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Bar group wants lawyers suspended

3 were involved in fen-phen case

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Three Lexington lawyers accused of taking millions in excessive fees in Kentucky's fen-phen case should have their licenses to practice law suspended, a Kentucky Bar Association commission has concluded.

The Kentucky Supreme Court, which disciplines lawyers, will hold a hearing Aug. 17 on a request by the bar association's Inquiry Commission for temporary suspensions of lawyers Melbourne Mills, Shirley Cunningham Jr. and William Gallion, according to the court's calendar.

Linda Gosnell, chief counsel for the bar, said a Supreme Court rule prohibits her from commenting on disciplinary investigations or proceedings.

But William E. Johnson of Frankfort, who is representing the lawyers, said yesterday that he requested the hearing to present his clients' side. He said it was his understanding that the bar association commission was seeking temporary suspensions while it does a disciplinary investigation.

Under Supreme Court rules, temporary suspensions can be ordered under certain circumstances, including "a misappropriation or improper dealing of funds of others," pending completion of an investigation that could result in additional disciplinary action.

Johnson said he would object to the temporary suspensions because there hasn't yet been a hearing at which his clients could present their side, as part of the bar association investigation.

Johnson also said that his clients maintain that in determining their fees in the fen-phen case, they were following the orders of Boone Circuit Judge Joseph Bamberger, who approved the settlement in 2001 between American Products Corp. and 440 plaintiffs. Fen-phen was a popular diet-drug combination.

Bamberger retired in February, pending possible removal by the Judicial Conduct Commission, which publicly reprimanded him for several acts, including approving excessive fees to the plaintiffs' lawyers.

In a lawsuit filed against the lawyers in 2004, the plaintiffs claim that up to \$64.4 million of the \$200 million settlement was misappropriated.

The suit is pending in Boone Circuit Court.

Cunningham, Gallion and Mills paid themselves more than \$20 million each and paid \$20.5 million more to Cincinnati lawyer Stan Chesley, whom they hired to negotiate the fen-phen settlement.

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Plaintiffs claim they were not made aware of the settlement amount by their lawyers, and they contend the three Lexington lawyers should have received about \$14 million each, and Chesley's fee should have been \$13 million. Chesley also has denied any wrongdoing.

In March, Special Judge William Wehr, presiding in the Boone County case against all four lawyers, ruled that Cunningham, Gallion and Mills breached their duty to their clients when they paid themselves and others more than half of the settlement amount and put an additional \$20 million in a charitable fund. The Lexington lawyers and Bamberger were among the fund's paid directors.

They have said they will appeal the ruling, which could result in them being ordered to surrender some or all of their fees.

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