

STATE BAR OF NEW MEXICO
CLIENT PROTECTION FUND

2012 ANNUAL REPORT



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



STATE BAR
of **NEW MEXICO**
CLIENT PROTECTION FUND

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2012 COMMISSION

December 31, 2012

Gaelle D. McConnell
Chair

Briggs F. Cheney
Treasurer

Stuart D. Shanor
Secretary

COMMISSIONERS

Erika Anderson

Henry A. Kelly

Daniel J. O'Brien

Charles J. Vigil

EX OFFICIO

Joseph Conte
Charles D. Noland

Since its creation by the Supreme Court in December 2005, the Client Protection Fund Commission has considered 231 claims and approved 142 reimbursements totaling \$421,119 for clients of 34 New Mexico attorneys who failed to refund unearned fees or, in 13 cases, misappropriated client funds. In 2012, the Commission received an unprecedented 70 claims—more than triple the 2011 total and a 23 percent increase over the previous record of 57 claims filed in 2008. A full description of 2012 claims activity follows in this annual report.

The Client Protection Fund is a working commission. Each commissioner is assigned multiple claims and conducts independent investigations to develop recommendations for determination by the full commission. Occasionally the Commission raises questions which require further investigation. This year, one member was the investigating commissioner for 17 claims against a single attorney, including two that also named the attorney's former partner. In addition to these responsibilities, each of the current commissioners works in a busy private practice.

To ease the strain created by the high caseload and to support continuity as positions turn over due to term expiration, in December 2012 the Commission asked the Supreme Court to authorize the addition of two more commissioners, one to be appointed by the Supreme Court and the other by the Board of Bar Commissioners. The Court approved the request and the Commission increased to nine members. Additionally, the Supreme Court increased the limit for reimbursable claims from \$10,000 to \$20,000.

While the Commission faced an unprecedented challenge this past year, it also experienced wide support among fellow members of the State Bar and the judiciary. The fund was the designated recipient of \$5,750 from four district court orders imposing sanctions under Rule 11 for abusive discovery tactics in litigation. The Supreme Court transferred \$120,000 from MCLE delinquency penalties to be used for CPF claims. The Court also approved a Disciplinary Board recommendation to pay an unclaimed balance of \$968 that remained in a deceased lawyer's trust account to the fund as the potential payer of any future claims by that lawyer's other clients.

The Commission continues to be dedicated to the timely resolution of claims in furtherance of its mission to promote public confidence in the administration of justice and the integrity of the legal profession. I want to thank each of the commissioners for their hard work, thorough investigation, and thoughtful deliberation over this past year. I especially wish to thank Hank Kelly, whose most recent term expired in December 2012. Hank was a strong proponent for the creation of the Commission in 2005. He served from 2006 through 2012 and has been a tireless advocate for the special responsibility we share as a self-regulated profession to reimburse as fully as possible those clients who suffer financial losses caused by the dishonest conduct of lawyers licensed to practice in New Mexico.

Sincerely,

Gaelle D. McConnell, Esq., 2012 Chair
Client Protection Fund Commission

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INTRODUCTION

History and Purpose

The purpose of the Client Protection 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 Client Protection Fund Commission was established by order of the New Mexico Supreme Court effective Dec. 13, 2005, as a permanent commission of the State Bar of New Mexico Board of Bar Commissioners. The Supreme Court adopted a modified version of the American Bar Association's model rules for client protection funds and codified them at Rules 17A-001 *et seq.* of the New Mexico Rules Annotated. The Commission oversees the CPF and is charged with receiving, holding, managing, and disbursing money from the Fund according to the rules. The State Bar is responsible for administering the Commission, developing and approving the budget, and managing operations and staffing. 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 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 and again in 2012 additional monies were also transferred from MCLE to the Fund by Supreme Court orders. The combination of the MCLE funds and the annual assessment is expected to permit the Fund to increase reserves and gradually increase the maximum reimbursable amount, which in 2012 was raised from \$10,000 to \$20,000 per claim. The State Bar provides in-kind support to the Fund and the Commission through staff support, office and meeting space, and fiscal administration. (See 2012 Financial Information, page 12.)

Eligible Claims

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

The rules also include a hardship exception which allows the Commission, in cases of extreme hardship or special and unusual circumstances, to recognize a claim that was filed late or would not otherwise be reimbursable. This exception has only been used for one of the 142 claims approved in the Commission's seven-year history.

A typical CPF 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 2012 involved fewer than two-thirds of one percent (0.0063) of 3,646 active in-state lawyers in private practice, the area where lawyers are most likely to handle client funds. Even rarer are thefts of client funds, typically from financial settlements paid to lawyers for distribution to clients and their creditors. In 2006, 2007, 2008 and again in 2011 and 2012, all paid claims involved failures to refund unearned retainers. In 2009 and 2010, the Fund paid 13 claims totaling \$78,441 against six lawyers who stole client funds.

