

# 2013 ANNUAL REPORT

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



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



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December 31, 2013

2013 COMMISSION

Briggs F. Cheney  
Chair

The Client Protection Fund Commission finished its eighth full year of operation in 2013 by passing the half-million-dollar mark and reaching \$538,412 in reimbursements for clients' financial losses due to lawyer dishonesty on 172 claims against 39 New Mexico lawyers. Year-by-year and cumulative statistics appear later in this report. The 2013 statistics are detailed after the section on CPF commissioners.

Charles J. Vigil  
Treasurer

Having been created by order of the Supreme Court in December of 2005, the faces of the Commission in the first years of the Commission's existence have remained the same, but in this last two years our first commissioners are, one-by-one, ending their tenure, making way for new faces, enthusiasm and ideas.

Stuart D. Shanor  
Secretary

This year saw Gaelle McConnell complete her final term, serving her last year as the Commission's Chair. Her years of experience on the Commission helped guide the Fund through a record breaking number of claims in 2012. She will be missed.

COMMISSIONERS  
Frank N. Chavez

Dan O'Brien also completed his final term as a commissioner. Like Gaelle and most of the original commissioners, Dan also served as a Commission Chair during his eight year tenure and the Commission will miss his experience, insight and wisdom.

Martha Chicoski

This year also marked the retirement of Chuck Noland who served the Commission so tirelessly this last 3 years helping the Commission in the implementation of new rules and procedures. His retirement has been the impetus for fostering a much closer relationship with the Supreme Court's Disciplinary Counsel's Office which will enhance and streamline both the administrative and investigative tasks of client protection and result in a much more cost-efficient administration of claims.

Jason A. Marks

Gaelle D. McConnell

That a single lawyer-administrator could both manage the program and provide investigative assistance to commissioners was conceptually a wonderful idea, but the 2012 and 2013 caseloads demonstrated that the combined job was too big to be workable without additional staff. Promoting the closer relationship with the Disciplinary Counsel Office will provide the Commission with investigative and IT resources not otherwise available.

Daniel J. O'Brien

Travis R. Steele

This year has presented challenges and the Commission has responded. As reported in the Highlights to this Report, the record number of claims in 2012 resulted in a substantial backlog of claims being carried into this year. Combined with the new claims filed this year, the Commission was confronted with 80 claims which had to be addressed. The Commission has resolved a record number of claims in 2013 leaving only four claims unresolved. It has been through the hard work of the commissioners, the Bar and the Judiciary that we have been able to respond to this challenge. On another front, it must also be mentioned that the Commission continues to be remembered by our District Court Judges who designate the Fund as the recipient of sanction monies.

EX OFFICIO MEMBERS

Joseph Conte  
Charles D. Noland

The challenges will, of course, continue. But for the original commissioners who I will join this year as my ninth year and tenure on the Commission comes to an end and on behalf of the commissioners who have followed us, we are very proud of the Commission's work promoting the public confidence in the administration of justice and the integrity of the legal profession.

Sincerely,

Briggs F. Cheney, Esq.  
2013 Chair

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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 State Bar provides in-kind support to the Fund and the Commission through staff support, office and meeting space, and fiscal administration. (See 2013 Financial Information, page 16). From time to time, the Fund receives monies from court-ordered sanctions directed to the fund at the discretion of the judge.

## ELIGIBLE CLAIMS

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

disregarding the lawyer's inability or reasonably anticipated inability to repay. A typical CPF claim involves a lawyer who collected a retainer from a client, performed some legal work, and then became unable or unwilling to finish the work or refund the unearned amount.

The rules also include a hardship exception which allows the Commission, in cases of extreme hardship or special and unusual circumstances, to recognize a claim that was filed late or would not otherwise be reimbursable. This exception has only been used for one of the 172 claims approved in the Commission's eight-year history. The maximum reimbursable amount was increased in 2012 from \$10,000 to \$20,000 per individual claim.

## PROCESSING A CLAIM

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

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

# 2013 ANNUAL REPORT HIGHLIGHTS

The Client Protection Fund Commission finished its eighth full year of operation in 2013 by passing the half-million-dollar mark and reaching \$538,412 in cumulative reimbursements for clients' financial losses on 172 claims against 39 New Mexico lawyers. Year-by-year and cumulative statistics appear later in this report. The 2013 statistics are highlighted here and detailed after the following section on CPF commissioners.

