

Fen-phen lawyers' licenses sought

Bar panel urges temporary move

By Brandon Ortiz
HERALD-LEADER STAFF WRITER

A Kentucky Bar Association commission wants to temporarily suspend the law licenses of three Lexington attorneys accused of taking excessive fees in Kentucky's fen-phen lawsuits.

The Kentucky Supreme Court has scheduled a hearing for Aug. 17 to consider suspending Melbourne Mills, Shirley Cunningham Jr. and William Gallion. The attorney representing the three lawyers, William E. Johnson of Frankfort, said the bar's Inquiry Commission has asked for their suspension pending a disciplinary investigation.

The bar's chief counsel, Linda Grosner, said Supreme Court rules prohibit her from commenting on or confirming disciplinary investigations.

More than 400 people sued fen-phen maker American Home Products in Boone Circuit Court, saying that the diet drug damaged their hearts. The case settled for \$200 million in 2001.

In late 2004, former fen-phen clients sued their former lawyers, asking for a full accounting of settlement funds.

The three lawyers and their consultants received more money -- collectively \$106 million, or roughly \$20 million each -- than the \$74 million divided among their 431 clients.

A judge ruled in March that the lawyers breached their fiduciary duty when they diverted more than \$20 million in settlement money to the non-profit Kentucky Fund for Healthy Living and received more money in fees than their contracts allowed.

The three Lexington lawyers, a trial consultant and later another judge who presided over the 2001 settlement were directors of the fund, being paid \$60,000 a year.

The lawyers say they used case law governing excess funds in class-action lawsuits that allows for lawyers to receive additional fees and also allows for creation of a non-profit from those fees.

Johnson has noted that a judge approved the additional payments and the creation of the fund. That judge, Boone Circuit Court Judge Jay Bamberger, was publicly reprimanded by the Judicial Conduct Commission in February for violating a host of judicial canons. Bamberger became a paid board member of the Kentucky Fund for Healthy Living and approved the attorney fees that another judge said were excessive.

Bamberger resigned rather than face disciplinary action.