

STATE BAR OF NEW MEXICO CLIENT PROTECTION FUND 2010 ANNUAL REPORT



SUBMITTED TO THE
SUPREME COURT OF NEW MEXICO
AND THE
BOARD OF BAR COMMISSIONERS OF THE STATE BAR OF NEW MEXICO



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December 31, 2010



As chair of the Client Protection Fund Commission for 2010, I am pleased to present, on behalf of the Commission, the Fund's annual report. The annual report provides information relating to the history, purpose, revenues and claim processes of the Commission. It also provides background biographical information for each commissioner, as well as a summary of the types of claims, the amounts reimbursed on claims, and an overview of the Fund from 2006–2010.

On December 13, 2005, the Supreme Court issued an order establishing the State Bar of New Mexico Client Protection Fund Commission. The Commission is comprised of four members appointed by the Supreme Court, two members appointed by the State Bar of New Mexico, the treasurer of the State Bar of New Mexico Board of Bar Commissioners, and two ex officio non-voting members.

The commissioners are active in thoroughly investigating every claim and providing recommendations to the full Commission. The Commission helps 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. In 2010, the Commission reimbursed \$116,744.40 to claimants who had been harmed by their attorneys. I would like to thank the Commissioners for their dedication and compassion in investigating claims to ensure that those harmed are reimbursed as fully as possible.

I would also like to extend my heartfelt gratitude to Chief Justice Charles Daniels, the CPF Liaison Justice Richard C. Bosson and all of the justices of the Supreme Court of New Mexico and the State Bar of New Mexico Board of Bar Commissioners for providing their support to the Fund. Significant this year, on September 29, 2009, the Supreme Court issued an order assessing \$15 annually from every attorney licensed to practice law in New Mexico. This has been the first year for the assessment and it will assist in providing long term funding for the Fund and for ensuring that we, as members of the New Mexico bar, do our utmost to ensure that the public is protected from financial harm by the dishonest conduct of any New Mexico lawyer.

I hope you will take the time to read the annual report and learn more about what the Fund does. Please share this valuable information with those who may need assistance from the Fund.

A handwritten signature in black ink, appearing to read "Charles J. Vigil".

Charles J. Vigil, Esq., Chair
Client Protection Fund 2010

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INTRODUCTION

The Client Protection Fund Commission (Commission) is proud to present the fifth annual report of the Client Protection Fund (Fund) of the State Bar of New Mexico, including its annual accounting of the operations of the Fund. This annual report contains information on Fund activities from 2006 through 2010.

The Fund reimburses clients for financial losses caused by dishonest conduct of their attorneys. There are 8,743 attorneys who are active members of the State Bar of New Mexico. In 2010, as has been the experience in previous years, the number of attorneys who have caused losses to their clients resulting in reimbursement from the Fund is only a small percentage of all of the attorneys practicing law in New Mexico. In 2010, the Commission investigated 14 attorneys (suspended, disbarred or deceased) who caused losses to clients who were subsequently reimbursed by the Fund.

History and Purpose

The Client Protection Fund Commission was established by order of the Supreme Court of New Mexico, effective December 13, 2005, as a permanent commission of the Board of Bar Commissioners of the State Bar of New Mexico. The Commission was established to oversee the Fund. The Commission is charged with receiving, holding, managing and disbursing money from the Fund according to the rules governing the Client Protection Fund, Rule 17A-001 et seq. NMRA. The State Bar of New Mexico has been given the responsibility of administering the Commission, developing and approving the budget, and managing operations and staffing for the Commission.

The purpose of the Fund 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 Commission continues to carry out its responsibilities and meet its objectives by providing assistance to clients who have been financially harmed by the dishonest conduct of licensed New Mexico attorneys.

Revenues

The initial funding for the Fund was established in 2005 by Supreme Court order transferring funds from fines levied through the Minimum Continuing Legal Education Board (MCLE) to the Fund. In 2008, the Supreme Court ordered an additional transfer of funds from MCLE to the Fund. The Supreme Court in 2009 ordered a \$15 annual assessment of every active New Mexico attorney pursuant to Rule 17A-003 (B) NMRA. In 2010, monies were also transferred from MCLE to the Fund. The combination of the MCLE funds and the annual assessment will permit the Fund to increase reserves, to gradually increase the maximum amount reimbursable from the Fund to injured clients, and to satisfy future losses that are certain to occur. In addition to financial support, the State Bar of New Mexico provides in-kind support in administration of the Fund and the Commission.

Eligible Claims

To qualify for a claim through the Fund, the loss the client incurred must be caused by the dishonest conduct of the lawyer and shall have arisen out of a client-lawyer relationship or a fiduciary relationship. The claim has to be filed no later than five years after the client knew or should have known of the dishonest conduct of the lawyer.

“Dishonest conduct” is defined as wrongful acts such as theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value such as failure to refund unearned fees or the borrowing of money from a client without intention to repay it or with disregard of the lawyer’s inability or reasonably anticipated inability to repay it.

The Commission also has a hardship exception which allows it, in cases of extreme hardship or special and unusual circumstances, to recognize a claim which would not otherwise be included under the Client Protection Fund rules.

Processing a Claim

The claimant must complete a 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. The 2010 cap per claim was \$10,000.

The program administrator of the Fund will notify the lawyer or the lawyer's representative and allow 20 days to respond to the claim. The Disciplinary Board is also notified of the claim against the lawyer.

The claim is referred to one of the commissioners for investigation. The commissioner investigates and presents a recommendation to the full Commission at its quarterly meeting. The approval or denial of a claim requires the affirmative votes of at least four commissioners.

The claimant and the lawyer are notified of the decision of the Commission. Either party may request reconsideration in writing within 30 days of the denial or determination of the amount of a claim. When appropriate, reimbursement of a claim will be completed after the 30-day reconsideration period has been completed. Reimbursement from the Fund is discretionary and no person has a legal right to reimbursement from the fund.

Confidentiality

The claims, proceedings and reports involving claims for reimbursement are confidential until the Commission approves a claim for reimbursement to the claimant. The Commission publishes the nature of the claim, the amount of reimbursement, and the name of the lawyer after reimbursement to the claimant. The claimant's name and address are confidential.

The Client Protection Fund has an information site on the State Bar of New Mexico website. All annual reports, rules, orders and contact information are available through the Fund's home page at www.nmbar.org.

2010 ANNUAL REPORT SUMMARY

The Fund experienced a marked increase in the dollar amounts claimants requested in 2010. The following is a summary of the 2010 operations.