Processing a Claim

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

“Thank you and the others for working on this case. It couldn't have been too easy. I am very grateful to all who had a hand and heart in this matter. Because I'm a little 'gun-shy' to hire another lawyer, for now I am going to open a savings account with my grandchildren's names and for birthdays, Christmas, and school starting, and in-between times add money to it that I would have spent on gifts in hopes and prayer that someday they could use it wisely and know in their hearts Grandma always thought and never quit loving them. Thank you again!

—Quote from a Claimant 2012

The CPF administrator will give notice of a claim to the lawyer against whom it is filed (or the lawyer's representative) and allow 20 days for a response. The Disciplinary Board is also notified of the claim.

The CPF administrator conducts an initial review, gathers facts, and refers the claim to one of the commissioners for investigation. The commissioner investigates and presents a recommendation to the full Commission. If appropriate under the circumstances, the recommendation includes the investigating commissioner's estimate of any amount that should be allowed as a credit against the claim for the value of work the lawyer performed or costs the lawyer properly paid with client funds. The approval or denial of a claim requires the affirmative votes of at least four of the seven commissioners.

The claimant and the lawyer are notified of the Commission's decision. Either party may request reconsideration in writing within 30 days of the denial or determination of the amount of a claim. If no request for reconsideration is received, the check for any approved reimbursement is sent after the notice period expires. If a timely request is received, the check for any approved reimbursement is sent after the Commission has reconsidered its decision. Rule 17A-013 NMRA provides that in either case the Commission's decision is final and there is no further right of appeal. Reimbursement is discretionary and no person has a legal right to reimbursement from the Fund.

Confidentiality

Rule 17A-018(A) protects the confidentiality of information on claims, claimants, and respondent lawyers with exceptions for approved claims and other limited purposes:

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

2012 ANNUAL REPORT SUMMARY

After an unexpected sharp decline in 2011, the Client Protection Fund Commission received a record 70 claims in 2012, raising the seven-year total for reimbursements to \$421,119 for 142 claims against former clients of 34 New Mexico lawyers. The 2012 claims represented a 23 percent increase over the previous record of 57 received in 2008 and was more than twice the average of 30 claims a year from 2007 through 2011.

2012 Highlights:

- Four claims requesting \$10,950 remained undecided at the end of 2011 and were carried over to 2012.
- 98 new requests for claim forms were received and processed.
- 70 claim forms, alleging total losses of \$368,431 caused by 23 lawyers, were submitted to the Commission for investigation and reimbursement.
- 27 claims were approved in whole or part for total reimbursements of \$69,560.
- 39 claims were denied in whole or part for total reductions of \$120,674.
- 31 claims alleging total losses of \$189,147 were carried over to 2013.
- A total of \$5,750 in contributions to the Fund were received from four district court sanctions awards against law firms under Rule 11 of the Rules of Civil Procedure for abuses of discovery in pending cases.
- No restitution was received by the Fund in 2012 from lawyers against whom claims had been paid. The Commission continued considering the possibility of pursuing collection actions against respondent lawyers in appropriate circumstances. The Supreme Court approved a \$968 payment to the Fund from the unclaimed balance remaining in the trust account of a deceased lawyer against whom other CPF claims had been paid.
- The Supreme Court approved an increase from seven to nine commissioners effective Jan. 1, 2013, in response to growing caseloads.

Visit the State Bar website at www.nmbar.org/Attorneys/CPF/clientprotectioncommission.html for further information on the Client Protection Fund.

2012 CLIENT PROTECTION FUND COMMISSION

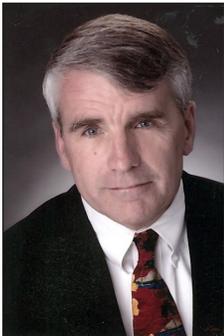
From its inception in 2006 through 2012 the Commission consisted of seven lawyers—four appointed by the Supreme Court, two appointed by the Board of Bar Commissioners, and the vice president of the BBC. The 2012 commissioners and officers are listed here. All members except the BBC vice president serve 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 Office of General Counsel.



Gaelle D. McConnell, Chair

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 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 board of the New Mexico Guardianship Association and is the current chair of Pegasus Legal Services for Children. McConnell has served on the Client Protection Fund Commission since its inception in 2006 and as its chair in 2009 and 2012. She was reappointed by the Supreme Court in 2011. Her current term ends Dec. 31, 2013.



Briggs F. Cheney, Treasurer

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 *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 *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 Lawyers' Professional Liability Committee. Cheney's national service includes 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, 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 Dec. 31, 2014.



