

State Bar of New Mexico
Client Protection Fund



2019
ANNUAL
REPORT

Presented to 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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History and Purpose

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

Revenues

The initial resources for the Fund were provided in 2005 by a Supreme Court order transferring funds from accumulated fines against lawyers who failed to comply with the Court's Minimum Continuing Legal Education requirements. In 2008 the Supreme Court ordered an additional transfer of funds from MCLE to the Fund. In 2009 the Supreme Court ordered a \$15 annual assessment of every active New Mexico attorney pursuant to Rule 17A-003 (B) NMRA. In 2010, 2012, 2016, and 2018 additional monies were also transferred from MCLE to the Fund by Supreme Court Orders. The State Bar provides in-kind support to the Fund and the Commission through staff support, office and meeting space, and fiscal administration. (See 2019 Financial Information, page 11). 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.

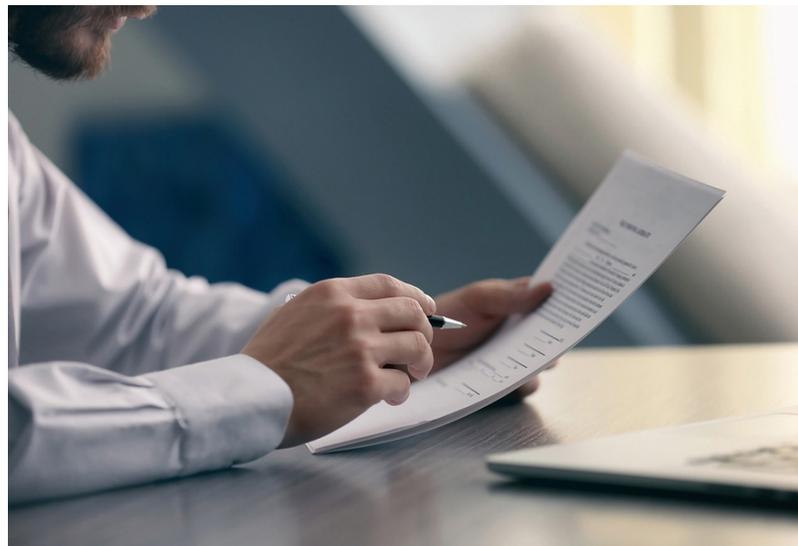
The rules also include a hardship exception which allows the Commission, in cases of extreme hardship or special and unusual circumstances, to recognize a claim that was filed late or would not otherwise be reimbursable. This exception has only been used for two of the 247 claims approved in the Commission's thirteen-year history. The maximum reimbursable amount was increased in 2012 from \$10,000 to \$20,000 per individual claim, and, effective January 1, 2016 from \$20,000 to \$50,000.

Processing a Claim

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

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

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



2019 Annual Report Highlights and Commission Activities

The Client Protection Fund Commission finished its thirteenth full year of operation in 2019 paying just over \$43,053 in 11 claims against 5 lawyers. To date, the Commission has paid just over \$920,000 in cumulative reimbursements for clients' financial losses involving 63 lawyers. Year-by-year and cumulative statistics appear later in this report.

The Commission met 4 times in 2019. Commissioners Leigh Anne Chavez, Sally Galanter and James Reist attended the 35th ABA National Forum on Client Protection in early June, 2019 in Vancouver, Canada.

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

A. Publicizing awarded claims. Claims, proceedings and reports involving claims for reimbursement are confidential until the commission authorizes reimbursement to the claimant, except as provided below, unless provided otherwise by law. After payment of the reimbursement, the commission shall publicize the nature of the claim, the amount of reimbursement, and the name of the lawyer. The name and the address of the claimant shall not be publicized by the commission unless specific permission has been granted by the claimant. The commission may provide a waiver to the claimant which authorizes disclosure.

B. Exceptions. This rule shall not be construed to deny access to relevant information by the disciplinary board, other professional discipline agencies or other law enforcement authorities as the commission shall authorize, or the release of statistical information that does not disclose the identity of the lawyer or the parties, or the use of such information as is necessary to pursue the fund's subrogation rights under Rule 17A-015 NMRA.