- 45 requests from the public for claim forms were received and processed.
- 31 claim forms alleging a total loss of \$193,707.38 were returned to the Commission requesting an investigation and reimbursement.
- 32 claims were reimbursed (in full or in part) against 14 attorneys in the amount of \$116,744.40.
- 25 claims were denied or partially denied for a total amount denied of \$814,816.71. This includes one denial of a claim from the previous year in the amount of \$680,636.00.
- 1 claim was settled by the attorney in full.
- 10 claims were carried over from 2009 and completed.
- \$3,250.00 was received by the Fund in restitution.
- All 2010 and prior year claims were completed and none were carried into 2011.

2010 CLIENT PROTECTION FUND COMMISSIONERS

The Commission consists of seven lawyers—four appointed by the Supreme Court, two appointed by the Board of Bar Commissioners (BBC), and the treasurer of the BBC. The State Bar staff administrator of the Fund and the executive director of the State Bar of New Mexico are ex-officio, non-voting members. The appointed members serve for staggered three-year terms. The CPF officers, elected by the Commission, consist of a chair, treasurer and secretary. Program assistance is provided by the State Bar of New Mexico Office of General Counsel.



Charles J. Vigil – Chair

Charles Vigil is the president and managing director of Rodey, Dickason, Sloan, Akin & Robb PA in Albuquerque, where he practices in the areas of labor and employment, products liability, commercial litigation and professional liability. He is a past president of the State Bar of New Mexico and has been actively involved in the area of client protection on both the state and national levels. Since 2006, Vigil has served as a member of the New Mexico Client Protection Fund Commission, and in 2008 he was appointed to serve on the ABA Client Protection Fund Committee. He is was first appointed to the Commission in January 2007. His current term expires December 31, 2012.

Supreme Court Appointee



Henry A. (Hank) Kelly –Treasurer

Hank Kelly practices in the areas of corporate and partnership law, mergers and acquisitions, commercial real estate law, insurance law, and business and individual taxation. Kelly is listed in *Best Lawyers in America*. He is a member of the American Bar Association (member, Standing Committee on Lawyers' Professional Liability, 1985–1991, chair, 1990–1991; member, Standing Committee on Professional Discipline, 1993–1998; member, Standing Committee on Lawyer Competence, 1998–1999; member, Standing Committee on Professionalism, 1999–2002; member, Standing Committee on Client Protection, 2002–2005; Real Property, Probate & Trust Section; Taxation Section, State Bar of Texas, State Bar of New Mexico; member, New Mexico Client Protection Fund Commission, 2006–present; Supreme Court of New Mexico Code of Professional Conduct Committee, 2002–present, chair 2009–present, expires 12/31/2010; Charter Fellow, Center for

State Bar of New Mexico Appointee

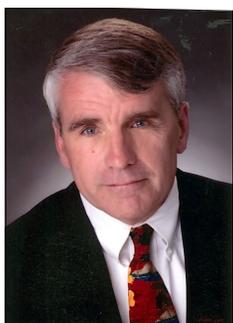
Civic Values, f/k/a New Mexico Bar Foundation. He was first appointed to the Commission in January 2007. His current term expires December 31, 2012.



Dan O'Brien – Secretary

Dan O'Brien has been in practice since 1983. He is "AV" rated by Martindale-Hubbell. O'Brien defends tort, employment and bad-faith actions and specializes in trial work. He has practiced insurance defense law for the last 24 years and has successfully defended more than 75 jury trials. He is one of the first New Mexico lawyers to be recognized as a civil trial specialist and is a member of the American Board of Trial Advocates (ABOTA). He served as president of the New Mexico Defense Lawyers Association in 1999 and president of the State Bar of New Mexico in 2004. He was given the "Quality of Life—Legal Employer Award" by the State Bar of New Mexico in June 2001. O'Brien was first appointed to the Commission in January 2007. He has recently been reappointed by the State Bar and his current term ends December 31, 2013.

State Bar of New Mexico Appointee



Briggs F. Cheney

Briggs Cheney has practiced law since 1973 in Albuquerque and currently practices with Sheehan & Sheehan PA as of counsel. His practice has focused on the representation of lawyers and he has been recognized for his work in this area in the 1995–1996, 1997–1998, 1999–00, 2000–02, 2002–04, 2005–06, 2007 editions of *Best Lawyers in America*, in *Albuquerque The Magazine* Albuquerque's Top Lawyers (July 2006), and *Southwest Super Lawyers* (2007). He is an AV rated lawyer by Martindale-Hubbell. In addition to an active trial practice, over the last fifteen years Cheney has devoted more of his active practice to mediation and has been recognized for his skills as a mediator in the 2005-06 edition of *Best Lawyers in America*. Cheney is active in local, state and national bar activities. He served on the State Bar of New Mexico's Board of Bar Commissioners

Supreme Court Appointee

for nine years and is a past president of the New Mexico Bar Foundation and the Albuquerque Bar Association. He served three elected terms as New Mexico's delegate to the House of Delegates of the American Bar Association (1995–2004) where he also served as a member of the ABA's Nominating Committee, the Executive Committee of State Delegates to the ABA (past co-chair), the Steering Committee to the ABA House, the ABA's Standing Committee on Lawyer's Professional Liability, the ABA Commission on Lawyer's Assistance Programs (COLAP), and the ABA's Standing Committee on Lawyer Referral. He is a longtime member and past chair of the New Mexico State Bar's Professional Liability Committee, served on the Code of Professional Conduct Committee and serves as a member of the State Bar Lawyer's Assistance Committee, a committee he helped form in the early 1980s. He has received recognition as Outstanding Lawyer of the Year from the Albuquerque Bar Association, the Distinguished Bar Service Award in 2005, the CLE Sandia Award (for a lifetime of vommitment to CLE) in 2008. In 2008, he received the ABA Solo and Small Firm Section's Making a Difference in the Profession award. In 2005, he was recognized by the University of New Mexico Alumni Association with its Zia Award. He was first appointed to the Commission in January 2007. His current term expires December 31, 2011.

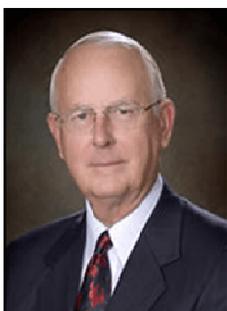


Gaelle McConnell

Supreme Court Appointee

Gaelle McConnell, Esq., is a sole practitioner concentrating in the areas of estate planning, probate, guardianship/conservatorship, and business planning. She graduated *magna cum laude* from the University of New Mexico and received her juris doctorate with honors from the University of New Mexico in 1991. She is a member of the Albuquerque and American Bar associations and the State Bar of New Mexico where she is a member of the Elder Law and Real Property, Probate & Trust sections. McConnell is listed in *Best Lawyers in America* in the category of trusts and estates and has an AV rating by her peers. McConnell is a member and former director of the Estate Planning Council. She is a former chair of the advisory committee for the Lawyer Referral for the Elderly Program and former president and board member of Law Access New Mexico. She currently serves on the board of the New Mexico Guardianship Association and Pegasus Legal Services for Chil-

dren. McConnell was appointed to the Client Protection Fund Commission by the Supreme Court in 2007 and served as its chair in 2009. Her current term ends December 31, 2013.



