

State Bar of New Mexico
Client Protection Fund



2023 Annual Report



*Presented to the
Supreme Court of New Mexico
and the State Bar of New Mexico
Board of Bar Commissioners*



State Bar of New Mexico
Client Protection Fund

2023 Commission

Sally Galanter
Chair
Tonya Herring
Vice-Chair
Scotty Holloman
Secretary/Treasurer

Ex Officio Members

Richard B. Spinello
Stormy Ralstin



State Bar of New Mexico Client Protection Fund

Commissioners

Don Anque
Aja Brooks
Andrew Cloutier
Mick Gutierrez
James Reist
Hon. Linda Vanzi

Commission Liaison

Anne L. Taylor

March 1, 2024

Dear Colleagues,

It has been my pleasure and honor to serve as the 2023 Chair of the Client Protection Fund. The annual report provides fund information from 2005, when the Supreme Court issued an order establishing the State Bar of New Mexico Client Protection Fund Commission through 2023, including the history, purpose of the fund, revenues generated, the claims process and claims approved and denied.

The Commissioners are dedicated to ensuring that those who have been financially harmed by the dishonest conduct of lawyers admitted and licensed to practice in New Mexico are reimbursed, fulfilling the purpose of the fund by promoting public confidence in the administration of justice and the integrity of the legal profession. The nine members, licensed New Mexico attorneys, are assigned multiple claims and thereafter conduct a thorough investigation and ultimately complete a recommendation which is presented to and voted on by the full Commission.

The Commission continues to see claims against deceased attorneys as well as claims in which attorneys have failed to retain unearned fees in their trust account and/or have failed to maintain adequate records regarding trust funds held for their clients. Observing these problems is a good reminder to all attorneys of the importance of vigilantly complying with the rules as to trust accounting and ensuring that trust funds are never comingled with other funds or removed from the trust account until earned.

In the eighteenth full year of Commission operation, Commissioners approved 11 claims against 9 attorneys reimbursing \$98,941.43 to claimants. The Supreme Court designated Anne Taylor to distribute trust account funds of one attorney in the amount of \$1,810.81 directly to one claimant. Commissioners denied 14 claims against 13 attorneys and had 12 finalized during the investigatory process. 13 claims have been carried over to be completed in 2024.

I thank all commission members for their tireless work and service towards fulfilling the purpose of the commission adding a special thanks to Aja Brooks, who while serving her one-year term in her capacity as secretary-treasurer added much to the quality of the work completed. Additionally, I would like to thank State Bar staff Stormy Ralstin, David Powell, Kate Kennedy and Donna Smith and Disciplinary Board Staff Anne Taylor and Tamma Williams without whose assistance, the commission could not complete its work and whose assistance has greatly enhanced the success of commission work.

Sincerely,

Sally Galanter
2023 Chair



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► Introduction



► History and Purpose

The purpose of the Client Protection Fund (CPF) is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of lawyers admitted and licensed to practice law in the courts of this jurisdiction. The Client Protection Fund Commission was established by order of the New Mexico Supreme Court effective Dec. 13, 2005, as a permanent commission of the State Bar of New Mexico Board of Bar Commissioners. The Supreme Court adopted a modified version of the American Bar Association's model rules for client protection funds and codified them at Rules 17A-001 et seq. of the New Mexico Rules Annotated. The Commission oversees the CPF and is charged with receiving, holding, managing, and disbursing money from the Fund according to the rules. The State Bar is responsible for administering the Commission, developing and approving the budget, and managing operations and staffing. Since January 1, 2014, the New Mexico Disciplinary Board has assisted in the technical administration of the Commission's tasks, including the processing of claims under the Commission's direction.

► Revenues

The initial resources for the Fund were provided in 2005 by a Supreme Court order transferring funds from accumulated fines against lawyers who failed to comply with the Court's Minimum Continuing Legal Education requirements. In 2008 the Supreme Court ordered an additional transfer of funds from MCLE to the Fund. In 2009 the Supreme Court ordered a \$15 annual assessment of every active New Mexico attorney pursuant to Rule 17A-003 (B) NMRA. In 2010, 2012, 2016, and 2018 additional monies were also transferred from MCLE to the Fund by Supreme Court Orders. The State Bar provides in-kind support to the Fund and the Commission through staff support, office and meeting space, and fiscal administration. (See 2023 Financial Information, page 10). From time to time, the Fund receives monies from court-ordered sanctions directed to the fund at the discretion of the judge.

