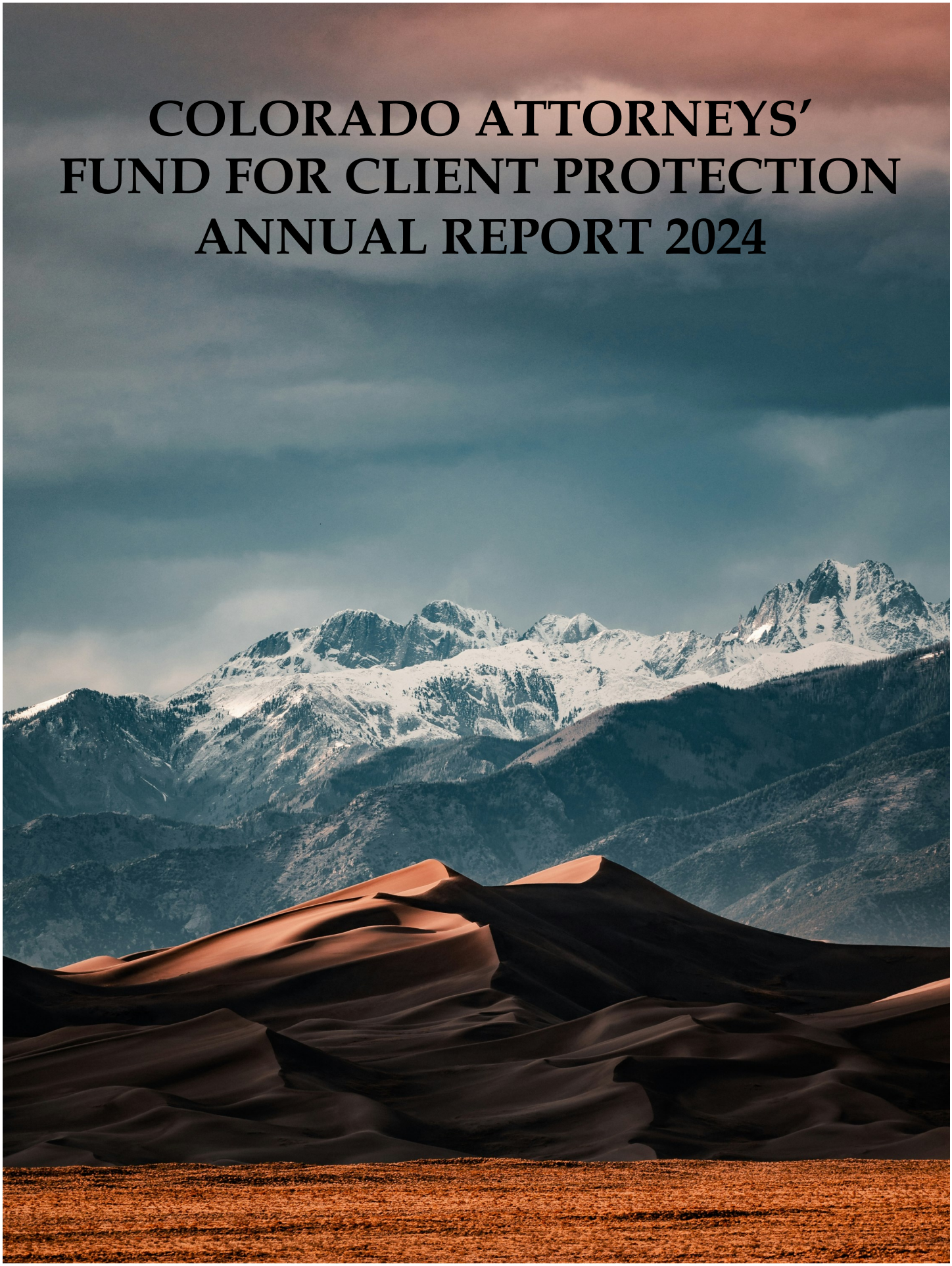
COLORADO ATTORNEYS' FUND FOR CLIENT PROTECTION ANNUAL REPORT 2024



" . . . to promote public confidence in the administration of justice and the integrity of the legal profession . . . "

Colorado Rule of Procedure Regarding Attorneys' Fund for Client Protection

Colorado Supreme Court

2024 ANNUAL REPORT
Attorneys' Fund for Client Protection

JUSTICES OF THE SUPREME COURT

Chief Justice Monica M. Márquez
Justice Maria Berkenkotter
Justice Brian D. Boatright
Justice William W. Hood, III
Justice Richard L. Gabriel
Justice Melissa Hart
Justice Carlos A. Samour, Jr.

