

State Bar of New Mexico
Client Protection Fund

2022 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

2023 Commission

Sally Galanter

Chair

Tonya Herring

Vice-Chair

Scotty Holloman

Secretary/Treasurer

Ex Officio Members

Richard B. Spinello

Stormy Ralstin



State Bar of New Mexico Client Protection Fund

Commissioners

Don Anque

Andrew Cloutier

Mick Gutierrez

James Reist

Hon. Linda Vanzi

Commission Liaison

Anne L. Taylor

March 31, 2023

Dear Colleagues,

It was my pleasure to serve as the 2022 Chair of the Client Protection Fund Commission, a statewide body whose purpose is to promote public confidence in the administration of justice and the integrity and competence of attorneys admitted and licensed to practice law in New Mexico. The Commission's history and work in 2022 are described in the following annual report.

A principal focus of the Commission's work involves considering claims and allocating funds to reimburse claimants for losses arising from the dishonest conduct of New Mexico attorneys. The conduct at issue often involves misappropriation of client money by attorneys who commingled attorney funds with client funds or otherwise failed to follow the rules concerning trust accounts, retainers, and unearned fees. The increase in the number of such claims in the last few years, particularly claims involving attorneys now deceased, highlights the critical importance of education and compliance in the area of attorney trust accounting.

In 2022, the seventeenth full year of Commission operation, Commissioners approved 48 claims against 7 attorneys, with \$179,367.99 allocated in total reimbursements. Commissioners also denied 13 claims and carried 26 claims into 2023.

I thank all of my fellow Commissioners for their work, dedication, and service, with special thanks to Jeff Baker, who served his final year as a Commissioner in 2022. On behalf of all Commissioners, I thank the staff members of the State Bar and Disciplinary Board, whose contributions are essential to the Commission's mission and work.

Sincerely,

Linda Vanzi

2022 Chair



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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 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 2022 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 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).

▶ 2022 Annual Report Highlights and Commission Activities

The Client Protection Fund Commission finished its seventeenth full year of operation in 2022 paying nearly \$180,000 in 48 claims against 7 lawyers. To date, the Commission has paid \$1,226,367 in cumulative reimbursements for clients' financial losses involving 76 lawyers. Year-by-year and cumulative statistics appear later in this report.

The Commission met 4 times in 2022, with Commissioners appearing in person and via Zoom. There was no conference travel by 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

► 2022 Client Protection Fund Commission

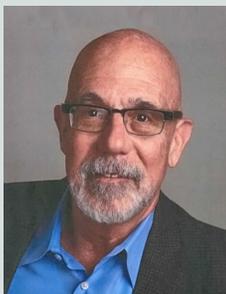
From its inception in 2006 through 2012 the Commission consisted of seven lawyers—four appointed by the Supreme Court, two appointed by the Board of Bar Commissioners, and formerly the vice president of the BBC, now the Secretary-Treasurer of the BBC. In 2013, the number of Commissioners was increased to nine. The 2022 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.



Linda Vanzi, 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, Vice-Chair

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*.



Sally J. Galanter, Secretary/Treasurer

Supreme Court Appointee

Sally J. 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.



Erinna M. “Erin” Atkins

State Bar of New Mexico Secretary-Treasurer 2022

Erin Atkins is an attorney in Alamogordo, where she practices law with her father, S. Bert Atkins. Specializing in family law and children’s law, she works in and lives in the Twelfth Judicial District. She proudly serves as the Guardian ad Litem in abuse and neglect cases and mental health guardianships. Ms. Atkins is active in her local community and currently serves as a commissioner for the NM Commission for Community Volunteerism, the Twelfth Judicial District Pro Bono Committee, and a state-wide non-profit service organization, a member of the Children’s Law Section, as well as the substitute Adult Drug Court judge. She was awarded the 2016 Young Lawyer of the Year Award for the Twelfth Judicial District and is a 2009 graduate of the University of New Mexico School of Law. Ms. Atkins received the 2018 Outstanding Service Award from the Young Lawyer’s Division of the State Bar for her years of service. She represents the 12th Judicial District which includes Lincoln and Otero counties. She is currently the President-Elect for the Board of Bar Commissioners and is slated to serve as President of the New Mexico State Bar in 2024.



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. Mr. Cloutier 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. Mr. 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. Mr. 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. Mr. 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.



