

COLORADO SUPREME COURT  
**ATTORNEYS' FUND**  
**FOR CLIENT PROTECTION**

ANNUAL REPORT

**2014**



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2014 ANNUAL REPORT  
Attorneys' Fund for Client Protection



**JUSTICES OF THE SUPREME COURT**

Chief Justice Nancy E. Rice  
Justice Gregory J. Hobbs, Jr.  
Justice Nathan B. Coats  
Justice Allison H. Eid  
Justice Monica M. Márquez  
Justice Brian D. Boatright  
Justice William W. Hood, III

**BOARD OF TRUSTEES**

Charles Goldberg, Esq., Chair  
Charles Turner, Esq.  
Yolanda M. Fennick  
Melinda M. Harper  
Michael B. Lupton  
Honorable Andrew P. McCallin  
David A. Mestas

**OFFICE OF ATTORNEY REGULATION COUNSEL**

James C. Coyle, Attorney Regulation Counsel  
James S. Sudler, Chief Deputy Regulation Counsel  
Matthew A. Samuelson, Chief Deputy Regulation Counsel  
Charles E. Mortimer, Jr., Deputy Regulation Counsel  
Margaret B. Funk, Deputy Regulation Counsel



“ ... 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

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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. The Trustees for 2014 were: Charles Goldberg, Chair, Charles Turner, Yolanda M. Fennick, the Honorable Andrew McCallin, Melinda M. Harper, Davis S. Mestas, and Michael B. Lupton.

**Charles Goldberg, Esq.**, Chair of the Board, is a partner in the Denver firm of Lewis Roca Rothgerber LLP and a former Denver District Court Judge. Mr. Goldberg served for over 20 years on the Colorado Supreme Court's Pattern Civil Jury Instructions Committee. Mr. Goldberg is the recipient of the 2011 Isaac Hecht Law Client Protection Award, granted by the American Bar Association's National Client Protection Organization, where he is a former member of the Board. Mr. Goldberg is a Fellow of the American College of Trial Lawyers. For many years he has been named to Best Lawyers in America and as one of the "Colorado Super Lawyers." In 2011, Mr. Goldberg was granted the DU "Law Star" Alumni Professionalism Award by The University of Denver Sturm College of Law. In 2010, Pope Benedict XVI granted the Benemerenti ("To a Well Deserving Person") Medal to Mr. Goldberg. He is also the recipient of the Civis Princeps (First Citizen) Award by Regis University in 2010. In addition, Mr. Goldberg is involved in several professional and community organizations.

**Charles Turner, Esq.**, was the Executive Director of the Colorado/Denver Bar Associations. Mr. Turner recently retired from these positions. Mr. Turner is involved locally and nationally in many professional organizations.

**Yolanda M. Fennick**, is a graduate from the University of Missouri-Columbia, Missouri and is a partner at The Law Office of Yolanda M. Fennick, P.C. in Colorado Springs, Colorado. Ms. Fennick is an active member of Colorado Women's Bar Association, El Paso County Bar Association, current board member of the El Paso County Bar Foundation, Women Lawyer's of the 4<sup>th</sup> Judicial District, Ben S. Wendleken Inn of Court, Statewide Access to Justice Commission, and President of Family Law Section of the El Paso County Bar Association.

**Melinda M. Harper**, is the founding member of Harper Hofer & Associates, LLC, financial consultants in litigation, valuation and marital dissolutions and provider of tax planning and compliance services. Her firm provides litigation services relating to

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damages, business disputes, investigatory services, fraud investigations, due diligence, solvency, lost earnings, employment disputes, intellectual property, business valuation and family law, as well as non-litigation valuation services and tax services. Melinda, who has been testifying for approximately 30 years, has been qualified as an expert in Federal Courts in California, Colorado, Idaho, New Mexico, Texas, Wyoming and Utah, in Colorado's District Courts, in Bankruptcy Courts, before arbitration panels and in depositions, also serves as an expert consultant, special master and arbitrator. Her primary emphasis is on business issues in complex commercial litigation, arbitration and mediation. She is a former Chair of the AICPA's Consulting Services Executive Committee and of the AICPA's Litigation and Dispute Resolution Services Subcommittee. She also was the founding Chair of the Litigation Support Services Committee of the Colorado Society of CPA's.