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

2019 Client Protection Fund Commission

From its inception in 2006 through 2012 the Commission consisted of seven lawyers—four appointed by the Supreme Court, two appointed by the Board of Bar Commissioners, and formerly the vice president of the BBC, now the Secretary-Treasurer of the BBC. In 2013, the number of Commissioners was increased to nine. The 2019 commissioners and officers are listed here. All members except the BBC Secretary-Treasurer serve staggered three-year terms. The BBC Secretary-Treasurer serves for one year before advancing to become the State Bar president-elect and is succeeded on the Commission by the incoming Secretary-Treasurer. The six original commissioners were appointed for part of 2006 after the Commission was created and for staggered terms of one, two, and three years that began in 2007. Each of the six original commissioners were appointed to two full three-year terms. The CPF officers, elected annually by the Commission, consist of a chair, vice-chair or treasurer, and secretary. Program assistance and administrative support is provided by the State Bar Office of General Counsel and the New Mexico Disciplinary Board.



Andrew J. (Drew) Cloutier, Chair
Supreme Court Appointee

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



Leigh Anne Chavez, Chair Elect
Supreme Court Appointee

Leigh Anne Chavez grew up in Las Vegas, Nevada, and received her B.A. in English from UNLV. She received her J.D. from UCLA, and taught paralegals at CNM for 24 years. She also has a A.A.S. in Accounting and is working on her Master's Degree in Accounting at Anderson School of Management at UNM. Leigh Anne is the Recycled Metals Prosecutor and Manufactured Housing Division Counsel for the New Mexico Regulation and Licensing Department.



Matthew Sanchez, Secretary/Treasurer
Supreme Court Appointee

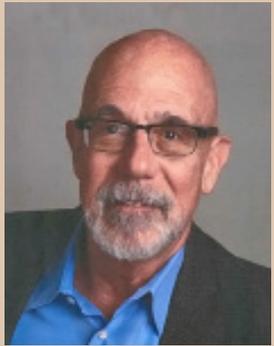
Matthew C. Sanchez, an Albuquerque native, currently serves as General Counsel and Director of Enterprise Risk Management to the Jaynes Companies, a collection of construction companies headquartered in Albuquerque, NM. Before joining Jaynes, Mr. Sanchez was a senior associate attorney with the Sheehan & Sheehan law firm where he represented not only Jaynes, but other clients such as the New Mexico Department of Transportation, the Public Schools Facilities Authority, contractors, suppliers, counties, municipalities, and various school districts. Mr. Sanchez's private practice centers on construction, employment, and commercial law. Mr. Sanchez obtained both his Masters and law degree at the University of New Mexico and completed his undergraduate studies at Santa Clara University in California. In early 2016, he was recognized as a Fellow of the American Bar Association Forum on Construction Law. In 2018, he completed the Leadership New Mexico - Core Program.



Erin O'Brien Anderson

State Bar of New Mexico Appointee

Erin Anderson has been a trial attorney in criminal and civil cases in New Mexico for 16 years. She has served as an Administrative Law Judge and Special Commissioner. She currently serves as a board member of the New Mexico Women's Bar Association. A graduate of McGill University, and Suffolk University Law School she currently practices as an attorney in environmental and security matters for the United States Coast Guard in New Orleans, Louisiana. While away from New Mexico she pines for green chile.



Jeff Baker

State Bar of New Mexico Appointee

Jeff Baker has been a trial lawyer for more than 40 years. He graduated from Harvard College and from SUNY at Buffalo Law School. He was a felony trial lawyer in the Bernalillo County District Attorney's office and the New Mexico Public Defender's office. He served as chief of the civil litigation division for the Legal Department of the City of Albuquerque before going into private practice. He is recognized by Martindale Hubbell with its highest rating (AV), and by Best Lawyers in America. Jeff has served as special assistant disciplinary counsel to the New Mexico Supreme Court, and is a member of the Supreme Court Code of Professional Conduct Committee. For over 25 years Jeff has been a board member of the Anti-Defamation League (3 times serving as president of the New Mexico region), and he is on the board of Albuquerque Film and Music Experience. He is the Executive Producer of a short anti-bullying film, *The Time That Remains*.

John Caraway

State Bar of New Mexico Appointee



Sally Galanter

State Bar of New Mexico Appointee

Sally Galanter has 38 years of legal experience working in the private and public sectors. After being a sole civil trial practitioner for approximately 22 years, Sally continued her legal career as a hearing officer with the Taxation and Revenue Department for over eight years conducting tax, MVD, and numerous other types of hearings while also supervising attorneys before moving to the Attorney General's office and prosecuting for numerous boards and commissions while also defending state officials in both state and federal court for over three years. For the past five years she has served as legal counsel for the Construction Industries and Manufactured Housing Divisions of the Regulation and Licensing Department representing the divisions in both civil and criminal matters in state courts. Recently she has dedicated herself to representation of the Construction Industries Division for all legal matters.