► Eligible Claims

To qualify for a reimbursement from the Fund, a client must have incurred a financial loss caused by the dishonest conduct of a New Mexico-licensed lawyer who was counseling, advising, or representing the client or serving in another fiduciary capacity such as a trustee. The claim must be filed no later than five years after the client knew or should have known of the lawyer's dishonest conduct. Dishonest conduct is specifically defined under the CPF rules as wrongful acts such as theft or embezzlement of money or the wrongful taking or conversion of money, property, or other things of value; e.g., failing to refund unearned fees or borrowing money from a client without the intention to repay or disregarding the lawyer's inability or reasonably anticipated inability to repay. A typical CPF claim involves a lawyer who collected a retainer from a client, performed some legal work, and then became unable or unwilling to finish the work or refund the unearned amount.

The rules also include a hardship exception which allows the Commission, in cases of extreme hardship or special and unusual circumstances, to recognize a claim that was filed late or would not otherwise be reimbursable. This exception is rarely used. The maximum reimbursable amount was increased in 2012 from \$10,000 to \$20,000 per individual claim, and, effective January 1, 2016 from \$20,000 to \$50,000.

► Processing a Claim

The claimant must complete a prescribed claim form and have it notarized. The claimant must provide a copy of any written agreement pertaining to the claim and copies of any checks, money orders, receipts, or other proof of payment. The claimant is responsible for completing the form and providing evidence of a reimbursable loss up to the maximum amount payable per claim.

The CPF gives notice of a claim to the lawyer against whom it is filed (or the lawyer's representative) and allows 20 days for a response. The Disciplinary Board is also notified of the claim. After the lawyer's response and other initial facts and documents are gathered, the claim is assigned to one of the CPF commissioners for investigation. The commissioner investigates and presents a recommendation to the full Commission. If appropriate under the circumstances, the recommendation includes the investigating commissioner's estimate of any amount that should be allowed as a credit against the claim for the value of work the lawyer performed or costs the lawyer properly paid with client funds. The approval or denial of a claim requires the affirmative votes of at least five commissioners.

The claimant and the lawyer are notified of the Commission's decision. Either party may request reconsideration in writing within 30 days of the denial or determination of the amount of a claim. If no request for reconsideration is received, the check for any approved reimbursement is sent after the notice period expires. If a timely request is received, the check for any approved reimbursement is sent after the Commission has reconsidered its decision. Rule 17A-013 NMRA provides that in either case the Commission's decision is final and there is no further right of appeal. Reimbursement is discretionary and no person has a legal right to reimbursement from the Fund. As part of the claim form, the claimant agrees to assign his/her claims against the lawyer to the fund in the event that the CPF makes a payment, and the CPF may pursue reimbursement and recovery from the lawyer or the lawyer's successor (e.g., an estate).



► 2023 Annual Report Highlights and Commission Activities



The Client Protection Fund Commission finished its eighteenth full year of operation in 2023 paying nearly \$99,000 in 11 claims against 9 lawyers. To date, the Commission has paid \$1,325,288.42 in cumulative reimbursements for clients' financial losses involving 85 lawyers. Year-by-year and cumulative statistics appear later in this report.

The Commission met 3 times in 2023, with Commissioners appearing in person and via Zoom. There was no conference travel by the Commissioners.

The Commission reminds everyone that Rule 17A-018(A) protects the confidentiality of information on claims, claimants, and respondent lawyers with exceptions for approved claims and other limited purposes as set forth below:

- A. Publicizing awarded claims. Claims, proceedings and reports involving claims for reimbursement are confidential until the commission authorizes reimbursement to the claimant, except as provided below, unless provided otherwise by law. After payment of the reimbursement, the commission shall publicize the nature of the claim, the amount of reimbursement, and the name of the lawyer. The name and the address of the claimant shall not be publicized by the commission unless specific permission has been granted by the claimant. The commission may provide a waiver to the claimant which authorizes disclosure.
- B. Exceptions. This rule shall not be construed to deny access to relevant information by the disciplinary board, other professional discipline agencies or other law enforcement authorities as the commission shall authorize, or the release of statistical information that does not disclose the identity of the lawyer or the parties, or the use of such information as is necessary to pursue the fund's subrogation rights under Rule 17A-015 NMRA.

► **Visit the State Bar website at**
www.sbnm.org/cpf
for further information on the
Client Protection Fund.