Melinda is also a Member of the American Arbitration Association's Large Complex Case and Mediation Panels and serves on the Colorado Supreme Court's Disciplinary Hearing Panel and the Attorneys' Fund for Client Protection. She is also a former member of the AICPA's Joint Trial Board and currently serves on the Colorado Society of CPAs Professional Conduct Board. She is also a former Board member of the Legal Aid Foundation and the Colorado Health Foundation, where she served on the audit and finance committees, and the HCA Joint Venture Board, where she was also a member of the audit committee. She also currently serves on the board of the Colorado Health-OP.

In addition to the service described above, Ms. Harper was the founding president of The Alliance of Professional Women and has been involved with many other community organizations. In addition to honors earned while taking the CPA exam, she has received awards recognizing her public service. She graduated from West Virginia University with a Bachelor of Science in Business Administration with a major in Accounting.

**Michael B. Lupton**, is a graduate of University of Washington, Seattle, WA with a BSEE, and has over 40 years in the Telecommunications Industry. He has been an active volunteer for over 20 years with a Douglas County Youth Sports organization as a Coach, Sport Manager and Officer of the Board of Directors.

**The Honorable Andrew P. McCallin, Esq.**, is a District Judge in the Second Judicial District, which covers the City and County of Denver. Previous to being appointed to



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the Denver District Court, Judge McCallin worked in the Consumer Protection Section of the Colorado Attorney General's Office for sixteen years as an Assistant Attorney General and then as a First Assistant Attorney General.

**David A. Mestas**, is a partner at Gavaldon & Mestas, LLC in Fort Collins, Colorado. He was admitted to the Colorado Bar in 1990 and the U.S. District Court for the District of Colorado in 1992. He is an active member of the Colorado Hispanic Bar and Hispanic National Bar. Mr. Mestas is the former Chairman of the Colorado Supreme Court's Unauthorized Practice of Law Committee in which he served from 2000 - 2009.

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## II. INTRODUCTION

This annual report of the Colorado Supreme Court Attorneys' Fund for Client Protection (the Fund) covers the period beginning January 1, 2014 and ending December 31, 2014.

The purpose of the Fund is to promote public confidence in the administration of justice and the integrity of the legal profession 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 relationship between the attorney and the claimant.

The Fund does not receive any governmental monies or tax dollars. Every active Colorado attorney has contributed twenty-five dollars to the Fund as a part of their annual registration fee since January 1, 2008 (effective January 16, 2014, the Supreme Court decreased the annual assessment to twenty-five dollars per active attorney).

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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 terms of three years and are eligible to serve no more than two consecutive, three-year terms. *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, investigate, determine and pay claims. The Trustees promulgate 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. Attorney Regulation Counsel receives and investigates all claims filed with the Fund. *See* C.R.C.P. 252.12.

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## IV. ELIGIBLE CLAIMS

For a claim to be eligible for reimbursement, the loss must be caused by the dishonest conduct of the attorney. Additionally, the loss must arise out of and by reason of an attorney-client relationship or a court-appointed fiduciary relationship between the attorney and the claimant. *See* C.R.C.P. 252.10. Pursuant to court rule, the Trustees could not pay claims for losses incurred as a result of dishonest conduct committed prior to July 1, 1999. *See* C.R.C.P. 252.2(c).

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 as Appendix A.

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(e).

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

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## 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 payment of \$20,000 in the aggregate regardless of the magnitude of losses any particular lawyer may have caused.

