

THE SUPREME COURT *of* OHIO



LAWYERS' FUND
FOR CLIENT PROTECTION

2019 ANNUAL REPORT

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Lawyers' Fund for Client Protection



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GREGORY DELEV

ROBERT W. EVERETT

HON. GUY L. REECE II

MONICA SANSALONE

MEMBERS

JANET GREEN MARBLEY

ADMINISTRATOR/BOARD SECRETARY

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Introduction

This Annual Report for the Lawyers' Fund for Client Protection is respectfully presented to Chief Justice O'Connor and Justices of the Supreme Court of Ohio. This report includes a detailed review of the administration of the Fund during fiscal year 2019.

Formerly known as the Clients' Security Fund, the Fund was established by the Supreme Court of Ohio in 1985 to restore public confidence in the legal profession by providing financial reimbursement to victims of dishonest lawyers. For the past 34 years, the Court has continued to support the mission and purpose of the fund by allocating adequate and continuous funding. Since its establishment in 1985, the Court has allocated more than \$24 million toward achieving the fund's mission of promoting public confidence in the integrity of the legal profession.

The overwhelming majority of Ohio lawyers observe high standards of integrity and professionalism when entrusted with law-client money or property. However, the dishonest acts of a few can have a negative effect on the public's image of and confidence in the legal profession as a whole.

The Board of Commissioners, as well as the staff, commend the Supreme Court of Ohio for its continuing and unwavering support of the mission and purpose of the fund.

Janet Green Marbley, Esq., *Administrator*
Lawyers' Fund for Client Protection

“ I'm just writing to say
thank you so much... ”

Thank you,
Chris Chapman

Chair's Comments

On behalf of the Board of Commissioners of the Lawyers' Fund for Client Protection of Ohio, I am pleased to present this report to the Supreme Court of Ohio covering the work of the fund during fiscal year 2019.

In fiscal year 2019, the fund received 94 new applications for reimbursement. The Board reviewed 68 claims and determined that 56 were eligible for reimbursement. The total reimbursement for eligible claims for fiscal year 2019 was \$503,894.47. This represents a decrease from the previous year.

The reimbursements made in fiscal year 2019 resulted from the dishonest conduct of 24 Ohio attorneys. As in previous years, this number represents less than 1 percent of all active Ohio attorneys.

Unearned fee claims accounted for 49 of the 56 eligible claims and 23 percent of the total amount reimbursed by the fund. By contrast, there was one claim resulting from a settlement theft, but this claim accounted for 15 percent of the total dollars reimbursed by the fund. There were no claims that involved escrow theft, and no estate theft claims. In addition, six claims involved theft by fiduciary, representing 62 percent of the total dollars reimbursed in fiscal year 2019.

The maximum amount that may be reimbursed is \$75,000 per claim. During fiscal year 2019, four claimants received the maximum reimbursement.

I would like to express my appreciation to the Commissioners with whom I serve for their hard work and dedication to the accomplishment of the fund's mission. These individuals volunteer their time and expertise to help improve the image of the legal profession by helping those who have been harmed by the dishonest acts of a few.

I would like to thank the staff of the fund whose responsibilities include, but are not limited to, investigation of all the claims, preparation of summaries for the commissioners' review, and disbursement of funds. Their contribution to the fund's mission is invaluable.

I also would like to thank the Supreme Court of Ohio for its continued support of the fund's mission and goals, and for the confidence placed in me by allowing me to chair this board.

Jack R. Kullman, Jr., *Chair*

Lawyers' Fund for Client Protection Board of Commissioners

Board of Commissioners

Gov.Bar R. VIII (Appendix B) requires the establishment of a seven-member board of commissioners (Board) of the Lawyers' Fund for Client Protection (LFCP) to determine the eligibility of claims filed with the fund and to manage fund assets. The current board includes five attorneys, one judge, and one non-attorney. Board members are appointed by the Supreme Court justices to three-year terms and are limited to two consecutive terms. They serve as volunteers and are compensated only for travel expenses.



HON. JOHN J. RUSSO, served one partial unexpired term and two three-year terms on the board, beginning in November 2011. Judge Russo served as Chair of the Board from January 2015 through December 2018, when his second full term on the board expired. Judge Russo is the presiding and administrative judge of the Cuyahoga County Court of Common Pleas in Cleveland.



JACK R. KULLMAN JR. was appointed to the board in 2015, and was reappointed to his second term in 2018. Kullman became chair of the board on Jan. 1, 2019. Kullman is the executive director of the Guardianship Service Board.



STEPHEN R. SERRAINO served two three-year terms on the Board, beginning in January 2013. During his second term, Mr. Serraino was appointed vice chair and served in that capacity until December 2018 when his second term expired. Mr. Serraino is General Counsel and Corporate Secretary for the Upper Peninsula Power Company in Marquette, Michigan.



SARA L. PELLER was appointed to the board for a three-year term in 2015, and was reappointed to her second term in 2018. Peller currently serves as vice chair. Peller recently retired as the chief executive officer of the American Red Cross for the Greater Cincinnati/Dayton region.



HON. CASSANDRA COLLIER-WILLIAMS was appointed to the board for a three-year term beginning on Jan. 1, 2019. Judge Collier-Williams has served on the Cuyahoga County Common Pleas Court bench since January 2013.



GREGORY DELEV was appointed to the LFCP board for a three-year term beginning Jan. 1, 2017. He is a practicing attorney with Delev & Associates, LLC in Cincinnati.