In December 2012 the New Mexico Supreme Court approved a Commission request for an increase from seven to nine commissioners after a record 70 claims in 2012. At the end of 2012 there were 31 claims awaiting decisions and carried over. Another 49 new claims brought the total 2013 caseload to 80. A combination of the two new commissioners, additional staff support from the State Bar and an improved database developed by the CPF administrator for tracking claims allowed the Commission to dispose of 76 claims by the end of 2013, leaving only four claims to be carried over to 2014.

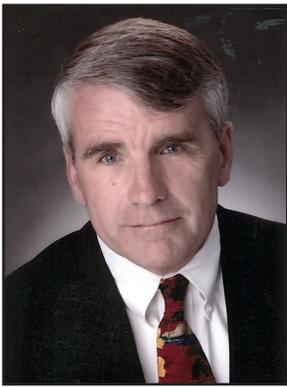
- The 31 claims carried over from 2012 requested reimbursements totaling \$189,147.
- The 49 new claims filed in 2013 requested an additional \$184,445.
- From those 80:
  - 6 claims totaling \$41,517 were determined to be wholly ineligible for CPF consideration under Rule 17A- 010 NMRA.
  - 6 other claims for fee disputes totaling \$52,129 were wholly ineligible but were transferred to the State Bar Fee Arbitration Program by agreement of the parties and 4 of those claimants received full or partial arbitration awards during 2013.
  - 11 claimants received \$14,727 in full refunds from their lawyers, eliminating any need for CPF reimbursements
  - 11 other claimants received \$9,982 in partial refunds from their lawyers and \$19,622 in partial denials by the Commission for fees earned.
  - 19 claimants received \$55,377 in full reimbursements from the Commission for unearned fees
  - 5 other claimants received \$18,283 in partial reimbursements for unearned fees and \$7,007 in partial denials by the Commission for fees earned.
  - 3 claimants received \$10,685 in full reimbursements for theft or conversion of client settlement funds.
  - 3 other claimants received \$32,993 in partial reimbursements for theft of conversion of settlement funds, \$6,050 in partial denials for fees earned, and \$11,350 for lack of proof of amounts claimed to have been dishonestly withheld by their lawyers.
  - 8 claims totaling \$19,875 were denied in full for fees earned by respondent lawyers.
  - 6 claims totaling \$42,267 were denied in full for lack of proof of alleged losses.
  - 1 claim totaling \$1,500 was denied administratively after the claimant died, said denial being without prejudice to refiling by a personal representative of the claimant's estate.
  - 4 claims requesting \$32,128 for alleged unearned fees were carried over to 2014.
- A total of \$8,500 in contributions to the Fund were received from two district court sanctions awards against an Albuquerque law firm for disregard or court orders in a pending case.
- Restitution payments totaling \$1,075 toward amounts previously paid from the Fund were received from one respondent who resigned his license in lieu of discipline and, with Supreme Court approval, the balance remaining in a deceased respondent's trust account.

Visit the State Bar website at [www.nmbar.org/Attorneys/CPF/clientprotectioncommission.html](http://www.nmbar.org/Attorneys/CPF/clientprotectioncommission.html) for further information on the Client Protection Fund.

# 2013 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. In 2013, the number of Commissioners was increased to nine. The 2013 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, vice-chair or treasurer, and secretary. Program assistance is provided by the State Bar Office of General Counsel.

## **Briggs F. Cheney, Chair 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 chair in 2009. He was most recently reappointed by the Supreme Court in January 2012. His current term ends Dec. 31, 2014.

## **Charles J. Vigil, Treasurer 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 has served on the Commission since its inception in 2006 and was chair in 2006 and 2010. He was most recently reappointed by the Supreme Court in January 2013. His current term ends Dec. 31, 2015.

## **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 U.S. Supreme Court, the U.S. Court of Appeals for the 10th Circuit, the U.S. Court of Claims, the U.S. 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 U.S. 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.

**Frank N. Chavez**  
**State Bar of New Mexico Appointee**



Frank N. Chavez was appointed by the BBC to succeed founding Commissioner Hank Kelly when his last full term expired in December 2012. Frank's current term expires December 31, 2015. In November 2013 he was also elected to represent the Las Cruces area on the Board of Bar Commissioners. Frank attended New Mexico State, Univ. of Washington and New Mexico Tech, obtaining his undergraduate degree in both biology and chemistry. He

served his country in the US Army Reserve from 1964-1970, as an enlisted man and as an officer. Before law school he worked for the NM Dept. of Health as an environmentalist. Frank graduated from UNM School of Law in 1969. He worked for the NM Attorney General's Office for 3 years and was the Las Cruces City Attorney for 9 years. He was the president of Reeves, Chavez, Albers and Walker PA, the largest law firm in Las Cruces, for over 20 years. He was also a managing partner in the Rosner and Chavez LLC law firm in Las Cruces. He has been an AV rated attorney since 1995. He was on the Board of Bar Examiners for 6 years. Frank has also worked as a neutral arbitrator with the National Arbitration Forum. Frank presently serves on the Code of Professional Conduct Board, the Code of Judicial Conduct Board, and the Client Protection Board. He also conducts fee arbitrations for the State Bar. In his spare time Frank is a long distance bicycle rider with numerous cross country trips to his credit. He is married to Mary Rosner, a District Court Judge in Las Cruces.