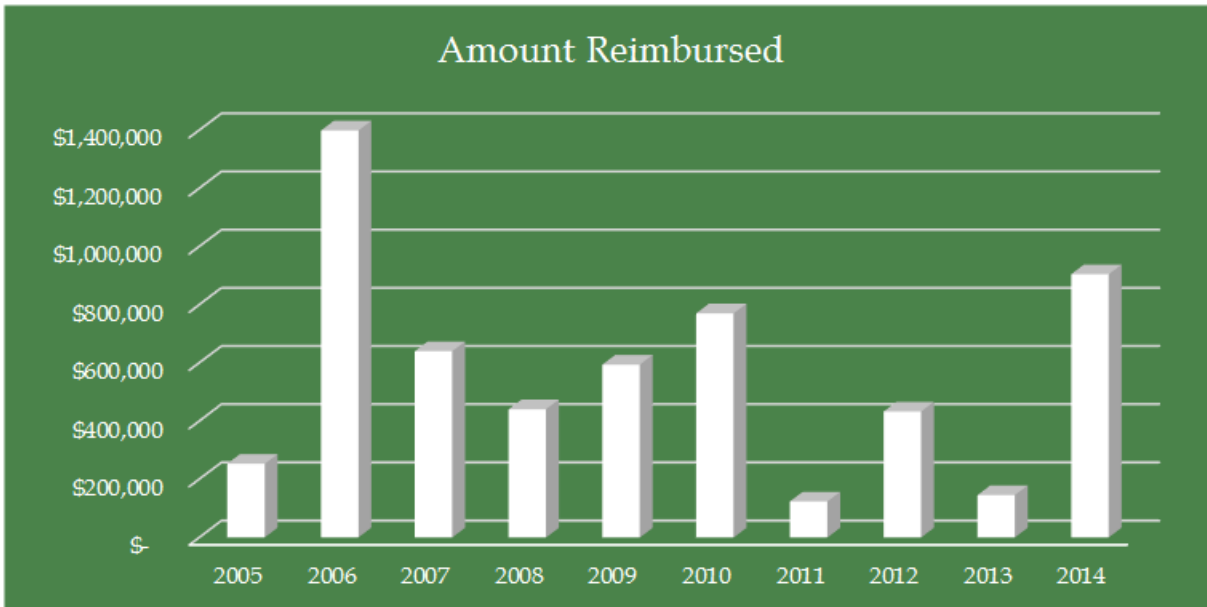
The Trustees subsequently set a \$50,000 per claim limit and a \$100,000 limit for losses caused by any one attorney. The amount of any award made is within the sole discretion of the Trustees.

In 2009, the Trustees adopted a policy regarding claims previously approved but not wholly paid. That policy requires the Trustees to reconsider all 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 successive years. (For example, assuming the claim was partially paid at the December 2012 meeting, then the committee shall reconsider the claim at the final meeting in 2013 and in 2014. As another example, if the claim was partially paid at the April 2012 meeting, then the Committee shall reconsider the claim at the final meetings in 2012, 2013, and 2014.)



## VI. CLAIMS – REIMBURSEMENTS

In 2014, the Board approved \$904,870 in reimbursements, the second most in the past 10 years.



As of December 31, 2014, the Trustees met on the following dates:

### 2000

June 15, 2000  
November 16, 2000

### 2001

March 20, 2001  
December 12, 2001

### 2002

April 17, 2002  
September 12, 2002 December 12, 2002

### 2003

April 21, 2003  
October 21, 2003

### 2004

February 24, 2004  
July 29, 2004  
December 9, 2004

### 2005

March 2, 2005  
June 28, 2005  
September 16, 2005  
December 6, 2005

### 2006

March 16, 2006  
July 13, 2006  
November 30, 2006

**2007**

March 14, 2007  
June 7, 2007  
December 12, 2007

**2008**

April 19, 2008  
August 15, 2008  
December 1, 2008  
April 27, 2009

**2009**

September 22, 2009  
December 3, 2009

**2010**

March 23, 2010  
June 22, 2010  
September 21, 2010  
December 3, 2010

**2011**

April 19, 2011  
October 25, 2011

**2012**

January 23, 2012  
May 14, 2012  
September 11, 2012

**2013**

March 12, 2013  
June 25, 2013  
September 17, 2013  
December 10, 2013.