ROBERT W. EVERETT was appointed to the LFCP board for a three-year term beginning in 2014. Everett previously served on the Board from 2003 through 2006. He is a former Dover, Ohio, police officer.



HON. GUY L. REECE II was appointed to the board for a three-year term beginning on Jan. 1, 2019. Judge Reece retired from the Franklin County Common Pleas Court bench in January 2019 after having served since 2003. Judge Reece also served on the Franklin County Municipal Court from 1990 -1992.



MONICA SANSALONE was appointed to the LFCP board for a three-year term beginning Jan. 1, 2016. She is a partner in the law firm of Gallagher Sharp in Cleveland.

Administrator & Staff

The Supreme Court of Ohio appoints an administrator who serves at the pleasure of the Court and is responsible for managing the legal, fiscal, and administrative affairs of the office. The administrator also serves as Secretary to the Board of Commissioners. The administrator appoints, with the approval of the Court, staff to assist with the duties of the board.



JANET GREEN MARBLEY, the administrator and secretary to the board, was appointed by the Court in 1995. She is a graduate of the University of Cincinnati and Capital University Law School. She is the former president of the National Client Protection Organization and former chair of the American Bar Association's Standing Committee on Client Protection.



MELETHA DAWSON serves as administrative secretary and is responsible for processing all claims filed with the LFCP, maintaining the claims inventory, and providing clerical support to staff.



RIKKHYIA HARPER serves as fiscal coordinator and is responsible for the fiscal operations of the fund and the preparation of financial reports.



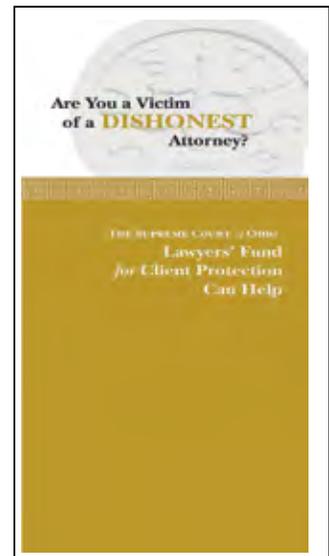
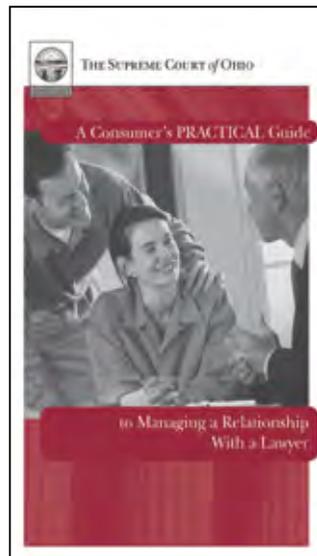
ABBY WILSON serves as claims analyst and investigates all claims filed with the LFCP to assist the administrator and the board in determining whether requirements for reimbursement have been met.

Public Information & Consumer Education

The Lawyers' Fund for Client Protection continues to increase its efforts to make the public aware of its existence. The LFCP maintains a web page at: sc.ohio.gov/Boards/clientprotection. The page contains questions and answers about the fund and the types of claims reimbursed. An application for reimbursement is available on the web page as well.

With the assistance of the Court's Office of Public Information, the fund prepares public announcements following all LFCP board meetings containing information about claims determined by the board to be eligible for reimbursement. The announcements include a listing, by county, of attorneys involved in LFCP claims. The announcements are distributed statewide to news media outlets and other organizations.

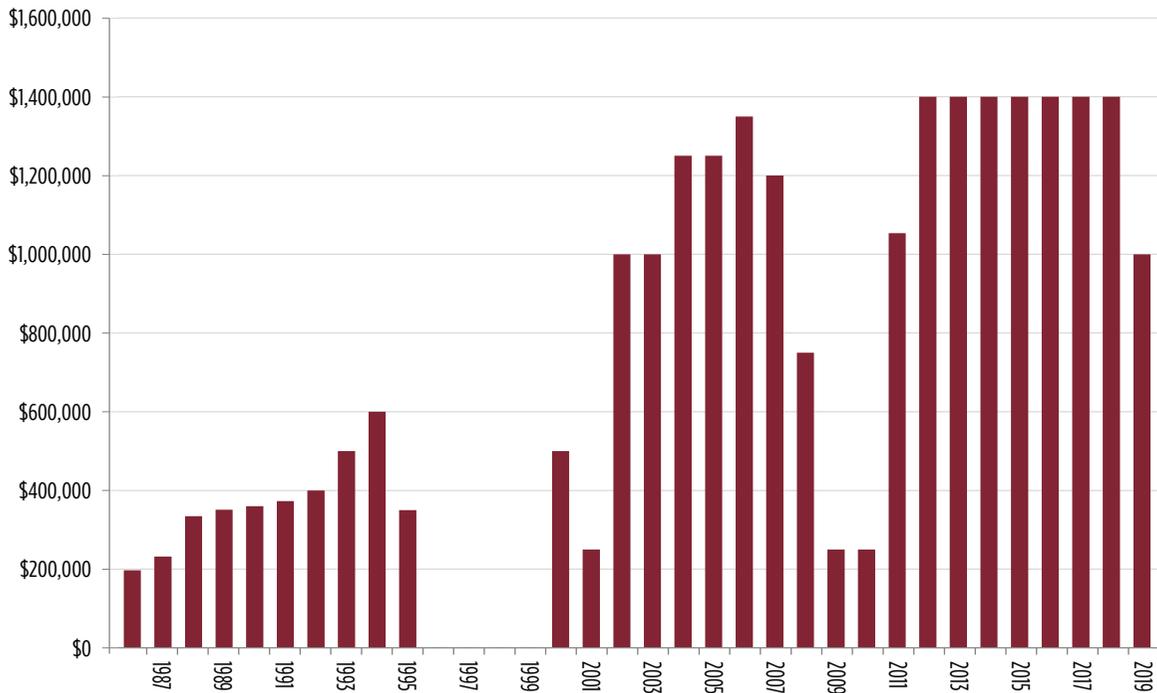
The LFCP publishes a pamphlet containing a brief description of the purpose of the fund along with answers to basic questions about the types of claims reimbursed. The pamphlet is distributed to individuals requesting information about the LFCP and/or applications for reimbursement. The pamphlet, as well as the fund's application for reimbursement, also is distributed statewide to bar associations.