Stuart D. Shanor

Supreme Court Appointee

Stuart D. Shanor is a senior partner in the Roswell office of Hinkle, Hensley, Shanor & Martin LLP. His practice primarily involves commercial litigation, including products liability, employment cases, mediation and arbitration. Shanor has served on the Executive Committee of the firm and as the partner in charge of the Roswell office and as the loss prevention. Shanor attended Wittenberg University in Springfield, Ohio (B.A., 1959) and the University of Michigan Law School (J.D., 1962) where he was a member of the Barristers Society. Shanor was affiliated with Thompson, Hine & Flory of Cleveland, Ohio, until 1966 when he relocated to New Mexico and joined the predecessor firm to Hinkle, Hensley, Shanor & Martin LLP. He is a member of the Chaves County and American Bar associations. He is admitted to practice before the United States Supreme Court,

the United States Court of Appeals for the Tenth Circuit, the United States Court of Claims, the United States District Court for the District of New Mexico, and the New Mexico Supreme Court. He is a member of the American Judicature Society, a fellow of the American Bar Foundation, a charter member of the New Mexico Bar Foundation, and a member and regional chair for the United States Supreme Court Historical Society. He served as chair of the New Mexico Supreme Court Task Force on Lawyer Advertising, as co-chair of the Supreme Court Task Force on the Code of Professional Responsibility, and as chair of the Task Force on Professionalism. He is a review officer for the New Mexico Disciplinary Board and is a member of the State Bar Fee Arbitration Committee. He is a former member of the Uniform Jury Instructions Committee of the New Mexico Supreme Court. He serves as a member of the Fair Judicial Elections Commission. Shanor is a former member and subcommittee chair of the Committee on Admissions and Disciplinary Proceedings for the United States District Court for the District of New Mexico. He is a member of the Board of Directors of the Tenth Circuit Historical Society. He also is a fellow, past president and ex officio member of the Board of Regents of the American College of Trial Lawyers. He is a former president of the Foundation of the American College of Trial Lawyers. He is a fellow of the International Society of Barristers. He was a founder and the counselor of the George L. Reese, Jr. American Inn of Court. He is the year 2000 recipient of the Professionalism Award of the State Bar of New Mexico and received the 2010 President's Award of the State Bar of New Mexico for contributions to the profession. Shanor has been listed in the Best Lawyers in America since 1989 in the area of business litigation. He is listed in Chambers USA and Super Lawyers of the Southwest. Shanor is also a former president of the Board of Education of the Roswell Independent School District and a former chair of the Roswell Planning and Zoning Commission and the Extra-

territorial Zoning Commission. He has served on the boards of the Roswell Girls Club and is a past president of the Roswell Kiwanis Club. He is president of St. Andrew's Episcopal Church Foundation and a former member and senior warden of St. Andrew's Episcopal Church Vestry. He is a former director of United New Mexico Bank of Roswell and a former member of the board of trustees of Eastern New Mexico Medical Center.



Andrew Cloutier

State Bar of New Mexico Appointee

Drew Cloutier is a partner in the Roswell office of Hinkle, Hensley, Shanor & Martin LLP. He has practiced law for 22 years, primarily in the areas of oil and gas, commercial, and complex litigation. He is a 1987 graduate of the University of Texas School of Law and received a B.A. from the University of Dallas in 1984. Cloutier is licensed to practice law in New Mexico and Texas. He is a review officer for the Disciplinary Board, a member of the Rules of Civil Procedure Committee, and was previously a director of the Bankruptcy Law Section. He presently serves as president of the Sidney Gutierrez Middle School Foundation. He is on the executive board of the Conquistador Boy Scout Council, is scoutmaster of Boy Scout Troop 149, and is a religious education instructor at his church. Drew and his wife, Carrie-Leigh, have three sons. Drew also represents the 6th Bar Commissioner District on the State Bar's Board of Bar Commissioners.



Justice Richard C. Bosson

Supreme Court Liaison

Justice Richard C. Bosson became a member of the New Mexico Supreme Court in December 2002. He served as judge on the New Mexico Court of Appeals starting in 1994, including two years as chief judge during 2001–02. Justice Bosson graduated in 1966 from Wesleyan University and received his juris doctorate in 1969 from Georgetown University Law Center. He has been an active member of the State Bar of New Mexico since 1970. In 1998 Justice Bosson received a master's degree in judicial process from the University of Virginia School of Law. He was a member of the Legal Aid Society of Albuquerque and a founding member of the Mexican American Legal Defense and Education Fund in Albuquerque from 1970–74. In 1975 he spent a year in Colombia as a recipient of a Latin American teaching fellowship sponsored by the Fletcher School of

Law and Diplomacy associated with the Universidad de los Andes in Bogota. Justice Bosson was with the New Mexico Attorney General's Office in the Consumer Protection Division and as director of the Civil Division from 1976–78. Entering private law practice in Santa Fe, Justice Bosson was a senior partner of Bosson & Canepa PA from 1981 to 1994.



Joseph Conte

Executive Director, State Bar New Mexico

Appointed by Position

Ex officio, non-voting

Joe Conte became the executive director of the State Bar of New Mexico and the New Mexico Bar Foundation in July 2003. He was director of communications for the State Bar from 1998—2001 and then was director of communications for the State Bar of Georgia from 2001 until his return to New Mexico. Conte has more than two decades of experience in marketing, communications and non-profit management. His prior work experience includes serving as deputy director of communications for the Michigan House of Representatives and senior editor for a California-based publishing company. He holds a bachelor's degree from Oakland University and a master's degree in communications from Michigan State University. He is a member of the National Association of Bar Executives, the Association of Legal Administrators, and the New Mexico Society

of Association Executives. He has been an active volunteer for the Center for Civic Values and Dismas House where he received the honor of "chef of the year" for 2006. Conte also volunteers for the American Lung Association of New Mexico and New Mexico Animal Friends. He is a past board member of the Appleseed Foundation of New Mexico and is currently vice president of the New Mexico Bio Park Society.



Richard B. Spinello

General Counsel, State Bar of New Mexico

Staff Counsel

Richard Spinello, a native New Mexican, has an undergraduate degree from the University of New Mexico (1989) and a juris doctorate from the Thomas M. Cooley Law School (1997). He became a member of the State Bar of New Mexico in 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 (LREP) and was a 2002 graduate of the State Bar's Leadership Training Institute. After three years as staff attorney and a year as managing attorney for the LREP program, Spinello was

hired as director of the Public & Legal Services Department (PLSD) 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 is currently overseeing a professional office to assist the State Bar and Bar Foundation with policy and regulatory functions of an integrated bar. In 2009, he was appointed by the New Mexico Supreme Court to the Court's Code of Professional Conduct Committee. He is the past chair of the Supreme Court's Access to Justice Commission System Planning Working Group, a member of the State Bar of New Mexico, the Albuquerque Bar Association, the American Bar Association, the ABA Center for Professional Responsibility, and the National Association of Bar Executives.