BOARD OF TRUSTEES

Hon. Adam J. Espinosa, Chair
Allison L. Gambill, Esq., Vice Chair
John S. Bunting, CPA[1]
Susan J. Coykendall, Ph.D.
Wesley D. Hassler, Esq.
Corelle M. Spettigue, Esq.
Kimberly Van Dyke, Esq.

OFFICE OF ATTORNEY REGULATION COUNSEL

Jessica E. Yates, Attorney Regulation Counsel
Margaret B. Funk, Chief Deputy Regulation Counsel
April M. McMurrey, Deputy Regulation Counsel
Gregory G. Sapakoff, Deputy Regulation Counsel
Dawn M. McKnight, Deputy Regulation Counsel

1 John Bunting passed away on February 15, 2025.

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I. BOARD OF TRUSTEES

The Board of Trustees, appointed by the Supreme Court, consists of five attorneys and two public members. Board members in 2024 were:

The Hon. Adam J. Espinosa, Chair of the Board, is a Denver District Court Judge. Judge Espinosa is active in the community, having been appointed and served on numerous local, state and national boards including the ABA Standing Committee on Client Protection and the Colorado Hispanic Bar Association. He is a frequent lecturer and author on various ethics, professionalism, and legal topics.

Allison L. Gambill, Esq., Vice Chair of the Board, was the 2022 President of the Sam Cary Bar Association and is Employment Counsel for Covetrus, Inc. a global veterinary healthcare organization. Allison has experience in employment law and representing a variety of regulated industry clients in federal, state and administrative courts.

John Bunting, JD, CPA, CFE, was a Certified Public Accountant and Certified Forensic Accountant. He assisted the Jefferson County District Attorney's Office with financial analysis and investigations of elder abuse. He passed away on February 15, 2025. He is missed, and this Board is extremely grateful for his service.

Susan J. Coykendall, Ph.D., is a Professor of Psychology at Western State Colorado University. Dr. Coykendall is also responsible for performing outpatient competency evaluations on the Western Slope of Colorado. Her term ended December 31, 2024.

Wesley D. Hassler Esq., practices law in Pueblo, Colorado, handling a variety of matters through his law firm, Hassler Law Firm of Pueblo and Southern Colorado. Mr. Hassler is active in various bar associations, and is a Commissioner on the Colorado Access to Justice Commission.

Corelle M. Spettigue, Senior Asst. Attorney General, represents the Colorado Department of Public Health and Environment, and the Colorado Department of Health Care Policy and Financing in complex litigation cases and a range of health-related enforcement, regulatory, procurement and compliance matters.

Kimberly Van Dyke, Esq., practices law in Mesa County through Van Dyke Law LLC, in the areas of criminal defense and worker's compensation. Ms. Van Dyke is active with the Colorado Criminal Defense Bar, Colorado Bar Association, and Mesa

II. INTRODUCTION

This Annual Report of the Colorado Supreme Court Attorneys' Fund for Client Protection (the Fund) covers the period beginning January 1, 2024 and ending December 31, 2024.

The purpose of the Fund is to promote public confidence in the administration of justice and the integrity of the legal profession. The Fund does this by mitigating losses caused by the dishonest conduct of attorneys admitted and licensed to practice law in the courts of this state during the course of attorney-client or court-appointed fiduciary relationships between the attorney and the claimant.

The Fund does not receive any governmental monies or tax dollars. From the inception of the Fund until January 1, 2007, each active Colorado attorney contributed annually the sum of $18.15 per year to the Fund as a portion of their annual registration fee. On January 1, 2007, the Court increased the contribution from each active Colorado lawyer to $19.15 per year. The contribution was subsequently increased by the Court the following year, on January 1, 2008, to $40 per year as a part of the registration fee; once the Fund balance had increased to a reasonable level of safety, on January 16, 2014, the Colorado Supreme Court decreased the annual assessment of each active Colorado lawyer from $40 per annum to $25 dollars per annum per active lawyer. On November 22, 2022, the Colorado Supreme Court again decreased the assessment directed to the Attorneys' Fund for Client Protection from $25 to $20, reflecting the healthy balance of the Fund.

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III. HISTORY AND STRUCTURE OF THE FUND

On June 25, 1998 (effective January 1, 1999), the Colorado Supreme Court established the Fund. Under the supervision of the Colorado Supreme Court, a Board of Trustees appointed by the Court receives, holds, manages and disburses the funds collected. *See* C.R.C.P. 252.2.

