

STATE BAR OF NEW MEXICO
CLIENT PROTECTION FUND

2011 ANNUAL REPORT



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



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Daniel J. O'Brien
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Gaëlle D. McConnell
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Stuart D. Shanor
Secretary

COMMISSIONERS

Briggs F. Cheney

Andrew J. Cloutier

Henry A. Kelly

Charles J. Vigil

EX OFFICIO

Joseph Conte
Charles D. Noland

December 31, 2011

As 2011 chair of the Client Protection Fund Commission, I am pleased to present the Fund's annual report on the Commission's behalf. The report provides comprehensive information on the Commission's history, purpose, finances, claim processes and other activities for 2011, as well as cumulative statistics for 2006 through 2011. It also provides background biographical information for each commissioner.

The New Mexico Supreme Court established the Client Protection Fund Commission in 2005 as a permanent commission of the State Bar of New Mexico Board of Bar Commissioners (BBC). The Fund's purpose is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing clients' financial losses caused by their lawyers' dishonest conduct. By the end of 2011, the Fund had reimbursed \$351,559—more than a third of a million dollars—on 115 claims brought by former clients of 60 New Mexico lawyers.

The Commission consists of seven voting members, all of whom are licensed New Mexico lawyers in active practice with principal offices in-state, and two non-voting ex officio members who are employees of the State Bar of New Mexico, which administers the Fund and its operations. The commissioners are active in thoroughly investigating every claim and providing recommendations to the full Commission. 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 the available resources permit. I would also like to extend my heartfelt gratitude to Chief Justice Charles Daniels, Commission Liaison Justice Richard C. Bosson and all of the justices of the Supreme Court of New Mexico, and the BBC for their support of the Fund.

In particular, 2011 was the second year of the Supreme Court-approved \$15 annual assessment for the Fund from every licensed New Mexico lawyer in active practice. As shown by the financial statements in this report, the assessment more than covers the costs of operating the Fund and thus helps preserve the trust funds appropriated from other sources by the Supreme Court for client reimbursements. It is the Commission's hope, through increases in the fund balance, that it can gradually increase the per-claim limitation (\$10,000 in 2011 and \$20,000 effective for 2012) to limits comparable to those of more mature client protection funds in other states.

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

A handwritten signature in black ink that reads "Daniel J. O'Brien".

Daniel J. O'Brien, 2011 Chair
Client Protection Fund Commission

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INTRODUCTION

The Client Protection Fund Commission (the Commission) is proud to present the sixth annual report of the State Bar of New Mexico Client Protection Fund (the Fund), including its annual report of Fund operations and cumulative information on the Fund's activities from 2006 through 2011.

The Fund reimburses clients for financial losses caused by the dishonest conduct of their attorneys. In 2011 the Fund received 19 claims against eight New Mexico lawyers requesting a total of \$49,911, and approved 13 reimbursements totaling \$24,927. From 2006 through 2011 the Fund paid 115 claims to former clients of 60 New Mexico lawyers for total reimbursements of \$351,559.

A typical Fund claim involves a lawyer in solo practice or a small firm 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. Fortunately, these are rare cases which in 2011 involved fewer than one quarter of one per cent of the 3,646 active in-state lawyers in private practice, the area where lawyers are most likely to be involved in handling client funds. Considerably rarer are thefts of funds from financial settlements that are paid to lawyers for distribution to clients and their creditors. In 2006, 2007, 2008 and again in 2011, all claims paid involved failures to refund unearned retainers. In 2009 and 2010 the Fund paid 11 claims totaling almost \$81,000 against three lawyers who stole client funds.

History and Purpose

The Commission was established by order of the New Mexico Supreme Court effective Dec. 13, 2005, as a permanent commission of the Board of Bar Commissioners of the State Bar of New Mexico. The Supreme Court order adopted the American Bar Association's model rules for client protection funds which are codified at Rules 17A-001 et seq. NMRA. The Commission is the overseer and is charged with receiving, holding, managing and disbursing money from the Fund according to the rules. The State Bar of New Mexico is responsible for 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 lawyers.

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 (MCLE) 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 monies were also transferred from MCLE to the Fund. The combination of the MCLE funds and the annual assessment is expected to permit the Fund to increase reserves and gradually increase the maximum amount reimbursable from the Fund to injured clients. The State Bar of New Mexico provides in-kind support to the Fund and the Commission through staff support, office and meeting space and fiscal administration. See pages 14–15 for the Fund's 2011 financial statements.

“Thanks so much for your help. I really never thought I'd ever see a dime of this money again.”

—Quote from a Claimant 2010

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 lawyer who was acting as the client's attorney or in another fiduciary capacity toward the client. 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 Fund 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 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 Wisconsin Lawyers' Fund for Client Protection concisely puts it this way: “In order for your claim to be considered, you must establish that the money or property you are seeking to have reimbursed actually came into the hands of the attorney and was wrongfully retained by the attorney.”

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

Processing a Claim

The claimant must complete the 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 2011 cap per claim was \$10,000 and was raised to \$20,000 effective in 2012.

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

The Fund administrator, a staff attorney with the State Bar Office of General Counsel, conducts an initial review and preliminary fact-gathering and refers the claim to one of the commissioners for investigation. The commissioner investigates and presents a recommendation to the full Commission at its quarterly meeting, or increasingly by an email discussion and poll between meetings. 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. The approval or denial of a claim requires the affirmative votes of at least four of the seven 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. 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.

“Thank you for answering all of my questions and being so patient with me.”

—Quote from a Claimant 2010

Confidentiality

Rule 17A-018(A) provides that the claims, proceedings and reports involving claims for reimbursement are confidential until the Commission approves a claim for reimbursement. After reimbursement, the rule requires the Commission to publicize the nature of the claim, the amount of reimbursement, and the name of the lawyer. Claimants' names and addresses remain confidential unless specific permission for disclosure is granted by an individual claimant.