**Christine Joseph (retired)
Program Administrator**

Christine Joseph is the program administrator for the general counsel of the State Bar. She is a member of the State Bar of New Mexico Paralegal Division. Joseph has an associate's degree in paralegal studies from CNM. She has worked at the State Bar for ten years. She is the program administrator for the Client Protection Fund Commission. She assists with the Client Helpline and various committees. Chris is also the administrator of the State Bar's Fee Arbitration program.

**Appointed by Position
Ex officio, non-voting**

2011 CLIENT PROTECTION FUND COMMISSION

2011 Client Protection Fund Commission Officers

| | |
|-------------------------------|---|
| Chair Daniel J. O'Brien | Reappointed January 1, 2011 |
| Treasurer Gaelle D. McConnell | Reappointed January 1, 2011, 3-year term expires 12/31/2013 |
| Secretary Stuart D. Shanor | Appointed January 1, 2009 |

2011 Client Protection Fund Commissioners

| | |
|---|---|
| Charles J. Vigil | Appointed January 1, 2010, 3-year term expires 12/31/2012 |
| Henry A. (Hank) Kelly | Appointed January 1, 2010, 3-year term expires 12/31/2012 |
| Briggs F. Cheney | Reappointed January 1, 2009, 3-year term expires 12/31/2011 |
| Andrew J. Cloutier | Appointed January 1, 2011 |
| The Hon. Richard C. Bosson, Supreme Court Liaison | |
| Joseph Conte, Executive Director, State Bar of New Mexico, Ex officio, non-voting | |
| Charles D. (Chuck) Noland, Program Administrator, State Bar of New Mexico, Ex officio, non-voting | |

2011 Client Protection Fund Staff

Richard B. Spinello, General Counsel, State Bar of New Mexico, Staff Counsel
 Jorge A. Jimenez, Administrative Assistant, Office of General Counsel

FORMER CLIENT PROTECTION FUND COMMISSIONERS AND ADMINISTRATORS

| | |
|--|--------------------------------|
| Hans Voss (BBC Treasurer) | 1-year term expired 12/31/2009 |
| Jessica Anne Pérez (BBC Treasurer) | 1-year term expired 12/31/2008 |
| Stephen S. Shanor (BBC Treasurer) | 1-year term expired 12/31/2007 |
| Henry A. Alaniz (BBC Treasurer) | 1-year term expired 12/31/2006 |
| Richard Spinello, Esq. (Staff Administrator) | Ex officio 2007-2008 |
| Tonya Herring (Staff Administrator) | Ex officio 2006-2007 |

2010 CLIENT PROTECTION FUND OPERATIONS

2010 Claim Processing

The Commission received a total of 45 claim form requests in 2010. Of those requests, 31 claims alleging a loss of \$234,807.38 were filed. The return rate of claims filed represents 71 percent of the total forms that were requested and sent.

In addition to 31 new claims filed in 2010, 10 claims were carried over from 2009 which were investigated and completed. Of all claims investigated and completed, 32 claims were paid a total amount of \$116,744.40, broken down as follows:

- 19 claims were paid in full for a total of \$51,374.40.
- 13 claims were partially paid for a total of \$65,370.00.
- The partial amount that was denied for these 13 claims totaled \$100,571.71.
- 12 claims were denied in full for a total of \$714,245.00.
- One claim was settled in full, \$25,000.

2010 Awarded Claims

| Attorney | Claims Paid | Claim Amount Reimbursed | Nature of Claim |
|-------------------|-------------|-------------------------|---|
| Eric Turner | 6 | \$16,480.50 | Failure to Refund Unearned Fees |
| Jackson Wright | 8 | \$14,159.26 | Failure to Refund Unearned Fees |
| John Burnett | 1 | \$10,000.00 | Theft |
| Michael Runnels | 1 | \$1,800.00 | Failure to Refund Unearned Fees |
| Rudy Ortiz | 2 | \$10,305.00 | Failure to Refund Unearned Fees and Theft |
| Thomas Tabet | 6 | \$9,500.00 | Failure to Refund Unearned Fees |
| Victor Sizemore | 6 | \$47,600.00 | Failure to Refund Unearned Fees and Theft |
| Victoria Williams | 1 | \$5,904.64 | Theft |
| Nettie Griffin | 1 | \$950.00 | Failure to Refund Unearned Fees |

Acknowledgement of Assistance

The Commission would like to thank the following people who have given generously of their time to assist in the investigation of claims. The assistance and information provided was helpful in presenting and approving recommendations to the Commission.

Ryan White
Christine Joseph
Ann House, Investigator

Anne Taylor
Office of Disciplinary Counsel
Jeanne Wyche, Administrative Assistant,
Sutin Thayer & Browne

SUMMARIES OF APPROVED CLAIMS

Claim 139213

Attorney Rudy Ortiz

Claimant paid the attorney \$350.00 for assistance with filing a Chapter 7 bankruptcy. Attorney took the money but did not do any work on the case. The Commission approved reimbursement of \$350.00 to claimant.

Reimbursed \$350.00

Unearned Fees

Claim 120308

Attorney Victoria Williams

Claimant hired the attorney for a personal injury lawsuit. The attorney settled the lawsuit but failed to pay the outstanding medical bills. The attorney retained the money to pay the medical bills but failed to pay them. The Commission approved reimbursement of \$5,904.64 to claimant.

Reimbursed \$5,904.64

Theft

Claim 139450

Attorney Eric Turner

Claimant paid the attorney \$3,202.50 for assistance with filing an bankruptcy. The attorney cashed the checks. The investigation found that services performed were of no value to the client. The Commission approved reimbursement of \$3,202.50 to claimant.

Reimbursed \$3,202.50

Unearned Fees

Claim 139511

Attorney Eric Turner

Claimant paid the attorney \$1,000 as an advance fee for assistance in responding to possible criminal allegations. The investigation found that the attorney had done no work on the client's case and did not refund the advance fee. The Commission approved reimbursement of \$1,000.00 to claimant.

Reimbursed \$1,000.00

Unearned Fees

Claim 133723

Attorney Victor Sizemore

Claimant hired the attorney for a personal injury lawsuit. The attorney retained \$20,000 to pay medical bills but failed to pay them. The Commission approved reimbursement of the cap of \$10,000 to claimant.

Reimbursed \$10,000.00

Theft

Claim 139250

Attorney Nettie Griffin

Claimant paid the attorney \$950.00 to establish paternity and to obtain an order for support and visitation rights. The investigation found that the fees were unearned as no benefit was derived by the client. The Commission approved reimbursement of \$950.00 to claimant.