In collaboration with the Court's Commission on Professionalism, the LFCP publishes "A Consumer's Practical Guide to Managing a Relationship with a Lawyer." The guide, which is now available in Spanish and English, provides general information about the lawyer-client relationship, including how to find a lawyer, what to expect after hiring a lawyer, and how to avoid problems in the lawyer-client relationship. The consumer guide is distributed statewide to bar associations, public libraries, law firms, and other professional and governmental offices.

Revenue

TRUST ALLOCATION - 1986 - 2019



Attorney Registration Fees

Since 1985, the Supreme Court has allocated more than \$24 million from the Attorney Services Fund to the LFCP for the payment of claims.

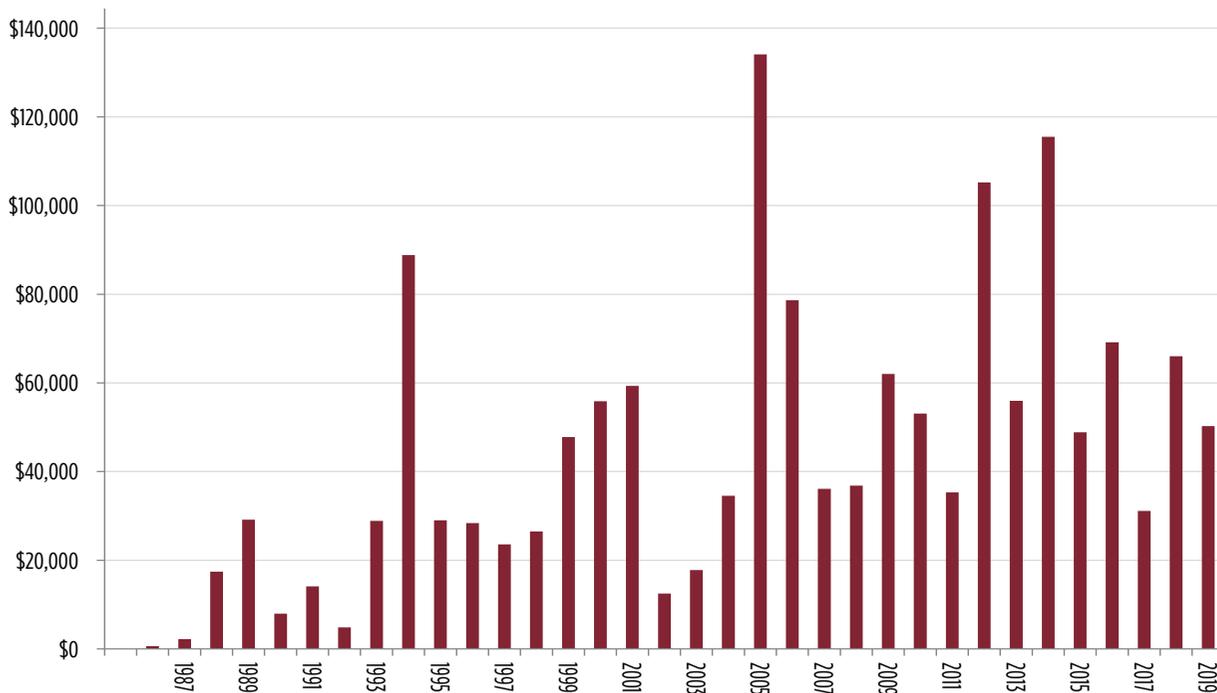
During fiscal year 2019 the Court allocated \$1 million for the payment of claims and \$451,208 for administrative expenses. The LFCP expended \$503,894.47 for claims and \$800 for attorney fees, more than 50 percent of the claims allocation. A total of \$440,115, or 97.5 percent, of the administrative expenses allocation was expended. The trust account bank balance on June 30, 2019 was \$5,667,600.62.

Interest Income

The trust account earned \$104,916.07 in interest income.