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, and a

charter member of the New Mexico Bar Foundation. 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. He is a former member of the Uniform Jury Instructions Committee of the New Mexico Supreme Court. 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 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.



Erika Anderson

State Bar of New Mexico Appointee

Erika Anderson, the 2012 vice president of the Board of Bar Commissioners, served a one-year term as a CPF commissioner before becoming the BBC president-elect for 2013. She is scheduled to become the BBC president in 2014. Anderson is a civil litigation attorney at French & Associates PC. She has been practicing law for 11 years in the areas of governmental liability, civil rights, personal injury, general tort liability, and employment litigation. Anderson has represented the State Risk Management Division, the New Mexico Association of Counties, the City of Santa Fe, and the City of Albuquerque at the trial and appellate levels. She is licensed to practice in New Mexico, the U.S. District Court for the District of New Mexico, and the U.S. Tenth Circuit Court of Appeals. She attended the University of Colorado, Boulder (Bachelor's Degree, Psychology), the University of New Mexico (Master's Degree, Counseling, 1995), and the University of New Mexico School of Law (J.D., 2001). She worked as a counselor for adolescents and their families for four years and then clerked for the eight judges in the Fifth Judicial District. Anderson clerked for the Honorable Gene Franchini and the

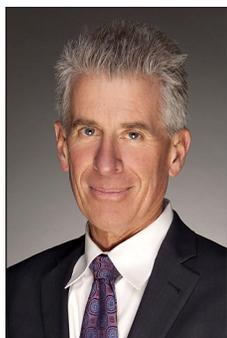
Honorable Richard C. Bosson on the New Mexico Supreme Court from 2002–2004. She is currently serving as chair-elect for the American Bar Association Tort, Trial and Insurance Practice Section Trial Techniques Committee and is a past president of the New Mexico Women's Bar Association.



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. In July 2012 Kelly was honored by the State Bar of New Mexico for his years of distinguished service in those areas. He served on the Commission from its inception in 2006 until his second full three-year term ended on Dec. 31, 2012.



Daniel J. O'Brien

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 30 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, is a member of the American Board of Trial Advocates (ABOTA), and will serve as president of the New Mexico Chapter of ABOTA in 2014. 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 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.



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 CPF Commission, were named co-recipients of the National Client Protection Organization's annual Isaac Hecht Law Client Protection Award. Vigil has served on the Commission since its inception in 2006 and has been reappointed to another term beginning Jan. 1, 2013, and ending Dec. 31, 2014.

Ex Officio Members



Joseph Conte

Executive Director, State Bar of 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 Appleseed Foundation of New Mexico and is currently vice president of the New Mexico Bio Park Society.



Charles D. Noland

CPF Administrator

Appointed by Position

Chuck Noland has been a lawyer since 1978. He has worked for the State Bar since 2007 and has been the CPF administrator in the Office of General Counsel since January 2011. Noland attended the University of New Mexico School of Law (J.D., 1978) and worked in state government and private practice in Santa Fe for 26 years. In 2005 he moved back to Albuquerque to help a nationally prominent law firm establish a New Mexico practice in his specialty of public school law and his subspecialty of federal special education law. He moved to the State Bar in 2007 as a staff attorney with the Lawyer Referral for the Elderly Program (LREP) and worked on the LREP telephone helpline for seniors for 3-1/2 years before becoming CPF administrator in 2011. He graduated from the University of New Mexico (B.A., 1973), where he studied journalism under Tony Hillerman. He was editor-in-chief of the New Mexico *Lobo* in 1967–68 and worked as a reporter, editor, and feature writer from 1969–74, mainly for the Associated Press in Iowa and New Mexico and the U.S. Army's official magazine, *Soldiers* (successor to *Army Digest*), in suburban Washington, DC.

2012 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 and served as chief justice from 2005–2006. 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. Justice Bosson was in private practice in Santa Fe from 1981–1994 including terms as New Mexico Commissioner of Banking and State Bond Counsel. 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

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). She 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.

Disciplinary Board Liaison

2012 COMMISSION STAFF



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

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

Staff Counsel



Daniel Macy

Daniel Macy attended the University of New Mexico (B.A., Political Science, 2012) and plans to go to law school. As the administrative clerk for the CPF, he is responsible for sending and processing claims, answering phones, and entering data. He also assists with the Divorce Options workshops and the Bridge the Gap Mentorship Program. Macy began working at the State Bar in 2009 as a campaign assistant for Equal Access to Justice. He has also worked for the State Bar Foundation and has assisted the New Mexico Hispanic Bar Association.