The Board of Trustees consists of five Colorado attorneys and two public members appointed by the Supreme Court. The Trustees serve without compensation and are appointed for one term of seven years. The Chair and Vice-Chair may be appointed to a second seven-year term. *See* C.R.C.P. 252.5.

The Trustees meet as frequently as necessary to process claims in a timely manner. The Trustees, in their sole discretion, evaluate and pay claims. The Trustees follow the Court's rules of procedure and fix a maximum amount of payment per claim payable on an aggregate amount, which may be paid because of the dishonest conduct of any one attorney. *See* C.R.C.P. 252.7.

The Colorado Supreme Court Office of Attorney Regulation Counsel serves as counsel to the Board of Trustees for purposes of receiving and investigating all claims filed with the Fund. *See* C.R.C.P. 252.12. Through CLEs, trust account school, and the online self-assessment tool, the Office also educates attorneys about proper law firm trust account practices that protect client funds.

IV. ELIGIBLE CLAIMS

For a claim to be eligible for reimbursement, the loss must allege a pecuniary loss arising out of and by reason of an attorney-client relationship or a court-appointed fiduciary relationship between the Respondent Attorney and the Claimant. Additionally, the loss must arise out of (a) the dishonest conduct of the attorney; (b) due to the death or disability of the Respondent Attorney; or (c) due to the Respondent Attorney's inability to respond, and insufficient evidence to substantiate the work done by the Respondent Attorney. *See* C.R.C.P. 252.10.

On June 16, 1999, the Trustees adopted guidelines to carry out the purposes of the Fund. The guidelines set forth eligibility requirements, filing instructions, processing details and payment of award details. The Trustees occasionally modify the guidelines to meet changing needs. (The guidelines are attached to this Annual Report in Part X.)

In cases of extreme hardship or special or unusual circumstances, the Trustees may, in their sole discretion, recognize a claim that would otherwise be excluded under the rules. *See* C.R.C.P. 252.10(c).

The Trustees require the Claimant to initiate a request for investigation with the Office of Attorney Regulation Counsel prior to consideration of any claim.

V. CLAIM LIMITS

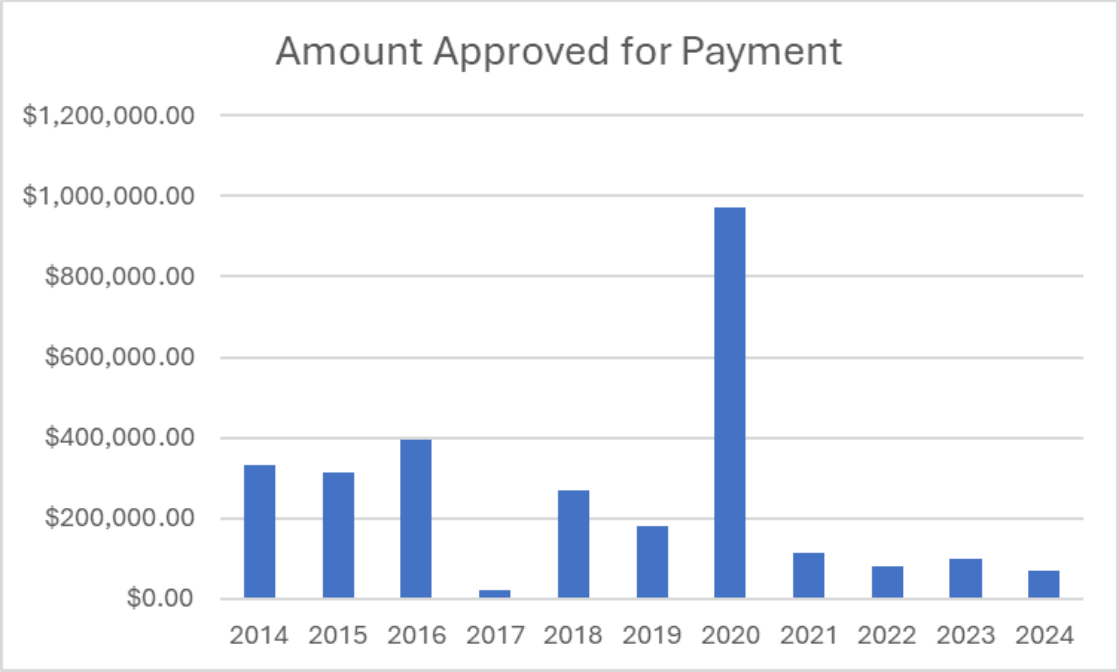
At the inception of the Fund, the Trustees adopted a limit of $5,000 as the maximum amount any claimant could receive from the fund regardless of the magnitude of the loss. Additionally, the Trustees initially adopted a maximum of $20,000 in aggregate payments per attorney regardless of the magnitude of losses any particular lawyer may have caused.