**Martha Chicoski**  
**State Bar of New Mexico Appointee**

Martha Chicoski has a wide range of litigation experience in both civil and criminal law. In August 2010 she founded Chicoski Law Firm LLC. She will serve as President-elect of the Board of Bar Commissioners for the State Bar of New Mexico in 2014. Other bar service includes the New Mexico Women's Bar Association (immediate past president 2013, president 2012, treasurer 2011), the Young Lawyers Division (chair 2010 and 2009). In 2008, she received one of 10 national scholarships to the American Bar Association Young Lawyers Division Minorities in the Profession Committee. She attended The George Washington University (B.A., Criminal Justice) and Suffolk University Law School (J.D.). She is licensed to practice in New Mexico and Massachusetts as well as in the U.S. District Court for the District of New Mexico. During free time, she enjoys running, hiking/mountaineering, and skiing. She and her husband, Jason, reside in Albuquerque with their rescue dogs, Doug Flutie, Ty Webb, and Morley Bean.

**Jason A. Marks**  
**Supreme Court Appointee**

Jason Marks was appointed by the Supreme Court to a three-year term in one of the new positions approved effective for 2013. Marks is a sole practitioner in Albuquerque. His practice includes civil litigation, business advisory services, representation of public entities, and utility law. Marks was elected and served two terms as a New Mexico Public Regulation Commissioner representing the Albuquerque area, 2005-2012. He was recognized by the *Albuquerque Journal* on multiple occasions as the voice for public accountability and ethics at the PRC, and was also known for his protection of consumer interests and advocacy on behalf of renewable energy. Prior to becoming an attorney, Marks led a national consulting practice in healthcare finance extending to 20 states and the federal government. His current term ends Dec. 31, 2015.

**Gaelle D. McConnell**  
**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 last full term ended Dec. 31, 2013.

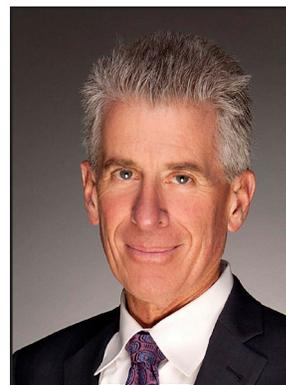
**Travis R. Steele**  
**State Bar of New Mexico Appointee**



Travis Steele was appointed by the BBC to one of the new positions approved by the Supreme Court effective Jan. 1, 2013. Travis practices primarily in the areas of commercial litigation, Indian gaming, oil and gas, and real estate litigation. He has conducted numerous hearings and trials in New Mexico state, federal and tribal courts. Travis regularly prosecutes and defends commercial lawsuits on behalf of his corporate clients, including contract disputes, lien issues, copyright claims, allega-

tions of unfair business practices, and any other issue that surfaces when business dealings fall apart. Travis regularly advises clients on licensure, regulatory and litigation matters related to Indian gaming and has substantial experience in sovereign immunity and tribal exhaustion cases. In addition, Travis has experience responding to federal investigations, including False Claims Act investigations by the Office of the Inspector General. Travis regularly represents construction and real estate clients in breach of contract matters, lien disputes and construction defect litigation. In his creditors' rights practice, Travis represents several financial institutions in the recovery of secured collateral, garnishments and loan default matters. In addition, Travis represents clients in commercial foreclosure cases, and has represented both landlords and tenants in commercial and residential lease disputes. His current term ends Dec. 31, 2015.

**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 last full term ended Dec. 31, 2013.

## EX OFFICIO MEMBERS

### Joseph Conte Appointed by Position Executive Director, State Bar of New Mexico



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 2003. 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 the New Mexico Bio Park Society.