Reimbursed \$950.00

Unearned Fees

Claim 131584

Attorney Rudy Ortiz

Claimant hired the attorney for representation in a personal injury lawsuit. The investigation found that the attorney had settled the claim with the insurance company and had not distributed the \$12,955.55 which was to go to the client. The Commission approved reimbursement of the cap of \$10,000.00 to the claimant.

Reimbursed \$10,000.00

Theft

Claim 140195

Attorney Eric Turner

Claimant paid the attorney \$5,000.00 for assistance in filing a lawsuit. The investigation concluded that the attorney did no work for the advance fee and did not refund the fee. The Commission approved reimbursement of \$5,000.00 to the claimant.

Reimbursed \$5,000.00

Unearned Fees

Claim 140439

Attorney Jackson Wright

Claimant paid the attorney \$1,911.50 to prepare and file a spousal petition package. The investigation concluded that the attorney passed away before any work could be done. The Commission approved reimbursement of \$1,911.50 to the claimant.

Reimbursed \$1,911.50

Unearned Fees

| | |
|---|---|
| <p>Claim 140419 Attorney Jackson Wright Claimant paid the attorney \$1,334.38 for an immigration issue. The investigation concluded that the attorney passed away before any work could be done. The Commission approved reimbursement of \$1,334.38 to the claimant.</p> | <p>Reimbursed \$1,334.38 Unearned Fees</p> |
| <p>Claim 140371 Attorney Jackson Wright Claimant paid the attorney \$4,900.00 for representation in two immigration cases. The investigation concluded that the attorney was successful in obtaining citizenship but passed away before the second cases was completed. The Commission approved reimbursement of \$1,900.00 to the claimant.</p> | <p>Reimbursed \$1,900.00 Unearned Fees</p> |
| <p>Claim 140334 Attorney Eric Turner Claimant paid the attorney \$2,000.00 for representation in a lawsuit. The investigation concluded per the case docket in the claimant’s matter that the attorney did no work on the case and did not refund the fee. The Commission approved reimbursement of \$2,000.00 to the claimant.</p> | <p>Reimbursed \$2,000.00 Unearned Fees</p> |
| <p>Claim 140427 Attorney Jackson Wright Claimant paid the attorney \$2,250.00 to prepare and file a marriage petition package. The investigation did determine that some fact gathering was done by the attorney. The attorney has since passed away. The Commission determined that the work that was done was not of any benefit and approved reimbursement of \$2,250.00 to the claimant.</p> | <p>Reimbursed \$2,250.00 Unearned Fees</p> |
| <p>Claim 140665 Attorney Jackson Wright Claimant paid the attorney \$2,137.00 to file a spousal petition package. The investigation determined that there was little evidence of work performed and the attorney has since passed away. The Commission determined that the work that was done was not of any benefit and reimbursed \$2,137.00 to the claimant.</p> | <p>Reimbursed \$2,137.00 Unearned Fees</p> |
| <p>Claim 140316 Attorney Jackson Wright Claimant paid the attorney \$2,500.00 to prepare and file a permanent residence package. The investigation concluded that there was about four hours of work completed but that the work was of no benefit. The Commission approved reimbursement of \$2,500.00 to the claimant.</p> | <p>Reimbursed \$2,500.00 Unearned Fees</p> |
| <p>Claim 140575 Attorney Eric Turner Claimant paid the attorney \$1,000.00 to investigate reinstatement of driving privileges. The investigation concluded that the attorney had done no work on the client’s case. The Commission approved reimbursement of \$1,000.00 to the claimant.</p> | <p>Reimbursed \$1,000.00 Unearned Fees</p> |
| <p>Claim 140394 Attorney Thomas Tabet Claimant paid the attorney \$1,400.00 to represent him in the appeal of a DUI from magistrate court to district court. The investigation concluded that the attorney did file an Entry of Appearance and filed a Stipulated Motion and Order for Continuance. The claimant was informed of the attorney’s incapacity just four days prior to the trial and was unable to retain counsel and an additional continuance was unavailable. In addition, it was determined that the attorney did not deposit the retainer in the trust account. The Commission approved reimbursement of \$1,400.00 to the claimant.</p> | <p>Reimbursed \$1,400.00 Unearned Fees</p> |
| <p>Claim 140929 Attorney Thomas Tabet Claimant paid the attorney \$1,500.00 for representation on a burglary charge. The investigation concluded that the attorney attended three hearings and arranged a plea bargain but became ill before it was entered. The investigation determined that the attorney performed \$1,000 worth of work. The Commission approved reimbursement of \$500.00 to the claimant.</p> | <p>Reimbursed \$500.00 Unearned Fees</p> |

| | |
|--|--|
| <p>Claim 141068 Attorney Eric Turner Claimant paid the attorney \$5,000.00 for representation in dissolution of marriage. The investigation concluded with the assistance of the successor attorney that some work was done that was of benefit for the client with a value of \$722.00. The Commission approved reimbursement of \$4,278.00 to the claimant.</p> | <p>Reimbursed \$4,278.00 Unearned Fees</p> |
| <p>Claim 140926 Attorney Thomas Tabet Claimant paid the attorney \$1,735.00 for representation on a criminal matter. The investigation concluded that the attorney performed some work which was valued at \$735.00 and which benefitted the client. The attorney was preparing for trial when he became ill. The Commission approved reimbursement of \$1,000.00 to claimant.</p> | <p>Reimbursed \$1,000.00 Unearned Fees</p> |
| <p>Claim 140924 Attorney Thomas Tabet Claimant paid \$3,000.00 to the attorney for a criminal matter. The investigation concluded that the attorney attended the arraignment and pre-trial hearing and initiated discovery. The attorney became incapacitated right before trial. The successor attorney stated that the value of the work performed was \$1,500.00. The Commission approved reimbursement of \$1,500.00 to the claimant.</p> | <p>Reimbursed \$1,500.00 Unearned Fees</p> |
| <p>Claim 141117 Attorney Thomas Tabet Claimant paid the attorney \$1,500 for representation. The investigation concluded that the attorney within a short time of being retained became incapacitated and no work had been done on his case. The Commission approved reimbursement of \$1,500.00 to the claimant.</p> | <p>Reimbursed \$1,500.00 Unearned Fees</p> |
| <p>Claim 140328 Attorney Victor Sizemore Claimant paid the attorney \$110,000.00 for representation for a criminal matter. The investigation concluded that the attorney did refund the client \$51,071.80. The attorney signed a promissory note which stated he would pay the client an additional \$25,000.00. The attorney passed away without paying the client and there was no money in a trust account to pay the client. The Commission approved reimbursement of the cap of \$10,000.00 to the claimant.</p> | <p>Reimbursed \$10,000.00 Unearned Fees</p> |
| <p>Claim 140395 Attorney Victor Sizemore Claimant paid the attorney \$7,000.00 to set up a limited liability company. The investigation concluded that the attorney was terminated on the same day that he was hired, therefore no work was done. There was no money in a trust account to reimburse the client. The Commission approved reimbursement of \$7,000.00 to the claimant.</p> | <p>Reimbursed \$7,000.00 Unearned Fees</p> |
| <p>Claim 134861 Attorney Victor Sizemore Claimant hired the attorney on a contingency fee agreement for an employment issue. The claimant paid the attorney \$2,500.00 for costs and expenses. The investigation concluded that the attorney made some phone calls, wrote a letter and filled out a form which would be part of his contingency fees. There were no billing statements supplied to the client for any costs or expenses. The Commission approved reimbursement of \$2,500.00 to the claimant.</p> | <p>Reimbursed \$2,500.00 Unearned Fees</p> |
| <p>Claim 140215 Attorney Jackson Wright Claimant paid the attorney \$2,500.00 for representation in a property dispute. The investigation concluded that there was a retainer agreement between the client and the attorney and the client's file reflected work performed by the attorney on the client's behalf. The Commission approved reimbursement of \$792.00 to the claimant.</p> | <p>Reimbursed \$792.00 Unearned Fees</p> |
| <p>Claim 140592 Attorney Michael Runnels Claimant paid the attorney \$2,000.00 for representation in a boundary dispute. The investigation concluded that the attorney had prepared an answer and counterclaim. The Commission approved reimbursement of \$1,800.00 to the claimant.</p> | <p>Reimbursed \$1,800.00 Unearned Fees</p> |