The Trustees subsequently set a $50,000 per claim limit and a $100,000 limit for losses caused by any one attorney. The amount of any award made is within the sole discretion of the Trustees.

In 2009, the Trustees adopted a policy regarding claims previously approved but not wholly paid. Under that policy, the Trustees can reconsider claims previously approved, but not wholly paid, at the final meeting of each calendar year, including the year the claim was initially approved and two subsequent years thereafter. (For example, assuming the claim was partially paid at the December 2022 meeting, then the Committee could reconsider the claim at the final meeting in 2023 and in 2024. As another example, if the claim was partially paid at the April 2022 meeting, then the Committee would reconsider the claim at the final meetings in 2022, 2023 and 2024.)

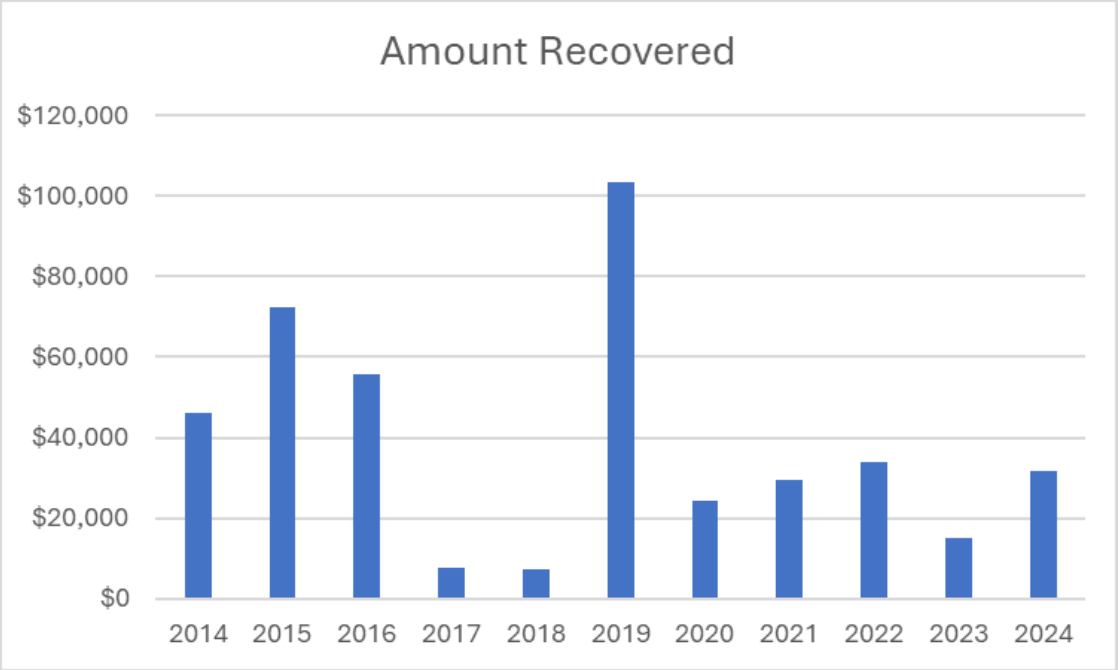
VI. CLAIMS APPROVED FOR PAYMENT

In 2024, the Board approved **$67,672** in payments to claimants.



VII. RESTITUTION TO THE FUND

An attorney whose dishonest conduct results in payment to a claimant shall be liable to the Fund for restitution. In 2024, the Board recovered **$31,600** from attorneys deemed responsible for claims paid by the Fund. This amount does not include Inventory Counsel recoveries from attorneys' trust accounts when the attorneys have died or become disabled. Those are reported on page 16.



