

State Bar of New Mexico
Client Protection Fund

2021

ANNUAL
REPORT

Presented 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

2021 Commission

James T. Reist

Chair

Linda Vanzi

Vice-Chair

Jeff Baker

Secretary/Treasurer

Ex Officio Members

Richard B. Spinello

Stormy Ralstin



State Bar of New Mexico Client Protection Fund

Commissioners

Erin O'Brien Anderson

Andrew J. (Drew) Cloutier

Sally Galanter

Tanya Noonan Herring

Benjamin Sherman

Commission Liaison

Anne L. Taylor

December 31, 2021

Dear Colleagues:

It was my pleasure to serve as the 2021 Chair of your Client Protection Fund. The Fund was created to address financial losses suffered by clients of and others having a fiduciary relationship with a New Mexico lawyer due to the dishonest conduct of the lawyer. The management of the Fund (including receipt, holding and disbursement of funds) is entrusted to a Commission composed of nine lawyers (five lawyers appointed by the New Mexico Supreme Court, three appointed by the Board of Bar Commissioners, and the secretary-treasurer of the Board of Bar Commissioners).

The work of the Commission is described in the introduction section of this annual report. In large part, it centers around the consideration of claims and determining whether a claim meets the criteria for reimbursement. Serving as a Commissioner has been one of the most rewarding positions I have held as a lawyer, and I would encourage anyone with an interest in a service to the bar and the public to strongly consider applying for a vacancy as they are announced from time to time in the Bar Bulletin.

Recently, the Commission has seen an escalation of claims against deceased lawyers who either failed to place retainers or other unearned fees into a separate trust account (thereby commingling the client's funds with the lawyer's funds) or failed to maintain the requisite records for trust accounts. This makes it difficult or impossible to determine which trust account funds, if any, are being held for a particular client. Although these lawyers may not have intended harm, their failure to comply with rules involving trust accounts, retainers, and unearned fees, sometimes resulted in a conversion of funds belonging to the client or a delay in returning unearned funds to the client. This escalation of claims should remind all of us of the importance of complying with all rules applicable to the maintenance of trust accounts.

2021 marked the sixteenth full year of operation for the Commission. Of the seventeen claims fully processed in 2021, ten claims against six different lawyers were approved: resulting in payments totaling \$62,398.13. Seven claims were denied. Thirty-four claims were carried over to 2022, due to the timing of the Commission's receipt of those claims or the need for more extensive investigation of the claims.

I want to thank all the Commissioners who tirelessly served in 2021, particularly those whose terms on the Commission ended in 2021, including Erin O'Brien Anderson and Benjamin Sherman (who served as one-year term in his capacity as secretary-treasurer of the State Bar). Additionally, the assistance provided by the State Bar of New Mexico, including Richard Spinello, Stormy Ralstin, David Powell, Vanessa Sanchez and Kate Kennedy, and staff from the Disciplinary Board including Anne Taylor and Tamma Williams was essential to the success of the Commission's work.

Sincerely,

James T. Reist

2021 Chair



2440 Louisiana Blvd. NE, Ste 280
Albuquerque, NM 87110



(505) 842-5781
Fax (505) 766-6833



info@sbnm.org
www.sbnm.org



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› Introduction



› 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 Jan. 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 and the Disciplinary Board provide in-kind support to the Fund and the Commission through staff support, office and meeting space, and fiscal administration. (See 2021 Financial Information, page 10). 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 is rarely used. The maximum reimbursable amount was increased in 2012 from \$10,000 to \$20,000 per individual claim, and, effective Jan. 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).

› 2021 Annual Report Highlights and Commission Activities

The Client Protection Fund Commission finished its fifteenth full year of operation in 2021, paying just over \$62,398 in 10 claims against six lawyers. To date, the Commission has paid over \$1,000,000 in cumulative reimbursements for clients' financial losses involving 69 lawyers. Year-by-year and cumulative statistics appear later in this report.

The Commission met four times in 2021, all via Zoom. Due to the pandemic, there was no conference travel for the Commissioners.

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.sbnm.org**
for further information on the
Client Protection Fund.



State Bar of New Mexico
Client Protection Fund

› 2021 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 2021 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 and secretary/treasurer. Program assistance and administrative support is provided by the State Bar Office of General Counsel and the New Mexico Disciplinary Board.



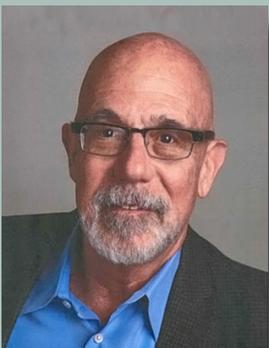
James T. Reist, Chair
Supreme Court Appointee

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.



Linda Vanzi, Vice-Chair
State Bar of New Mexico Appointee

Linda Vanzi joined the Rodey Law Firm's Complex and Commercial Litigation Group after retiring from the New Mexico Judiciary, where she served for 12 years as a judge on the New Mexico Court of Appeals, including two years as chief judge, following four years of service as a trial judge at the Second Judicial District Court, Civil Division.



