



THE SUPREME COURT *of* OHIO
LAWYERS' FUND
FOR CLIENT PROTECTION

2018
ANNUAL
REPORT

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Lawyers' Fund for Client Protection



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JACK R. KULLMAN JR.

SARA L. PELLER

MONICA SANSALONE

MEMBERS

JANET GREEN MARBLEY

ADMINISTRATOR/BOARD SECRETARY

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Introduction

This is the 33rd Annual Report for the Lawyers' Fund for Client Protection, formerly known as the Clients' Security Fund. This report, presented to Chief Justice O'Connor and Justices of the Supreme Court of Ohio, reviews in detail the administration of the Fund during Fiscal Year 2018.

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. 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 Fund has reimbursed more than \$23 million to 3,025 former law clients.

This report confirms the fact that the overwhelming majority of Ohio lawyers observe high standards of integrity and professionalism when entrusted with law-client money or property. The dishonest acts of a few, however, can affect the public's image of and confidence in the legal profession as a whole. The Lawyers' Fund for Client Protection seeks to improve the image of the legal profession by reimbursing law clients for losses sustained as a result of the dishonest conduct of their lawyers.

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

Hi:

I Just want to let you know
that thank you so much. I Appreciate
it and God bless you.

Sincerely:

Luisa Guzman



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 2018.

In fiscal year 2018, the Fund received 97 new applications for reimbursement. The Board reviewed 146 claims and determined that 107 were eligible for reimbursement. The total reimbursement for eligible claims for fiscal year 2018 was \$648,504.85. This represents a decrease from the previous year.

The reimbursements made in fiscal year 2018 resulted from the dishonest conduct of 37 Ohio attorneys. As in previous years, this number represents less than one-tenth of 1 percent of all active Ohio attorneys.

Unearned fee claims accounted for 85 of the 107 eligible claims and 38 percent of the total amount reimbursed by the Fund. By contrast, there were 13 claims resulting from thefts by fiduciaries, but these claims accounted for 26 percent of the total dollars reimbursed by the Fund. There were also two claims that involved escrow theft, which represented 8 percent of the total amount reimbursed by the fund, along with three estate theft claims that accounted for 25 percent of the total amount reimbursed. In addition, four claims involved theft of settlement proceeds, representing 3 percent of the total dollars reimbursed in fiscal year 2018.

The maximum amount that may be reimbursed is \$75,000 per claim. During fiscal year 2018, one claimant 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 would also 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.

Judge John J. Russo, *Chair*

Lawyers' Fund for Client Protection Board of Commissioners

Board of Commissioners

Gov.Bar R. VIII (Appendix C) 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, presiding and administrative judge of the Cuyahoga County Court of Common Pleas in Cleveland, was appointed to the LFCP board in November 2011 to complete an unexpired term. Judge Russo was appointed to his first full term on the board in January 2013 and became chair of the board in 2015.



STEPHEN R. SERRAINO was appointed to the Board in 2013 and currently serves as vice chair. He is a practicing Ohio attorney with more than 30 years of experience. He currently serves as General Counsel and Corporate Secretary for the Upper Peninsula Power Company in Marquette, Michigan.



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.



JACK R. KULLMAN JR. was appointed to the Board in 2015, for a three-year term. He is the Executive Director of the Guardianship Service Board.



SARA L. PELLER was appointed to the LFCP Board for a three-year term beginning Jan. 1, 2015. She formerly was the Chief Executive Officer of the American Red Cross for the Greater Cincinnati/Dayton region.



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 LFCP staff.



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



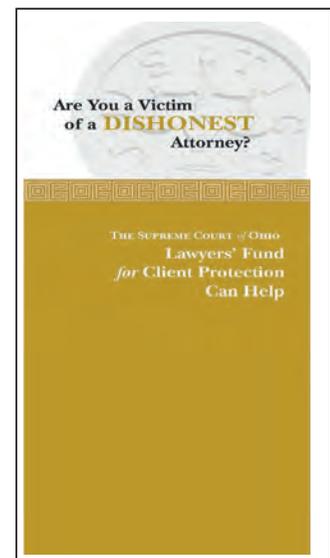
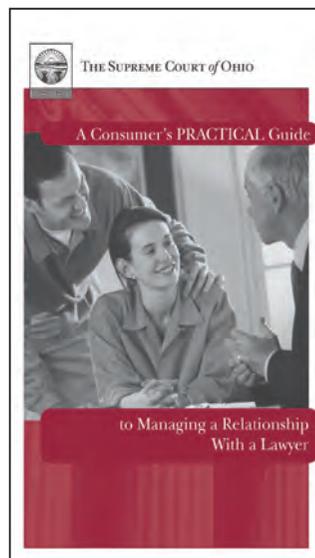
ABBY MINNIX-WILSON, serves as claims analyst and investigates all claims filed with the LFCP to assist the administrator and the Board in determining whether the requirements for reimbursement have been met.