### Charles D. Noland Appointed by Position CPF Administrator



Chuck Noland has been a New Mexico lawyer since 1978 and spent 24 years practicing public school law in state government and private practice. In 2007 he joined the State Bar Lawyer Referral for the Elderly Program (LREP) and worked for 3-1/2 years providing free legal advice to about 3,000 seniors on the LREP helpline and presenting workshops on elder law, estate planning and related matters at senior centers and conferences statewide. He served as CPF administrator in the State Bar Office of General

Counsel from 2011 through 2013 before returning to part-time teaching and private practice focusing primarily on school law, elder law and estate planning and administration. Noland attended the University of New Mexico School of Law (J.D., 1978) and worked in government and private practice in Santa Fe from 1979 to 2005 before moving back to Albuquerque to help a nationally known school law firm establish a New Mexico practice. He graduated from Artesia High School in 1964 and attended the University of New Mexico (B.A., 1973), where he studied journalism under the late Tony Hillerman and was editor-in-chief of the *New Mexico Lobo*. He was a reporter, news editor and feature writer from 1969 to 1974, mostly for The Associated Press in Iowa and New Mexico and the U.S. Army's official magazine, *Soldiers*.

## 2013 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 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). She has been with the Office of Disciplinary Counsel since January 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.

## 2013 COMMISSION STAFF

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



Richard Spinello attended the University of New Mexico (B.A., 1989) and the Thomas M. Cool-ey 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.

**Daniel Macy**  
**Administrative Clerk**



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 New Mexico State Bar in 2009 as a campaign assistant for Equal Access to Justice. He has also worked for the New Mexico State Bar Foundation and has assisted the New Mexico Hispanic Bar Association.



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

# 2014 COMMISSION & STAFF

## 2014 CLIENT PROTECTION FUND COMMISSION OFFICERS

Chair Charles J. Vigil	Reappointed January 1, 2013, 3-year term expires 12/31/2015
Vice-Chair Jason Marks	Appointed January 1, 2013, 3-year term expires 12/31/2015
Secretary Travis Steele	Appointed January 1, 2013, 3-year term expires 12/31/2015

## 2014 CLIENT PROTECTION FUND COMMISSIONERS

Briggs F. Cheney	Reappointed January 1, 2012, 3-year term expires 12/31/2014
Stuart D. Shanor	Reappointed January 1, 2012, 3-year term expires 12/31/2014
Brent Moore	Appointed January 1, 2014, 1-Year Term Expires 12/31/2014
Frank Chavez	Appointed January 1, 2013, 3-Year Term Expires 12/31/2015
Robert Valdez	Appointed January 1, 2014, 3-Year Term Expires 12/31/2016
Joseph Conte	Ex officio, non-voting, Executive Director, State Bar of New Mexico

## 2014 CLIENT PROTECTION FUND LIAISONS

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

## 2014 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

# FORMER COMMISSIONERS & ADMINISTRATORS

Henry A. (Hank) Kelly	Appointed 2006 (founding commissioner) Reappointed 2007–2009, 2010–2012
Gaelle D. McConnell	Appointed 2006 (founding commissioner) Reappointed 2008–2010, 2011–2013
Daniel J. O'Brien	Appointed 2006 (founding commissioner) Reappointed 2008–2010, 2011–2013
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
Charles D. Noland (Staff Administrator)	Ex officio 2011-2013

# OTHER COMMISSION

## ACTIVITIES AND INFORMATION

The Client Protection Fund Commission met five times in 2013: Jan. 17, March 21, June 20, Sept. 19, and Nov. 7. Several Commission members attended the 29th ABA National Forum on Client Protection from May 31 through June 1, 2013, in San Antonio, Texas.

The Commission bid farewell at the end of 2013 to two of its founding Commissioners: Gaelle D. McConnell and Daniel J. O'Brien, both of whom showed tremendous dedication to the Commission and each of whom will undoubtedly be missed. At the same time, the Commission welcomed its newest members: Frank Chavez, Jason Marks, and Travis Steele. Thanks to the New Mexico Supreme Court, the Commission size increased from seven to nine members effective Jan.1, 2013.

The Commission also said goodbye at the end of 2013 to Charles D. ("Chuck") Noland. Noland has administered the Client Protection Fund for the last three years. The Commission came to rely heavily on his professional and thorough approach to claims administration and his automation of the process and statistical tracking. The Commission wishes Chuck continued success in his new ventures and thanks him for his longstanding, demonstrated commitment to the Client Protection Fund and the public that it serves.

For 2014, the Commission entered into a Memorandum of Understanding with the Disciplinary Board to provide administrative support to the Commission in lieu of filling the position vacated by Noland.

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

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

# 2013 CLAIMS AND RESPONDENT LAWYERS

As set forth below, 30 of the 76 claims resolved in 2013 resulted in payments to the complaining party as a result of the actions of 11 lawyers. The following table summarizes those decisions. For a 2006-13 cumulative summary see, page 14.

