



STATE BAR OF WISCONSIN

Your Practice. Our Purpose.™

REPORT OF THE WISCONSIN LAWYERS' FUND FOR CLIENT PROTECTION

FISCAL YEAR 2011
JULY 1, 2010 THROUGH JUNE 30, 2011

Attorney Deborah M. Smith (member, 2011) was appointed chairperson to serve until June 30, 2011. In addition to Attorney Smith, the other members serving on the committee in fiscal year 2011 were Attorney Lindsey D. Draper (2012), who also served as vice chair, Dr. Steven Behar (2011), Mary Beth Growney-Selene (2013), Attorney Stephen D. Chiquoine (2013), Attorney David P. Kaiser (2014), and Attorney Joseph P. Wright (2015).

The committee met three times, August 24, 2010, November 2, 2010, and March 15, 2011, to consider claims filed and address other business.

CLAIMS SUMMARY

During fiscal year 2011, the committee acted upon a total of 79 claims. The claims included 70 new claims first presented in fiscal year 2011; eight claims deferred from fiscal year 2010; and one claim that was reconsidered from fiscal year 1999. The 79 claims were against 46 attorneys.

A total of 40 claims were approved in the following categories:

- Trust Account Conversion – nine claims totaling \$109,042
- Unearned Advanced Fees – 27 claims totaling \$100,600
- Theft by Estate - two claims totaling \$89,434.07
- Misappropriation of Funds - two claims totaling \$9,419.25

The Fund approved claims against the following 15 individual attorneys:

- Fred L. Bardenwerper - one claim totaling \$400
- Joan Marie Boyd – three claims totaling \$3,400
- Leonard V. Brady – two claims totaling \$89,434.07
- Khaja M. Din – one claim totaling \$3,000
- Peter T. Elliott – two claims totaling \$9,419.25
- T. Christopher Elliott – seven claims totaling \$31,541.50
- Charles R. Koehn – one claim totaling \$2,000

- Mark R. Kramer – one claim totaling \$75,000
- Robert K. Kuhnmuench – one claim totaling \$1,000
- Alf R H R Langan – one claim totaling \$3,000
- Gene D. Linehan – one claim totaling \$1,750
- Brian P. Mularski – one claim totaling \$2,500
- Christopher A. Mutschler - 16 claims totaling \$84,220
- Robert J. Smead – one claim totaling \$1,000
- Ronald J. Thompson - one claim totaling \$830

Of the 79 claims considered, 31 were approved for payment in full, 10 were approved in part and denied in part, 45 were denied in full, and seven were deferred for further consideration.

Of the 31 claims approved, and one claimant did not return a signed subrogation agreement required for reimbursement of the approved \$830. Payment was also issued in the amount of \$8,750 for two claims approved in Fiscal Year 2010; however, due to a lack of funds the payments were deferred to Fiscal Year 2011. As of the date of this report, seven claims have been received for consideration in fiscal year 2012. In addition, the seven deferred claims, totaling \$195,021.50 will again be considered in fiscal year 2011.

REVENUE

The Wisconsin Lawyers' Fund for Client Protection ended fiscal year 2010 with a balance of (\$5,311.86). During fiscal year 2010, there was a Wisconsin Lawyers' Fund for Client Protection assessment of \$25 per attorney per SCR 12.07(3) Certificate of sufficiency. "The committee shall determine the net value of the fund as of May 1 of each year. Whenever the value of the fund shall equal or exceed \$250,000, after deducting all claims which the committee has determined to pay and which are not disposed of at the date of valuation and all expenses properly chargeable against the fund, the committee shall file with the supreme court prior to May 31 of that year a certificate of sufficiency to that effect. When a certificate of sufficiency is filed with the Supreme Court, there shall be no annual assessment for the next fiscal year."

Total assessments collected amounted to \$491,714. Interest on deposits totaled \$1,222.80. Restitution collected from attorneys totaled \$9,117.49. Total funds available to the committee for distribution during fiscal year 2011, therefore, were \$502,054.29.

EXPENSES

Of the 79 claims considered in the fiscal year, 39 were paid for a total amount of \$316,585.82. Administrative expenses were paid in the aggregate amount of \$54,357.67. Total disbursements made by the fund were thus \$370,943.49. As of the end of the fiscal year—June 30, 2011—the fund balance was \$125,798.94.