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 webpage 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 webpage 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.

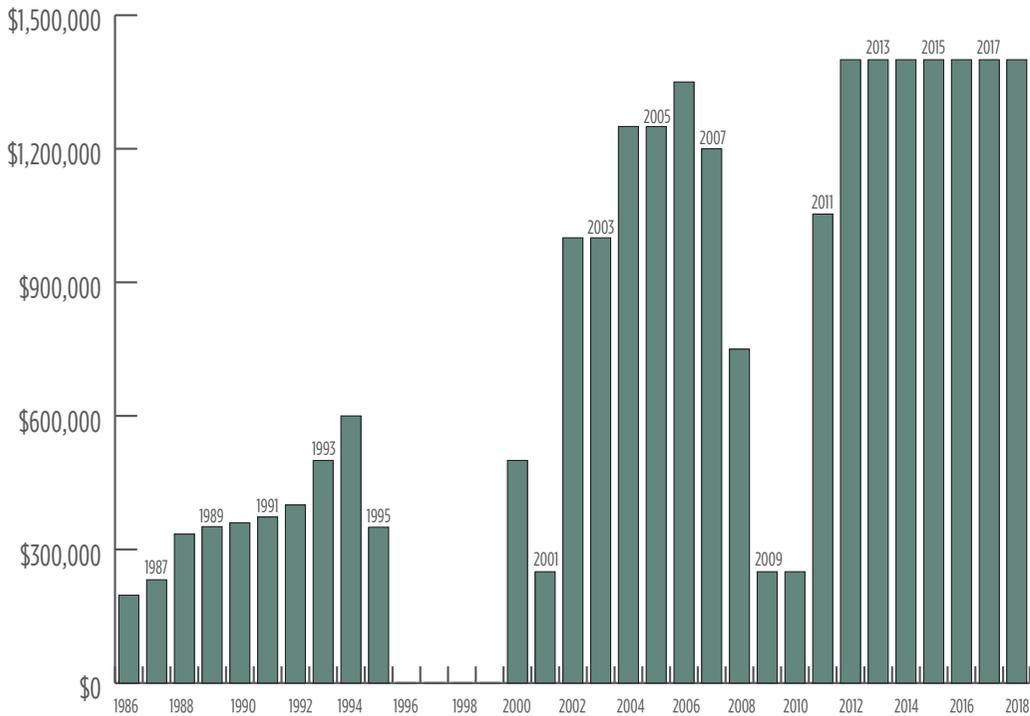
The LFCP publishes a pamphlet containing a brief description of the purpose of the Fund along with answers to basic questions about the types of claims reimbursed. The pamphlet is distributed to individuals requesting information about the LFCP and/or applications for reimbursement. The pamphlet, as well as the Fund's application for reimbursement, is also 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 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 - 2018



Attorney Registration Fees

Since 1985 the Supreme Court has allocated over \$23 million from the Attorney Services Fund to the LFCP for the payment of claims.

During fiscal year 2018 the Court allocated \$1,400,000 for the payment of claims and \$436,295 for administrative expenses. The LFCP expended \$428,150 or 98.1 percent of the administrative expenses allocation.