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.

2011 ANNUAL REPORT SUMMARY

In 2011 the Fund experienced a sharp decline in the number and size of claims and the amounts reimbursed compared with the previous three years. The reasons for the decline are elusive, but as of 2012 the Commission is working to understand them as best it can and to revise its outreach efforts to increase awareness of the Fund by the public, lawyers, and law-related organizations.

2011 Highlights:

- All 2010 claims were disposed of by Jan. 1, 2011.
- 31 new requests from the public for claim forms were received and processed.
- 19 claim forms alleging total losses of \$49,911 caused by eight lawyers were returned to the Commission requesting an investigation and reimbursement.
- 13 claims were approved in whole or part for total reimbursements of \$24,927.
- 13 claims were denied in whole or part for total reductions of \$14,034.
- 4 claims alleging total losses of \$10,950 were carried over to 2012.
- The second year of the Supreme Court-approved \$15 assessment for the Client Protection Fund on each active New Mexico lawyer was in effect and yielded more than enough to cover the Commission's and the Fund's operating expenses.
- A \$1,000 contribution to the Fund was received from an Albuquerque law firm under a Rule 11 sanctions order by District Judge Alan Malott for lawyers' abuse of discovery in a pending case.
- \$100 was received by the Fund in restitution.

2011 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 vice president of the BBC. All members except the BBC vice president serve staggered three-year terms. The BBC vice president serves for one year before advancing to become the State Bar president-elect and is succeeded on the Commission by the incoming vice president. 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 has been appointed to two full three-year terms. The CPF officers, elected annually 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.



Daniel J. O'Brien, Chair

State Bar of New Mexico Appointee

Dan O'Brien has been in practice since 1983. He defends tort, employment and bad-faith actions and specializes in trial work. AV-rated by Martindale-Hubbell, O'Brien has practiced insurance defense law for the last 28 years and has successfully defended more than 90 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 has served on the Commission since its inception in 2006 and was most recently reappointed by the State Bar in January 2011. His current term ends Dec. 31, 2013.



Gaelle D. McConnell, Treasurer

Supreme Court Appointee

Gaelle McConnell is a sole practitioner concentrating in the areas of estate planning, probate, guardianship/conservatorship, and business planning. She attended the University of New Mexico (*magna cum laude*, 1988) and the UNM School of Law (J.D., with honors, 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 and 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. She is a member and former director of the Estate Planning Council, 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 boards of the New Mexico Guardianship Association and Pegasus Legal Services for Children. McConnell has served on the Client Protection Fund Commission since its inception in 2006 and served as its chair in 2009. She was most recently reappointed by the Supreme Court in 2011 and her current term ends Dec. 31, 2013.

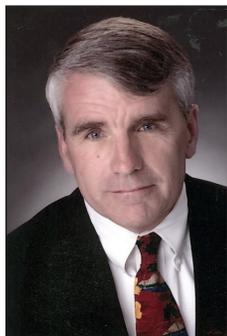


Stuart D. Shanor, Secretary

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, as the partner in charge of the Roswell office, and is the firm's loss prevention partner. He 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. He 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 and 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 and 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 and was a founder and the counselor of the George L. Reese, Jr. American Inn of Court. He is recipient of the 2000 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 also listed in *Chambers USA*

and *Super Lawyers of the Southwest*. Most recently, he was inducted into the Roehl Circle of Honor for Trial Lawyers. 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 Extraterritorial 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. He has served on the Commission since its inception in 2006 and was most recently reappointed by the Supreme Court in January 2012. His current term ends Dec. 31, 2014.



Briggs F. Cheney

Supreme Court Appointee

Briggs Cheney has practiced law in Albuquerque since 1973 and has been of counsel with Sheehan & Sheehan PA since 1994. He has focused on representing lawyers, for which he has been recognized in *The Best Lawyers in America* since 1995 and in *Southwest Super Lawyers* since 2007. In addition to his active litigation practice Cheney has been recognized as a mediator in *The Best Lawyers in America* since 2005. He was named one of Albuquerque's Top Lawyers by Albuquerque The Magazine in 2006. He holds an AV rating from Martindale-Hubbell. Cheney has been active in local, state and national bar activities. He served on the State Bar's Board of Bar Commissioners for nine years and is a past president of the New Mexico Bar Foundation and the Albuquerque Bar Association. He was a founding member of the State Bar's Lawyers Assistance Committee in the 1980s and continues as an active committee member for the New Mexico Lawyers and Judges Assistance Program. He is also a member and past chair of the State Bar Lawyers' Professional Liability Committee. Cheney's national service included three terms as New Mexico's delegate to the American Bar Association House of Delegates and service

on several ABA standing committees including lawyers' assistance and lawyers' professional liability. His honors include multiple awards for outstanding service and professional achievement from the ABA, the State Bar of New Mexico, the Albuquerque Bar Association and the UNM Alumni Association during the past 20 years. Cheney has served on the Commission since its inception in 2006 and was most recently reappointed by the Supreme Court in January 2012. His current term ends December 31, 2014.



Andrew J. (Drew) Cloutier

State Bar of New Mexico Appointee

Drew Cloutier, the 2011 vice president of the State Bar of New Mexico Board of Bar Commissioners, is a partner in the Roswell office of Hinkle, Hensley, Shanor & Martin LLP. He has practiced law for 24 years, primarily in the areas of oil and gas, commercial, and complex litigation. He attended the University of Dallas (B.A., 1984) and the University of Texas School of Law (J.D., 1987). 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.