Mick I.R. Gutierrez

State Bar of New Mexico Appointee

Mick Gutierrez graduated in 1980 from UCLA School of Law. He was awarded a Post-Doctorate Fellowship from Howard University. Mr. Gutierrez has worked at the Southern NM Legal Aid, as a Special Assistant Attorney General, NM, as a Senior Trial Prosecutor at the District Attorney’s office in Dona Ana County and at a private law firm. Mr. Gutierrez also worked as an Assistant US Attorney for approximately 21 years. During his time as an Assistant US Attorney, he helped anyone who needed a lawyer (pro bono). He currently works with New Mexico Legal Aid, Inc. as a staff attorney. Mr. Gutierrez is licensed in New Mexico and California. He has three adult daughters, seven grandkids, and a wife of 45 years on April 7, 2023.



Tonya Noonan Herring

Supreme Court Appointee

Tonya 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.



Scotty A. Holloman

Supreme Court Appointee

Scotty A. Holloman is a shareholder, director, and president of Maddox, Holloman & Moran PC in Hobbs. He attended Texas Tech University (B.B.A., Accounting, 1980) and Texas Tech University School of Law (J.D., 1983). Mr. Holloman was admitted to practice law in Texas in 1983 and in New Mexico in 1984. He is a member of the State Bar Real Property, Trust and Estate Section and the State Bar Business Law Section. Mr. Holloman served as president of the Lea County Bar Association. From 2009-2012 he served as the out-of-state liaison to the State Bar of Texas Board of Directors. He and his wife, Terry, have three children: Aaron and wife Kelli; Emily; Jacob and wife Lacey; and three grandchildren: Simon, Owen and Annie of Roswell. Mr. Holloman also represents the Sixth Bar Commissioner District.



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 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.

► 2022 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.

► 2022 Financial Information

2022 Financial Information Balance Sheet As of December 31, 2022

Assets	
Cash and Equivalents	\$521,258.14
Certificates of Deposit	\$513,952.30
Due from State Bar	\$27,970.07
Prepaid Insurance	\$126.00
Total Assets	\$1,063,306.51
Liabilities and Net Assets	
Liabilities	
Deferred Revenues	\$25,215.00
Total Liabilities	\$25,215.00
Net Assets	
Fund Balance	\$1,075,242.93
Current Year Increase (Decrease) in Net Assets	(\$37,151.42)
Total Net Assets	\$1,038,091.51
Total Liabilities and Net Assets	\$1,063,306.51

**Statement of Revenues and Expenditures
For Year Ending December 31, 2022**

	Actual	Budget	Variance
Revenue			
CPF Assessments	\$114,080.00	\$115,000.00	(\$920.00)
CPF Assessments (PHV)	\$12,075.00	\$9,000.00	\$3,075.00
Interest Earned	\$2,883.92	\$2,500.00	\$383.92
Contributions / Sanctions	\$16,315.18	\$500.00	\$15,815.18
Restitution	\$150.00	\$1,000.00	(\$850.00)
Total Revenue	\$145,504.10	\$128,000.00	\$17,504.10
Expenditures			
Audit	\$1,200.00	\$1,200.00	-0-
Dues & Subscriptions	200.00	\$250.00	(\$50.00)
Insurance	\$517.25	\$650.00	(\$132.75)
Marketing & Advertising	-0-	\$1,000.00	(\$1,000.00)
Meetings and Governance	\$850.24	\$1,250.00	(\$399.76)
Mileage Reimbursement	\$431.14	\$2,000.00	(\$1,568.86)
Personnel	-0-	\$500.00	(\$500.00)
Postage Expense	\$88.90	\$200.00	(\$111.10)
Professional Development	-0-	\$10,000.00	(\$10,000.00)
Total Expenditures	\$3,287.53	\$17,050.00	(\$13,762.47)
Revenue Over Expenditures	\$142,216.57	\$110,950.00	\$31,266.57
Claims Approved	\$179,367.99	-0-	\$179,367.99
Increase in Net Assets	(\$37,151.42)	\$110,950.00	(\$148,101.42)

► 2022 Claims and Respondent Lawyers

2022 Claims and Respondent Lawyers

As required by Rule 17A-018, the Commission reports that 48 claims resolved in 2022 resulted in payments to the complaining party as a result of the actions of 7 lawyers. The following table summarizes those payments.