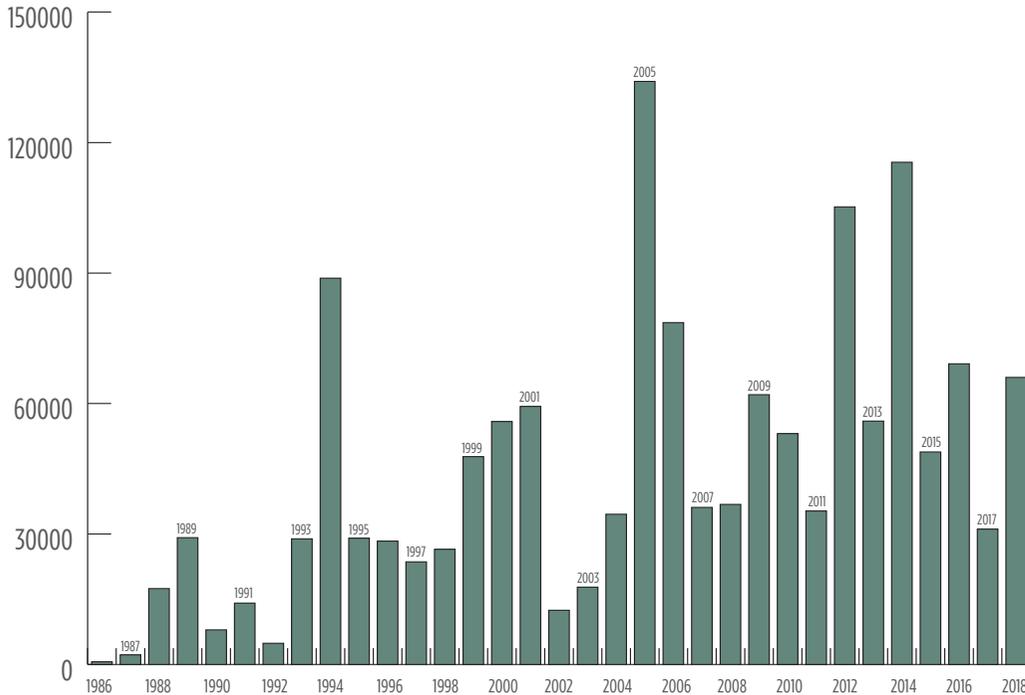
\$648,504.85 was expended for claims and \$900 for attorney fees, or 46.39 percent of the claims allocation. The trust account bank balance on June 30, 2018 was \$4,996,737.07.

Interest Income

The trust account earned \$38,454.55 in interest income.

Restitution

RESTITUTION PROCEEDS, 1986 - 2018

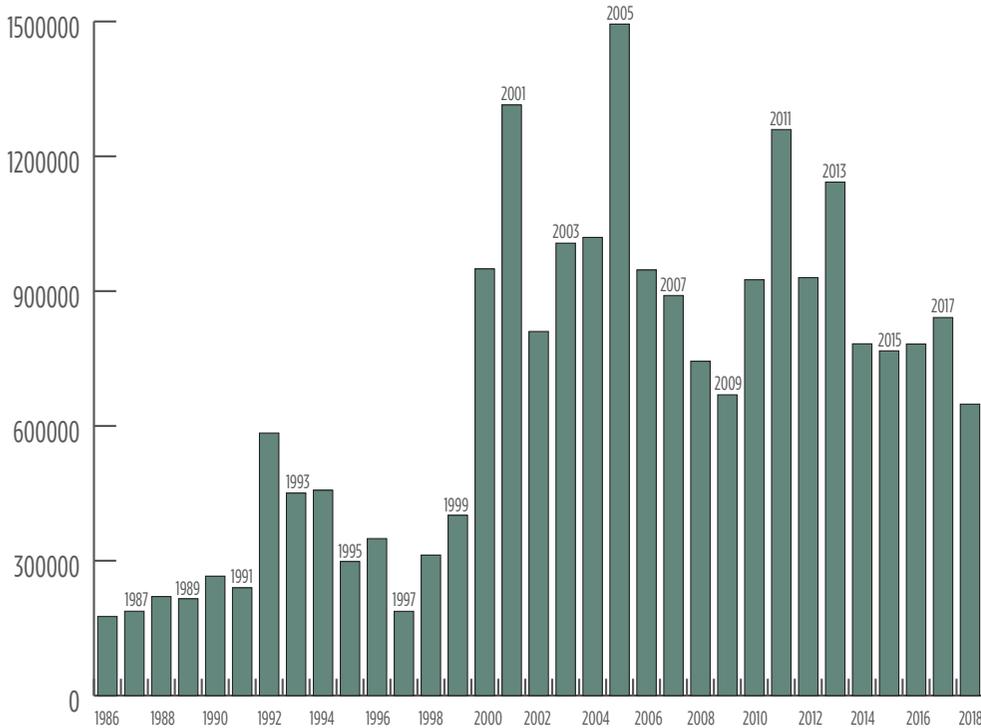


Amounts (restitution revenue) recovered by the Fund from lawyers involved in eligible LFCP claims is deposited into the trust account. Restitution revenue for fiscal year 2018 totaled \$66,010.70. Sources of restitution received by the Fund include:

- \$932.35 collected through court-ordered probation and/or restitution.
- \$42,400.17 collected by the Office of the Attorney General.
- \$4,548.93 collected by outside counsel (Weltman, Weinberg & Reis, Co., L.P.A.).
- \$9,696.25 collected through repayment agreements obtained by the LFCP.
- \$8,433.00 collected through voluntary payments.