Carla Martinez

State Bar of New Mexico Secretary-Treasurer 2019

Carla C. Martinez is a native New Mexican and a 1998 graduate of the New Mexico School of Law. Martinez currently serves as the Chief Administrative Officer for the Second Judicial District Attorney's Office. Prior to joining the Office of the Second Judicial District Attorney, Martinez was Chief of Staff for Operations for the New Mexico Office of the Attorney General. She served in this capacity for approximately two years. Immediately preceding, Martinez was the Deputy State Auditor for the New Mexico Office of the State Auditor for eight years. She also served for four years as a Board Member and Chair of the New Mexico Gaming Control Board. Previously, Martinez has worked for an insurance defense law firm and an international accounting firm. Martinez is also a Certified Public Accountant and a Certified Fraud Examiner. Carla represents the First Bar Commissioner District which includes Bernalillo County.



James T. Reist
Supreme Court Appointee

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

EX OFFICIO MEMBERS



Richard B. Spinello
Appointed by Position, Executive Director, State Bar of New Mexico

Richard Spinello attended the University of New Mexico (B.A., 1989) and the Thomas M. Cooley Law School (J.D., 1997). Previously in private practice in Rio Rancho, Spinello assisted clients with family law, estate planning, probate and adult guardianships. He came to the State Bar in 2000 as a staff attorney for the Lawyer Referral for the Elderly Program. After three years as staff attorney and a year as managing attorney for the LREP program, Spinello was named director of the Public and Legal Services Department for the State Bar and Bar Foundation where he helped secure funding for and participated in the creation of the Client Protection Fund rules and CPF Commission, the statewide 10 Step Pro Bono Plan, and the 2007 State Plan for Providing Civil Legal Services to Low Income New Mexicans. In January 2007, Spinello was named general counsel for the State Bar and in 2019 was named the Executive Director of the State Bar.



Stormy K. Ralstin
Administrator and Staff Counsel, General Counsel, State Bar of New Mexico

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

2019 COMMISSION LIAISONS



Anne L. Taylor
Disciplinary Board Liaison

Anne L. Taylor is Deputy Disciplinary Counsel for the Office of Disciplinary Counsel of the New Mexico Supreme Court Disciplinary Board where she has worked since January, 2002. Anne has a J.D. from Vanderbilt University School of Law in Nashville, Tennessee. She has argued numerous disciplinary cases before the New Mexico Supreme Court and serves as the liaison between the Disciplinary Board and the Client Protection Fund. In addition, Anne is responsible for overseeing the Disciplinary Board's IOLTA. When she's not lawyering, Anne is also a level 4/5 gymnastics judge.

Commission and Liaisons

2019 Client Protection Fund Commission

Andrew Cloutier, Chair	Reappointed January 1, 2017, 3-year term expires 12/31/2019
Leigh Anne Chavez, Chair Elect	Reappointed January 1, 2018, 3-year term expires 12/31/2020
Matthew Sanchez, Secretary	Reappointed January 1, 2018, 3-year term expires 12/31/2020
Erin O'Brien Anderson	Appointed January 1, 2019, 3-year term expires 12/31/2021
Jeffrey L. Baker	Appointed January 1, 2017, 3-year term expires 12/31/2019
John M. Caraway	Appointed January 1, 2019, term expires 12/31/2019
Sally J. Galanter	Appointed January 1, 2019, 3-year term expires 12/31/2021
Carla Martinez	Appointed January 1, 2019, term expires 12/31/2019
James T. Reist	Appointed January 1, 2016, 3-year term expires 12/31/2018
Richard Spinello	Ex officio, non-voting, Executive Director, State Bar of New Mexico
Stormy K. Ralstin	Ex officio, non-voting, Administrator and Staff Counsel General Counsel, State Bar of New Mexico

2019 Client Protection Fund Liaisons

Anne L. Taylor Disciplinary Board Liaison

2019 Financial Information Balance Sheet (Pre-Audit As of December 31, 2019

Assets	
Cash and Equivalents	\$423,751.85
Certificates of Deposit	\$506,562.78
Dues from State Bar	\$44,992.82
Prepaid Insurance	\$140.18
Total Assets	\$975,447.63
Liabilities and Net Assets	
Liabilities	
Accounts Payable	\$3,007.03
Deferred Revenues	\$37,395.00
Total Liabilities	\$40,402.03
Net Assets	
Fund Balance	\$836,750.63
Restricted Funds – Lawyer Succession & Transition Committee	\$7,733.17
Current Year Decrease in Net Assets	\$90,561.80
Total Net Assets	\$935,045.60
Total Liabilities and Net Assets	\$975,447.63