Administrative Clerk

2013 COMMISSION AND STAFF

2013 Client Protection Fund Commission Officers

Chair Briggs F. Cheney	Reappointed January 1, 2012, 3-year term expires 12/31/2014
Treasurer Charles J. Vigil	Reappointed January 1, 2013, 3-year term expires 12/31/2015
Secretary Stuart D. Shanor	Reappointed January 1, 2012, 3-year term expires 12/31/2014

2013 Client Protection Fund Commissioners

Gaelle D. McConnell	Reappointed January 1, 2011, 3-year term expires 12/31/2013
Daniel J. O'Brien	Reappointed January 1, 2011, 3-year term expires 12/31/2013
Martha Chicoski	Appointed January 1, 2013, 1-Year Term Expires 12/31/2013
Frank Chavez	Appointed January 1, 2013, 3-Year Term Expires 12/31/2015
Jason Marks	Appointed January 1, 2013, 3-Year Term Expires 12/31/2015
Travis Steele	Appointed January 1, 2013, 3-Year Term Expires 12/31/2015
Joseph Conte	Ex officio, non-voting, Executive Director, State Bar of New Mexico
Charles D. (Chuck) Noland	Ex officio, non-voting, CPF Administrator, State Bar of New Mexico

2013 Client Protection Fund Liaisons

The Hon. Richard C. Bosson	New Mexico Supreme Court Liaison
Anne Taylor	Disciplinary Board Liaison

2013 Client Protection Fund Staff

Richard B. Spinello	General Counsel, State Bar of New Mexico, Staff Counsel
Daniel Macy	Administrative Clerk, State Bar of New Mexico Office of General Counsel

FORMER COMMISSIONERS AND ADMINISTRATORS

Henry A. (Hank) Kelly	Appointed 2006 (founding commissioner) Reappointed 2007–2009, 2010–2012
Andrew J. Cloutier (BBC Vice President)	1-year term expired 12/31/2011
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

2012 OPERATIONS

2012 Claims Processing

The Commission began 2012 with a 2011 carryover of four claims totaling \$10,950. During 2012 the Commission sent 98 claim forms to potential claimants and received 70 claims, which alleged total losses of \$368,431. The number of claims filed in 2012 was equal to 71 percent of the number of forms sent, although some claims were filed on forms sent in 2011.

The four carryover claims plus the 70 new claims brought the total 2012 caseload to 74 claims requesting a total of \$379,381 in reimbursements. During 2012 the Commission decided 43 of those claims requesting total reimbursements of \$190,233 as follows:

- 27 claims were approved in full or part for total reimbursements of \$69,560.
 - Approved in full : four claims for total reimbursements of \$5,050.
 - Approved in part: 23 claims for total reimbursements of \$64,510.

As reflected below in the summaries of approved claims, clients often seek CPF reimbursements for the total amount paid to the lawyer. In deciding such claims, the Commission seeks to allow fair credit to the lawyer for the value of work actually performed and/or costs properly paid from the client's funds, producing partial rather than full reimbursements in most cases.

- As in 2011, all reimbursements approved in 2012 were for the respondent lawyers' failure or refusal to refund the unearned portions of client fees that were paid in advance.

Typically a CPF respondent against whom a claim is approved has no funds or not enough funds left in his client trust account to cover required reimbursements, and sometimes does not have a trust account (as required by the Rules of Professional Conduct for holding client funds). In such cases, the Client Protection Fund may serve as a payer of last resort, reimburse the client, and be subrogated to the client's right to pursue the lawyer for the amount reimbursed. In most cases, however, subrogation does not appear to be worth pursuing in light of the amount involved, the lawyer's apparent lack of attachable assets, or both.

- 39 claims were denied in full or part for total denials of \$120,674.
 - Denied in full: 16 claims totaling \$89,750.
 - Denied in part: The 23 claims that were approved in part also were denied in part for a total of \$30,923. The vast majority of these partial denials were for fees earned or costs properly paid by the respondent lawyer. Other notable reasons included lack of proof (in four claims for \$4,140 of denials), refunds by the respondent (in one claim for \$3,000) and one ineligible claim for consequential damages of \$2,712 that was denied on a claim for which a \$600 reimbursement for unearned fees was approved.
- 31 claims requesting a total of \$189,147 remained undecided at the end of 2012 and were carried over to 2013.

2012 Claims and Respondent Lawyers

The 70 claims filed in 2012 involved 23 lawyers. Two disbarred lawyers, Shawn Lunsford from Carlsbad and Pedro Palacios from Las Cruces, accounted for 35 claims, or exactly 50 percent. Six other lawyers accounted for 20 more claims. Together, those eight lawyers accounted for 55 of the 70 claims filed, or 79 percent—almost four-fifths—of the total. The remaining 15 claims were filed against 15 other lawyers.

As noted above, 27 claims were approved in full or part. These claims involved six lawyers, none of whom was still practicing by the end of 2012. The following table summarizes those decisions. (A capsule description of each approved claim appears on pages 13–14.)