State Bar of New Mexico
Client Protection Fund

► 2023 Client Protection Fund Commission

From its inception in 2006 through 2012 the Commission consisted of seven lawyers—four appointed by the Supreme Court, two appointed by the Board of Bar Commissioners, and formerly the vice president of the BBC, now the Secretary-Treasurer of the BBC. In 2013, the number of Commissioners was increased to nine. The 2023 commissioners and officers are listed here. All members except the BBC Secretary-Treasurer serve staggered three-year terms. The BBC Secretary-Treasurer serves for one year before advancing to become the State Bar president-elect and is succeeded on the Commission by the incoming Secretary-Treasurer. The six original commissioners were appointed for part of 2006 after the Commission was created and for staggered terms of one, two, and three years that began in 2007. Each of the six original commissioners were appointed to two full three-year terms. The CPF officers, elected annually by the Commission, consist of a chair, vice-chair and secretary/treasurer. Program assistance and administrative support is provided by the State Bar Office of General Counsel and the New Mexico Disciplinary Board.



Sally J. Galanter, Chair
Supreme Court Appointee

Sally J. Galanter has 39 years of legal experience working in the private and public sectors. After being a sole civil trial practitioner for approximately 22 years, Sally continued her legal career as a hearing officer with the Taxation and Revenue Department for over eight years conducting tax, MVD, and numerous other types of hearings while also supervising attorneys before moving to the Attorney General's office and prosecuting for numerous boards and commissions while also defending state officials in both state and federal court for over three years. For the past six years she has served as legal counsel for the Construction Industries and Manufactured Housing Divisions of the Regulation and Licensing Department representing the divisions in both civil and criminal matters in administrative proceedings and in state courts. Ms. Galanter retired from her position at the Regulation and Licensing Department in December 2021.



Tonya Noonan Herring, Vice-Chair
Supreme Court Appointee

Tonya Herring is a 1988 graduate of the New Mexico School of Law and has been practicing law in New Mexico for over thirty years. After law school, Ms. Herring worked in the Regulation and Licensing Division of the U.S. Securities and Exchange Commission in Washington D.C. Upon her return to New Mexico, she was employed by the New Mexico State Bar to implement and manage a newly created program called the Client Attorney Assistance Program, which included administrating the Client Protection Fund, the Fee Arbitration Panel, and the Unauthorized Practice of Law, and other attorney programs. Ms. Herring spent much of her legal career working for the State of New Mexico, in various departments. She worked for the New Mexico Department of Taxation and Revenue as a staff attorney and later as Acting Chief Counsel, and for the Office of the Attorney General in its Consumer Affairs Division and its Criminal Appeals Division. Ms. Herring retired from her position as Chief Counsel of the Office of the Secretary of State in 2020.



Scotty A. Holloman, Secretary/Treasurer
Supreme Court Appointee

Scotty A. Holloman is a shareholder, director, and president of Maddox, Holloman & Moran PC in Hobbs. He attended Texas Tech University (B.B.A., Accounting, 1980) and Texas Tech University School of Law (J.D., 1983). Mr. Holloman was admitted to practice law in Texas in 1983 and in New Mexico in 1984. He is a member of the State Bar Real Property, Trust and Estate Section and the State Bar Business Law Section. Mr. Holloman served as president of the Lea County Bar Association. From 2009-2012 he served as the out-of-state liaison to the State Bar of Texas Board of Directors. He and his wife, Terry, have three children: Aaron and wife Kelli; Emily; Jacob and wife Lacey; and three grandchildren: Simon, Owen and Annie of Roswell. Mr. Holloman also represents the Sixth Bar Commissioner District.



Don Anque

State Bar of New Mexico Appointee

Don Anque completed his undergraduate education at the University of California, Riverside (B.A. English and Graduates Address Speaker) and his legal education at Syracuse University (Law Ambassador and Pro Bono Award Recipient). Mr. Anque also obtained a certificate of study in Bioethics from Yale University, in contemplation of further doctorate studies. Before becoming a lawyer, Mr. Anque worked in politics for several years, and then, became a prosecutor in the Fourth Judicial District of New Mexico. In 2023, he was also selected to serve as an American Bar Association Young Lawyers Division Scholar.