VIII. STATISTICS ON REVENUES/EXPENSES

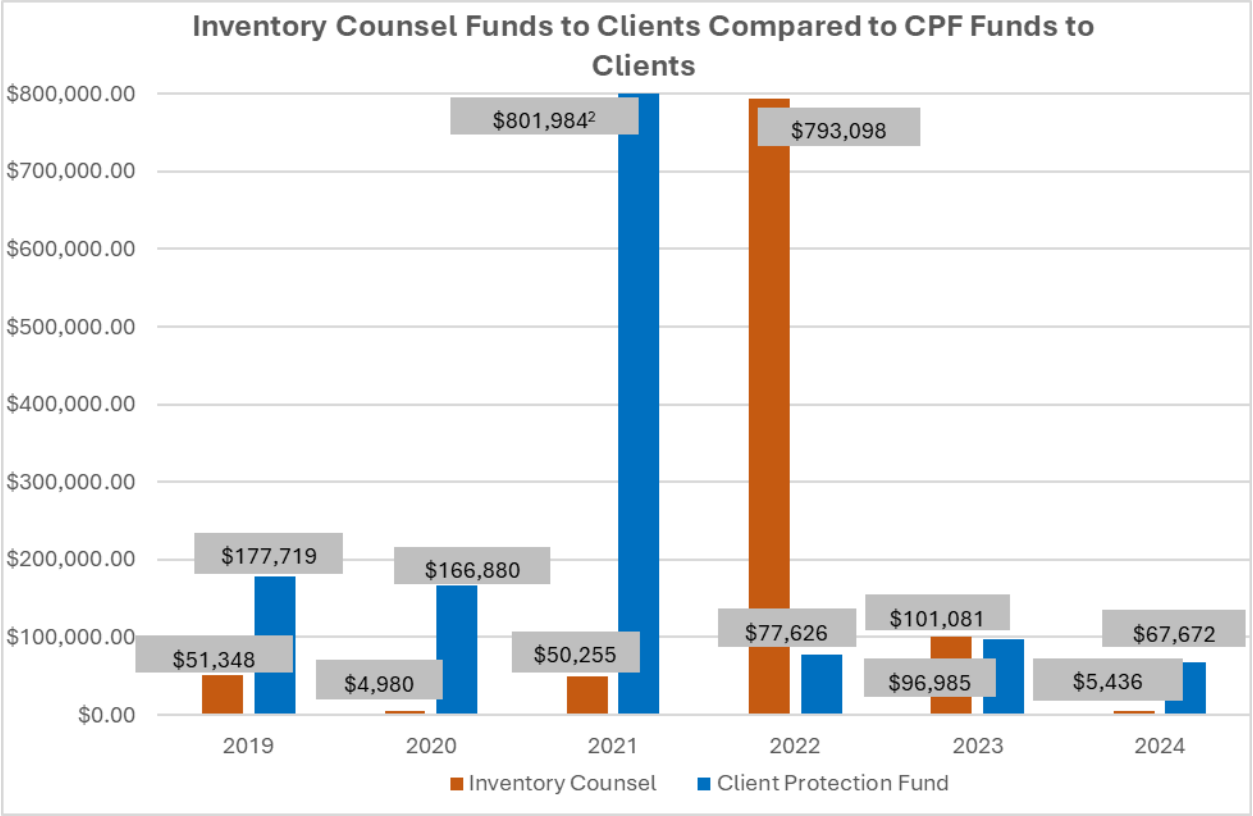
		2024
Revenue:		
Attorney Registration Fees	$ 538,880.00	$ 592,098.00
Collections from Respondents	14,952.33	31,600.02
Interest Income	248,480.87	165,865.17
Miscellaneous Income	0.00	0.00
	$ 802,313.20	$ 789,563.19
Expenditures:		
Claimant Payments	96,984.55	67,672.66
Payroll & Miscellaneous	355,620.78	433,077.34
	452,605.33	$ 500,750.00
Net Revenue (Expenditures)	$ 349,707.87	$ 288,813.19
Beginning Fund Balance	5,898,816.30	6,248,524.17
Ending Fund Balance	$ **6,248,524.17**	$ **6,537,337.36**

Cumulative	**1999-2023**		**1999-2024**
Collections from Respondents		$880,590	$912,190
Cumulative	**1999-2023**	$8,342,019	**1999-2024**
Claimant Payments			$8,409,691

IX. CLIENT FUNDS RECOVERED BY INVENTORY COUNSEL

Attorney Regulation Counsel's umbrella also covers the end of an attorney's career and sometimes the end of his or her life. When an attorney is no longer able to perform his or her duties to clients, due to disability or death, or suspension or disbarment, and there is no other party responsible for the attorney's affairs, the Office of Attorney Regulation Counsel steps in to file a petition for appointment of inventory counsel pursuant to C.R.C.P. 244.

Inventory Counsel reviews the client files and trust account records of the deceased, disabled, suspended or disbarred attorney, and takes steps to protect the interests of the attorney's clients. This typically involves returning or destroying client files, disbursing funds from trust, and at times from business accounts. The inventory process may take months or years depending on the number of files, the area of practice, the difficulty in locating the previous clients, and the availability of records related to the trust account. Inventory Counsel disbursals return unearned fees to deceased or disabled attorneys' clients, thereby reducing the need for the Fund to reimburse claims made by those same clients.