Restitution

RESTITUTION PROCEEDS - 1986 - 2019



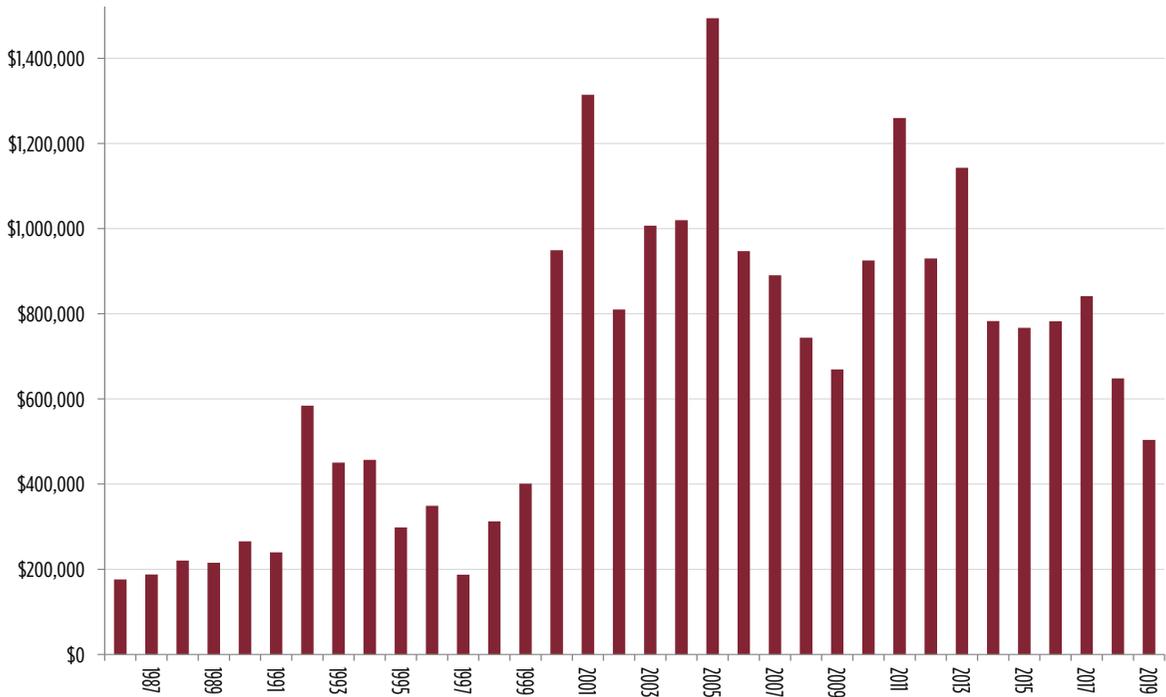
Restitution revenue for fiscal year 2019 totaled \$50,246.24.

Sources of restitution received by the fund include:

- \$1,352.01 collected through court-ordered probation and/or restitution;
- \$32,097.23 collected by the Office of the Attorney General;
- \$2,017.00 collected by outside counsel (Weltman, Weinberg & Reis, Co., L.P.A.);
- \$6,795.00 collected through repayment agreements obtained by the LFCP; and
- \$7,985.00 collected through voluntary payments.

Claims Activity

CLAIMS HISTORY - 1986 - 2019



The LFCP board of commissioners held four quarterly meetings during fiscal year 2019. The board reviewed 68 claims, determining 56 claims eligible for the reimbursement of \$503,894.47 in total. The board also approved two applications for attorney fees, totaling \$800. Four claimants received the maximum reimbursement amount of \$75,000 and 35 claimants received 100-percent reimbursement of their losses. The reimbursements resulted from the dishonest conduct of 24 Ohio attorneys.

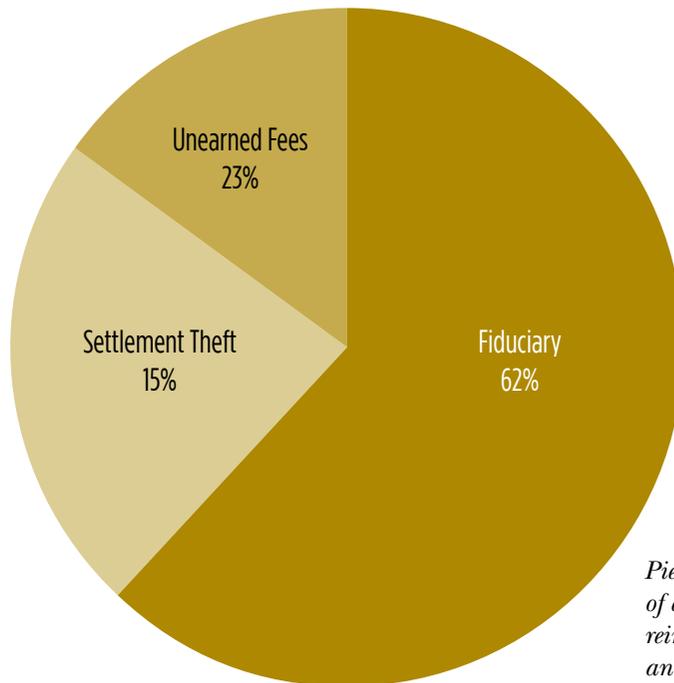
Former clients of five deceased lawyers were reimbursed by the fund. The clients paid for services that were not provided, and the clients did not receive refunds of their unearned fees.

2019 CLAIM DETERMINATIONS

DATE	ELIGIBLE	INELIGIBLE	AMOUNT
Sept. 7, 2018	14	3	\$208,525.00
Dec. 7, 2018	16	1	\$240,423.50
March 8, 2019	19	2	\$40,079.97
June 7, 2019	7	3	\$14,866.00
Total	56	9	\$503,894.47

Theft Categories

FY 2019 THEFT TYPES



Pie chart illustrates total dollar value of each theft category. There were no reimbursements in the escrow theft and estate theft categories.