Aja N. Brooks

State Bar of New Mexico Secretary-Treasurer 2023

Aja Nicole Brooks is a native New Mexican, born in Hobbs. She is a graduate of Wake Forest University in Winston-Salem, North Carolina, where she received her Bachelor of Arts in English and Spanish. She attended the University of New Mexico School of Law and graduated with her juris doctorate in 2008. She currently works as the Executive Assistant United States Attorney for the District of New Mexico, and previously worked as the Director of the Second Judicial District Court’s Center for Self-Help and Dispute Resolution. She is involved in many legal groups and activities, including serving as the President-Elect of the State Bar of New Mexico and as a mentor in the Bridge the Gap Mentorship Program. She is the past President of the New Mexico Black Lawyers Association, a former President of the New Mexico State Bar Foundation, and a member of the Iota Xi Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated. She enjoys exploring and traveling near and far with her husband, Johnn and her son, Emerson.



Andrew J. (Drew) Cloutier

Supreme Court Appointee

Drew Cloutier was appointed to the Commission by the Supreme Court of New Mexico effective Jan. 1, 2015. Mr. Cloutier previously served in the Commission *ex officio* as an officer of the State Bar of New Mexico in 2010 and 2011. He is partner in the Roswell office of Hinkle Shanor LLP. He practices primarily in the areas of oil and gas law and commercial litigation. Mr. Cloutier has litigated and tried a number of oil and gas issues in state and federal courts. He also assists oil and gas clients with a wide variety of issues with state and federal agencies. Mr. Cloutier served on the Board of Bar Commissioners of the State Bar of New Mexico from 2006 through 2014 and as its President in 2013. He has volunteered for the Conquistador Council of the Boy Scouts of America for many years and is serving as President of the Council’s Executive Board. Mr. Cloutier is a Trustee of the Rocky Mountain Mineral Law Foundation. He was named “Member of the Year” by the Independent Petroleum Association of New Mexico.



Mick I.R. Gutierrez

State Bar of New Mexico Appointee

Mick Gutierrez graduated in 1980 from UCLA School of Law. He was awarded a Post-Doctorate Fellowship from Howard University. Mr. Gutierrez has worked at the Southern NM Legal Aid, as a Special Assistant Attorney General, NM, as a Senior Trial Prosecutor at the District Attorney’s office in Dona Ana County and at a private law firm. Mr. Gutierrez also worked as an Assistant US Attorney for approximately 21 years. During his time as an Assistant US Attorney, he helped anyone who needed a lawyer (pro bono). He currently works with New Mexico Legal Aid, Inc. as a staff attorney. Mr. Gutierrez is licensed in New Mexico and California. He has three adult daughters, seven grandkids, and a wife of 45 years on April 7, 2023.



James T. Reist

Supreme Court Appointee

Jim Reist practices law in the small firm of Smidt, Reist & Keleher, P.C., in Albuquerque, New Mexico. His practice is primarily in the areas of business and commercial law and litigation as well as legal ethics and professional responsibility matters. He was appointed to the Commission beginning January 1, 2016. He also serves as chair of the Ethics Advisory Committee of the State Bar of New Mexico and has been a member of that committee for 20 years. He served as president of the Albuquerque Bar Association in 2015 and was a member of its board of directors from 2009 through 2016.



Linda Vanzi

State Bar of New Mexico Appointee

Linda Vanzi joined the Rodey Law Firm’s Complex and Commercial Litigation Group after retiring from the New Mexico Judiciary, where she served for 12 years as a judge on the New Mexico Court of Appeals, including two years as chief judge, following four years of service as a trial judge at the Second Judicial District Court, Civil Division.

▶ **EX OFFICIO MEMBERS**



Richard B. Spinello

Appointed by Position, Executive Director, State Bar of New Mexico

Richard Spinello attended the University of New Mexico (B.A., 1989) and the Thomas M. Cooley Law School (J.D., 1997). Previously in private practice in Rio Rancho, Spinello assisted clients with family law, estate planning, probate and adult guardianships. He came to the State Bar in 2000 as a staff attorney for the Lawyer Referral for the Elderly Program. After three years as staff attorney and a year as managing attorney for the LREP program, Spinello was named director of the Public and Legal Services Department for the State Bar and Bar Foundation where he helped secure funding for and participated in the creation of the Client Protection Fund rules and CPF Commission, the statewide 10 Step Pro Bono Plan, and the 2007 State Plan for Providing Civil Legal Services to Low Income New Mexicans. In January 2007, Spinello was named general counsel for the State Bar and in 2018 was named the Executive Director of the State Bar.