[2] 2021 payments by the Fund included a one-time payment into a court registry of $801,984 related to a single claim approved in 2020.

In 2024, $5,436.72 was returned to clients of Colorado attorneys for whom Inventory Counsel had been appointed. The Colorado Lawyer Trust Account Foundation received $26,768.40 from Inventory Counsel in 2024, remitted as unclaimed funds. Pursuant to Colo. RPC 1.15B(k), funds remitted to the Colorado Lawyer Trust Account Foundation may be returned to the owners, including clients, if the owners can be determined and located. In 2024, $198,603.48 was returned by Inventory Counsel to the estates of deceased attorneys when Inventory Counsel determined that the funds had been earned by the attorneys. Attorney Jay Fernandez became Inventory Counsel for the Office of Attorney Regulation Counsel in 2022.

X. GUIDELINES

To carry out the purposes of Rule 252.1(a) of the Colorado Rules of Civil Procedure establishing the Colorado Attorneys' Fund for Client Protection (the "Fund"), the Trustees promulgate the following guidelines that are intended to serve as a guide, but not to bind, the operations of the Fund.

1. **Construction of guidelines.** These guidelines shall be liberally construed to accomplish the objectives of the Fund and the policies of the Trustees.

2. **Eligible claims.**

   a. The Trustees shall consider claims for reimbursement of losses caused by the dishonest conduct of the attorney authorized to practice in Colorado and as set forth in Rule 252, that have arisen out of and by reason of an attorney-client relationship or court-appointed fiduciary relationship between the attorney and the client;

   b. "Dishonest conduct" embodies a wide range of wrongful acts committed by an attorney. Examples include:

      (1) Theft;

      (2) Embezzlement of money;

      (3) The wrongful conversion of money, property, or other things of value;

      (4) An attorney's refusal to refund unearned fees received in advance as required by Rule 1.16 of the Colorado Rules of Professional Conduct;

      (5) Failure to properly hold or manage property belonging to clients or third parties as required by Rule 1.15(A)-1.15(D) of the Colorado Rules of Professional Conduct;

      (6) Borrowing money from a client without intention to repay it, or with disregard of the attorney's inability or reasonably anticipated inability to repay it; and

      (7) After an attorney has died and it is discovered that at or prior to the time of his demise, the deceased attorney has not complied with Rules 1.15(A)-1.15(D) of the Colorado Rules of Professional Conduct.

c. The loss occurred on or after July 1, 1999.

d. The following losses shall not be eligible:

(1) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of attorney(s) causing the losses;

(2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;

(3) Losses incurred by any financial institution that are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;

(4) Losses incurred by any business entity controlled by the attorney;

(5) Losses incurred by any governmental entity or agency;

(6) Losses arising from the activities of an attorney not having an office or residence in Colorado where those activities do not have substantial contacts with Colorado; and

(7) Interest on the loss or any type of consequential damages or punitive damages or cost.

e. Ordinarily, claims against Colorado licensed or certified attorneys in good standing will be denied or payment delayed until discipline is ordered by the Colorado Supreme Court; if the attorney has been disciplined, is dead, the attorney's whereabouts cannot be determined, or other good cause exists, the Trustees shall proceed to process the claim.

f. In cases of extreme hardship or special and unusual circumstances, the Board may, in its discretion, recognize a claim that would otherwise be excluded under these rules.

g. In cases where it appears that there will be unjust enrichment or multiple recovery or the claimant unreasonably or knowingly contributed to the loss, the Trustees may, in their discretion, deny the claim.

h. The claimant shall have the responsibility to provide satisfactory evidence of an eligible loss.

3. Filing claims.

a. Claims for reimbursement from the Fund shall be written and verified. The Fund shall provide an official claim form that shall require the following information: the name and address of the claimant; the name and last known address of the attorney who is alleged to have committed a dishonest act; the terms of the attorney's professional engagement for the claimant; the amount of the loss incurred; the date of the loss or the period of time when the loss occurred; the place and manner in which the loss occurred; the date and manner in which the claimant discovered the loss; a description of what steps the claimant has taken to recover the loss from the attorney or any other source; and whether there are other sources, such as insurance, fidelity bonds, or surety agreements, to reimburse the claimant's loss. The Trustees may require a claimant to submit additional information that may be necessary to determine a claim.

b. The Fund shall promptly acknowledge receipt of the claim, which shall be assigned a claim number.

c. A claim shall be filed no later than three years after the claimant knew or should have known of the dishonest conduct of the attorney.