Claim 141004**Attorney Thomas Tabet**

Claimant paid the attorney \$3,600.00 for representation on a criminal matter. The investigation concluded that the attorney did take the retainer from the client and then realized there was a conflict of interest and the attorney told the client that the money would be refunded but he never did so. The Commission approved reimbursement of \$3,600.00 to the claimant.

Reimbursed \$3,600.00**Unearned Fees****Claim 141174****Attorney Victor Sizemore**

Claimant hired the attorney for representation on a personal injury lawsuit. The investigation concluded that the attorney settled the lawsuit with the insurance company and collected \$30,000.00 but the client never received any money from the settlement. The Commission approved reimbursement of the cap of \$10,000.00 to the claimant.

Reimbursed \$10,000.00**Unearned Fees****Claim 141703****Attorney Jackson Wright**

Claimant paid the attorney \$1,334.38 to prepare and file an I-130 Spousal petition package. The investigation concluded that the attorney was paid half of the retainer and no work would be done until the full amount was paid. The attorney passed away and it was determined that the money was not deposited in a trust account. The Commission approved reimbursement of \$1,334.38 to the claimant.

Reimbursed \$1,334.38**Unearned Fees****Claim 141290****Attorney John Burnett, Jr.**

Claimant hired the attorney for a personal injury lawsuit. The investigation concluded that the attorney did settle the lawsuit and the client was supposed to receive \$15,515.16. The client never received the money. The Commission approved reimbursement of the cap of \$10,000.00 to the claimant.

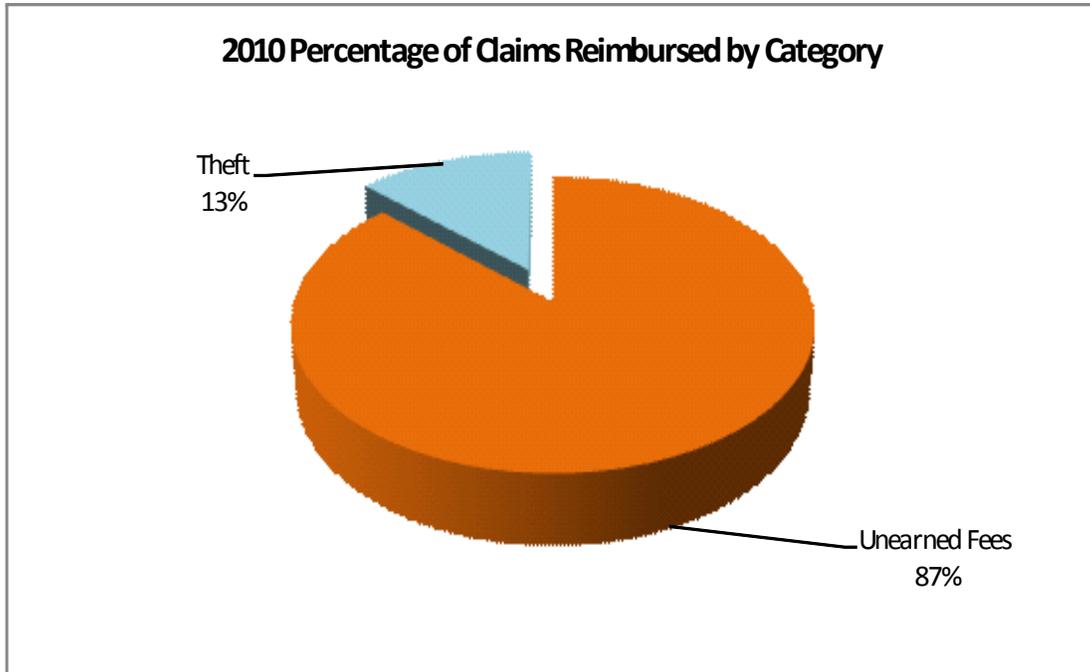
Reimbursed \$10,000.00**Theft****Claim 133467****Attorney Victor Sizemore**

Claimant paid the attorney \$10,000.00 to pursue a collection from a bonding company. The investigation concluded that the attorney drafted some letters and communicated with the bonding company with a value of \$1,900.00 worth of work. The attorney passed away before the work could be completed. The Commission approved reimbursement of \$8,100.00 to the claimant.