Henry A. (Hank) Kelly

State Bar of New Mexico Appointee

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 and 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, 2002–2010, chair 2009–2010; Charter Fellow, Center for Civic Values, f/k/a New Mexico Bar Foundation. Kelly was most recently reappointed to the Commission by the State Bar in January 2010. His current term ends Dec. 31, 2012.



Charles J. Vigil

Supreme Court Appointee

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. Vigil has served as a member of the New Mexico Client Protection Fund Commission since its inception in 2006 and in 2008 was appointed to serve on the ABA Standing Committee on Client Protection. In 2010 Vigil and Justice Richard C. Bosson, the Supreme Court liaison to the Client Protection Fund Commission, were named co-recipients of the National Client Protection Organization's annual Isaac Hecht Law Client Protection Award. Vigil was most recently reappointed by the Supreme Court in January 2010. His current term ends Dec. 31, 2012.

Ex Officio Members



Joseph Conte
Executive Director, State Bar New Mexico

Appointed by Position

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, returning to New Mexico in 2001. Conte has more than two decades of experience in marketing, communications and non-profit management. He was deputy director of communications for the Michigan House of Representatives and senior editor for a California-based publishing company. He attended Oakland University (bachelor's degree) and Michigan State University (master's degree). 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 "2006 Chef of the Year." Conte also volunteers for the American Lung Association of New Mexico and New Mexico Animal Friends. He is a past board member of the Applesseed Foundation of New Mexico and is currently vice president of the New Mexico Bio Park Society.



Charles D. Noland, CPF Administrator
Staff Attorney, State Bar of New Mexico Office of General Counsel

Appointed by Position

Chuck Noland succeeded Christine Joseph (retired) as Fund administrator on Jan. 1, 2011. Noland attended the University of New Mexico (B.A., 1973), where he studied journalism under the late Tony Hillerman, and was a reporter, news editor and feature writer from 1969–1974, primarily with The Associated Press and the U.S. Army's *Soldiers* magazine. He attended the University of New Mexico School of Law (J.D., 1978) and was a lawyer with state government in Santa Fe for six years, of counsel with the Cuddy Law Firm for 10 years and in state government for 12 more years. In 2005 Noland moved to Albuquerque to help establish the New Mexico practice of the Texas-based Walsh Anderson law firm, which is nationally prominent in his former specialty of education law and subspecialty of federal special education law. In 2007 he joined the State Bar's Lawyer Referral for the Elderly Program and worked as a telephone helpline lawyer before moving to the reconfigured Fund administrator/lawyer/investigator position in the Office of General Counsel.

2011 CLIENT PROTECTION FUND COMMISSION LIAISONS



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 (2001–02). Justice Bosson attended Wesleyan University (B.A., 1966), Georgetown University Law Center (J.D., 1969) and the University of Virginia School of Law (master's degree, Judicial Process, 1998). He has been an active member of the State Bar of New Mexico since 1970. 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 1981–1994. In 2010 Justice Bosson and Commissioner Charles Vigil were named co-recipients of the National Client Protection Organization's annual Isaac Hecht Law Client Protection Award.

Anne Taylor

Disciplinary Board Liaison

Anne Taylor attended the University of New Mexico (B.A., Spanish, Phi Beta Kappa, *cum laude*, 1994) and Vanderbilt University School of Law (J.D., 2000). Taylor has been with the Office of Disciplinary Counsel since January of 2002 and is involved in all levels of attorney discipline, including investigating and prosecuting complaints against attorneys, investigating petitions for reinstatement to the practice of law, monitoring attorneys on probation, and filing petitions for reciprocal discipline. She is a member of the National Organization of Bar Counsel and has taught numerous continuing legal education programs in legal ethics, particularly in the areas of lawyer fees and trust accounting. She began working closely with the State Bar of New Mexico's Client-Attorney Assistance Program in 2002 and was designated as the Office of Disciplinary Counsel liaison to the Client Protection Fund and Commission in 2008. She also works closely with the New Mexico Lawyers and Judges Assistance Program and assisted the New Mexico Supreme Court's Code of Professional Conduct Committee in developing proposed revisions to the Rules of Professional Conduct. A mother of four, Taylor volunteers in fundraising efforts for Escuela del Sol Montessori and Albuquerque Academy.

2011 CLIENT PROTECTION FUND COMMISSION STAFF



Richard B. Spinello,
General Counsel, State Bar of New Mexico

Staff Counsel

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 is currently overseeing a professional office to assist the State Bar and Bar Foundation with policy and regulatory functions of an integrated bar.



Jorge Jimenez
Administrative Assistant, State Bar of New Mexico

Administrative Assistant

Jorge Jimenez, Administrative Assistant to the Office of the General Counsel, began with the State Bar of New Mexico as an administrative clerk for the Public and Legal Services Department in 2006. Since then, Jimenez has worked with many programs and departments, including Accounting, Executive Office, Administration, Fee Arbitration, and most recently Operations. Jimenez is transitioning into the web/operations assistant role as he pursues a degree at Central New Mexico Community College in Computer Information Systems concentrating in Digital Media.