2013 Summary of Claims Approved by Lawyer				
Lawyers (11)	Lawyer's Status as of Dec. 31, 2013	Claims Approved 2013	Dollars Awarded 2013	Reason
John Burnett, Albuquerque	Withdrawn	5	\$29,728	Theft/conversion
Pedro Palacios, Las Cruces	Disbarred	7	\$25,762	Unearned fees
Jose Arrieta, Las Cruces	Disbarred	2	\$20,143	\$13,950.00 Theft/conversion \$6,193 Unearned fees
Michael Peters, Albuquerque	Deceased	2	\$16,880	Unearned fees
Bradley Sims, Las Cruces	Disbarred	4	\$7,800	Unearned fees
Sherry Tippett, Silver City	Deceased	4	\$5,228	Unearned fees
Raymond Van Arnam, Alamogordo	Suspended	2	\$5,192	Unearned fees
Gilbert Vigil, Albuquerque	Withdrawn	1	\$2,675	Unearned fees
Shawn Lunsford, Carlsbad	Disbarred	1	\$2,190	Unearned fees
Mario Alfaro, El Paso, Texas	Disbarred	1	\$890	Unearned fees
Donald Klein, Socorro	Deceased	1	\$850	Unearned fees
	<b>Total approved</b>	<b>30</b>	<b>\$117,338</b>	<b>Unearned fees \$73,660</b> <b>Theft/conversion \$43,678</b>

**2006-2013 Cumulative Claims Paid by Lawyer**

<b>Lawyer</b>	<b>Status as of Dec. 31, 2013</b>	<b>Total Claims Paid 2006-2013</b>	
Abeita, Christopher	Suspended	1	\$5,000
Alfaro, Mario	Disbarred	1	\$890
Arrieta, Jose	Disbarred	9	\$38,770
Baca, Henry	Deceased	1	\$1,200
Baker, G. Mitchell	Suspended	1	\$2,214
Bartholomew, James	Deceased	10	\$18,840
Benavidez, Edward	Deceased	3	\$7,145
Bloomfield, Gerald	Deceased	1	\$925
Burnett, John	Withdrawn	7	\$40,728
Dinwiddie, Aaron	Suspended	2	\$4,300
Griffin, Nettie	Withdrawn	3	\$3,000
Joiner, Joseph	Deceased	2	\$11,611
Kelly, Leo	Suspended	1	\$2,500
Kennedy, Mary	Active	3	\$7,261
Kirkpatrick, Jack	Deceased	3	\$6,000
Klein, Donald	Deceased	1	\$850
Lepley, Donald	Deceased	1	\$10,000
Lunsford, Shawn	Disbarred	16	\$33,976
Marcus, Charles	Suspended	22	\$50,004
Martinez, Anthony	Deceased	1	\$600
Martinez, Dennis	Suspended	1	\$6,090
Nelson, Gary Wayne	Suspended	1	\$5,000
Ortiz, Rudy	Disbarred	2	\$10,305

