

Restoring public trust

A judge's long-awaited decision to order the repayment of excessive attorney fees in the celebrated fen-phen diet drug case was right on the money.

Special Judge William Wehr's order that three central Kentucky lawyers repay at least \$62.5 million - with interest at 8 percent over the six years they had the money - sends a welcome message to anyone who might think the legal system is theirs to game.

The three attorneys once represented more than 400 Kentucky residents who believed they'd been harmed by taking fen-phen. With help from Cincinnati attorney Stan Chesley, the three lawyers secured a \$200 million settlement from the drug's manufacturer.

Last month a federal grand jury indicted the three attorneys - William J. Gallion, 56, and Shirley A. Cunningham Jr., 52, of Lexington and Melbourne Mills Jr., 76, of Versailles - for conspiracy to commit wire fraud. They are accused of lying to their clients about the amount of the settlement, and of taking two-thirds of it when they were entitled to just one-third. All three have pleaded not guilty.

Last year, in a civil suit the ex-clients had filed, Wehr concluded that after paying Chesley \$20 million for his role in negotiating the settlement, the three lawyers paid themselves \$42 million and used another \$20.5 million to set up a charitable fund with themselves as trustees who were each paid \$60,000 a year. The attorneys told the presiding judge in the original fen-phen case that all the plaintiffs wanted the charitable fund established. In fact, Wehr concluded, the plaintiffs knew nothing about the fund until after it had been established. In depositions given in the civil case, the three lawyers acknowledged that they met secretly to decide how to distribute the settlement money and burned or tore up notes that would have shown how much they paid themselves and their clients.

Chesley was not indicted, but has been sued by some of the original plaintiffs for allegedly breaching his fiduciary duty to them. He has denied any wrongdoing, saying his dealings were with the three attorneys, not the clients. His civil trial in Wehr's court is scheduled to begin in September.

Wehr had said nearly a year ago that he would require some of the attorney fees be repaid to the clients. But it wasn't until Friday that he issued a binding order specifying an amount to be repaid. Still pending is a civil trial on the question of punitive damages; Wehr has said that will wait until after the criminal proceedings are concluded.

Through his steady handling of the matter, and by going the extra step of charging interest on the money that should have gone to the fen-phen clients, Wehr is helping to mend the damage caused by this celebrated case. Public confidence in the legal system is sometimes shaky, in part because of the perception that some lawyers are using the suffering of others to strike it rich. By sending such a clear signal that shenanigans won't be tolerated, Wehr is helping to restore public trust - and in the process he is helping the majority of lawyers who play by the rules and conduct themselves honorably.