Claims Activity

CLAIMS HISTORY 1986 - 2018



The LFCP board of commissioners held four quarterly meetings during fiscal year 2018. The board reviewed 146 claims, determining 107 claims eligible for reimbursement of totaling \$648,504.85. The board also approved two applications for attorney fees totaling \$900.00. One claimant received the maximum reimbursement amount of \$75,000. Seventy-five claimants received 100-percent reimbursement of their losses. The reimbursements resulted from the dishonest conduct of 37 Ohio attorneys.

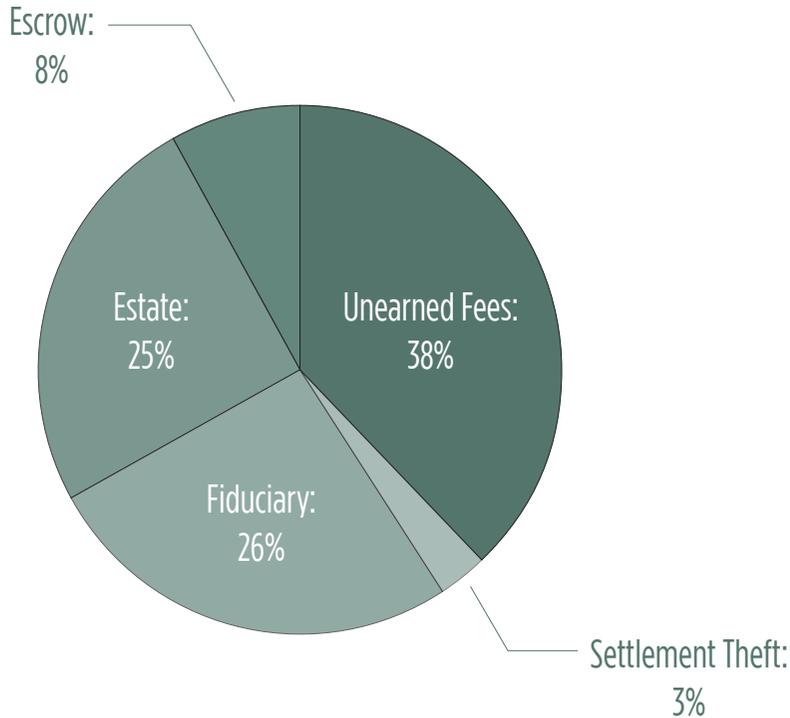
Former clients of nine deceased lawyers were reimbursed by the Fund. The clients paid for services that were not provided, and the clients did not receive refunds of their unearned fees.

2018 CLAIM DETERMINATIONS

| DATE | ELIGIBLE | INELIGIBLE | AMOUNT |
|-------------------|------------|------------|---------------------|
| September 9, 2017 | 29 | 16 | \$228,099.58 |
| December 2, 2017 | 31 | 4 | \$198,609.91 |
| March 3, 2018 | 25 | 9 | \$80,354.98 |
| June 28, 2018 | 22 | 6 | \$141,440.38 |
| Total | 107 | 35 | \$648,504.85 |

Theft Categories

2018 THEFT TYPES



There were 85 losses resulting from unearned-fee claims, accounting for the largest number of eligible claims. By contrast, there were only two eligible claims resulting from escrow thefts, and three eligible claims from estate thefts.