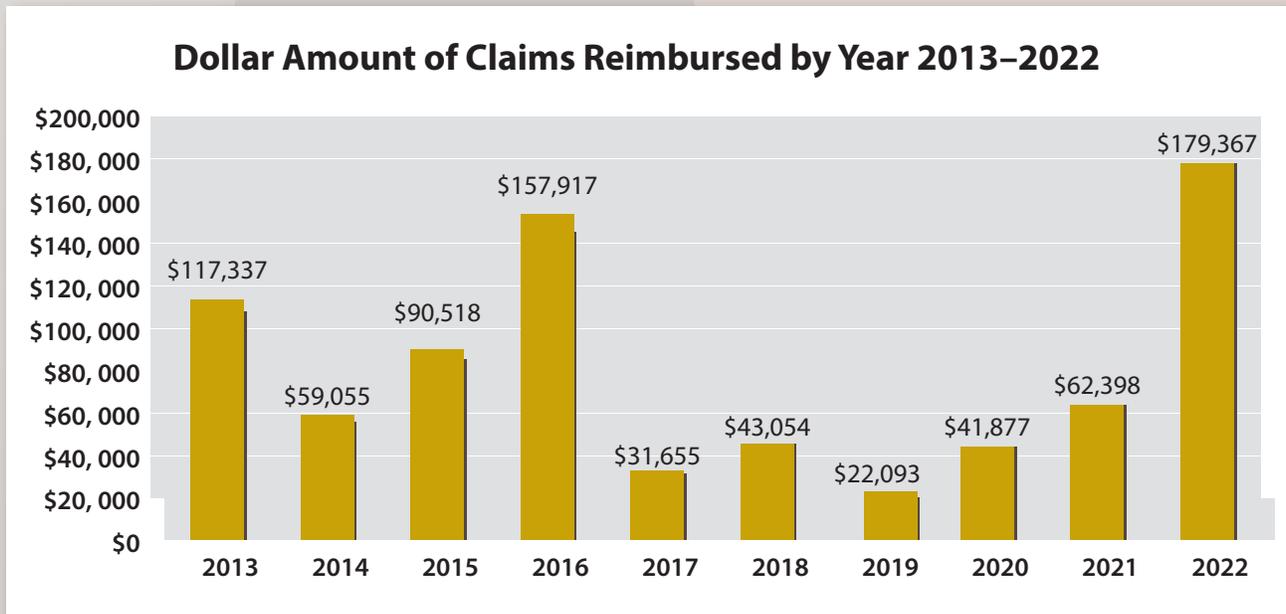
2022 Summary of Claims Approved by Lawyer				
Lawyers	Lawyer's Status as of 12/31/2022	Claims Approved in 2022	Dollars Awarded in 2022	Reason
Jon Fredlund	Suspended	2	\$6,309.13	Unearned Fees
Peter Keys	Suspended	1	\$996.60	Unearned Fees
Anthony Rascon	Disbarred	2	\$3,650.00	Unearned Fees
Daniel Salazar	Suspended	2	\$14,000.00	Unearned Fees
David Serna	Deceased	13	\$110,994.36	Unearned Fees
Sean Thomas	Deceased	26	\$34,597.65	Unearned Fees
Armando Torres	Suspended	2	\$8,820.25	Unearned Fees
Claims paid on lawyers	Total approved	48	\$179,367.99	

▶ Annual Statistics 2006-2022

2006-2022 Annual Statistics

CLAIMS APPROVED	2006-2017	2018	2019	2020	2021	2022	TOTALS
Total number of claims approved in whole or in part	236	11	6	7	10	48	318
Total dollar amount of claims approved and paid (revised from prior annual reports after reconciliation of cumulative lawyer summary)	\$877,557	\$43,054	\$22,093	\$41,877	\$62,398	\$179,367.99	\$1,226,346.99
CLAIMS DENIED							
Total number of claims denied in whole or part	228	20	11	12	7	13	291
Total dollar amount of denials	\$1,290,274	\$147,363	\$164,065	\$277,192	\$149,624	\$259,099.28	\$2,287,617.28
Claims made over limit	20	0	0	0	1	2	23
Total amount denied over limit	\$290,638	0	0	0	\$51,000	0	\$341,638
Total amount denied for other reasons	\$999,636	\$147,363	\$164,065	\$277,192	\$98,624	\$259,099.28	\$1,945,979.28
CLAIMS PENDING AT END OF YEAR							
Claims undecided and carried over to next year	103	12	15	16	34	26	-----
Claim amount pending at end of year	\$545,025	\$102,089	\$272,336	\$205,821	\$347,744	\$183,792.42	-----
ATTORNEY STATISTICS							
Total number of attorneys with claims filed	215	20	14	14	20	27	-----
CONTRIBUTIONS/ SANCTIONS/ RESTITUTION	\$49,252.53	\$6,934.96	\$1,700.00	\$12,932.31	\$12,991.03	\$16,465.18	\$100,276.01

▶ 2013–2022 Statistical History





State Bar of New Mexico
Client Protection Fund

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