Stormy K. Ralstin

Administrator and Staff Counsel, General Counsel, State Bar of New Mexico

Stormy Ralstin joined the State Bar of New Mexico in 2012 as the managing attorney for the Legal Resources for the Elderly Program. Ms. Ralstin was made the Director of Legal Services for the State Bar and Bar Foundation in 2014. In January 2018, Ms. Ralstin was named General Counsel for the State Bar, overseeing the policy and regulatory function of the State Bar and Bar Foundation. Ms. Ralstin is a graduate of the University of New Mexico School of Law.

▶ **2023 COMMISSION LIAISONS**



Anne L. Taylor

Disciplinary Board Liaison

Anne L. Taylor is Chief Disciplinary Counsel for the Office of Disciplinary Counsel of the New Mexico Supreme Court Disciplinary Board where she has worked since January 2002. Anne has a J.D. from Vanderbilt University School of Law in Nashville, Tennessee. She has argued numerous disciplinary cases before the New Mexico Supreme Court and serves as the liaison between the Disciplinary Board and the Client Protection Fund. In addition, Anne is responsible for overseeing the Disciplinary Board’s IOLTA.

► 2023 Financial Information

2023 Financial Information Balance Sheet As of December 31, 2023

Assets	
Cash and Equivalents	\$580,042.68
Certificates of Deposit	\$524,344.44
Due from State Bar	\$30,764.50
Prepaid Insurance	\$176.60
Total Assets	\$1,135,328.22
Liabilities and Net Assets	
Liabilities	
Deferred Revenues	\$28,970.00
Total Liabilities	\$28,970.00
Net Assets	
Fund Balance	\$1,038,091.51
Current Year Increase (De-crease) in Net Assets	\$68,266.71
Total Net Assets	\$1,106,358.22
Total Liabilities and Net Assets	\$1,135,328.22

Statement of Revenues and Expenditures For Year Ending December 31, 2023

	Actual	Budget	Variance
Revenue			
CPF Assessments	\$115,705.00	\$115,000.00	\$705.00
CPF Assessments (PHV)	\$10,110.00	\$10,000.00	\$110.00
Interest Earned	\$11,940.23	\$2,500.00	\$9,440.23
Contributions / Sanctions	\$27,730.53	\$500.00	\$27,230.53
Restitution	\$4,475.00	\$500.00	\$3,975.00
Total Revenues	\$169,960.76	\$128,500.00	\$41,460.76
Expenditures			
Audit	\$1,200.00	\$1,200.00	-0-
Dues & Subscriptions	\$200.00	\$250.00	(\$50.00)
Insurance Allocation	\$656.40	\$650.00	\$6.40
Marketing / Advertising	-0-	\$1,000.00	(\$1,000.00)
Meetings & Governance	\$607.74	\$1,500.00	(\$892.26)
Mileage Reimbursement	-0-	\$2,000.00	(\$2,000.00)
Personnel	-0-	\$60,000.00	(\$60,000.00)
Postage Allocation	\$88.48	\$200.00	(\$111.52)
Professional Development	-0-	\$10,000.00	(\$10,000.00)
Total Expenses	\$2,752.62	\$76,800.00	(\$74,047.38)
Revenue Over Expenditures	\$167,208.14	\$51,700.00	\$115,508.14
Less: Claims Approved	\$98,941.43	-0-	\$98,941.43
Total Increase (De-crease) in Net Assets	\$68,266.71	\$51,700.00	\$16,566.71

► 2023 Claims and Respondent Lawyers

2023 Claims and Respondent Lawyers

As required by Rule 17A-018, the Commission reports that 11 claims resolved in 2023 resulted in payments to the complaining party as a result of the actions of 9 lawyers. The following table summarizes those payments.