2018 THEFT CATEGORIES

| CATEGORY OF CLIENT LOSS | REIMBURSEMENTS | TOTAL |
|-------------------------|----------------|---------------------|
| Escrow Thefts | 2 | \$51,000.00 |
| Estate Thefts | 3 | \$159,280.98 |
| Theft by Fiduciary | 13 | \$166,544.74 |
| Settlement Theft | 4 | \$22,885.60 |
| Unearned Fees | 85 | \$248,793.53 |
| Total | 107 | \$648,504.85 |

Attorneys Involved in LFCP Claims in Fiscal Year 2018

| Attorney | County | Awards | Theft Category | Reimbursed |
|----------------------------|----------|--------|---|--------------|
| Javier Horacio Armengau | Franklin | 6 | Unearned Fee | \$18,700.00 |
| Michael Lamont Belcher * | Cuyahoga | 1 | Unearned Fee | \$1,500.00 |
| Timothy Eric Bellew | Trumbull | 3 | Unearned Fee | \$1,500.00 |
| Csaba Andrew Bodor | Trumbull | 1 | Unearned Fee | \$1,706.00 |
| Jeffrey Shane Brumbaugh | Miami | 1 | Unearned Fee | \$5,200.00 |
| Joseph John Corso * | Cuyahoga | 1 | Unearned Fee | \$500.00 |
| Stanlee Earl Culbreath | Franklin | 1 | Fiduciary | \$6,067.51 |
| R. Paul Cushion II | Cuyahoga | 2 | Unearned Fee | \$7,700.00 |
| Mark Alan Deters | Greene | 1 | Unearned Fee | \$3,000.00 |
| Dennis Armand DiMartino | Mahoning | 1 | Unearned Fee | \$10,000.00 |
| Joseph English Feighan III | Cuyahoga | 1 | Unearned Fee | \$2,500.00 |
| Justin Enrique Fernandez | Hamilton | 1 | Unearned Fee | \$1,500.00 |
| John Barry Frenden | Cuyahoga | 1 | Fiduciary/Unearned Fee | \$3,800.00 |
| Harold Kevin Garrison | Hamilton | 1 | Fiduciary/Unearned Fee | \$375.00 |
| Mark Minor George | Cuyahoga | 2 | Escrow | \$51,000.00 |
| Stephanie Gail Gussler | Licking | 1 | Unearned Fee | \$2,500.00 |
| Heidi A. Hanni | Mahoning | 2 | Unearned Fee | \$3,250.00 |
| Robert Hansford Hoskins | Hamilton | 2 | Unearned Fee | \$3,350.00 |
| Robert Lawrence Johnson | Trumbull | 8 | Unearned Fee | \$6,058.00 |
| James M. Johnson | Cuyahoga | 6 | Fiduciary | \$27,452.07 |
| Benjamin Joltin | Mahoning | 2 | Unearned Fee | \$20,150.00 |
| Paul Michael Kaufman | Cuyahoga | 1 | Fiduciary/Settlement Theft/Theft by Deception | \$9,000.00 |
| Paul Stephen Kormanik * | Franklin | 21 | Fiduciary/Unearned Fee | \$104,679.03 |

| | | | | |
|----------------------------|----------|------------|--------------------------------------|---------------------|
| Lawrence Landskroner * | Cuyahoga | 2 | Fiduciary | \$31,805.88 |
| George William Macdonald * | Cuyahoga | 11 | Unearned Fee | \$12,645.50 |
| Kenard McDuffie * | Cuyahoga | 1 | Unearned Fee | \$1,500.00 |
| Donald Richard Murphy * | Cuyahoga | 1 | Unearned Fee | \$1,650.00 |
| Daniel Alan Niehaus | Wyandot | 3 | Fiduciary/Unearned Fee | \$11,360.47 |
| Gabriel William Poland * | Hancock | 2 | Unearned Fee | \$10,150.00 |
| Joseph Dues Reed | Franklin | 4 | Unearned Fee | \$9,875.00 |
| Elliott Ian Resnick * | Cuyahoga | 1 | Fiduciary | \$63,808.81 |
| Nancy Susan Schramski * | Allen | 2 | Unearned Fee | \$2,575.00 |
| Rasheed Asani Simmonds | Hamilton | 2 | Unearned Fee | \$2,475.00 |
| David Gregory Simonette | Franklin | 1 | Fiduciary | \$30,000.00 |
| Teddy Sliwinski | Cuyahoga | 4 | Estate/Settlement Theft/Unearned Fee | \$168,666.58 |
| Mark Immanuel Verkhlin | Cuyahoga | 4 | Settlement Theft/Unearned Fee | \$6,005.00 |
| Jared Lee Wilson | Portage | 2 | Unearned Fee | \$4,500.00 |
| 37 Attorneys | | 107 | | \$648,504.85 |

* 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

JUDGE JOHN J. RUSSO
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

JUDGE JOHN J. RUSSO
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 Flr., 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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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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Rule VIII - Lawyers' Fund for Client Protection - *continued*

(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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