4. Processing claims.

a. Whenever it appears on the face of a claim that a claim is not eligible for reimbursement pursuant to these guidelines, the Office of the Attorney Regulation Counsel will advise the claimant of the reasons why the claim is not eligible for reimbursement, and that unless additional facts to support eligibility are submitted to the Fund within 50 days, the claim shall be dismissed by the Office of Attorney Regulation Counsel and not processed to the Board for consideration.

b. The Office of the Attorney Regulation Counsel of the Colorado Supreme Court shall serve as the staff agency for the Fund and shall assist the Trustees as follows:

(1) Investigating and reporting on all claims;

(2) Recommending payment, denial or partial payment and partial denial of those claims received based on the claim criteria outlined in C.R.C.P. 252 and these guidelines;

(3) Recommending denial of those claims when the underlying grievance matter has been closed by the Office of Attorney Regulation Counsel without discipline or the Claimant has withdrawn the claim;

(4) Preparing the committee agenda and recording the minutes of the committee meetings;

(5) Presenting of claims to the Trustees;

(6) Notifying claimants of ultimate disposition;

(7) Coordinating payouts;

(8) Monitoring subrogation rights on previously paid claims;

(9) Preparing annual Fund reports;

(10) Acting as custodian of all Fund records including, but not limited to, minutes and all bank records; and

(11) Paying only those claims authorized or approved by a majority of the Trustees at a meeting duly called at which a quorum was present either in person or via teleconference.

c. A certified copy of an order disciplining an attorney for the same act of conduct alleged in a claim, or a final judgment imposing civil or criminal liability therefor, shall, for the purpose of these guidelines, be evidence that the attorney committed such act.

d. All claims that are eligible for reimbursement from the Fund shall be investigated by the Office of the Attorney Regulation Counsel, which shall furnish to the Trustees a written report of each investigation.

e. Upon receipt of the investigation report, the Trustees shall determine whether to conduct additional investigation. If the attorney whose alleged conduct gave rise to the claim has not been previously notified of the claim, a copy of the claim shall be provided to the attorney. The attorney shall be invited to respond to the claim within 21 days.

f. The Trustees may request that testimony be presented to complete the record. Upon request, the claimant and the attorney, or their respective representatives, shall be given an opportunity to be heard.

g. The Trustees shall determine, in their sole discretion, whether a claim merits reimbursement from the Fund, and the amount, time, manner of its payment and the conditions upon which payment shall be made. The award of a claim shall require the affirmative vote of at least four Trustees.

h. If services were performed that were ultimately useful to the claimant, the amount of the claim for which useful services were performed will customarily be denied.

i. Unless the Trustees direct otherwise, no claim shall be awarded during the pendency of a disciplinary proceeding involving the same act of conduct that is alleged in the claim.

j. In the exercise of their discretion in determining claims, the Trustees shall consider, together with such other factors as they deem appropriate:

(1) The amount of money available and likely to become available to the Fund for the payment of claims, and the size and number of claims that have been or are likely to be presented;

(2) The amount of the claimant's loss as compared with the amount of losses sustained by other claimants who may merit reimbursement from the Fund;

(3) Any conduct of the claimant that contributed to the loss; and

(4) The existence of other sources to reimburse the claimant's loss, such as insurance, fidelity bonds or surety agreements.

k. Written notice of the Trustees' determination shall be provided to the claimant and the attorney whose alleged conduct gave rise to the claim, or the representatives.

5. Reconsideration of claims. After whole or partial denial of a claim by the Trustees, a claimant may request that the Trustees reconsider the claim by filing an application with the Fund no later than 35 days following receipt of the Trustees' determination. If a claimant fails to request reconsideration, or the original determination of the Trustees is confirmed, the Trustees' determination shall be final.

6. Payment of awards.

a. Claimants shall be reimbursed for losses in amounts to be determined by the Trustees. No award shall be in excess of $50,000.00 per claim and the Fund shall not pay more than $100,000.00 for losses caused by one attorney, unless otherwise determined by the Board of Trustees.

b. Awards shall not include interest. Attorneys' fees, consequential damages, and other incidental and out-of-pocket expenses shall not be reimbursed by the Fund. Additional taxes, interest, late charges and similar penalties finally incurred by a claimant as the direct result of an attorney's misappropriation may be eligible for reimbursement in the discretion of the Trustees. The investigation report in a claim which involves such an element of loss shall contain an estimate of the amount of such loss and a recommendation whether the loss merits reimbursement from the Fund. The Trustees will reconsider all claims previously approved, but not wholly paid, at the final meeting of each calendar year, including for the year the claim was initially approved and two successive years. (For example, assuming the claim was partially paid at the December 2020 meeting, then the committee shall reconsider the claim at the final meeting in 2021 and in 2022. As another example, if the claim was partially paid at the April 2021

meeting, then the Committee shall reconsider the claim at the final meetings in 2023, 2024, and 2025.)