2023 Summary of Claims Approved by Lawyer

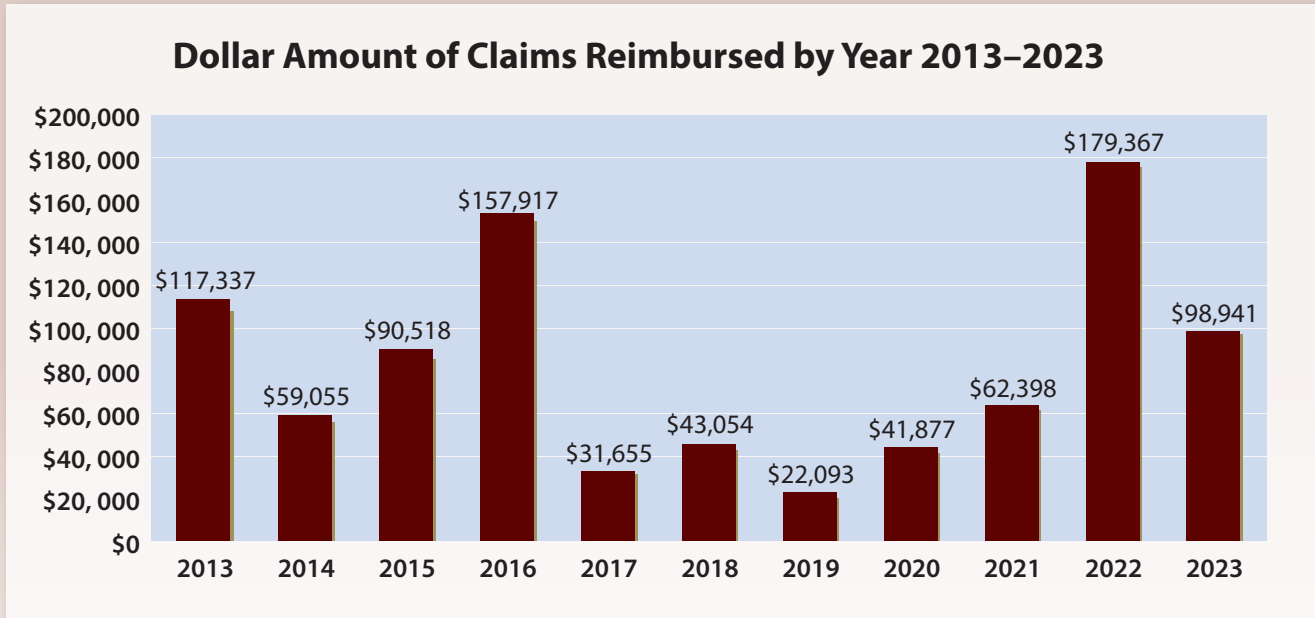
Lawyers	Lawyer's Status as of 12/31/2023	Claims Approved in 2023	Dollars Awarded in 2023	Reason
Diane Albert	Deceased	1	\$600.00	Unearned Fees
Sean Thomas	Deceased	3	\$3,252.76	Unearned Fees
William Morgan	Deceased	1	\$1,000.00	Unearned Fees
David Proper	Suspended	1	\$2,500.00	Unearned Fees
David Mathias	Deceased	1	\$2,475.00	Unearned Fees
Diwayne Gardner	Deceased	1	\$1,640.00	Unearned Fees
Shannon Robinson	Disbarred	1	\$10,740.00	Unearned Fees
Anthony Rascon	Disbarred	1	\$26,733.67	Unearned Fees
Anthony Ayala	Disbarred	1	\$50,000.00	Unearned Fees
Claims paid on 9 lawyers	Total approved	11	\$98,941.43	

► Annual Statistics 2006-2023

2006-2023 Annual Statistics

CLAIMS APPROVED	2006-2018	2019	2020	2021	2022	2023	TOTALS
Total number of claims approved in whole or in part	247	6	7	10	48	11	329
Total dollar amount of claims approved and paid (revised from prior annual reports after reconciliation of cumulative lawyer summary)	\$920,611	\$22,093	\$41,877	\$62,398	\$179,367.99	\$98,941.43	\$1,325,288.42
CLAIMS DENIED							
Total number of claims denied in whole or part	248	11	12	7	13	14	305
Total dollar amount of denials	\$1,437,637	\$164,065	\$277,192	\$149,624	\$259,099.28	\$145,128.38	\$2,432,745.66
Claims made over limit	20	0	0	1	2	0	23
Total amount denied over limit	\$290,638	0	0	\$51,000	0	0	\$341,638
Total amount denied for other reasons	\$1,146,999	\$164,065	\$277,192	\$98,624	\$259,099.28	\$145,128.38	\$2,091,107.66
CLAIMS PENDING AT END OF YEAR							
Claims undecided and carried over to next year	115	15	16	34	26	13	-----
Claim amount pending at end of year	\$647,114	\$272,336	\$205,821	\$347,744	\$183,792.42	\$345,931.37	-----
ATTORNEY STATISTICS							
Total number of attorneys with claims filed	235	14	14	20	27	26	-----
CONTRIBUTIONS/ SANCTIONS/ RESTITUTION	\$56,187.49	\$1,700.00	\$12,932.31	\$12,991.03	\$16,465.18	\$32,205.53	\$132,481.54

► 2013–2023 Statistical History





State Bar of New Mexico
Client Protection Fund

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