**Statement of Revenues and Expenditures
(Pre-Audit)
For Year Ending December 31, 2019**

	Actual	Budget	Variance
Revenue			
CPF Assessments	\$110,340.00	\$107,000.00	\$3,340.00
CPF Assessments (PHV)	\$9,255.00	\$8,000.00	\$1,255.00
Interest Earned	\$4,913.57	\$1,500.00	\$3,413.57
Contributions	-0-	\$1,000.00	(\$1,000.00)
Restitution	\$1,700.00	\$1,000.00	\$700.00
Total Revenue	\$126,208.57	\$118,500.00	\$7,708.57
Expenditures			
Audit	\$1,200.00	\$1,200.00	-0-
Dues & Subscriptions	\$225.00	\$250.00	(\$25.00)
Insurance Allocation	\$556.86	\$500.00	\$56.86
Marketing & Advertising	\$486.05	\$1,000.00	(\$513.95)
Meetings and Governance	\$726.06	\$1,250.00	(\$523.94)
Mileage Reimbursement	\$1,640.80	\$2,000.00	(\$359.20)
Personnel	-0-	\$500.00	(\$500.00)
Postage Expense Allocation	-0-	\$200.00	(\$200.00)
Professional Development	\$8,719.00	\$10,000.00	(\$1,281.00)
Total Expenditures	\$13,553.77	\$16,900.00	(\$3,346.23)
Revenue Over Expenditures	\$112,654.80	\$101,600.00	\$11,054.80
Claims Approved	\$22,093.00	-0-	\$22,093.00
Increase in Net Assets	\$90,561.80	\$101,600.00	\$(11,038.20)

2019 Claims and Respondent Lawyers

2019 Claims and Respondent Lawyers

As required by Rule 17A-018, the Commission reports that 6 claims resolved in 2019 resulted in payments to the complaining party as a result of the actions of 5 lawyers. The following table summarizes those payments.

2019 Summary of Claims Approved by Lawyer				
Lawyers	Lawyer's Status as of 12/31/2019	Claims Approved in 2019	Dollars Awarded in 2019	Reason
John Gregory Camp	Deceased	1	\$2,500	<i>Unearned Fees</i>
R. Nathan Gonzales	Active	1	\$2,593	Unearned Fees
Paul Grace	Deceased	1	\$1,000	Unearned Fees
Bryan Hess	Suspended	1	\$2,000	Unearned Fees
Daniel Salazar	Suspended	2	\$14,000	Unearned Fees
Claims paid on lawyers	Total approved	6	\$22,093	