2012 CLIENT PROTECTION FUND COMMISSION AND STAFF

2012 Client Protection Fund Commission Officers

Chair Gaelle D. McConnell	Reappointed January 1, 2011, 3-year term expires 12/31/2013
Treasurer Briggs F. Cheney	Reappointed January 1, 2012, 3-year term expires 12/31/2014
Secretary Stuart D. Shanor	Reappointed January 1, 2012, 3-year term expires 12/31/2014

2012 Client Protection Fund Commissioners

Charles J. Vigil	Reappointed January 1, 2010, 3-year term expires 12/31/2012
Henry A. (Hank) Kelly	Reappointed January 1, 2010, 3-year term expires 12/31/2012
Daniel J. O'Brien	Reappointed January 1, 2011, 3-year term expires 12/31/2013
Erika Anderson	Appointed January 1, 2012, 1-Year Term Expires 12/31/2012
The Hon. Richard C. Bosson	New Mexico Supreme Court Liaison
Joseph Conte	Ex officio, non-voting, Executive Director, State Bar New Mexico,
Charles D. (Chuck) Noland	Ex officio, non-voting, CPF Administrator, State Bar of New Mexico

2012 Client Protection Fund Staff

Richard B. Spinello	General Counsel, State Bar of New Mexico, Staff Counsel
Lizeth Cera	Administrative Assistant, State Bar of New Mexico Office of General Counsel

FORMER CLIENT PROTECTION FUND COMMISSIONERS AND ADMINISTRATORS

Andrew J. Cloutier (BBC Treasurer)	1-year term expired 12/31/2010
Hans Voss (BBC Treasurer)	1-year term expired 12/31/2009
Jessica 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
Christine Joseph (Staff Administrator)	Ex officio 2009-2010
Richard Spinello (Staff Administrator)	Ex officio 2007-2008
Tonya Herring (Staff Administrator)	Ex officio 2006-2007

2011 CLIENT PROTECTION FUND OPERATIONS

2011 Claims Processing

The Commission began 2011 with a clean slate after deciding and paying all previous claims by the end of 2010.

In 2011 the Commission sent claim forms to 31 potential claimants and received 19 claims alleging total losses of \$49,911. The number of claims filed was 61% of the total number of forms sent (although some claims were on forms that were sent in 2010).

15 of the 19 claims filed in 2011 were decided by the end of the year, as follows:

- 2 claims were approved in full and paid for a total of \$1,600.
- 11 claims were approved in part and paid for a total of \$24,927.
- All 11 claims approved in part were for failures to refund unearned fees. A total of \$9,784 was denied and credited to the respondent lawyers for the estimated value of work performed.
- 1 claim for \$1,700 was denied because adequate reimbursement had been made from the deceased lawyer's trust account by the appointed inventorying law firm.
- 1 claim for \$2,500 was denied with leave to refile if claimant can provide proof of the amount of retainers paid.
- Four claims requesting a total of \$10,950 were under review at the end of the year and were carried over to 2012.

2011 Approved Claims

Rule 17A-018(A) NMRA requires that, "After payment of reimbursement, the Commission shall publicize the nature of the claim, the amount of reimbursement, and the name of the lawyer."

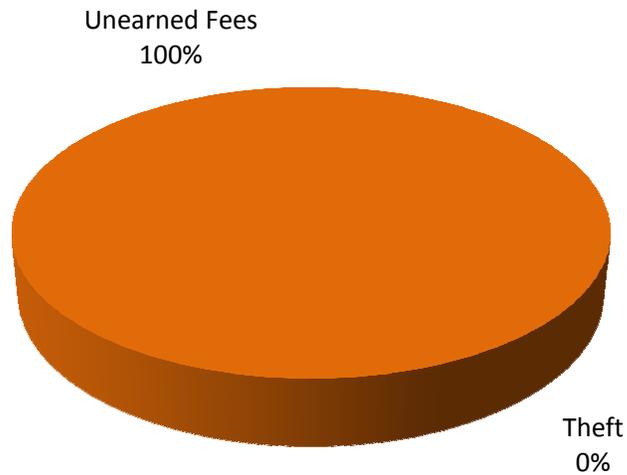
The 19 claims filed in 2011 involved eight lawyers. A total of 13 claims against six lawyers were decided by the end of the year. The following table summarizes those decisions. See pages 10–12 for a capsule summary of each approved claim.

LAWYER	CLAIMS APPROVED	AMOUNT REIMBURSED	NATURE OF CLAIM
Jose Arrieta, Las Cruces	7	\$18,627	Failure to refund unearned fees
Jackson Wright, Albuquerque (Deceased)	2	\$3,000	Failure to refund unearned fees
Henry Baca, Las Cruces	1	\$1,200	Failure to refund unearned fees
John Burnett, Albuquerque	1	\$1,000	Failure to refund unearned fees
Anthony Martinez, Albuquerque (Deceased)	1	\$600	Failure to refund unearned fees
Nettie Griffin, Portales	1	\$500	Failure to refund unearned fees

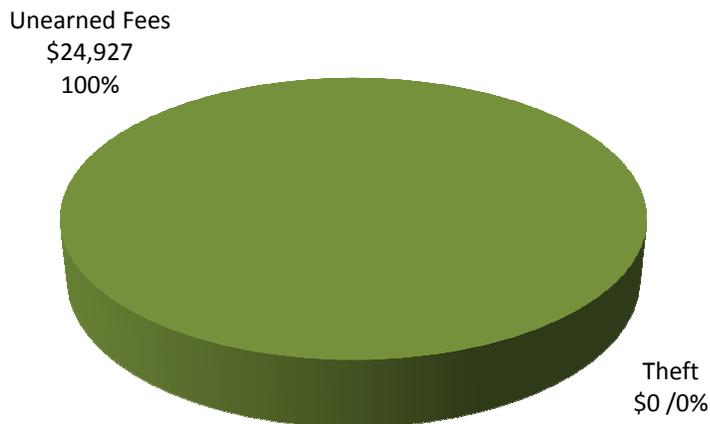
2011 Percentage/Dollar Amount of Claims Reimbursed by Category

As the charts below reflect, 100 per cent of the 13 claims and 100 per cent of the \$24,927 in total reimbursements approved by the Commission in 2011 were for unearned fees. See pages 13–14 for charts displaying year-by-year and cumulative amounts approved and denied for 2006 through 2011 by category of misconduct.