There were 49 losses resulting from unearned-fee claims, accounting for the largest number of eligible claims. However, theft by fiduciary accounted for the largest category of theft by dollar value. There was only one eligible claim resulting from settlement theft and there were no losses resulting from escrow or estate thefts.

2019 THEFT CATEGORIES

CATEGORY OF CLIENT LOSS	REIMBURSEMENTS	TOTAL
Escrow Thefts	0	\$0.00
Estate Thefts	0	\$0.00
Theft by Fiduciary	6	\$311,204.08
Settlement Theft	1	\$75,000.00
Unearned Fees	49	\$117,690.39
Total	56	\$503,894.47

Attorneys Involved in LFCP Claims in Fiscal Year 2019

Attorney	County	Awards	Theft Category	Awarded
Rebecca Jo Austin	Cuyahoga	1	Unearned Fee	\$1,000.00
Daniel Lee Bennett	Logan	1	Unearned Fee	\$1,100.00
Gary James Boecker *	Summit	1	Fiduciary	\$35,900.00
Glen F. Buttacavoli	Stark	1	Unearned Fee	\$5,500.00
Mark Andrew Chuparkoff	Summit	7	Settlement Theft/Unearned Fee	\$109,784.00
Mark Alan Deters	Lucas	11	Unearned Fee	\$18,305.39
Justin Enrique Fernandez	Hamilton	2	Unearned Fee	\$4,521.00
Barry Scott Galen *	Montgomery	1	Unearned Fee	\$880.00
John Walter Gold	Cuyahoga	1	Unearned Fee	\$2,000.00
Brian Wade Harter	Delaware	2	Fiduciary/Unearned Fee	\$2,998.58
Benjamin Joltin	Mahoning	2	Unearned Fee	\$900.00
John Harold Large	Trumbull	1	Unearned Fee	\$2,500.00
Charles Rocco Laurie Jr. *	Cuyahoga	1	Fiduciary	\$75,000.00
George William Macdonald *	Cuyahoga	1	Unearned Fee	\$300.00
Neal Hall Magee II	Franklin	1	Fiduciary	\$75,000.00
Steven Jerome Moody	Cuyahoga	2	Unearned Fee	\$2,750.00
John David Moore Jr.	Franklin	1	Unearned Fee	\$2,000.00
Timothy Eugene Potts	Summit	4	Unearned Fee	\$3,325.00
Andrea Lynn Reino	Hamilton	6	Unearned Fee	\$17,125.00
Elliott Ian Resnick *	Cuyahoga	1	Fiduciary/Unearned Fee	\$1,400.00
Guy Darius Rutherford	Cuyahoga	3	Unearned Fee	\$5,700.00
William Lawrence Summers	Cuyahoga	3	Fiduciary/Unearned Fee	\$124,105.50
Trent Reynard Turner	Franklin	1	Unearned Fee	\$1,000.00
Mark Immanuel Verkhlin	Cuyahoga	1	Settlement Theft/Unearned Fee	\$10,000.00
24 Attorneys		56		\$503,894.47

* Attorney was deceased at the time claim was filed and/or during claim process.

A full listing of attorneys involved in claims from 1987 to the present is at:
sc.ohio.gov/Boards/clientprotection/reimbursements.asp

Lawyers' Fund for Client Protection Application for Reimbursement

THE LAWYERS' FUND FOR CLIENT PROTECTION

AN AGENCY OF THE SUPREME COURT OF OHIO

JANET GREEN MARBLEY
ADMINISTRATOR

JACK R. KULLMAN, JR.
CHAIR

Application for Reimbursement

INSTRUCTIONS

1. **All questions** on this application **must be answered**. If a question does not apply to your situation, please answer "N/A" (not applicable.) If you need more space, please attach additional pages. **Incomplete applications will be returned.**
2. Attach copies of any documents that support your claim for reimbursement. **Proof of all amounts paid to the attorney or received by the attorney on your behalf is required** (i.e. front and back of cancelled checks, payment receipts, billing statements, fee agreements, settlement documents or checks, etc.) **PLEASE DO NOT SEND ORIGINALS.**
3. **Sign and date the application in the presence of a notary** and return it with your supporting documentation to: The Lawyers' Fund for Client Protection, Thomas J. Moyer Ohio Judicial Center, 65 S. Front Street, 5th Floor, Columbus, Ohio, 43215-3431. **Applications that have not been notarized will not be accepted and will be returned.**
4. **If you are unable to complete this application**, or need assistance, please call our office at (614) 387-9390/ (800) 231-1680 or visit our website at WWW.SC.OHIO.GOV/BOARDS for more information.

Notice to Claimants: To be eligible for reimbursement from the fund, the lawyer involved in your claim must be suspended, reprimanded, disbarred, convicted, have resigned, or be deceased. Reimbursement is limited to money or property paid to or received by your lawyer. Damages or other types of losses are not reimbursable. Reimbursement from the Lawyers' Fund for Client Protection is within the sole discretion of the Board of Commissioners and not as a matter of right. **The maximum amount of reimbursement for any claim is \$75,000.** The Lawyers' Fund for Client Protection is separate from the lawyer discipline process. If you have not already done so, you may want to contact your local bar association or The Office of Disciplinary Counsel at 1-800-589-5256 to file a disciplinary grievance against the lawyer involved in your claim.

