
In the Matter of the Petition to
amend Supreme Court Rule 12.07
Relating to the Assessment of Attorneys
for the Wisconsin Lawyers' Fund for Client
Protection

MEMORANDUM IN
SUPPORT

To: Chief Justice Shirley S. Abrahamson
Justice Ann Walsh Bradley
Justice N. Patrick Crooks
Justice David Prosser, Jr.
Justice Patience D. Roggensack
Justice Annette Kingsland Ziegler
Justice Michael J. Gableman

Filed with the Clerk of the Supreme Court

Clerk of Supreme Court Office
110 East Main Street, Suite 215
Madison, WI 53703

The Wisconsin Lawyers' Fund for Client Protection, by its chair, Deborah M. Smith, hereby petitions the Supreme Court of Wisconsin for an order amending Supreme Court Rule 12.07 relating to the annual assessment of attorneys for the operation of the Fund. The amended rule would provide a more reliable and predictable source of income for payment of eligible claims.

The Assessment and the Sufficiency Level

The Wisconsin Lawyer's Fund for Client Protection was established by the Supreme Court in 1981. The basic mission of the Fund is to reimburse clients who have suffered a covered financial loss due to the misconduct of their lawyer. The Fund is administered by a committee consisting of 5 attorneys and 2 non-attorneys appointed by the president of the State Bar of Wisconsin. The committee considers claims submitted to the Fund, adopts rules of procedure, and determines the annual assessment based on existing Supreme Court rules.

SCR 12.07 sets a sufficiency level for the fund and directs the committee regarding the annual assessment.

SCR 12.07 Assessment of attorneys; enforcement.

- (1) Initial assessment. Every attorney shall pay to the fund an initial assessment of \$5.
- (2) Annual assessments. Commencing with the state bar's July 1, 1982 fiscal year,

every attorney shall pay to the fund such annual assessment as is necessary to maintain a balance in the fund of \$250,000, but in no event shall any annual assessment exceed \$25. An attorney whose annual state bar membership dues are waived for hardship shall be excused from the payment of the annual assessment for that year. An attorney shall be excused from the payment of the annual assessment for the fiscal year during which he or she is admitted to practice in Wisconsin.

(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.

(4) Collection; failure to pay. The initial assessment and annual assessments shall be collected at the same time and in the same manner as the annual membership dues for the state bar are collected. An attorney who fails to timely pay the initial assessment or any annual assessment shall have his or her right to practice law suspended pursuant to SCR 10.03(6).

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 FY 01 – FY 05 was \$154,000. The average annual claims paid for FY 06 – FY 10 was \$316,000. See Chart 1 Total Claims Paid FY 01 – FY 10.

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 FY 2010 ended with a negative balance, meaning payment of claims had to be delayed into FY 11.

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. This will allow the fund to meet its obligations to claimants despite yearly variations in claims made. Chart 2 shows what the Fund balance would have been had the assessment been steady at \$20 per year for FY 05 – FY 10.

Many other states maintain a reserve account for their client protection programs. The recommendation from the National Client Protection Organization is:

The assessment should not be halted, suspended, or reduced because the Fund has a positive balance. To the contrary, a substantial reserve should be sought, as interest income will help the Fund meet the need in times of large or numerous claims.

A copy of the National Client Protection Organization's *Standards for Evaluating Lawyers Fund for Client Protection* is attached. Also attached is a copy of the preamble to the ABA Model Rules for lawyers' funds for client protection.

The Wisconsin Fund has recent experience with large and numerous claims. In FY 2010 we received a claim from the Bethany Evangelical Lutheran Church of Milwaukee for \$150,000. The lawyer involved handled the sale of some church property. The sale was necessary in order for this inner city church to keep its doors open and continue to serve the more immediate needs of the poor in its community. In FY 2010 the Fund paid out a total of \$381,692 for four claims against this same attorney.

Also, in FY2010 we began receiving a series of claims against a once prominent DUI attorney from the Fox Valley. In FY2010, we paid \$50,450 for nine claims against the attorney. During FY 2011, 13 claims have been paid to date for a total of \$64,970. Six additional claims are pending for FY 2011. The Wisconsin Fund received its first multi-million dollar claim in FY 2011.

The proposed change to the language of the rule is set forth in the attached petition.

Periodic Review

The Court has put several of its newer rules on a schedule of periodic review. The proposed amendments include periodic review. This will allow the Court and the Bar to assess the stability of the Fund and make corrections to the assessment.

Dated this 17th day of December, 2010.

Respectfully Submitted,



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