2012 CLAIMS APPROVED BY LAWYER					
Lawyer	Status as of 12/31/2012	Claims Approved 2012	Dollars Awarded 2012*	Percentage of Total Claims Approved	Percentage of Total Dollars Awarded
Shawn Lunsford, Carlsbad	Disbarred	15	\$31,786	55%	46%
Pedro Palacios, Las Cruces	Disbarred	8	\$24,061	29%	35%
Gilbert Vigil, Albuquerque	Resigned	1	\$5,224	4%	7%
Sherry Tippett, Albuquerque (formerly Silver City)	Deceased	1	\$4,939	4%	7%
Jack Kirkpatrick, Montezuma (Las Vegas)	Deceased	1	\$2,000	4%	3%
Nettie Griffin, Portales	Resigned	1	\$1,550	4%	2%
Grand Totals		27	\$69,560	100%	100%

*All reimbursements were for failure to refund unearned fees.

OTHER COMMISSION ACTIVITIES IN 2012

The Client Protection Fund Commission met six times in 2012: Jan. 26, March 8, June 21, Aug. 22, Sept. 13, and Nov. 8.

Commission Chair McConnell, Commissioners Anderson, Cheney, 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 Boston June 1–2, 2012. 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 for New Mexico attendees and guests was hosted during the conference by the Disciplinary Board of the New Mexico Supreme Court and Chief Disciplinary Counsel William D. Slease. The CPF Commission and the Disciplinary Board work closely together, as authorized and encouraged by the rules governing both entities, on investigations of CPF claims involving lawyers who are also under disciplinary scrutiny.

The Aug. 22 Commission meeting was held by conference call to approve the final 2011 financial statements, which were delayed by technical accounting issues, and the *2011 Client Protection Fund Annual Report*, which had awaited the final financial statements. The annual report was printed and distributed in September 2012 to the New Mexico Supreme Court, the State Bar Board of Bar Commissioners, judges, and other law-related organizations and individuals statewide.

In a related financial matter, Commission Chair McConnell, Commissioner Kelly and State Bar General Counsel Richard Spinello worked closely during 2012 with CPA David Chavez, the State Bar's chief financial officer, to enhance the clarity of the presentations in the Client Protection Fund's financial statements. Two main objectives were to add an item to the balance sheet to reflect the potential financial exposure of the CPF trust fund to claims that have been filed but not yet decided and to separate the Commission's operating expenses from its expenses for claims paid on the statement of revenues and expenditures. The 2012 financial statements on page 12 reflect those enhancements.

In September 2012 the Commission asked the New Mexico superintendent of insurance to issue a new notice of proposed rulemaking for adoption of an American Bar Association 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 rule is designed to help curb lawyer thefts of settlement funds by making sure the client knows a check has been sent. The Commission paid \$78,441 of theft claims in 2009 and 2010 that might have been prevented by such a rule. A former superintendent of insurance began a rulemaking case in 2009 but left office in 2010, and a statutory time limit expired in 2011 after a successor superintendent declined to adopt the proposed rule without a new rulemaking. The 2012 request to that superintendent was crowded out by higher-profile issues with the Public Regulation Commission. A state constitutional amendment making the superintendent of insurance an independent state officer was approved by voters in November 2012 and new legislation establishing the structure will take effect July 1, 2013. The Commission plans to renew this effort in 2013.

Client protection funds, state supreme courts, lawyer disciplinary agencies, lawyer assistance programs and the American Bar Association share growing concerns about protecting clients of lawyers whose professional abilities are impaired or who otherwise become unable to continue practicing for a variety of reasons. In May 2012 representatives of the Client Protection Fund Commission joined an ad hoc group that began meeting at the State Bar Center to identify the range of issues involved and consider potential resources to help reduce succession and transition difficulties for New Mexico lawyers and clients. The group included representatives from the Supreme Court, the Disciplinary Board, the Lawyers and Judges Assistance Program and the State Bar executive offices. Discussions and information-gathering continued into the fall. In December the Supreme Court approved the creation of a Lawyers' Succession and Transition Committee and a transfer of \$20,000 from Minimum Continuing Legal Education delinquency funds to produce a short video intended for use at CLE programs and other gatherings to help raise lawyers' awareness of issues involving incapacity, practice transitions and succession.

The unforeseen flood of 2012 claims may or may not herald things to come, but the resulting overload prompted a thorough review of the Commission's infrastructure to handle a substantially increased caseload if necessary. The 35 claims against disbarred lawyers Lunsford and Palacios came in two waves that began at the start and near the middle of the 2012 claims cycle. These claims were accompanied during the year by 35 other claims and totaled more than twice the CPF's five-year average caseload. The demands on the infrastructure were addressed as follows:

- Administrative Clerk Daniel Macy was assigned as support staff for the administrator at midyear. The cost of his time on CPF duties is being covered from the State Bar budget as in-kind support to the Commission. Macy has taken over a substantial number of day-to-day administrative tasks since joining the program.