2011 Percentage of Claims Reimbursed by Category



2011 Dollar Amount of Claims Reimbursed by Category



OTHER COMMISSION ACTIVITIES IN 2011

The Client Protection Fund Commission met five times in 2011: January 20, March 10, June 9, September 15 and November 10.

The Commission issued its 2010 annual report in March 2011 to the New Mexico Supreme Court, the State Bar of New Mexico Board of Bar Commissioners, judges, and other law-related organizations and individuals statewide.

Administrator Position

With the retirement of former Staff Administrator Christine Joseph approaching in 2010, the Commission approved State Bar General Counsel Richard Spinello's recommendation to upgrade the position from a paralegal/administrator to a lawyer/administrator who could provide additional legal and investigative support to the volunteer commissioners. Chuck Noland, Esq. was transferred into the upgraded position from the State Bar's Lawyer Referral for the Elderly Program effective Jan. 1, 2011, and provided substantial additional assistance to the Commission through the year.

ABA National Forum

Commissioners Cheney, Cloutier, Kelly, O'Brien and Vigil, Supreme Court Liaison Justice Bosson and Administrator Noland attended the American Bar Association's National Forum on Client Protection in Memphis on June 3–4, 2011. The annual forum provides a high-quality program covering current issues of importance to client protection funds from the United States and Canada. A dinner was held during the conference for New Mexico attendees. Guests included Justice Daniel Crothers of the North Dakota Supreme Court who was chair of the ABA Standing Committee on Client Protection, and John Holtaway, the ABA's lead senior counsel for client protection and policy implementation.

Proposed Adoption of ABA Model Rule on Payee Notification

Commissioner Vigil and Administrator Noland met with New Mexico Superintendent of Insurance John Franchini and his general counsel in July 2011 to request adoption of an ABA model rule requiring insurance companies to notify third-party liability claimants when sending settlement checks for \$5,000 or more to the claimants' lawyers. The practice in the insurance industry is to send the lawyer a check made out to the lawyer and the client without letting the client know that the check has been issued. The ABA payee notification rule is designed to help curb lawyer thefts of settlement funds by making sure the client knows a check has been sent. Although New Mexico had no Client Protection Fund claims involving lawyer theft during 2011, almost \$81,000 of such claims were paid in earlier years and a claim form for a \$28,000 theft was requested in late 2011.

National Client Protection Organization Workshop

The State Bar and the Disciplinary Board cosponsored the annual fall workshop of the National Client Protection Organization at the Buffalo Thunder Resort in Santa Fe on Oct. 4–5, 2011. Justices Richard Bosson and Edward Chávez, the Supreme Court liaisons to the Client Protection Fund Commission and the Disciplinary Board, delivered opening remarks along with BBC Vice President/CPF Commissioner Drew Cloutier. The workshop drew a record 58 registrants from across the United States and British Columbia who discussed issues facing client protection funds. The workshop also included a session on lawyer wellness which was webcast using the University of New Mexico School of Law's Internet streaming account and was viewed by law students at UNM and three other law schools from New Jersey to Washington state.

SUMMARIES OF 2011 APPROVED CLAIMS

As noted above, Rule 17A-018(A) NMRA requires that “After payment of reimbursement, the Commission shall publicize the nature of the claim, the amount of reimbursement, and the name of the lawyer.” Claimants’ names remain confidential unless an individual claimant grants specific permission to disclose the name.

All of the claims approved in 2011 involved failures or refusals to refund the unearned portion of retainers for legal work that was begun but not finished. The Rules of Professional Conduct require retainers for future work to be deposited in a lawyer’s trust account and withdrawn only as earned. The most common scenario for the minuscule percentage of lawyers who become the subject of Client Protection Fund claims is that none of a claimant’s retainer remains in a trust account even if it was initially deposited there.

The Disciplinary Board looks closely at trust account records if indicated by the circumstances of a disciplinary complaint. The Disciplinary Board and Client Protection Fund rules encourage close cooperation between the two agencies in their overlapping areas of responsibility. The Fund regularly receives any information requested from disciplinary counsel when investigating claims and participates in constructive discussions with the Disciplinary Board (and other interested bodies) on issues of common concern.

Lawyer Jose Arrieta, Las Cruces: The New Mexico Supreme Court suspended this lawyer’s law license indefinitely on Aug. 10, 2010, and disbarred him on Jan. 25, 2012. The following seven reimbursement claims totaling \$18,627 were approved in 2011.

Claim No. 01-2011

Reimbursed \$2,700

Claimant paid \$3,000 for help with a civil domestic violence case and a related criminal charge. Lawyer did an estimated \$300 worth of work before being suspended less than a month after being hired. The Commission approved a \$2,700 reimbursement.

Claim No. 04-2011

Reimbursed \$4,020

Claimant paid a total of \$4,660 for help with two business issues and a dispute over a real estate investment. Lawyer did an estimated \$640 worth of work in the four months before his suspension. Lawyer did not respond to the claim. The Commission approved a \$4,020 reimbursement.

Claim No. 08-2011

Reimbursed \$900

Claimant’s wife paid \$2,500 for help with tort claims for claimant against the Doña Ana County Detention Center, the federal Bureau of Prisons and other federal agencies for alleged medical mistreatment of claimant while in custody on federal criminal charges of wire fraud and money laundering. Lawyer did substantial work on tort claims notices and follow-ups to all involved agencies before concluding that there was no medical documentation to support further pursuit of the claims. The Commission allowed a \$1,600 credit for work performed and approved a \$900 reimbursement.

