

An Editorial

Assessing Without Apology

By Kenneth J. Bossong

There is no truer truism in the field of client protection than this: without funding, there can be no client protection fund. Yet there is always someone who feels that he or she should not have to pay the freight. It's easy to forget that such malcontents are in a distinct minority. But whether numerous or few, loud or quiet, they deserve to be answered.

For trustees and staff alike, fund advocacy is an important part of the job. Whatever advantages fund critics may seem to have, advocates have one huge advantage in the merits of inherent worth: a client protection fund, when properly presented, is a very difficult program to oppose publicly.

Occasionally, however, there will be those who ask, "Why should I be my brother's keeper?" Amazingly, this is offered without irony, as if to imply that Cain was role model. Perhaps the best answer is to point out that the fund is not there to benefit dishonest brethren, but their victims.

Most opponents, though, take a different tack: they praise the fund, but indicate that there are unique circumstances that should exempt them. Typically they are lawyers who are not engaged in the "private" practice of law. They include government lawyers, judges, law professors, legislators, and court employees. Maybe they live and work out-of-state. Should they be expected to contribute to the fund? Yes, and without apology.

Among their arguments: "I should be exempt because I do not contribute to the risk

that the client protection fund covers". This insurance analogy is fatally flawed.

The fund is not about lawyers banding together to spread economic risk. Lawyers are not a band of thieves. In the real world, there will be relatively few dishonest lawyers and victims whose misfortune it was to trust them.

To their credit, lawyers know that it's intolerable to leave these victims without a remedy. In addition, they finance these protection funds from their own pockets. This is directly related to the trust that is reposed in the profession by the public. When a lawyer steals, it besmirches all lawyers; when the protection fund makes good, it benefits them all.

Assessments can and should be reasonable. Almost all jurisdictions should find \$50 per year (\$.96 per week) to be entirely adequate; and many can do a good job with even less. That's true, however, only if all lawyers participate, in good years as well as bad.

It's not a crime for a fund to be financially healthy. Building a reserve generates interest income to help care for victimized clients. On the other hand, an arbitrary cap on a fund's reserve dares fate to disprove the adequacy of the cap. Few funds have reduced their assessments without an eventual regret for the decision. Fewer still are the lawyers who express appreciation when an assessment is reduced.

The best advice: refuse to go defensive for doing what is right and intelligent.

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