- Administrator Noland began expanding the capabilities of the existing Microsoft Access claims-tracking database to include the major steps required of CPF staff to process a claim from beginning to end. With new fields and queries, the system now highlights day-to-day specific tasks needed to move pending claims toward the Commission's long-standing goal of resolving all matters within an average of 90 days from filing to resolution.
- State Bar Executive Director/ex officio CPF Commissioner Joe Conte and General Counsel Richard Spinello approved Administrator Noland's recommendation to buy a leading commercial law office case management software program at State Bar expense and hire an experienced law office technology consultant to customize the software to automate the CPF's claims tracking, statistical reporting, and operating needs. The software was installed and the customization for tracking and reporting began in the fall of 2012. The upgrade will continue in 2013.

ACKNOWLEDGMENT OF INVESTIGATIVE ASSISTANCE

The Commission would like to thank the following people who gave generously of their time in 2012 to assist in the investigation of claims. The information they provided helped significantly in developing recommendations for the Commission.

Matthew T. Byers
McCormick Caraway Tabor & Byers LLP, Carlsbad
Special award from State Bar and Supreme Court
for outstanding service as inventorying attorney

Peter T. White
Peter Thomas White Attorney at Law, Santa Fe

Christopher Mills
Law Office of Christopher R. Mills, Carlsbad

Susan Cuddy-Moore
McCormick Caraway Tabor & Byers LLP, Carlsbad

New Mexico Supreme Court Disciplinary Board, Albuquerque
William D. Slease, Anne Taylor, Virginia Ferrara, Jane Gagne,
Andrea Henckel, Christine Long, Joel Widman, Tamma Williams

Daniel Lindsey
Daniel R. Lindsey Law Firm, Clovis

Victoria Doom
Law Office of Victoria W. Doom, Las Vegas

2012 FINANCIAL INFORMATION

Balance Sheet (Pre-Audit) As of December 31, 2012

Statement of Revenues and Expenditures (Pre-Audit) For Year Ending December 31, 2012

ASSETS	
Cash and Equivalents	\$483,926.75
Due from State Bar	50,297.47
Total Assets	\$534,224.22
LIABILITIES AND NET ASSETS	
LIABILITIES	
Claims Payable	\$0.00
2013 Assessments Received in 2012	20,370.00
Total Liabilities	\$20,370.00
NET ASSETS	
Fund Balance	\$241,116.48
Reserve for Open Claims	189,147.00
Current-Year Revenue Over Expenditures	83,590.74
Total Net Assets	\$513,854.22
Total Liabilities and Net Assets	\$534,224.22

	ACTUAL	2012 BUDGET	VARIANCE REV. (-) EXP. (+)
Revenue			
CPF Assessments	\$102,458.68	\$100,000.00	\$2,458.68
Interest Earned	2,653.32	3,000.00	(346.68)
Restitution	0.00	2,500.00	(2,500.00)
Contributions	6,717.62	0.00	6,717.62
MCLE Excess Funds	120,000.00	0.00	120,000.00
Total Revenue	\$231,829.62	\$106,000.00	\$125,829.62
Expenditures			
Administrative Fees	\$0.00	\$800.00	\$800.00
Bar Center Occupancy	999.99	1,000.00	0.01
Audit	1,200.00	1,200.00	0.00
Labor Expense	57,606.56	55,000.00	(2,606.56)
Dues & Subscriptions	200.00	200.00	0.00
Insurance Allocation	540.00	540.00	0.00
Printing Expense	581.25	1,000.00	418.75
Internet/Phone Allocation	533.51	470.00	(63.51)
Postage Expense Allocation	600.92	0.00	(600.92)
Professional Development	14,602.89	9,000.00	(5,602.89)
Marketing & Advertising	860.00	1,000.00	140.00
Mileage Reimbursement	71.04	0.00	(71.04)
Meetings and Governance	648.10	1,000.00	351.90
Office Supplies	234.77	0.00	(234.77)
Total Expenditures	\$78,679.03	\$71,210.00	(\$7,469.03)
Revenue Over Expenditures Before Claims	\$153,150.59	\$34,790.00	\$118,360.59
Claims Approved	69,559.85	100,000.00	30,440.15
Revenue over Expenditures	\$83,590.74	(\$65,210.00)	\$148,800.74

SUMMARIES OF 2012 APPROVED CLAIMS

As in 2011, all 27 claims approved in 2012 involved failures to refund the unearned portions of retainers for legal work that respondent lawyers began (in most cases) but did not finish. The Rules of Professional Conduct require retainers 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 respondents on CPF claims is that none of a claimant's retainer remains in the trust account even if it was initially deposited there. In some cases, there is no trust account.