Claim No. 09-2011

Reimbursed \$1,097

Claimant paid \$1,500 toward a \$2,500 retainer for help with a child support enforcement case in Las Cruces. While awaiting payment of the rest, lawyer did some related work on a child custody issue involving claimant’s ex-wife and children in Nevada. Lawyer did not respond to this claim but did respond to a Disciplinary Board complaint that claimant also filed with documents including a billing statement showing \$403 in charges and a credit balance of \$1,097. Lawyer did no work on the local case for which he was hired because claimant did not pay the full retainer. The Commission credited lawyer for the \$403 on the billing statement and approved a \$1,097 reimbursement.

Claim No. 11-2011

Reimbursed \$1,380

Claimant paid \$2,500 for help enforcing her former son-in-law’s obligations to convey some property as required by the property settlement in a divorce granted before the claimant’s daughter died. Lawyer filed notices of daughter’s death in the divorce case and a criminal case in which daughter was still on probation. He also obtained claimant’s appointment as her daughter’s personal representative and moved to substitute claimant/PR for her daughter in the divorce case so she could enforce the settlement agreement. The estimated value of the work performed was \$1,120 and the Commission approved a \$1,380 reimbursement.

Claim No. 12-2011**Reimbursed \$3,680**

Claimant's mother paid \$5,000 for help with immigration issues for her son who had been arrested in Las Cruces and was being held in Louisiana. Lawyer paid a Louisiana attorney \$1,000 to get the case transferred to El Paso after claimant posted bond. Lawyer calendared a setting in the El Paso immigration case but did no further work. The Commission credited the lawyer for the \$1,000 paid to the Louisiana attorney, estimated the value of the lawyer's own work at \$320, and approved a \$3,680 reimbursement.

Claim No. 21-2011**Reimbursed \$4,850**

Claimants owned a 35-foot motor yacht that was docked at Elephant Butte Lake and was repossessed under federal maritime law by a California marina for an unpaid repair bill. Lawyer hired another attorney who settled the federal case. One claimant's father then paid lawyer \$5,000 for a wrongful repossession damages claim against the marina at Elephant Butte that released the boat to the U.S. Marshal under a federal court order. Lawyer filed claimant's suit in 7th Judicial District Court but took no other effective action for several years during which the case was dismissed, refiled and dismissed again while lawyer repeatedly assured the claimants it was proceeding normally. Although lawyer had done some significant work along the way, the Commission determined that the failure to follow through negated any value to the claimants that the work might otherwise have had. The Commission allowed a \$150 credit for court costs paid from the retainer and approved a \$4,850 reimbursement.

Lawyer Jackson Wright, Albuquerque (Deceased): Lawyer died of cancer in 2010 leaving several cases incomplete and no unearned retainers in his trust account. Eight reimbursements totaling \$14,159 were paid to his former clients in 2010 and the two claims below were paid in 2011.

Claim No. 07-2011**Reimbursed \$2,315**

Claimant paid \$3,471 for help with immigration and adoption issues for her grandson. Claimant hired immigration and family law attorneys for the separate matters after lawyer died. Based on their estimates the Commission allowed \$1,156 for work done and approved a \$2,315 reimbursement.

Claim No. 13-2011**Reimbursed \$685**

Claimant paid \$1,710 in 2007 for help clearing up two DWIs from the early 1990s which the claimant had ignored. Claimant first consulted the lawyer in 2002, when lawyer assessed the matters and suggested an installment plan for paying the old fines. Claimant preferred to wait and save up enough to pay off the fines. Lawyer apparently expected claimant to return soon and did not yet bill for the initial work. Claimant did not return until 2007 due to serious medical and personal issues. Lawyer performed additional work in 2007-08 and claimant disappeared again until 2011, when he learned lawyer had died. The Commission allowed \$1,025 for work done and approved a \$685 reimbursement.

Lawyer Henry Baca, Las Cruces**Claim No. 18-2011****Reimbursed \$1,200**

Claimant's wife paid \$2,270 in April and June 2011 to represent claimant on two drug-related criminal matters. Lawyer was suspended indefinitely by the New Mexico Supreme Court on July 18, 2011. The claim was filed in August 2011, when claimant was being held without bond for to appear in one case and needed funds to hire new counsel for an upcoming trial in the other case. Lawyer responded with a description of work performed before his suspension and proposed a \$1,200 settlement from his trust account. There was a question about available funds and the Commission wanted to reimburse claimant's wife promptly so she could pay new counsel who was standing by to prepare for the upcoming trial. The Commission approved a \$1,200 reimbursement, accepted the respondent lawyer's settlement offer under the Fund's standard subrogation agreement and authorized immediate payment to claimant's wife.

Lawyer John Burnett, Albuquerque: Burnett resigned his license in 2011 after admitting to disciplinary charges of stealing several clients' funds from insurance settlements. He returned to Arkansas, where he was also licensed, and resigned his license there. Several of his former clients sued him in Second Judicial District Court. One Client Protection Fund claim against him was approved in 2010 for the cap of \$10,000. The claim below may or may not have resulted from a simple math error.

Claim No. 06-2011**Reimbursed \$1,000**

Claimant hired lawyer on a contingent fee for a personal injury claim. Lawyer received an insurance settlement check and distributed the funds to claimant's medical providers, his office and another law office that worked on the case, with the remainder to claimant. A miscalculation on the distribution sheet caused a \$1,000 shortage to claimant which she discovered later. The Commission approved a \$1,000 reimbursement.

Lawyer Anthony Martinez, Albuquerque (Deceased)

Claim No. 05-2011

Reimbursed \$600

Claimant paid lawyer \$600 on Aug. 6, 2010, for representation on a misdemeanor battery charge. Lawyer entered an appearance but died on Aug. 18, 2010, without taking any other identifiable action. There were funds left in this lawyer's trust account and the inventorying attorneys proposed a partial refund of \$500. The Commission approved a reimbursement for the full \$600 and asserted a subrogation claim to the refund from the trust account. The Fund received the trust account refund check in 2012.