**2006-2013 Cumulative Claims Paid by Lawyer (continued)**

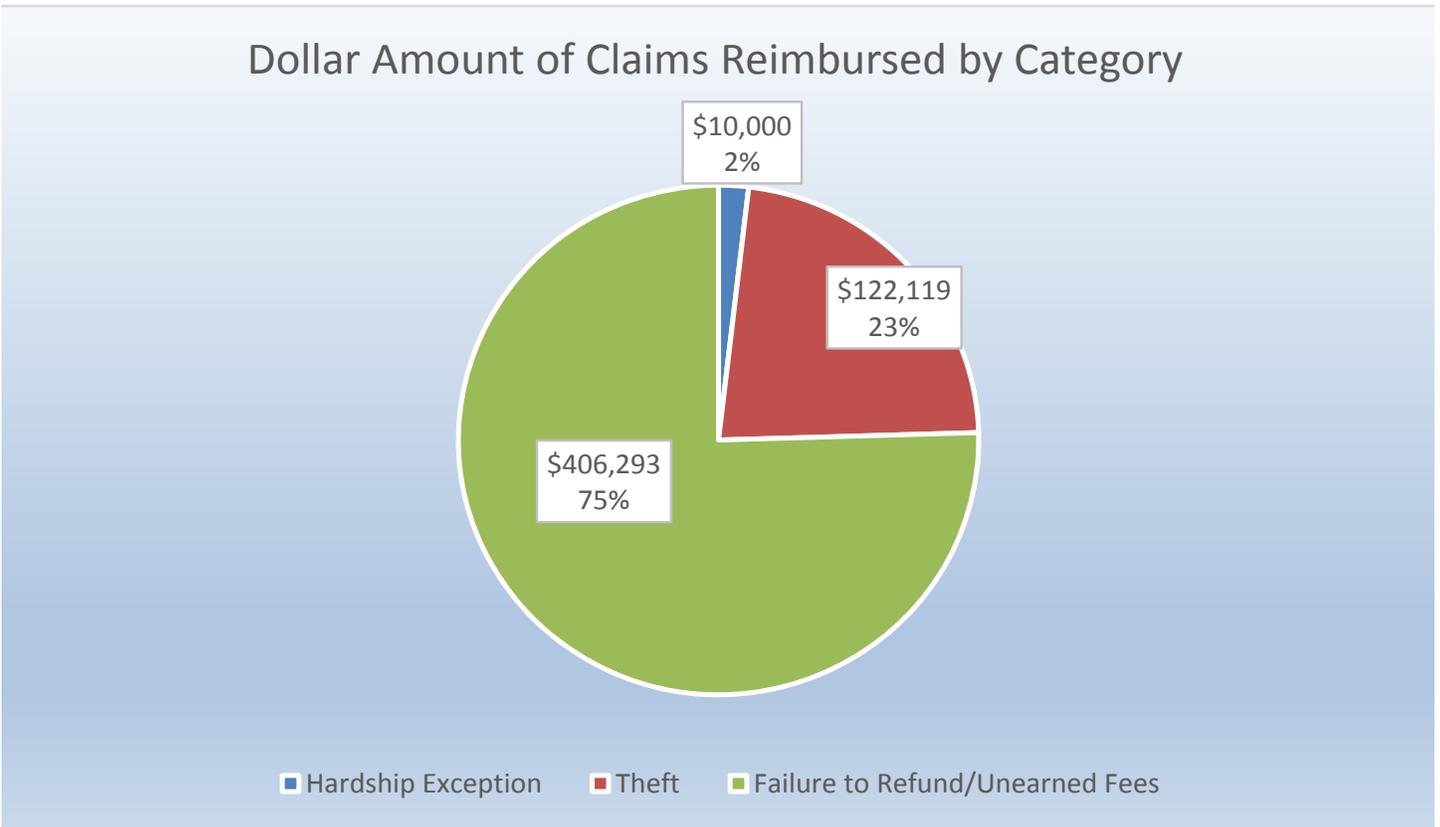
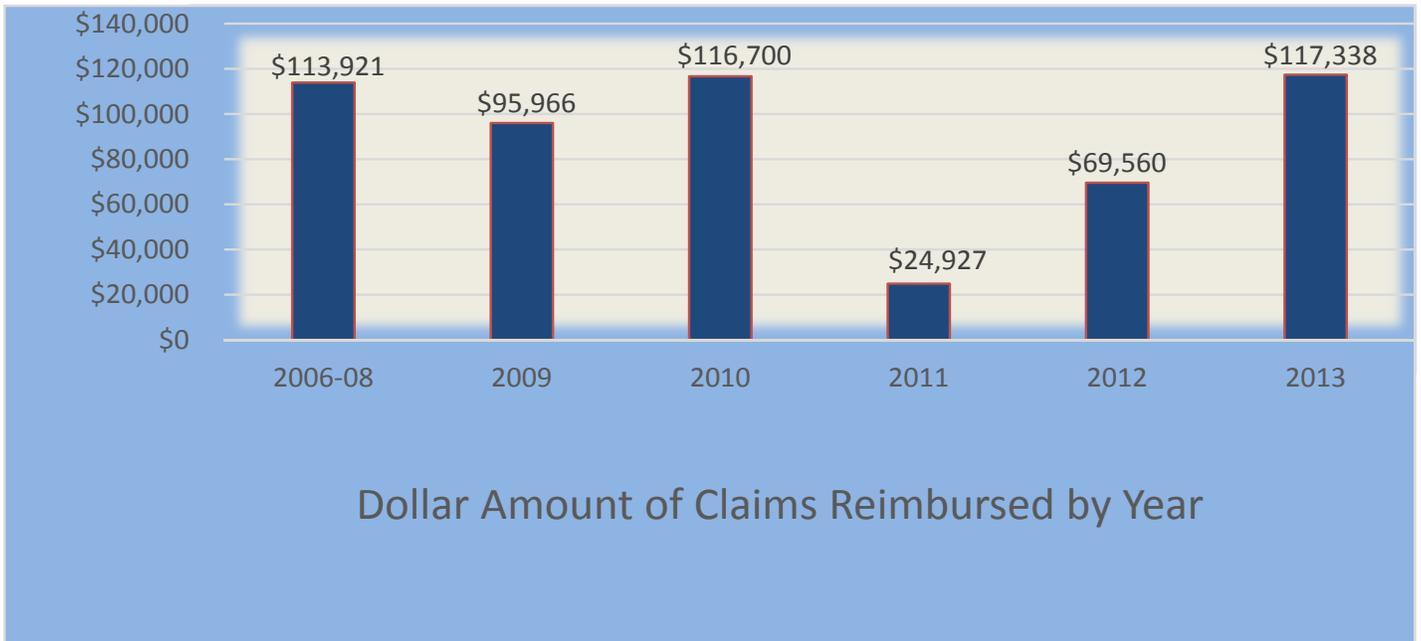
<b>Lawyer</b>	<b>Status as of 12/31/2013</b>	<b>Total Claims Paid 2006-2013</b>	
Palacios, Pedro	Disbarred	15	\$49,823
Peters, Michael	Deceased	2	\$16,880
Romo, Anthony	Suspended	1	\$1,400
Runnels, Michael	Suspended	1	\$1,800
Sims, Bradley	Disbarred	4	\$7,800
Sizemore, Victor	Deceased	16	\$110,137
Stein, Stuart	Suspended	1	\$1,000
Tabet, Thomas	Suspended	6	\$9,500
Thompson, Erik	Suspended	4	\$6,775
Tippett, Sherry	Deceased	5	\$10,167
Turner, Eric	Suspended	6	\$16,481
Van Arnam, Raymond	Suspended	2	\$5,192
Vigil, Gilbert	Withdrawn	2	\$7,899
Werner, Karl	Suspended	3	\$3,285
Williams, Victoria	Suspended	1	\$5,905
Wright, Jackson	Deceased	10	\$17,159
<b>Totals (39 lawyers)</b>		<b>172</b>	<b>\$538,412</b>

