

## COLORADO ATTORNEYS' FUND FOR CLIENT PROTECTION

An Open Letter to Our Sisters and Brothers of the Bench and Bar,

Over 10 years ago, via Rule 241, et seq., of the Colorado Rules of Civil Procedure, the Colorado Supreme Court established the Colorado Attorneys' Fund for Client Protection ("Fund"). The purpose of the Fund is to promote public confidence in the administration of justice and integrity of the legal professional by mitigating losses caused by the dishonest conduct of attorneys admitted and licensed to practice law in the courts of this state occurring in the course of attorney-client or court-appointed fiduciary relationship between the attorney and the claimant. To further this laudable goal, upon the establishment of this Fund, the Colorado Supreme Court directed that \$15 from each attorney registration fee paid would be placed into a trust fund for the purpose of compensating clients who have been victimized through the dishonest act of their Colorado licensed lawyer. Recently, the Colorado Supreme Court directed that \$40 of each attorney's annual registration fee shall be allocated to this Fund.

**The purpose of this report is to both thank you and to inform you of the remarkable success this Fund has had in fulfilling its noble goals.**

Since the inception of this Fund, the Trustees<sup>1</sup> have received 541 requests for compensation. Of those requests, the Trustees found that 429 (16 pending) claims met the minimal eligibility requirements for compensation from this victim's fund. To date, the Trustees of your Fund have paid from this Fund a total of \$3,472,624.39. It is estimated at year end 2009 this Fund is expected to maintain a minimum reserve balance of at least \$1 million, and possibly more.

During the past 10 years, nearly 100 percent of the eligible claims have been fully paid. Frequently, the Attorney Regulation Counsel's Office which is the support staff for your Trustees have received gracious thank you notes from former clients of dishonest attorneys who felt that they would never, ever be wholly restored of their financial losses. An example of the letters of appreciation, of which really you are the true beneficiaries, read:

I have been trying to come out of shock and find adequate words to express our thanks and appreciation to each and every one of you for the most generous reimbursement that you granted my husband and me... You have renewed our confidence in the legal profession on the whole. There are still good, honest, caring people in this world... It was a total surprise and we are very grateful for the Attorneys' Fund and to the attorneys that have contributed to the fund.

It is with sincere appreciation that I acknowledge the receipt of the Colorado Attorneys' Fund for Client Protection check as full reimbursement for the claim that I had submitted... I am indeed very humbled by the efforts of the Colorado Supreme Court's

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<sup>1</sup> The current trustees, as of July 2009, for the Colorado Attorneys' Fund for Client Protection are: Charles Goldberg, Esq., Chair; Charles Turner, Esq., Andrew McCallin, Esq., Nathifa Lewis, Esq., Mr. Donald A. Pesek, and Ms. Susan S. Riehl.

Attorney Regulation Counsel in bringing closure to my amazing predicament...I do hope you share my gratitude and thoughts with your colleagues and with the Board of Trustees of the Colorado Attorneys' Fund for Client Protection.

Unfortunately, during the 10 years of our existence, your Trustees have been unable to fully compensate all the victims of eight dishonest lawyers. The obvious reason is that, although eligible for compensation from the Fund, these few dishonest lawyers' losses caused to clients have far exceeded the ability of the Fund to fully indemnify these clients for their total losses.

Initially, the Fund began with a per claim maximum limit of \$15,000 per victim and an aggregate loss per lawyer of \$30,000. Notwithstanding these relatively modest limits of compensation, during the years in which these limits were in effect, each of the claimants were fully indemnified. Some of the larger losses that the clients have suffered have occurred in recent years.

As a result of the solvency of this Fund, your Trustees have increased the limits to \$50,000 per claimant and \$100,000 for an aggregate per dishonest lawyer payout. In order to alleviate some of the harsh consequences of these limits in a few cases, your Board of Trustees has recently approved a policy of a two-year annual look back. It is anticipated that this two-year look back will apply only to those people who have been "capitated" by the limits of the Fund, but whose losses have been larger than the existing caps. To the extent the Fund has a balance in excess of its budgeted reserve of \$1 million during the look back period, the Trustees will pay a pro rata share of the portion of the approved claim yet to be paid up to and including the maximum loss. Obviously, the goal is to wholly indemnify each qualified claimant to the maximum extent possible while, at the same time, operating your Fund in a fiscally responsible manner.

Each of the losses are tragic and, of course, risk management measures are being regularly reviewed and, where appropriate, implemented so that the day may come when hopefully this Fund is no longer necessary.

As indicated above, the message of this letter is to let you know that you should be proud of your diligent efforts to maintain the honesty and integrity of the legal profession and yet stand behind those few who do tarnish the well-deserved reputation of the Colorado Bar as a group of honest, reputable, upstanding, and contributing citizens of our community.

The eligibility requirements for receiving compensation from this Fund are quite simple. The loss must be caused by the dishonest conduct of a licensed Colorado attorney that arose out of and by reason of an attorney-client relationship or a court-appointed fiduciary relationship between the attorney and claimant. It is that simple. There is nothing more to it. It is just that simple.

The claim must be filed no later than three years after the claimant knew or should have known of the dishonest conduct of the attorney. Dishonest conduct does include a refusal to refund unearned fees received in advance as required by Rule 1.16 of the Colorado Rules of Professional Conduct. It also includes 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.

The Fund does not compensate for losses caused by the attorney's negligence nor does the Fund cover consequential damages, interest on any loss, or punitive damages from an attorney's negligence.

Most importantly, in cases of extreme hardship or special or unusual circumstances, the Trustees may, in their discretion, recognize a claim which would otherwise be excluded under these rules.

The processing and administration of every claim is handled quickly, efficiently, and at an exceedingly small cost to the Fund by the Attorney Regulation Counsel.

We encourage you to take justifiable pride in this Fund. If you ever learn of anyone who may possibly be a legitimate claimant, please encourage that person to come forward and file his or her claim with this Fund. We are here to pay all losses caused by any dishonest lawyer within the Rules and Guidelines of the Fund.

If you have any questions, please do not hesitate to call either of us at our numbers listed below.

Charles Goldberg  
Chairman of the Board of Trustees of the Colorado  
Attorneys' Fund for Client Protection

John Gleason  
Attorney Regulation Counsel, Colorado Supreme  
Court