Reimbursed \$8,100.00**Unearned Fees**

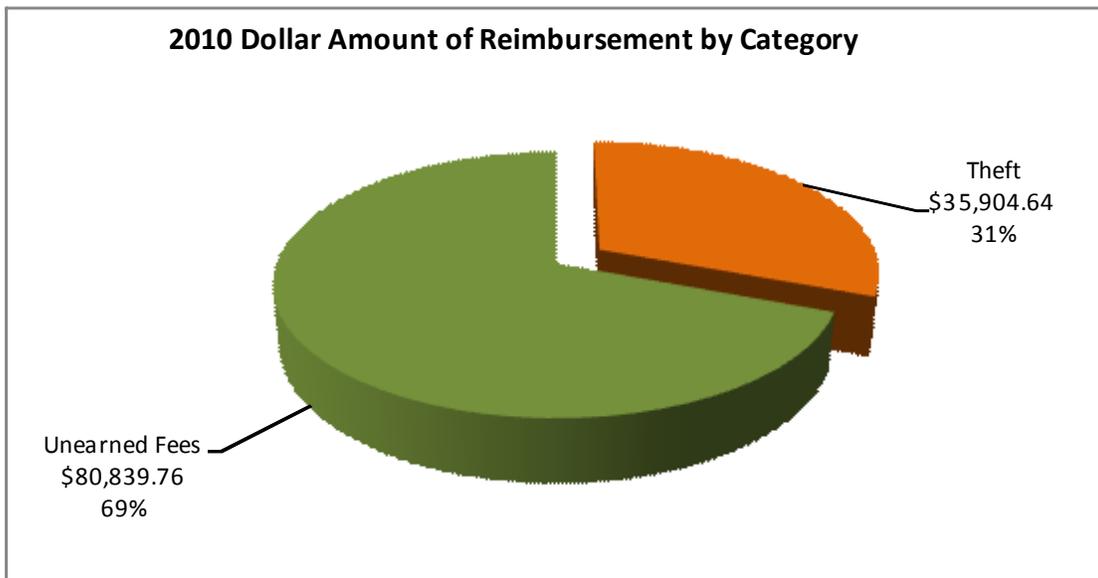
PERCENTAGE OF CLAIMS REIMBURSED BY CATEGORY

In 2010, the Fund reimbursed 32 claims. The largest number of claims was for unearned fees, which was 87% or 28 claims. Theft was 13% or 4 claims.



DOLLAR AMOUNT OF CLAIMS REIMBURSED BY CATEGORY

In 2010, the Fund reimbursed claimants \$116,744.40 on 32 claims. The largest number of claims was reimbursed for unearned fees, which represents 69% or \$80,839.76. Theft represented 31% or \$35,904.64.



2010 ISAAC HECHT LAW CLIENT PROTECTION AWARD



Charles J. Vigil and Justice Richard C. Bosson accept the 2010 Isaac Hecht Law Client Protection Award June 4, 2010, at the American Bar Association's 26th Law Client Protection Forum in Seattle.

The National Client Protection Organization selected Justice Richard C. Bosson of the Supreme Court of New Mexico and Charles J. Vigil, past president of the State Bar of New Mexico and the first chair of the Client Protection Fund Commission, as the joint recipients of the 2010 Isaac Hecht Law Client Protection Award. The award commemorates their persistence, leadership and success in establishing a viable and effective law client protection program in New Mexico.

The National Client Protection Organization created the Isaac Hecht Award to recognize an individual or professional organization that has demonstrated excellence in the filed of law client protection.

"The Isaac Hecht Award is the highest honor annually bestowed on a client protection fund or individual who best embodies the spirit and purpose of law client protection," said NCPO President John Gleason. "Clients of New Mexico lawyers are well served and protected by the efforts of the Supreme Court and the State Bar to re-establish a viable and sustainable client protection fund worthy of the Isaac Hecht Award. The mission of every law client protection fund is to preserve public confidence in the administration of justice, the bar's historic reputation for honesty and integrity, and the legal profession's commitment to protect law clients. The effort in New Mexico is indeed a model of action and professionalism for bar associations, law societies, and client protection funds everywhere."

OTHER COMMISSION ACTIVITIES IN 2010

- The Client Protection Fund Commission met five times in 2010: January 14, March 18, June 22, September 23, and November 18.
- The Commission issued its 2009 annual report in March 2010 to the New Mexico Supreme Court and the State Bar of New Mexico Board of Bar Commissioners.
- Commissioners Cloutier, Vigil, Kelly, O'Brien, Justice Bosson, and Staff Administrator Chris Joseph attended the ABA's National Forum on Client Protection in Seattle, Washington June 4-5, 2010.
- A PowerPoint presentation was created to use during speaking engagements.
- Packets of information on CPF were sent to new admittees to the State Bar
- Commissioner's presented information on the Fund to the Albuquerque Chamber of Commerce, Albuquerque Hispano Chamber of Commerce, and the New Mexico Medical Society.
- At the request of the Commission, the Supreme Court issued an order pursuant to Rule 17A-003 (B) NMRA providing a \$15 annual assessment of every lawyer admitted and licensed to practice law in New Mexico to the Client Protection Fund.
- Commissioners urged a Public Regulation Commission hearing officer not to weaken the Client Protection Fund's proposed PRC rule to require insurance companies to notify an attorney's client when issuing a check made out to the attorney and the client. The Commission will continue to urge the PRC to adopt an American Bar Association model rule that has been adopted in 14 other states including New York and California.

2010 CLIENT PROTECTION FUND

FINANCIAL INFORMATION

Statement of Revenues and Expenditures 2010 (pre audit)

| Revenues | Actual Current YTD | Annual Budget to Date | Variance Rev. Under () Exp. Over () |
|-------------------------------|----------------------------|----------------------------|---|
| Dues | \$98,652.50 | \$97,350.00 | \$1,302.50 |
| Contributions | 100,000.00 | \$0.00 | \$100,000.00 |
| Client Protection Funds Used | \$328.76 | \$18,380.00 | (\$18,051.24) |
| Interest on Investments | \$2,239.14 | \$12,000.00 | (\$9,760.86) |
| Restitution | \$3,350.00 | \$2,500.00 | \$850.00 |
| Total Revenues | \$204,570.40 | \$130,230.00 | \$74,340.40 |
| Expenses | | | |
| Bar Center Occupancy | \$684.00 | \$720.00 | \$36.00 |
| Audit/Accounting/Taxes Forms | \$1,388.76 | \$1,200.00 | (\$188.76) |
| Administration Fees | \$0.00 | \$800.00 | \$800.00 |
| Dues & Subscriptions | \$200.00 | \$200.00 | \$0.00 |
| Bank Fees | \$0.00 | \$300.00 | \$300.00 |
| Claims | \$116,744.00 | \$100,000.00 | (\$16,744.40) |
| Insurance Office Package | \$442.60 | \$540.00 | \$97.40 |
| Internet Usage | \$170.00 | \$170.00 | \$0.00 |
| Printing/Duplicating | \$213.18 | \$1,000.00 | \$786.82 |
| Supplies | \$29.74 | \$0.00 | (\$29.74) |
| Telephone | \$95.94 | \$300.00 | \$204.06 |
| Postage | \$753.25 | \$0.00 | (\$753.25) |
| Travel-Education | \$9,078.91 | \$9,000.00 | (\$78.91) |
| Meetings | \$839.34 | \$1,000.00 | \$160.66 |
| Marketing-Materials | \$568.44 | \$1,000.00 | \$431.56 |
| Direct Labor | \$10,775.78 | \$14,000.00 | \$3,224.22 |
| Total Expenses | <u>\$141,984.34</u> | <u>\$130,230.00</u> | <u>(\$11,754.34)</u> |
| Revenues over Expenses | \$62,586.06 | \$0.00 | \$62,586.06 |