# ANNUAL STATISTICS AT-A-GLANCE

	3-Year Totals 2006-2008	2009	2010	2011	2012	2013	Cumulative Totals 2006-2013
<b>CLAIM FORMS REQUESTED OR FILED</b>							
Total number of claim forms requested	133	44	45	27	98	57	404
Total dollar amount of requested claim forms (potential known exposure)	\$408,025	\$276,318	\$234,807	\$77,280	\$519,532	\$191,309	\$1,707,271
Total number of claims filed	82	29	31	19	70	49	280
Total dollar amount of claims filed	\$281,601	\$222,874	\$193,707	\$49,911	\$368,431	\$184,445	\$1,300,969
Return rate of requested claim forms	62%	66%	71%	70%	71%	86%	69%
<b>CLAIM REDUCTIONS WITHOUT COMMISSION REVIEW OF MERITS</b>	<b>Included in lump sum for amounts denied from 2006-2012, reported separately beginning in 2013</b>						
Fee disputes, no standing, not compensable		"			6	\$41,517	----
Transferred to State Bar Fee Arbitration Program with parties' agreement		"			6	\$52,129	----
<b>REFUNDED TO CLIENTS IN WHOLE OR PART BY RESPONDENTS</b>		"			22	\$24,710	----
<b>CLAIMS APPROVED (See 2013 highlights p. 2 for details)</b>							
Total number of claims approved in whole or part	47	23	32	13	27	30	172
Total dollar amount of claims approved and paid (revised from prior annual reports after reconciliation of cumulative lawyer summary)	\$113,921	\$95,966	\$116,700	\$24,927	\$69,560	\$117,338	\$538,412
<b>CLAIMS DENIED (See 2013 highlights at p. 2 for details)</b>							
Total number of claims denied in whole or part	43	11	25	13	39	33	164
Total dollar amount of denials	\$144,292	\$60,734	\$134,181	\$14,034	\$120,674	\$106,162	\$580,077
Dollar amount of reimbursement limit per claim	-----	\$10,000	\$10,000	\$10,000	\$20,000	\$20,000	-----
Claims made or known over limit	5	3	6	0	2	1	17
Total amount denied over limit	\$29,878	\$33,340	\$77,400	0	0	0	\$140,618