The Disciplinary Board of the New Mexico Supreme Court looks closely at trust account records if indicated by the circumstances of a disciplinary complaint. The rules of the Disciplinary Board and the CPF encourage close cooperation between the agencies in their overlapping areas of responsibility. Regular exchanges of information remain confidential except as required by the CPF rules for approved claims.

Lawyer Shawn Lunsford, Carlsbad

Disbarred

Fifteen claims reimbursed for failure to refund \$31,786 of unearned fees

CLAIM NUMBER	CLIENT'S LEGAL ISSUE	CLAIM AMOUNT	AMOUNT REIMBURSED	DENIED FOR WORK DONE, COSTS PAID, INELIGIBLE AMOUNTS CLAIMED, LACK OF PROOF OF PAYMENT TO LAWYER
2012-01	Felony trial, failure to perfect appeal	\$8,500	\$2,135	\$6,365
2012-02	Divorce	\$2,000	\$1,763	\$237
2012-03	Felony DWI	\$3,500	\$2,800	\$700
2012-05	Grandparent custody	\$600	\$500	\$100
2012-08	Felony theft, two misdemeanor DWIs, domestic violence	\$3,400	\$925	\$2,475
2012-09	Felony shooting at/from a vehicle (no bodily harm)	\$2,000	\$750	\$1,250
2012-10	Divorce	\$1,677	\$1,400	\$277
2012-19	Child support arrears	\$3,312	\$600	\$2,712
2012-20	DWI	\$1,500	\$1,250	\$250
2012-27	DWI	\$1,500	\$1,013	\$487
2012-42	Child custody dispute	\$3,300	\$1,700	\$1,600
2012-45	Grandparent visitation	\$2,127	\$1,450	\$677
2012-46	Felony trial, failure to file appeal	\$1,000	\$1,000	
2012-51	Felony drug possession	\$2,000	\$1,600	\$400
2012-54	Junkyard zoning dispute with city	\$16,000	\$12,900	\$3,100

Lawyer Pedro Palacios, Las Cruces

Permanently disbarred

Eight claims reimbursed for failure to refund \$24,061 of unearned fees:

CLAIM NUMBER	CLIENT'S LEGAL ISSUE	CLAIM AMOUNT	AMOUNT REIMBURSED	DENIED FOR WORK DONE, COSTS PAID, INELIGIBLE AMOUNTS CLAIMED, LACK OF PROOF OF PAYMENT TO LAWYER
2012-13	Probate	\$5,130	\$4,998	\$132
2012-14	Divorce	\$500	\$500	
2012-15	Felony theft, conspiracy	\$5,000	\$2,000	\$3,000
2012-18	Divorce	\$2,337	\$1,750	\$587
2012-21	Child custody/support	\$2,750	\$1,963	\$788
2012-24	Child custody	\$10,000	\$9,100	\$900
2012-29	DWI	\$3,000	\$1,750	\$1,250
2012-40	Divorce	\$2,000	\$2,000	

Lawyer Gilbert Vigil, Albuquerque

Resigned in lieu of discipline

Lawyer Sherry Tippett, Albuquerque (formerly Silver City)

Deceased

Lawyer Jack Kirkpatrick, Montezuma (Las Vegas)

Deceased

Lawyer Nettie Griffin, Portales

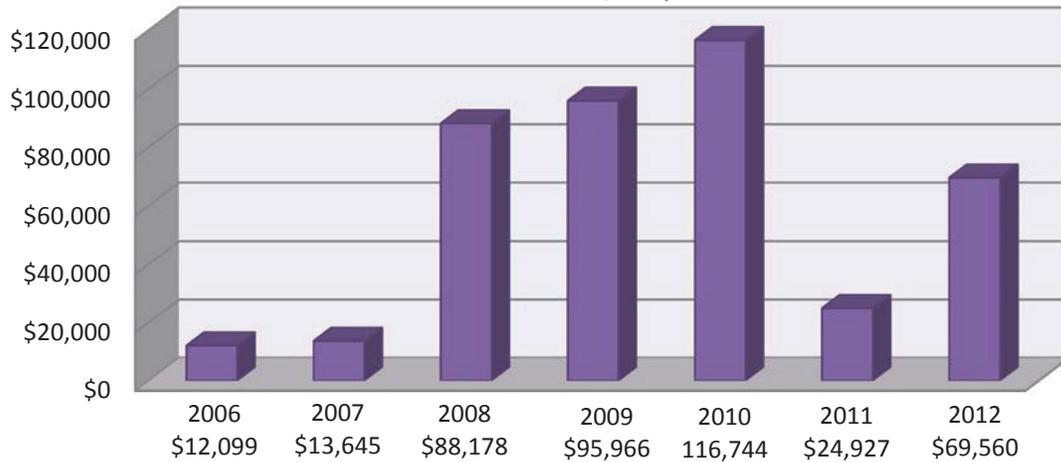
Resigned in lieu of discipline

One claim against each lawyer reimbursed for failure to refund \$13,713 of unearned fees:

CLAIM NUMBER	LAWYER	CLIENT'S LEGAL ISSUE	CLAIM AMOUNT	AMOUNT REIMBURSED	DENIED FOR WORK DONE, COSTS PAID, INELIGIBLE AMOUNTS CLAIMED, LACK OF PROOF OF PAYMENT TO LAWYER
2012-28	Vigil	Employment discrimination	\$5,800	\$5,224	\$576
2012-26	Tippett	Public employment	\$5,000	\$4,939	\$61
2011-22	Kirkpatrick	Challenge to commitment	\$5,000	\$2,000	\$3,000
2011-19	Griffin	Estate planning, probate	\$1,550	\$1,550	

2006–2012 STATISTICAL HISTORY

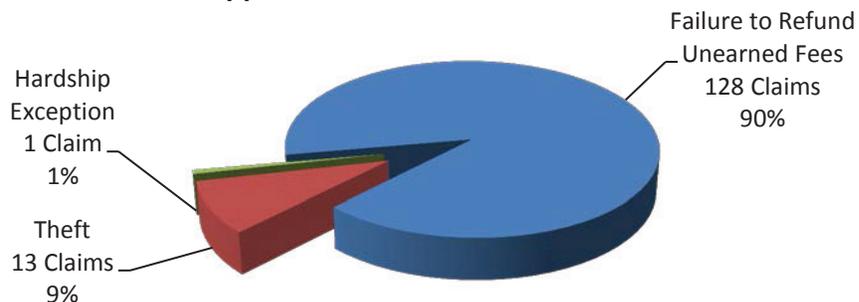
Dollar Amount of Claims Reimbursed by Year
Total \$421,119



Dollar Amount of Claims Reimbursed by Category
Total \$421,119



Number of Claims Reimbursed by Category
Total Approved Claims 142



ANNUAL STATISTICS AT-A-GLANCE

	2006-07	2008	2009	2010	2011	2012	Cumulative Totals
CLAIM FORMS REQUESTED OR FILED							
Total number of claim forms requested	57	76	44	45	27	98	347
Total dollar amount of requested claim forms (potential known exposure)	\$110,287	\$297,738	\$276,318	\$234,807	\$77,280	\$519,532	\$1,515,962
Total number of claims filed	25	57	29	31	19	70	231
Total dollar amount of claims filed	\$92,365	\$189,236	\$222,874	\$193,707	\$49,911	\$368,431	\$1,116,524
Return rate of requested claim forms	44%	75%	66%	71%	70%	71%	67%
CLAIMS APPROVED							
Total number of claims approved or partially approved	12	35	23	32	13	27	142
Total dollar amount of claims approved and paid	\$25,744	\$88,178	\$95,966	\$116,744	\$24,927	\$69,560	\$421,119
CLAIMS DENIED							
Total number of claims denied or partially denied	13	30	11	25	13	39	131
Total dollar amount of claims denied	\$48,135	\$96,157	\$60,734	\$134,181	\$14,034	\$120,674	\$473,915
Dollar amount of cap per claim	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$20,000	-----
Claims made or known in excess of current cap	2	3	3	6	0	2	16
Total amount denied in excess of current cap	\$16,500	\$13,378	\$33,340	\$77,400	0	Pending 12-31-2012	\$140,618
ATTORNEY STATISTICS					Total Non-cap Denials		\$333,297
Total number of attorneys with claims filed	15	15	15	14	8	23	68*
Highest number of claims for a single attorney	5	23	13	9	8	18	-----
Top two attorneys—total percentage of claims	N/A	64%	66%	37%	69%	50%	-----
Amount reimbursed to the Fund	\$2,400	\$11,266	\$6,502	\$3,250	\$100	\$0	\$23,518
CLAIMS PENDING AT END OF YEAR							
Claims approved and pending payment at end of year	0	1	0	0	0	0	-----
Claim amount approved and pending payment at end of year	0	\$3,670	\$0	\$0	\$0	\$0	-----
Claims pending approval and carried over to next year	5	9	10	0	4	31	-----
Claim amount pending approval (end of year)	\$15,653	\$18,359	\$58,543	\$0	\$10,950	\$189,147	-----

*This total includes ten lawyers who were counted more than once because claims were filed against them in more than one year. The 231 claims filed since 2006 named 58 lawyers; the 142 claims approved since 2006 involved 34 of those lawyers.



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