Jeff Baker, Secretary/Treasurer
State Bar of New Mexico Appointee

Jeff Baker has been a trial lawyer for more than 45 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 is a member of the State Ethics Commission, and has served as special assistant disciplinary counsel to the New Mexico Supreme Court. For over 30 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 president of Albuquerque Film and Music Experience, a 501c3. He is the Executive Producer of a short anti-bullying film, *The Time That Remains*.



Tanya Noonan Herring
Supreme Court Appointee

Tanya Herring is a 1988 graduate of the New Mexico School of Law and has been practicing law in New Mexico for over thirty years. After law school, Ms. Herring worked in the Regulation and Licensing Division of the U.S. Securities and Exchange Commission in Washington D.C. Upon her return to New Mexico, she was employed by the New Mexico State Bar to implement and manage a newly created program called the Client Attorney Assistance Program, which included administrating the Client Protection Fund, the Fee Arbitration Panel, and the Unauthorized Practice of Law, and other attorney programs. Ms. Herring spent much of her legal career working for the State of New Mexico, in various departments. She worked for the New Mexico Department of Taxation and Revenue as a staff attorney and later as Acting Chief Counsel, and for the Office of the Attorney General in its Consumer Affairs Division and its Criminal Appeals Division. Ms. Herring retired from her position as Chief Counsel of the Office of the Secretary of State in 2020.



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 17 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.



Andrew J. (Drew) Cloutier
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.



Sally Galanter
Supreme Court Appointee

Sally Galanter has 39 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 six 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 administrative proceedings and in state courts.



Benjamin Sherman

State Bar of New Mexico Secretary-Treasurer 2021

Ben Sherman is the founder of Ben Sherman Law LLC, located in Albuquerque. His practice is focused primarily on representing injured workers in workers' compensation cases. Prior to opening his own law firm in 2012, he served as a prosecutor with the 2nd Judicial District Attorney's Office and as an assistant city attorney with the City of Albuquerque's litigation department. Sherman is a proud 2008 graduate of the University of New Mexico School of Law and has been fortunate to practice law in New Mexico for the past fourteen years. A fluent Spanish-speaker, he enjoys representing people from all communities and appreciates New Mexico's unique diversity and rich traditions. Sherman is a past chair of the State Bar of New Mexico Young Lawyers Division and currently serves as an officer on the Alumni Board of the University of New Mexico School of Law. Ben represents the Second Judicial District, which includes Bernalillo County.

> 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 2018 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.

> 2021 COMMISSION LIAISONS



Anne L. Taylor

Disciplinary Board Liaison

Anne L. Taylor is Chief 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. °

> 2021 Financial Information

2021 Financial Information Balance Sheet As of December 31, 2021

Assets	
Cash and Equivalents	\$547,472.27
Certificates of Deposit	\$512,285.38
Due from State Bar	\$46,431.58
Prepaid Insurance	\$138.70
Total Assets	\$1,106,327.93
Liabilities and Net Assets	
Liabilities	
Deferred Revenues	\$31,085.00
Total Liabilities	\$31,085.00
Net Assets	
Fund Balance	\$1,020,343.19
Current Year Increase in Net Assets	\$54,899.74
Total Net Assets	\$1,075,242.93
Total Liabilities and Net Assets	\$1,106,327.93

Statement of Revenues and Expenditures For Year Ending December 31, 2021

	Actual	Budget	Variance
Revenue			
CPF Assessments	\$115,495.00	\$110,000.00	\$5,495.00
CPF Assessments (PHV)	\$11,400.00	\$8,000.00	\$3,400.00
Interest Earned	\$3,004.98	\$4,500.00	(\$1,495.02)
Contributions / Sanctions	\$12,791.03	\$500.00	\$12,291.03
Restitution	\$200.00	\$1,000.00	(\$800.00)
Total Revenue	\$142,891.01	\$124,000.00	\$18,891.01
Expenditures			
Audit	\$1,200.00	\$1,200.00	-0-
Dues & Subscriptions	200.00	\$250.00	(\$50.00)
Insurance	\$546.12	\$600.00	(\$53.88)
Marketing & Advertising	-0-	\$1,000.00	(\$1,000.00)
Meetings and Governance	\$285.02	\$750.00	(\$464.98)
Mileage Reimbursement	-0-	\$1,000.00	(\$1,000.00)
Personnel	-0-	\$500.00	(\$500.00)
Postage Expense	-0-	\$200.00	(\$200.00)
Professional Development	\$160.00	\$7,500.00	(\$7,340.00)
Total Expenditures	\$2,391.14	\$13,000.00	(\$10,608.86)
Revenue Over Expenditures	\$140,499.87	\$111,000.00	\$29,499.87
Claims Approved	\$85,600.13	-0-	\$85,600.13
Increase in Net Assets	\$54,899.74	\$111,000.00	(\$56,100.26)

› 2021 Claims and Respondent Lawyers

2021 Claims and Respondent Lawyers

As required by Rule 17A-018, the Commission reports that 10 claims resolved in 2021 resulted in payments to the complaining party as a result of the actions of 6 lawyers. The following table summarizes those payments.