	3-Year Totals 2006-2008	2009	2010	2011	2012	2013	Cumulative Totals 2006-2013
Total amount denied for other reasons	\$114,414	\$27,394	\$56,781	\$14,034	\$120,674	\$106,162	\$439,459
<b>CLAIMS PENDING AT END OF YEAR</b>							
Claims undecided and carried over to next year	14	10	0	4	31	4	-----
Claim amount pending approval at end of year	\$34,012	\$58,543	\$0	\$10,950	\$189,147	\$32,128	-----
<b>ATTORNEY STATISTICS (See 2006-2013 summary of claims approved by lawyer at pp. 14-15)</b>							
Total number of attorneys with claims filed	30	15	14	8	23	28	-----*
Highest number of claims filed for a single attorney	23 (2008)	13	9	8	18	6	-----
Top two attorneys - total percentage of claims filed	64% (2008)	66%	37%	69%	50%	24%	-----
Total number of attorneys with claims paid	16	8	9	6	6	11	39**
Top two attorneys - total percentage of amounts paid	Average 65%	76%	55%	87%	80%	47%	----
Amount reimbursed to the Fund	\$13,666	\$6,502	\$3,250	\$100	\$0	\$1,071	\$24,589
	*The total of this row is 118 but the year-by-year numbers include many lawyers more than once because claims were filed against them in two or more years. The more meaningful statistic appears to be the number of lawyers with claims approved against them, as shown three rows down.						
	**The total of this row is 56 but the year-by-year numbers include 17 lawyers who were counted more than once because claims approved against them were approved in more than one year. The 172 claims approved in whole or part since 2006 involved 39 New Mexico lawyers. See the 2006-2013 summary of claims approved by lawyer at pp 14-15.						

# 2006-2013 STATISTICAL HISTORY



# 2013 FINANCIAL INFORMATION

## Balance Sheet (Pre-Audit)

As of Dec. 31, 2013

ASSETS	
Cash and Equivalents	\$ 461,900.18
Due from State Bar	\$ 39,861.74
<b>Total Assets</b>	<b>\$ 501,761.92</b>
LIABILITIES AND NET ASSETS	
<b>Net Assets</b>	
Fund Balance	\$ 494,262.42
Reserve for Open Claims	\$ 32,127.68
Current-Year Revenue Over Expenditures	\$ (24,628.18)
<b>Total Net Assets</b>	<b>\$ 501,761.92</b>
<b>Total Liabilities and Net Assets</b>	<b>\$ 501,761.92</b>

## Statement of Revenues and Expenditures (Pre-Audit)

For Year Ending Dec. 31, 2013

	ACTUAL	2013 Budget	VARIANCE REV. ( - ) EXP. (+)
<b>Revenue</b>			
CPF Assessments	\$ 103,275.00	\$ 100,000.00	\$ 3,275.00
Interest Earned	\$ 1,881.26	\$ 3,000.00	\$ (1,118.74)
Restitution	\$ 1,070.64	\$ 2,500.00	\$ (1,429.36)
Contributions	\$ 10,000.00	\$ -	\$ 10,000.00
MCLE Excess Funds	\$ 56,800.00	\$ 56,800.00	\$ -
<b>Total Revenue</b>	<b>\$ 173,026.90</b>	<b>\$ 162,300.00</b>	<b>\$ 10,726.90</b>
<b>Expenditures</b>			
Administrative Fees	\$ -	\$ 800.00	\$ (800.00)
Bar Center Occupancy	\$ 999.96	\$ 1,000.00	\$ (0.04)
Audit	\$ 1,200.00	\$ 1,200.00	\$ -
Labor Expense	\$ 67,269.65	\$ 58,000.00	\$ 9,269.65
Dues & Subscriptions	\$ 200.00	\$ 200.00	\$ -
Insurance Allocation	\$ 540.00	\$ 540.00	\$ -
Internet/Phone Allocation	\$ 585.80	\$ 550.00	\$ 35.80
Postage Expense Allocation	\$ 663.37	\$ 600.00	\$ 63.37
Printing Expense	\$ -	\$ 1,000.00	\$ (1,000.00)
Professional Development	\$ 6,544.58	\$ 9,000.00	\$ (2,455.42)
Marketing & Advertising	\$ -	\$ 1,000.00	\$ (1,000.00)
Mileage Reimbursement	\$ 191.88	\$ 750.00	\$ (558.12)
Meetings and Governance	\$ 943.67	\$ 1,000.00	\$ (56.33)
Office Supplies	\$ 911.58	\$ 500.00	\$ 411.58
<b>Total Expenditures</b>	<b>\$ 80,317.99</b>	<b>\$ 76,140.00</b>	<b>\$ 4,177.99</b>
<b>Revenue Over Expenditures</b>	<b>\$ 92,708.91</b>	<b>\$ 86,160.00</b>	<b>\$ 6,548.91</b>
Before Claims			
Claims Approved	\$ 117,337.09	\$ 100,000.00	\$ 17,337.09
<b>Revenue Over Expenditures</b>	<b>\$ (24,628.18)</b>	<b>\$ (13,840.00)</b>	<b>\$ (10,788.18)</b>



STATE BAR  
of NEW MEXICO

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