

Legal Client Protection Fund Revived

Victims of Bad Lawyers Get Help

BY SCOTT SANDLIN
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New Mexico's vaunted uniqueness put it in awkward position in 2002.

That year, New Mexico was the only state in the nation with a bankrupt client protection fund, a reserve set up to help reimburse hapless clients of bad lawyers.

All that changes today, as an improved, reconstituted and newly funded Client Protection Fund Commission holds its inaugural meeting at the State Bar in Albuquerque.

At noon, Supreme Court Justice Pamela Minzner will swear in members Henry Alaniz, Briggs Cheney, Henry Kelly, Gaelle McConnell, Daniel O'Brien, Stuart Shanor and Charles Vigil, who were appointed in an effort to promote confidence in the legal profession.

State Bar executive director Joe Conte said a single bad lawyer did lasting damage to the fund not only in 2002 but in subsequent years.

New Mexico operated without any fund for a year, Conte said. When it got going

To file a claim

To file a Client Protection Fund claim, call fund administrator Tonya Noonan Herring at (505) 797-6055 or (800) 876-6227.

again, claims were capped at \$2,500 for a couple of years.

In some cases it wasn't enough, Conte said, "but it was a way to try and reimburse as many people as possible."

In 2005, The New Mexico Bar donated \$50,000 to get the client fund functioning again and gave the same amount again this year.

Now, the Supreme Court has stepped in to set up the commission and earmark \$339,000 in Minimum Continuing Legal Education sanction money — late fees paid by attorneys who haven't gotten their continuing legal education credits in time — to be used for the client fund.

Fund administrator Tonya Noonan Herring said new rules will make claims somewhat easier. The bar does

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minimal investigation to establish the validity of claims.

There's seldom a single category of legal misdeed, but more often than not there can be a single attorney behind a score of problems.

Last year, for instance, 13 of 16 claims could be traced to the same lawyer.

What can happen is that an attorney charges a blanket fee for a certain type of case and then doesn't do anything. The client hasn't received anything of value, but if the attorney has been disciplined, he or she isn't in a position to take corrective action, either.

Client funds are set up in each state, typically by bar associations, based on the idea that protecting clients is an essential element in any system of lawyer regulation.

In using the late fees for the fund, the state's high court implicitly rejected a funding mechanism that would have hiked bar dues for all attorneys.

"I think one of the points Chief

Justice Bosson wanted to make was that we're doing something without taxing members," Conte said.

While most lawyers also carry malpractice insurance, the client fund isn't intended as a substitute or enhancement for that, he said.

But not all attorneys have it, and as part of the revamped client fund, the bar is now collecting information on who has malpractice insurance and who doesn't so that it can be part of the bar's database.

Herring said the reorganized fund will do more extensive investigation of client claims than was previously the case because now there will be more money to conduct them.

Conte said that as part of receiving reimbursement, claimants give up the right to go after a lawyer.

"We're happy with the program because it puts some teeth into what was a little state bar fund," Conte said.

He said the new commission may also cap claims, at least initially.