2021 Summary of Claims Approved by Lawyer

Lawyers	Lawyer's Status as of 12/31/2021	Claims Approved in 2021	Dollars Awarded in 2021	Reason
George Adelo	Deceased	1	\$2,000	Unearned Fees
Jon Fredlund	Suspended	1	\$2,490	Unearned Fees
Nathan Gonzales	Active	1	\$901.13	Unearned Fees
Christin Kennedy	Deceased	4	\$43,000	Unearned Fees
Armando Torres	Suspended	2	\$10,007	Unearned Fees
Rosanna Vasquez	Disbarred	1	\$4,000	Unearned Fees
Claims paid on lawyers	Total approved	10	\$62,398.13	

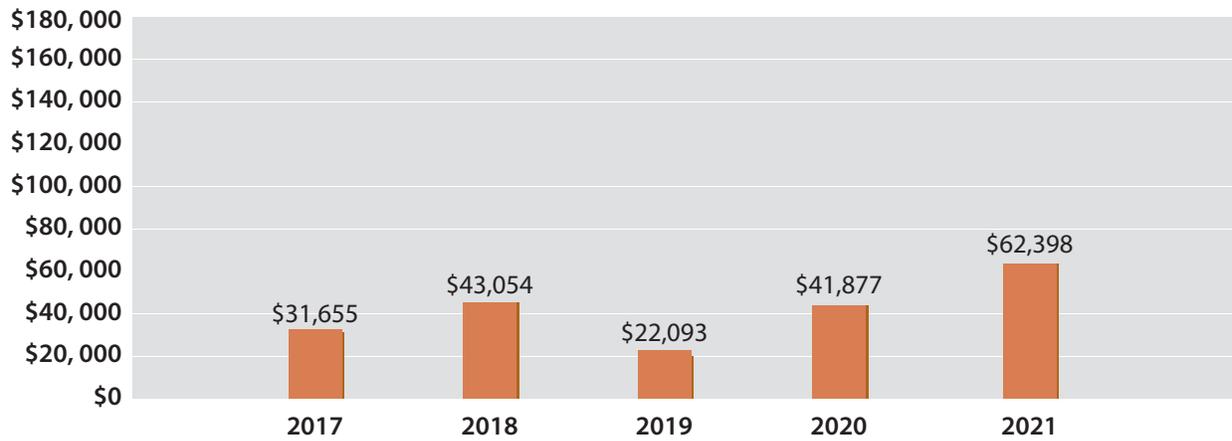
Annual Statistics 2006-2021

2006-2021 Annual Statistics

CLAIMS APPROVED	2006-16	2017	2018	2019	2020	2021	TOTALS
Total number of claims approved in whole or in part	229	7	11	6	7	10	270
Total dollar amount of claims approved and paid (revised from prior annual reports after reconciliation of cumulative lawyer summary)	\$845,902	\$31,655	\$43,054	\$22,093	\$41,877	\$62,398.13	\$1,046,979.13
CLAIMS DENIED							
Total number of claims denied in whole or part	208	20	20	11	12	7	278
Total dollar amount of denials	\$1,075,570	\$214,704	\$147,363	\$164,065	\$277,192	\$149,624.90	\$2,028,518.90
Dollar amount of reimbursement limit per claim	\$30,000 (through 2011) \$20,000 (effective 2012) \$50,000 (effective 2016)	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	-----
Claims made over limit	20	0	0	0	0	1	21
Total amount denied over limit	\$290,638	0	0	0	0	\$51,000	\$341,638
Total amount denied for other reasons	\$784,932	\$214,704	\$147,363	\$164,065	\$277,192	\$98,624.90	\$1,686,880.90
CLAIMS PENDING AT END OF YEAR							
Claims undecided and carried over to next year	89	14	12	15	16	34	-----
Claim amount pending at end of year	\$484,756	\$60,269	\$102,089	\$272,336	\$205,821	\$347,744.77	-----
ATTORNEY STATISTICS							
Total number of attorneys with claims filed	191	24	20	14	14	20	-----
Highest number of claims filed for a single attorney	34 (2008)	3	5	7	6	18	-----
AMOUNT REIMBURSED TO FUND	\$23,518	\$25,734.53	\$6,934.96	\$1,700	\$12,932.31	\$15,241.03	\$86,060.83

> 2017–2021 Statistical History

Dollar Amount of Claims Reimbursed by Year 2017–2021





State Bar of New Mexico
Client Protection Fund

5121 Masthead NE, Albuquerque, NM 87109
PO Box 92860, Albuquerque, NM 87199-2860

505-797-6093 • 800-876-6657

Fax: 505-828-3765

www.sbnm.org