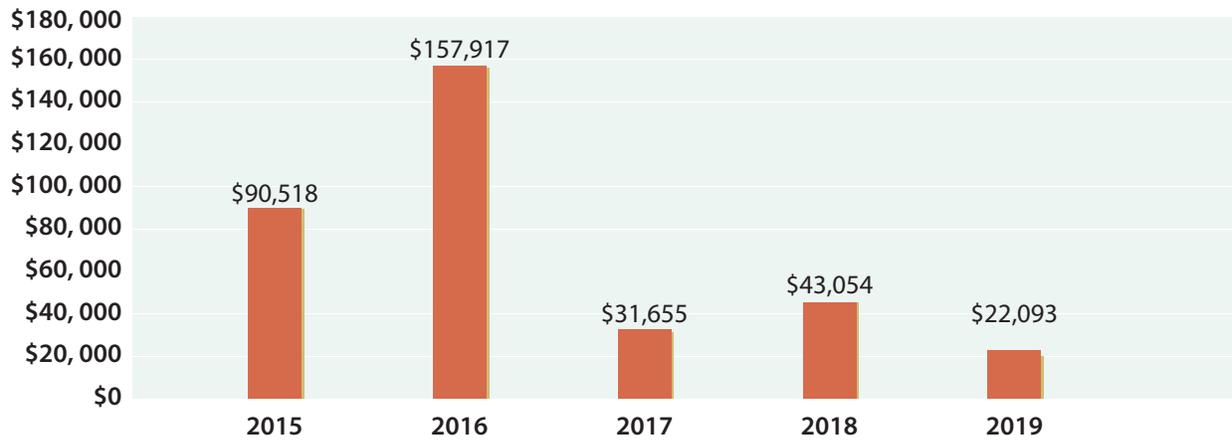
Annual Statistics 2006-2019

2006-2019 Annual Statistics

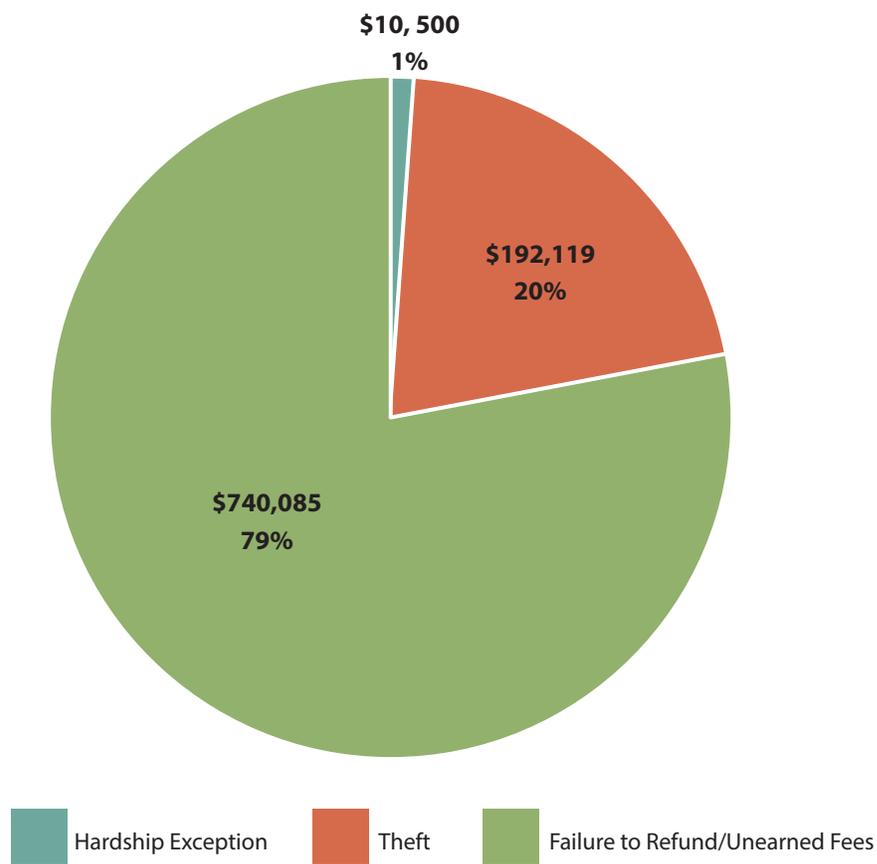
CLAIMS APPROVED	2006-13	2014	2015	2016	2017	2018	2019	TOTALS
Total number of claims approved in whole or in part	172	10	25	22	7	11	6	253
Total dollar amount of claims approved and paid (revised from prior annual reports after reconciliation of cumulative lawyer summary)	\$538,412	\$59,055	\$90,518	\$157,917	31,655	\$43,054	\$22,093	\$942,704
CLAIMS DENIED								
Total number of claims denied in whole or part	164	16	16	12	20	20	11	259
Total dollar amount of denials	\$580,097	\$232,303	\$73,568	\$189,602	\$214,704	\$147,363	\$164,065	\$1,601,682
Dollar amount of reimbursement limit per claim	\$10,000 (through 2011) \$20,000 (effective 2012)	\$20,000	\$20,000	\$20,000	\$50,000	\$50,000	\$50,000	-----
Claims made over limit	17	2	1	0	0	0	0	20
Total amount denied over limit	\$140,638	150,000	0	0	0	0	0	\$290,618
Total amount denied fo other reasons	\$439,459	\$82,303	\$73,568	\$189,602	\$214,704	\$147,363	\$164,065	\$1,311,064
CLAIMS PENDING AT END OF YEAR								
Claims undecided and carried over to next year	63	6	11	9	14	12	15	-----
Claim amount pending at end of year	\$325,050	\$43,524	\$59,486	\$56,696	\$60,269	\$102,089	\$272,336	-----
ATTORNEY STATISTICS								
Total number of attorneys with claims filed	119	19	26	27	24	20	14	-----
Highest number of claims filed for a single attorney	23 (2008)	5	8	3	3	5	7	-----
AMOUNT REIMBURSED TO FUND	\$23,518	\$0	13,300	\$0	\$14735	\$795	\$	\$

2015–2019 Statistical History

Dollar Amount of Claims Reimbursed by Year 2015–2019



Dollar Amount of Claims Reimbursed by Category





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