c. No claim for reimbursement shall be paid until the claimant transfers to the Fund, in such form as the Trustees shall authorize, the claimant's rights against the attorney whose dishonest conduct caused the claimant's loss and any other person or entity who may be liable for the claimant's loss.

d. Payment of claims shall be made in such amounts and at such times as the Trustees deem appropriate and may be paid in lump-sum or installment amounts.

e. If a claimant is a minor or is incompetent, the award may be paid to a parent, guardian, committee or the attorney of the claimant, on behalf of and for the sole benefit of the claimant.

f. All payments of awards of reimbursement from the Fund shall be made from the Fund.

g. Payments to the Fund shall be dependent upon the allocations made to the Fund each year by the Colorado Supreme Court pursuant to C.R.C.P. 252.2(b).

7. Fiscal year. The Fund will operate on a fiscal year basis, concurrent with the fiscal year of the Office of Attorney Regulation Counsel.

8. Meetings and Officers. Meetings of the Trustees shall be subject to the call of the chairperson or the call of a majority of the Trustees. The Trustees shall meet at least annually for the consideration of claims. The Trustees shall keep accurate records of their action which shall be open to inspection at any and all times by any Trustee or by any member of the Colorado Supreme Court or by any person or persons authorized by the Colorado Supreme Court to inspect said records. Nothing set forth in this guideline shall preclude the inspection of the records by any person or persons designated as auditors of the Fund. The Trustees shall have the right to disclose information from their records to any person employed by the Trustees for the purpose of seeking restitution of any claim paid by the Fund and to disclose said information publicly in the prosecution of its subrogation rights.

9. Duties of Officers.

a. The chair shall preside at all meetings of the Trustees and generally coordinate and supervise the administration of the Fund.

b. If the chair is absent or otherwise unable to serve, the vice chair shall undertake the duties of the chair.

c. The chair shall utilize the services of the Office of Attorney

Regulation Counsel, which shall have (1) custody of the monies and other assets of the Fund; (2) receive all payments to the monies of the Fund in the manner authorized by the Trustees; (3) make disbursement from the Fund authorized by the Trustees; (4) invest the monies of the Fund in the manner authorized by the Trustees; (5) cause an annual accounting to be made of the Fund; (6) maintain appropriate records; and (7) file such tax or information returns as may be required of the Fund. Disbursements from the Fund shall be made upon direction of the Board of Trustees and by the signature of Attorney Regulation Counsel, or for those amounts $5,000 or more, by the signature of Attorney Regulation Counsel and one of the liaison justices. The chair may authorize payment of administrative expenses from the Fund.

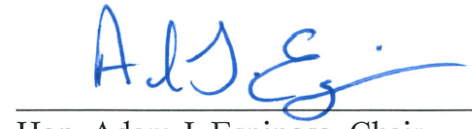
d. The Office of Attorney Regulation Counsel shall prepare minutes of each meeting of the Trustees and shall maintain the original records of the Trustees, including a separate file for each claim for all claims for reimbursement filed with the Fund.

10. Fund of last resort. Claimants should reasonably exhaust other remedies before seeking reimbursement from the Fund. Other remedies include bonds, professional liability policies, third party responsibility, the defalcating attorney's partners and deceased attorney's estate. Neither the Trustees nor the Fund nor its staff shall incur any liability for non-payment of claims or for erroneous payments.

11. Investment. All Fund assets may be invested, as authorized by C.R.C.P. 252.7(a)(5): (1) in bonds, notes or other securities of or guaranteed by the United States or a federal agency, and (2) in interest bearing accounts or certificates of any bank, trust company, or savings and loan association which are insured by the Federal Deposit Insurance Corporation of the United States or protected pursuant to the Public Deposit Protection Act (PDPA), C.R.S. § 11-105-101, et. seq.

12. Amendment. These Guidelines and Regulations may be amended by a vote of at least four of the Trustees.

Date of Adoption: These Guidelines have been adopted on June 16, 1999, which are effective, and amended March 23, 2005, June 11, 2015, and June 16, 2020.



Hon. Adam J. Espinosa, Chair
Colorado Attorneys' Fund for Client Protection
Colorado Supreme Court

Colorado Supreme Court
Office of Attorney Regulation Counsel
1300 Broadway, Suite 500
Denver, Colorado 80203

www.coloradolegalregulation.com