OTHER ACTION

The Wisconsin Supreme Court established the Wisconsin Lawyers' Fund for Client Protection (WLFCP), formerly named the Clients' Security Fund, in 1981 to reimburse people who lost money through dishonest acts of Wisconsin attorneys. Claims include unearned retainer, theft from estate, misappropriation of funds, conversion of trust account funds, and theft by investment. Claims for reimbursement and all proceedings of the committee are subject to **SCR 12.04-12**. Reimbursement decisions are made at the discretion of the committee.

The WLFCP continues to experience an even greater number and total amount of claims than the committee had anticipated. The committee continues with its commitment to paying claimants with substantiated claims as promptly it can. The WLFCP Committee is also committed to finding new ways to seek restitution from lawyers against whom claims are paid.

The WLFCP petitioned the Wisconsin Supreme Court to revise the Petition to amend Supreme Court Rule 12.07 Relating to the Assessment of Attorneys for the Wisconsin Lawyers' Fund for Client Protection. A public hearing was held on the Petition on April 11, 2011. Following the Supreme Court's administrative hearing, the petition to eliminate the sufficiency level and to set an annual assessment of attorneys at \$20 was approved and will become effective Fiscal Year 2013, July 1, 2012.

The WLFCP submitted the petition for a number of reasons: The sufficiency level for the Fund has not been changed since 1997 when it was raised from \$150,000 to \$250,000. In 2009, the committee changed its procedures to raise the maximum that can be paid on a claim from \$75,000 to \$150,000. The change was necessary because the maximum had not been raised since 1996 and the value of the claims

was increasing. The average annual claims paid for FY01 – FY05 was \$154,000. The average annual claims paid for FY06 – FY10 was \$316,000. See Chart 1 Total Claims Paid FY01 – FY10.

Although the trendline for claims paid shows an upward trend and the average annual total has increased, the yearly amounts vary greatly. Because the assessment is tied to the sufficiency level, the annual assessment to lawyers can also vary greatly year to year. The sufficiency level is calculated at the end of the fiscal year and only considers claims paid or to be paid and expenses. The sufficiency level does not take into account pending claims and deferred claims. The Fund balance at the end of the fiscal year is not a reliable indicator of what will be needed in the upcoming fiscal year. The consequence of basing the future year's assessment on the past year's final balance was that FY2010 ended with a negative balance, meaning payment of claims had to be delayed into FY11.

The members of the Client Protection Fund committee believe that the rules related to the sufficiency level and how the annual assessment is determined need to be changed in order to fulfill the Fund's core mission. The committee is recommending that the rule provide for a set assessment of \$20 per year for payment of claims. The committee is further recommending that any funds remaining after claims and expenses have been paid be placed in a reserve account.

The Wisconsin Fund has recent experience with large and numerous claims. In FY2010 the Fund paid out a total of \$381,692 for four claims against a single attorney. Also, in FY2010 the Fund began receiving a series of claims against a once prominent DUI attorney from the Fox Valley. In FY2010, the Fund paid \$50,450 for nine claims against the attorney. During FY2011, 16 claims were paid against the attorney for a total of \$84,220. In addition, the Wisconsin Fund received its first multi-million dollar claim in FY2011.

Client protection funds around the country are experiencing increases in the numbers and sizes of claims," notes committee chair Deb Smith. "As lawyers are under increasing economic pressure, some experience problems with substance abuse, depression, or generally become overwhelmed. Unfortunately, there are those who resort to stealing from clients and trust accounts. I think that explains, in part, what we're seeing in the numbers and amounts of claims in Wisconsin. While we can feel some empathy for the plight of those affected lawyers, it is important that we call them on their dishonest conduct and do what we can to make their victims whole. We are a self-policing profession, and as such, we owe a special duty to clients and the public to maintain trust and

confidence in lawyers. One important way we do this is by making amends for the bad deeds of a few.”

The WLFCP Committee approved an assessment for Fiscal Year 2012 (July 1, 2011 – June 30, 2012) of \$25.

Respectfully submitted,

WISCONSIN LAWYERS’ FUND FOR CLIENT PROTECTION

By: 
Deborah M. Smith, Chair

Date: 8/19, 2011

Attachment 1 - Action on Claims

Attachment 2 - Financial Statements

Attachment 3 – Fiscal Year 2011 Claims by Attorney

Attachment 4 – Fiscal Year 2011 Claims by Type of Theft