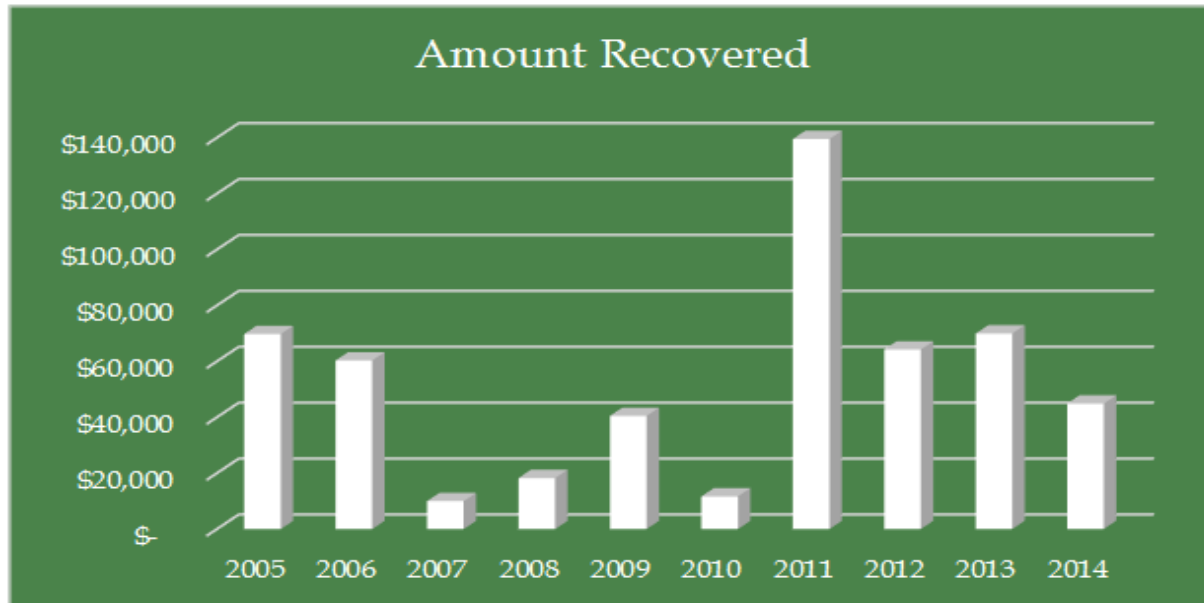
**2014**

April 8, 2014  
June 10, 2014  
September 16, 2014  
December 9, 2014



## VII. RESTITUTION TO THE FUND

An attorney whose dishonest conduct results in payment to a claimant shall be liable to the Fund for restitution. Since its inception, the Board has recovered \$529,183.42.



Below are the respondent attorneys and amounts recovered since the Board's inception:

<u>Respondent Attorney</u>	<u>Amount Recovered</u>
Marilyn Adkins	\$ 7,111.55
William A. Alexander, Jr.	27,450.29
Victor J. Barbieri	480.00
Angela Boeck-Giscom	2,217.85
Robert P. Borquez	1,988.97
Kirk Patterson Brown	10,594.00
Christopher Calbo	24,500.00
Daniel D'Acquisto	3,974.22
David Doering	1,000.00
Kirk Dougherty	2,682.89
David Doyle	11,464.00
Douglas Engler	25,000.00

Edward J. Essay	3,700.00
Mark Field	50.00
Janice M. Finch	6,650.00
William T. Griffin	7,700.00
Arnold Guttenberg	34,563.00
Daynel Hooker	12,340.00
Michael Hudson	3,918.58
Stephen M. Joynt	1,029.09
Shaun Kaufman	19,242.35
John Koelsch	575.00
Edward Kusick, Jr.	600.00
Brett Lambert	3,787.45
Gary Marsh	15,000.00
Cynthia Montgomery	1,500.00
Kevin Parnell	4,493.52
John D. Phillips	49,000.00
Daniel Post	22,055.38
Evan Powell	450.00
Victoria L. Ringler	2,000.00
Estate of Richard S. Shaffer	1,356.25
Matthew Smith	19,940.00
Caroline M. Stapleton	261.69
John Tannous	1,700.00
Scott Thomas	45,771.88
George Tilton	45,638.28
Jeffrey Tompkins	3,952.50
Michael Varallo	577.43
Scott Walker	1,886.00
Richard Wehrle	100,545.66
James Woods	<u>435.59</u>
<b>TOTAL:</b>	<b>\$529,183.42</b>