Lawyer Nettie Griffin, Portales

Claim No. 02-2011

Reimbursed \$500

Claimant paid lawyer \$1,700 total for help with a neighbor/boundary dispute that went to court. Claimant requested a \$1,500 reimbursement. Lawyer's work included representation at two depositions and at least one court appearance in 2008. The Commission credited lawyer with \$1,000 for work performed and approved a \$500 reimbursement. Lawyer resigned her license in 2010 after admitting to disciplinary charges. In 2010 the Commission approved a \$950 reimbursement to another of her former clients.

ACKNOWLEDGMENT OF INVESTIGATIVE ASSISTANCE

The Commission would like to thank the following people who gave generously of their time in 2011 to assist in the investigation of claims. The information they provided helped significantly in developing recommendations for the Commission.

Matthew Watson and Thomas Erickson
Watson Law Office LLC, Las Cruces

William Slease and Anne Taylor
Disciplinary Board of the New Mexico
Supreme Court, Albuquerque

Olsi Vrapı
Noble & Vrapı PA, Santa Fe

Lisa Olewine
Olewine Law Office PC, Albuquerque

Robert J. Desiderio, James La Fata, and Lori Villa
Sanchez Mowrer & Desiderio PC, Albuquerque

Joshua Boone
The Law Office of Kelley and Boone, Albuquerque

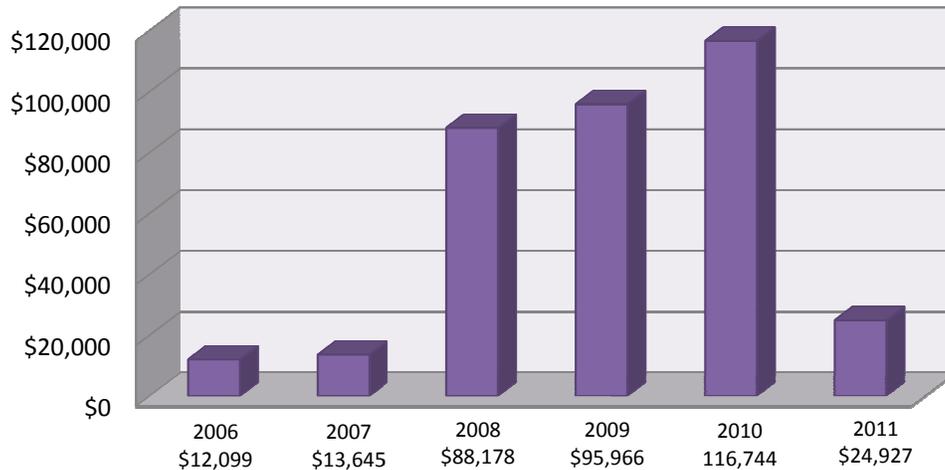
Daniel Lindsey
Daniel R. Lindsey Law Firm, Clovis

STATISTICAL HISTORY OF THE FUND 2006-2011

2006-2011 Claims Approved

A total of 161 claims were filed with the Fund from 2006 through 2011 alleging total losses of \$748,093. In the six years the Fund has been in existence, the Commission has approved 115 claims to clients of 60 New Mexico lawyers for total reimbursements of \$351,559.

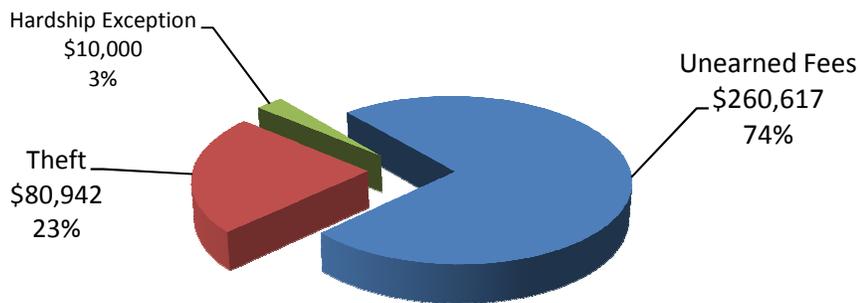
2006-2011 Dollar Amount of Claims Reimbursed by Year



2006-2011 Dollar Amounts of Claims Reimbursed by Category

By far the largest number of claims reimbursed by client protection funds in New Mexico and nationally are for lawyers' failures to refund unearned fees. In New Mexico from 2006 through 2011 unearned fees accounted for \$260,717, or 74% of the total dollar amount of approved reimbursements. Theft of client funds was the next highest category of misconduct at \$80,942, or 25% of the total dollar amount. One claim was approved under the hardship/unusual circumstances exception in the Fund rules for \$10,000 cap per claim, or 3% of the total value of approved reimbursements.

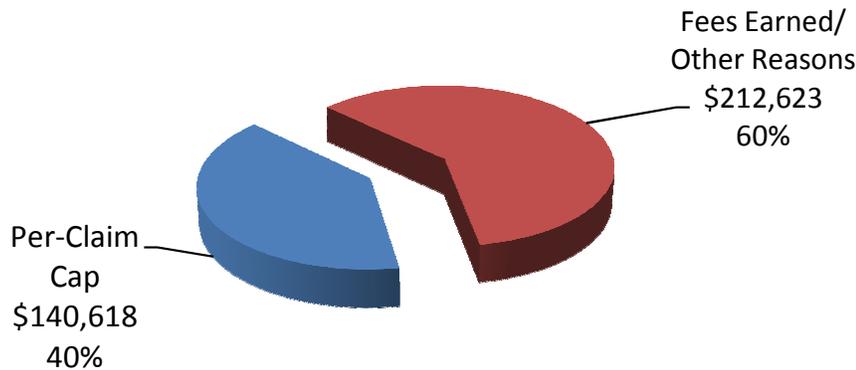
2006-2011 Dollar Amount of Claims Reimbursed by Category



2006-2011 Claims Denied in Whole or Part

From 2006 through 2011 the Commission has denied 92 claims in whole or part for a total reduction of \$353,241 from amounts claimed to amounts reimbursed. About 60% of the total denials, or \$206,091, was for fees earned and other reasons such as lack of proof of losses and, rarely, for a claimant’s failure or refusal to accept the requirements in the Fund rules for reimbursements. The other 40% of denials, or \$140,618, was for claims made in excess of the per-claim cap recommended by the Commission and approved by the New Mexico Supreme Court. The cap was \$5,000 per claim in 2006 and the first eight months of 2007 and was raised to \$10,000 in September 2007. The Supreme Court has approved the Commission’s request to raise the cap to \$20,000 as of 2012.