Notice to Lawyers Assisting Claimants with LFCP Claims: Section 6 (B) of Rule VIII of the Supreme Court Rules for the Government of the Bar provides "No attorney fees may be paid from the proceeds of an award made to a claimant under authority of this rule. The Board may allow an award of attorney fees to be paid out of the fund if it determines that the attorney's services were necessary to prosecute a claim under this rule or upon other conditions as the Board may direct." Board Rule 14 permits payment of attorney fees up to a maximum of \$500.

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Lawyers' Fund for Client Protection Application for Reimbursement - *continued*

THE LAWYERS' FUND FOR CLIENT PROTECTION

AN AGENCY OF THE SUPREME COURT OF OHIO

JANET GREEN MARBLEY
ADMINISTRATOR

JACK R. KULLMAN, JR.
CHAIR

Application For Reimbursement

(PLEASE PRINT OR TYPE)

CLAIMANT (*your Information*)

Mr. Mrs. Ms.

Full Name: _____

Address: _____ City: _____

County: _____ State: _____ Zip: _____

E-mail: _____ Home Phone: _____

Work Phone: _____ Cell Phone: _____

CO-CLAIMANT (*or person who paid for legal service – if different from Claimant*)

Mr. Mrs. Ms.

Full Name: _____

Address: _____ City: _____

County: _____ State: _____ Zip: _____

E-mail: _____ Home Phone: _____

Work Phone: _____ Cell Phone: _____

ATTORNEY INFORMATION (*Lawyer alleged to have caused loss*)

Full Name: _____

Address: _____ City: _____

County: _____ State: _____ Zip: _____

E-mail: _____

Work Phone: _____ Cell Phone: _____

1. When did you hire this attorney?

Month: _____ Day: _____ Year: _____

2. What legal services was the attorney hired to provide?

3. How many meetings and/or telephone calls (emails, text messages) did you have with the attorney?

_____ Meetings _____ Calls _____ other (emails, text messages)

Attach copies of any letters or other written correspondence to/from the attorney.

4. What legal services did the attorney provide for you?

5. How much did you pay the attorney for the services to be provided?

\$ _____ Date(s) Paid _____

6. How was the attorney paid?

Cash Check Credit Card Other

Attach copies of documentation to verify all money received by the attorney, i.e. cancelled checks, credit card receipts, cash receipts, billing statements, etc.

If you cannot provide this information, please explain why.

13. What is the current status of your legal matter?

(If applicable, please include case numbers and other court information.)

14. Have you taken any action to recover the loss directly from the attorney or any other source?

Yes No (If yes, please explain)

15. Has any part of the loss been recovered or refunded? Yes No

If yes, date of recovery or refund? _____ Month _____ Day _____ Year

Source of Recovery/Refund? _____

16. Are you aware if the attorney was covered by any insurance, indemnity or bond? Yes No
 Unknown

If yes, provide the following information:

Name of Insurer, Surety Company, or Bondsman: _____

Address: _____

City: _____ State: _____ Zip: _____

17. Were you, at the time of the loss, the spouse, child, parent, grandparent or sibling of the attorney, or a partner, associate, employee or employer of the attorney or a business entity controlled by the Attorney? Yes No

If yes, give your relationship to the attorney: _____

18. Have you filed a Disciplinary Grievance against the attorney? Yes No

If yes, please provide the following information:

Date Filed: _____ Month _____ Day _____ Year

Place Filed (local bar or Office of Disciplinary Counsel): _____

19. Have you contacted the local prosecutor and/or the local police department? Yes No

If yes, please provide the following information:

Date Contacted: _____ Month _____ Day _____ Year

Agency Contacted:

20. Did you file a malpractice lawsuit? Yes No

21. If a lawyer is assisting you with this claim, provide his/her name and contact information:

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

22. How did you learn about the Lawyers' Fund for Client Protection?

By signing this application, I (We) certify that each of the above statements are true. I am (We are) aware that if any of the statements are willfully false, I (We) may be subject to punishment under applicable law.

Witness

Signature of Claimant

Date

Witness

Signature of Second Claimant

Date

Notary Public

Expiration Date _____

APPLICATION CHECKLIST

Please check the following:

- Answered all questions (PRINT OR TYPE)
- Attached all support documentation (*including proof of payments - i.e. front and back of cancelled checks, payment receipts, billing statements, fee agreements, settlement documents or checks, etc.*)
- Application is notarized
- Mail completed application to: The Lawyers' Fund for Client Protection, Thomas J. Moyer Ohio Judicial Center, 65 S. Front Street, 5th Floor, Columbus, Ohio, 43215-3431
 - Once your claim is received by this agency, it can take between 12 to 18 months for your claim to be fully processed.

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[Printable Version](#)

Supreme Court of Ohio Rules for the Government of the Bar

Rule VIII - Lawyers' Fund for Client Protection

Section 1. Establishment of Fund.

(A) There shall be a Lawyers' Fund for Client Protection of the Supreme Court of Ohio consisting of amounts transferred to the fund pursuant to this rule and any other funds received in pursuance of the fund's objectives. The purpose of the fund is to aid in ameliorating the losses caused to clients and others by defalcating members of the bar acting as attorney or fiduciary, and this rule shall be liberally construed to effectuate that purpose. No claimant or other person shall have any legal interest in the fund or right to receive any portion of the fund, except for discretionary disbursements directed by the Board of Commissioners of the Lawyers' Fund for Client Protection of the Supreme Court of Ohio, all payments from the fund being a matter of grace and not right.