300-CLIENT PROTECTION

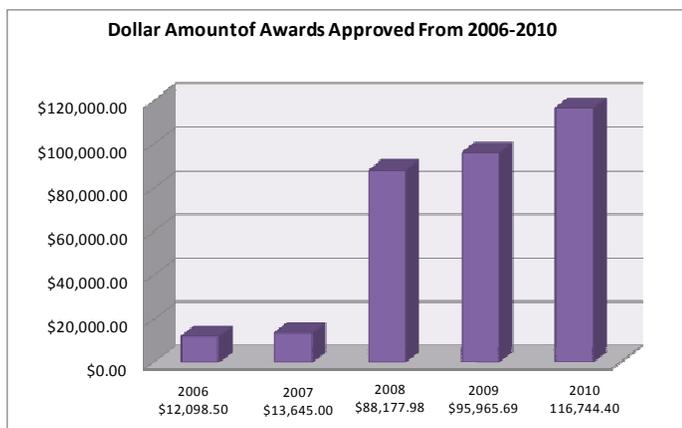
Balance Sheet For the Period Ending December 31, 2010

| | Current YTD |
|---------------------------------------|--------------------------|
| ASSETS | |
| Current Assets | |
| Cash | (\$1,662.30) |
| Trust | 407,457.67 |
| Subtotal Cash | 405,795.37 |
| Accounts Receivable | |
| Due from Affiliate | |
| Due to/from Inter Funds | 18,107.15 |
| Total Assets | <u>423,902.52</u> |
| LIABILITIES AND NET ASSETS | |
| Liabilities | |
| Accounts Payable | 25,950.00 |
| Total Liabilities | 25,950.00 |
| Net Assets | |
| Temporarily Restricted Assets | 335,366.46 |
| Current Net Assets | 62,586.06 |
| Total Net Assets | 397,952.52 |
| Liabilities and Net Assets | <u>423,902.52</u> |

STATISTICAL HISTORY OF THE FUND, 2006–2010

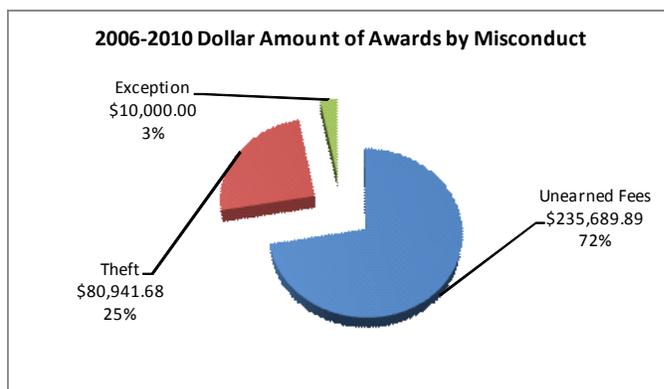
Awards Approved, 2006–2010

Since 2006, 142 claims have been filed with the Fund with a total amount of alleged losses of \$1,378,818. In the five years the Commission has been in existence, it has approved 102 claims and reimbursed \$326,631.57 to eligible claimants.



Dollar Amounts of Reimbursement by Misconduct, 2006–2010

Over the last five years, the largest number of reimbursements to claimants was for failure to return unearned fees. Unearned fees accounted for 72% or \$235,689.89 of all reimbursable losses. Theft was the next highest category with 25% or \$80,941.68 and 3% or \$10,000 reimbursed under the hardship/unusual circumstances exception in the rules.



Denial of Claims, 2006–2010

In the five years the Fund has been in existence, there have been 79 claims denied with a dollar amount of \$1,019,842.70. In 2006 the Fund had a cap of \$2,500, in 2007 the cap increased to \$5,000, and in 2008 the cap increased to \$10,000. The Commission approved a cap increase to \$20,000 and is currently awaiting approval from the Supreme Court.

ANNUAL CPF STATISTICS AT-A-GLANCE

| | 2006 | 2007 | 2008 | 2009 | 2010 |
|--|-------------|--------------|--------------|----------------------------------|---------------------------------|
| CLAIM FORMS REQUESTED OR FILED | | | | | |
| Total number of claim forms requested: | 19 | 38 | 76 | 44 | 45 |
| Total dollar amount of requested claim forms (potential known exposure): | Not tracked | \$110,287.04 | \$297,738.46 | \$956,954.43 * (\$276,318.43) | \$234,807.38 |
| Total number of claims filed with the Commission in 2010: | 9 | 16 | 57 | 29 | 31 |
| Total dollar amount of claims filed with the Commission: | \$30,648.50 | \$61,715.89 | \$189,236.13 | \$903,510.26 * (\$222,874.26) | \$193,707.38 |
| Return rate of requested claim forms: | 47% | 42% | 75% | 66% | 71% |
| CLAIMS APPROVED BY THE COMMISSION | | | | | |
| Total number of claims approved or partially approved: | 6 | 6 | 35 | 23 | 32 |
| Total dollar amount of claims approved and paid: | \$12,098.50 | \$13,645.00 | \$88,177.98 | \$95,965.69 | \$116,744.40 |
| CLAIMS DENIED BY THE COMMISSION | | | | | |
| Total number of claims denied or partially denied: | 7 | 6 | 30 | 11 | 25 |
| Total dollar amount of claims denied: | \$18,550.00 | \$29,585.41 | \$96,156.86 | \$60,733.78 | \$814,816.71* (\$134,180.71) |
| Claims made or known in excess of the current cap: | 1 | 1 | 3 | 3 | 6 |
| Total dollar amount denied in excess of the current cap: | \$12,500.00 | \$4,000.00 | \$13,378.29 | \$33,339.83 | \$77,399.71 |
| ATTORNEY STATISTICS | | | | | |
| Total number of attorneys with claims filed: | 4 | 11 | 15 | 15 | 14 |
| Highest number of claims for a single attorney: | 5 | 4 | 23 | 13 | 9 |
| Top two attorneys - total percentage of claims: | 67% | 44% | 64% | 66% | 37% |
| Amount Reimbursed to the Fund: | 0 | \$2,400.00 | \$11,266.18 | \$6,502.21 | \$3,250.00 |
| PENDING CLAIMS | | | | | |
| Claims approved and pending payment (end of year): | 0 | 0 | 1 | 0 | 0 |
| Claim amount approved and pending payment (end of year): | 0.00 | 0.00 | \$3,670.30 | 0.00 | 0.00 |
| Claims pending approval and carried over to next year: | 0 | 5 | 9 | 10 | 0 |
| Claim amount pending approval (end of year): | 0.00 | \$15,653 | \$18,359.13 | \$739,179.15* (\$58,543.15) | 0.00 |

*The asterisked amount includes a claim for \$680,636 which was denied in full. The amount remaining is shown in parenthesis.



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