2006-2011 Claims Denied in Whole or Part (Total \$353,241)



2011 CLIENT PROTECTION FUND FINANCIAL INFORMATION

Balance Sheet (Pre-Audit) For the Period Ending December 31, 2011

	Current YTD
ASSETS	
Current Assets	
Cash and Cash Equivalents	409,553.05
Due from State Bar	57,644.19
Total Assets	467,197.24
LIABILITIES AND NET ASSETS	
Liabilities	
Claims Payable	4,850.00
2012 CPF Assessments Rec'd in 2011	32,053.68
Total Liabilities	36,903.68
Net Assets	
Fund Balance	397,384.91
Current Year Revenue over Expenses	32,908.65
Total Net Assets	430,293.56
Liabilities and Net Assets	467,197.24

**Statement of Revenues and Expenditures (Pre-Audit)
For the Period Ending December 31, 2011**

Revenues	Actual Current YTD	Annual Budget to Date	Variance Rev. Under () Exp. Over ()
CPF Assessments	\$103,428	\$97,350	\$6,078
Client Protection Funds Used	\$0	\$18,380	(\$18,380)
Interest on Investments	\$2,556	\$12,000	(\$9,444)
Restitution	\$100	\$2,500	(\$2,400)
Contributions	\$1,350	\$0	\$1,350
Total Revenues	\$107,434	\$130,230	(\$22,796)
Expenses			
Bar Center Occupancy	\$996	\$720	(\$276)
Audit/Accounting/Taxes Forms	\$1,200	\$1,200	\$0
Administration Fees	\$351	\$800	\$449
Dues & Subscriptions	\$200	\$200	\$0
Bank Fees	\$68	\$300	\$232
Approved Claims	\$24,927	\$100,000	\$75,073
Insurance Office Package	\$443	\$540	\$97
Internet Usage	\$170	\$170	\$0
Printing/Duplicating	\$790	\$1,000	\$210
Supplies	\$13	\$0	(\$13)
Telephone	\$153	\$300	\$147
Postage	\$623	\$0	(\$623)
Travel-Education	\$10,467	\$9,000	(\$1,467)
Meetings	\$377	\$1,000	\$623
Marketing-Materials	\$876	\$1,000	\$124
Direct Labor	\$32,872	\$14,000	(\$18,872)
Total Expenses	\$74,526	\$130,230	\$55,704
Revenues over Expenses	\$32,909	\$0	\$32,909

ANNUAL CLIENT PROTECTION FUND STATISTICS AT-A-GLANCE

	2006	2007	2008	2009	2010	2011	Cumulative Totals
CLAIM FORMS REQUESTED OR FILED WITH THE COMMISSION							
Total number of claim forms requested:	19	38	76	44	45	27	249
Total dollar amount of requested claim forms (known potential exposure):	Not Tracked	\$110,287	\$297,738	\$276,318	\$234,807	\$77,280	\$996,430
Total number of claims filed:	9	16	57	29	31	19	161
Total dollar amount of claims filed:	\$30,649	\$61,716	\$189,236	\$222,874	\$193,707	\$49,911	\$748,093
Return rate of requested claim forms:	47%	42%	75%	66%	71%	70%	65%
CLAIMS APPROVED BY THE COMMISSION							
Total number of claims approved (in whole or part) by end of year:	6	6	35	23	32	13	115
Total dollar amount of claims approved by end of year:	\$12,099	\$13,645	\$88,178	\$95,966	\$116,744	\$24,927	\$351,559
CLAIMS DENIED BY THE COMMISSION							
Total number of claims denied (in whole or part):	7	6	30	11	25	13	92
Total dollar amount of claims denied:	\$18,550	\$29,585	\$96,157	\$60,734	\$134,181	\$14,034	\$353,241
Dollar amount of cap per claim:	\$5,000	\$5,000	\$10,000	\$10,000	\$10,000	\$10,000	-----
Claims made or known in excess of current cap:	1	1	3	3	6	0	14
Total amount denied in excess of current cap:	\$12,500	\$4,000	\$13,378	\$33,340	\$77,400	0	\$140,618
ATTORNEY STATISTICS							
Total number of attorneys with claims filed:	4	11	15	15	14	8	60 (67-7 repeaters)
Highest number of claims for a single attorney:	5	4	23	13	9	8	-----
Top two attorneys - total percentage of claims:	67%	44%	64%	66%	37%	69%	-----
Amount reimbursed to the Fund:	0	\$2,400	\$11,266	\$6,502	\$3,250	\$100	\$23,518
CLAIMS PENDING AT END OF YEAR							
Claims approved and pending payment at end of year:	0	0	1	0	0	0	-----
Claim amount approved and pending payment at end of year:	0	0	\$3,670	0	0	\$0	-----
Claims pending approval and carried over to next year:	0	5	9	10	0	4	-----
Claim amount pending approval at end of year:	0	\$15,653	\$18,359	\$58,543	0	\$10,950	-----



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