(B) The Supreme Court shall provide appropriate and necessary funding for the support of the Lawyers' Fund for Client Protection from the Attorney Registration Fund. The Clerk of the Supreme Court of Ohio shall transfer funds to the Lawyers' Fund for Client Protection at the direction of the Court.

Section 2. Board of Commissioners of the Lawyers' Fund for Client Protection of the Supreme Court of Ohio; Administrator; Chair.

(A) Creation; Members. There is hereby created a Board of Commissioners of the Lawyers' Fund for Client Protection of the Supreme Court of Ohio consisting of seven members appointed by the Supreme Court, at least one of whom shall be a person not admitted to the practice of law in Ohio or any other state. The Court shall designate one member as chair and one member as vice-chair, who shall hold such office for the length of their term. All terms shall be for a period of three years commencing on the first day of January. No member shall serve more than two consecutive three-year terms. The Board shall have its principal office in Columbus.

(B) Administrator. There shall be an Administrator of the Board of Commissioners of the Lawyers' Fund for Client Protection. The Court shall appoint and fix the salary of the Administrator. If the Administrator is an attorney admitted to practice in Ohio, the Administrator shall not engage in the private practice of law while serving in that capacity. The Administrator shall be the secretary to the Board. The Administrator shall appoint, with the approval of the Court, staff as required to satisfactorily perform the duties imposed by this rule. The Court shall fix the compensation of personnel employed by the Administrator.

(C) Powers of the Board. The Board shall do all of the following:

- (1) Investigate applications by claimants for disbursement from the fund;
- (2) Conduct hearings relative to claims;
- (3) Authorize and establish the amount of disbursements from the fund in accordance with this rule;

(4) Adopt rules of procedure and prescribe forms not inconsistent with this rule.

(D) Powers of the chair.

(1) The chair of the Board shall be the trustee of the fund and shall hold, manage, disburse, and invest the fund, or any portion of the fund, in a manner consistent with the effective administration of this rule. All investments shall be made by the chair upon the approval of a majority of the Board. Investments shall be limited to short-term insured obligations of the United States government, deposits at interest in federally insured banks or federally insured savings and loan institutions located in the state of Ohio, and in no-front-end-load money market mutual funds consisting exclusively of direct obligations of the United States Treasury, and repurchase agreements relating to direct Treasury obligations, with the interest or other income on investments becoming part of the fund. Annually and at additional times as the Supreme Court may order, the chair shall file with the Supreme Court a written report reviewing in detail the administration of the fund during the year. The fund shall be audited biennially by the Auditor of State at the same time as the Supreme Court's regular biennial audit. The Supreme Court may order an additional audit at any time, certified by a certified public accountant licensed to practice in Ohio. Audit reports shall be filed with the Board, which shall send a copy to the Supreme Court. The report shall be open to public inspection at the offices of the Board.

(2) The chair and vice-chair of the Board shall file a bond annually with the Supreme Court in an amount fixed by the Supreme Court.

(3) The chair of the Board shall have the power and duty to render decisions on procedural matters presented by the Board and call additional meetings of the Board when necessary.

(4) The vice-chair of the Board shall exercise the duties of the chair during any absence or incapacity of the chair.

(E) Meetings. The Board shall meet at least two times a year, in Columbus and at other times and locations as the chair designates.

(F) Expenses. Expenses for the operation of the Board as authorized by this rule shall be paid from the fund, including bond premiums, the cost of audits, personnel, office space, supplies, equipment, travel, and other expenses of Board members.

Section 3. Eligible Claims.

For purposes of this rule, an eligible claim shall be one for the reimbursement of losses of money, property, or other things of value that meet all of the following requirements:

(A) The loss was caused by the dishonest conduct of an attorney admitted to the practice of law in Ohio when acting in any of the following capacities:

(1) As an attorney;

(2) In a fiduciary capacity customary to the practice of law;

(3) As an escrow agent or other fiduciary, having been designated as an escrow agent of fiduciary by a client in the matter or a court of this state in which the loss arose or having been selected as a result of a client-attorney relationship.

(B) The conduct was engaged in while the attorney was admitted to the practice of law in Ohio and acting in his capacity as an attorney admitted to the practice of law in Ohio, or in any capacity described in division (A) of this section.

Supreme Court of Ohio Rules for the Government of the Bar

Rule VIII - Lawyers' Fund for Client Protection - *continued*

(C) On or after the effective date of this rule, the attorney been disbarred, suspended, or publicly reprimanded, has resigned, or has been convicted of embezzlement or misappropriation of money or other property and the claim is presented within one year of the occurrence or discovery of the applicable event. The taking of any affirmative action by the claimant against the attorney within the one-year period shall toll the time for filing a claim under this rule until the termination of that proceeding. In the event disciplinary or criminal proceedings, or both, can not be prosecuted because the attorney can not be located or is deceased, the Board may consider a timely application if the claimant has complied with the other conditions of this rule.

(D) The claim is not covered by any insurance or by any fidelity or similar bond or fund, whether of the attorney, claimant, or otherwise.

(E) The claim is made directly by or on behalf of the injured client or his personal representative or, if a corporation, by or on behalf of itself or its successors in interest.