## VIII. STATISTICS ON REVENUES/EXPENSES

	2004	2005	2006	2007	2008	2009
<b>Revenues/(Expenses)</b>						
Attorney Registration Fees	373,255	421,506	353,676	410,053	887,275	858,813
Investment Income	22,039	63,606	96,287	56,885	48,829	40,381
Miscellaneous Income	800	1,500		1,000,000	2,700	1,200
Collections	2,380	35,763	63,747	6,856	18,252	23,778
Claimant Payments	(172,167)	(253,544)	(1,399,097)	(670,441)	(440,823)	(594,197)
Expenses	(55,325)	(68,984)	(69,022)	(69,591)	(75,948)	(81,951)
<b>Net Revenues/(Expenses)</b>	170,982	199,847	(954,409)	733,762	440,285	248,024
Beginning Fund Balance	1,620,870	1,791,852	1,991,699	1,037,290	1,771,052	2,211,337
Adjustments						
<b>Ending Fund Balance</b>	1,791,852	1,991,699	1,037,290	1,771,052	2,211,337	2,459,361

	2010	2011	2012	2013	2014	Total
<b>Revenues/(Expenses)</b>						
Attorney Registration Fees	948,854	940,561	979,303	988,853	748,264	7,910,413
Investment Income	36,761	9,361	4,513	3,337	4,094	386,093
Miscellaneous Income	750	100	9,196	0	49,000	1,065,246
Collections	38,333	145,660	129,119	23,916	24,843	512,647
Claimant Payments	(770,470)	(123,757)	(507,298)	(145,908)	(155,968)	(5,233,670)
Expenses	(75,425)	(74,020)	(1,085,255)	(81,093)	(88,480)	(1,825,094)
<b>Net Revenues/(Expenses)</b>	178,803	897,905	(470,422)	789,105	581,752	2,815,634
Beginning Fund Balance	2,459,361	2,642,612	3,540,517	3,070,095	3,859,200	
Adjustments						
<b>Ending Fund Balance</b>	2,642,612	3,540,517	3,070,095	3,859,200	4,440,952	

	2004	2005	2006	2007	2008	2009
Claims Paid	\$ 172,167	\$ 253,544	\$ 1,399,097	\$ 670,441	\$ 440,823	\$ 594,197
Expenses *	\$ 55,325	\$ 68,984	\$ 69,022	\$ 69,591	\$ 75,948	\$ 81,951
Collections	\$ 2,380	\$ 35,763	\$ 63,747	\$ 6,856	\$ 18,252	\$ 23,778

	2010	2011	2012	2013	2014
Claims Paid	\$ 770,470	\$ 123,757	\$ 432,986	\$ 145,908	\$ 155,968
Expenses *	\$ 75,425	\$ 74,020	\$ 85,255	\$ 81,093	\$ 88,480
Collections	\$ 38,333	\$ 145,660	\$ 129,119	\$ 23,916	\$ 24,843

	2004	2005	2006	2007	2008	2009
Cum. Claims Paid	\$ 442,159	\$ 695,703	\$ 2,094,800	\$ 2,765,241	\$ 3,206,064	\$ 3,800,261
Cum. Expenses *	\$ 81,486	\$ 150,470	\$ 219,492	\$ 289,083	\$ 365,031	\$ 446,982
Cum. Collections	\$ 33,742	\$ 69,505	\$ 133,252	\$ 140,108	\$ 158,360	\$ 182,138

	2010	2011	2012	2013	2014
Cum. Claims Paid	\$ 4,570,731	\$ 4,694,488	\$ 5,127,475	\$ 5,273,383	\$ 5,360,259
Cum. Expenses *	\$ 522,407	\$ 596,427	\$ 681,682	\$ 762,775	\$ 1,825,094
Cum. Collections	\$ 220,471	\$ 350,072	\$ 479,191	\$ 503,108	\$ 512,647

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## IX. GUIDELINES



