

Posted on Fri, Aug. 18, 2006

## State bar asks suspension of 3 fen-phen lawyers

State bar asks suspension of 3 fen-phen lawyers | [Comment](#)

By Beth Musgrave

HERALD-LEADER STAFF WRITER

Calling it a case of "unbridled greed," a lawyer for the Kentucky Bar Association urged the state Supreme Court yesterday to temporarily suspend the law licenses of three Lexington lawyers accused of taking excessive fees in a \$200 million lawsuit over the diet drug fen-phen.

Linda Gosnell, chief bar counsel for the bar association, told the Supreme Court yesterday that Shirley Cunningham Jr., William Gallion and Melbourne Mills took millions more in attorney fees than their clients had agreed to give them.

"They took \$105 million and gave their clients \$74 million," Gosnell said.

Yesterday's hearing was a rare behind-the-scenes look at the Kentucky Bar Association's Inquiry Commission disciplinary proceedings, which are secret unless there is a public reprimand. The hearing yesterday focused on whether there was probable cause to temporarily suspend the lawyers until an investigation into possible misconduct was completed.

It's unclear how long it will take for the Supreme Court to issue a ruling.

At the end of the more than hourlong hearing one justice asked Gosnell if information about the case had been turned over to law enforcement.

Citing a Supreme Court order, Gosnell said the bar cannot contact law enforcement as a rule. But it appears that at least one law enforcement agency may be investigating.

"It's our understanding that there's another law enforcement agency looking into the case," said Vicki Glass, a spokeswoman for Attorney General Greg Stumbo's office. She said the attorney general's office is not investigating.

A spokesperson for the FBI did not return phone calls.

More than 400 people were involved in a settlement with American Home Products, the maker of the diet drug fen-phen. The plaintiffs said the drug damaged their hearts. The case settled for \$200 million in 2001.

In 2004, the former fen-phen clients sued their former lawyers, asking for a full accounting of the settlement funds. Many said they were never told how the money was disbursed.

The lawyers on the case -- which included other lawyers and consultants besides Gallion, Cunningham and Mills -- collectively made \$105 million, court documents show. And Gallion, Cunningham and Mills made more money than the contracts with their clients said they should make.

A special judge ruled in March that the lawyers breached their fiduciary duty when they diverted more than \$20 million of settlement money to the non-profit Kentucky Fund for Healthy Living and received more money in fees than their contracts with their clients allowed. Court records show that \$64 million that should have gone to clients went to lawyers for expenses and attorney fees. That case is continuing.

William Johnson, a Frankfort attorney who represents the three lawyers, argued that his clients knew little about the disbursement of class-action settlement funds and depended on case law and the wisdom of then-Circuit Court Judge Jay Bamberger to decide how the money was distributed.

Johnson has argued that some of the \$200 million had to be escrowed in case new plaintiffs stepped forward with claims against American Home Products. When no one did, the excess money had to be disbursed. Johnson has also said that the lawyers' clients received more money in settlement funds than they were originally supposed to get. Court records

show that some fen-phen plaintiffs received one settlement check and then months later received a second.

"Did the plaintiffs in those cases get what they were entitled to?" Johnson said. "That's the big issue."

But Gosnell said in court yesterday that the second disbursement of checks to plaintiffs was made after the bar sent a subpoena to Mills in February 2002, asking for an accounting of funds from the fen-phen settlement.

The three lawyers transferred about \$58 million from their personal accounts back into the client's accounts after receiving the subpoena, Gosnell said. That money was then given to the plaintiffs in a second round of checks. The lawyers also wrote checks on the clients' accounts to car dealerships, Gosnell said.

There were two checks to two car dealerships totaling about \$188,000, said Angela Ford, a Lexington lawyer who is representing the plaintiffs in the lawsuit against their former lawyers. Those checks for cars were written before many of the plaintiffs got their first check, Ford said.

Bamberger later was publicly reprimanded after the state Judicial Conduct Commission found that he acted improperly in the case. Bamberger, the commission found, approved the excessive attorney fees without examining the contracts with the lawyers. Bamberger also later became a paid board member of the Kentucky Fund for Healthy Living.

Mills, the only one of the three lawyers to attend yesterday's hearing, said afterward that he thought the state's rules regarding the disbursement of money in multimillion-dollar, class-action lawsuits should be clearer. Mills also said he is looking forward to telling his side of the story, saying there has never been a hearing on the merits of the case against him or his former colleagues.

Mills, who made \$23 million from the fen-phen lawsuit, said with expenses he was within his contingency fee of up to 3 percent, according to his contracts with his clients.

"We should have a chance to put on our proof," Mills said.

When asked if he thought that he or his co-counsel did anything wrong, Mills said they did not do anything criminally wrong.

"That's a subjective question," Mills said. "Certainly not significantly wrong."