(F) The loss was not incurred by any of the following:

(1) The spouse, children, parents, grandparents or siblings, partner, associate, employee, or employer of the attorney, or a business entity controlled by the attorney. The Board may, in its discretion, recognize such a claim in cases of extreme hardship or special or unusual circumstances.

(2) An insurer, surety or bonding agency or company, or any entity controlled by any of the foregoing;

(3) Any governmental unit.

(G) A payment from the fund, by way of subrogation or otherwise, will not benefit any entity specified in division (F) of this section.

Section 4. Dishonest Conduct.

For purposes of this rule, dishonest conduct consists of wrongful acts or omissions by an attorney in the nature of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property, or other things of value.

Section 5. Maximum Recovery.

The Board shall determine the maximum amount of reimbursement to be awarded to a claimant. No award shall exceed seventy-five thousand dollars.

Section 6. Conditions of Payment; Attorney Fees.

(A) As a condition to payment, the claimant shall execute any interest, take any action, or enter into any agreements as the Board requires, including assignments, subrogation agreements, trust agreements, and promises to cooperate with the Board in prosecuting claims or charges against any person. Any amounts recovered by the Board through an action shall be deposited with the fund.

(B) No attorney fees may be paid from the proceeds of an award made to a claimant under authority of this rule. The Board may allow an award of attorney fees to be paid out of the fund if it determines that the attorney's services were necessary to prosecute a claim under this rule and upon other conditions as the Board may direct.

Section 7. Claims Procedure.

(A) Forms. The Board shall provide forms for the presentation of claims to Disciplinary Counsel, all bar associations, and to any other person upon request. The Board shall create a complaint form for the use of claimants that shall include, but not be limited to the name and address of the claimant, the name and last known address of the attorney against whom the claim is made, the date of the alleged wrongful act, a clear and simple statement describing the wrongful act, the amount of the claimed loss, and a statement as to whether other affirmative action has been taken as described in Section 3(C) of this rule. A claim shall be considered as filed on the date the Board receives written notification of the claim, even in the absence of the prescribed form. However, completion of the formal application may subsequently be required by the Board.

(B) Notice. Upon receipt of a claim against an attorney, the secretary of the Board shall notify the attorney by certified mail, when possible, of the fact of its filing. All parties shall be notified of any action taken by the Board with respect to a claim.

(C) Investigation; Cooperation With Disciplinary Counsel and Local Bar Associations.

(1) The Board shall investigate or cause to be investigated all claims received under this rule.

(2) At the request of the Board, Disciplinary Counsel and local bar associations authorized to investigate attorney discipline complaints under Gov.Bar R. V shall make available to the Board all reports of investigations and records of formal proceedings in their possession with respect to any attorney whose conduct is alleged to amount to dishonest conduct under this rule. Where the information sought is the subject of a pending investigation or disciplinary proceeding required by Gov.Bar R. V to be confidential, disclosure shall not be required until the termination of the investigation or disciplinary proceeding, or both.

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(3) Where the Board receives a claim that is ineligible because disciplinary proceedings have not been undertaken, the Board shall hold the claim in abeyance, forward a copy of the claim to Disciplinary Counsel for further action, and advise the claimant that these procedures have been undertaken and that disciplinary action is a prerequisite to eligibility under this rule. If filed within the time limits prescribed in Section 3(C) of the rule, the claim shall be considered timely regardless of the time it is held in abeyance pending the outcome of disciplinary proceedings. Disciplinary Counsel shall advise the Board as to the disposition of the complaint.

(D) Hearings; Subpoenas.

The Board may conduct hearings for the purpose of resolving factual issues. Upon determining that any person is a material witness to the determination of a claim made against the fund, the Board, chair, or vice-chair shall have authority to issue a subpoena requiring the person to appear and testify or produce records before the Board. All subpoenas shall be issued in the name and under the Seal of the Supreme Court, signed by the chair, vice-chair, or Administrator, and served as provided by law.

(E) Confidentiality.

All claims filed under this rule and all records obtained by the Board pursuant to this rule shall be confidential. If an award is made under this rule, the award, the name of the claimant, the name of the attorney, and the nature of the claim may be disclosed.

(F) Consideration of Claims.

The Board, in its sole discretion, but on the affirmative vote of at least four members, shall determine the eligible claims that merit reimbursement from the fund and the amount, time, manner, conditions, and order of payments of reimbursement. No award may include interest from the date of the award. In making each determination, the Board shall consider, among other factors set forth in this rule, all of the following:

- (1) The amounts available and likely to become available to the fund for the payment of claims and the size and number of claims that are likely to be presented;
- (2) The amount of the claimant's loss as compared with the amount of losses sustained by other eligible claimants;
- (3) The degree of hardship suffered by the claimant as a result of the loss;
- (4) The degree of negligence, if any, of the claimant that may have contributed to the loss.
- (5) Any special or unusual circumstances.

To preserve the fund, the board may adopt rules implementing a sliding scale whereby eligible claims are compensable at fixed percentages of the total loss but not to exceed the maximum award allowed by this rule.

The determination of the Board shall be final.

[Not analogous to former Rule VIII, effective January 1, 1976; amended effective June 15, 1981; November 17, 1982; July 1, 1983; May 13, 1985; July 29, 1987; October 1, 1989; January 1, 1990; January 1, 1993; December 1, 1996; October 20, 1997; April 13, 1998; August 1, 2003; January 1, 2015.]

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