

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

ANNUAL REPORT

**2016**



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**JUSTICES OF THE SUPREME COURT**

Chief Justice Nancy E. Rice  
Justice Nathan B. Coats  
Justice Allison H. Eid  
Justice Monica M. Márquez  
Justice Brian D. Boatright  
Justice William W. Hood, III  
Justice Richard L. Gabriel

**BOARD OF TRUSTEES**

Charles Goldberg, Esq., Chair  
Charles Turner, Esq.  
Yolanda M. Fennick, Esq.  
Melinda M. Harper, CPA  
Michael B. Lupton  
Katayoun A. Donnelly, Esq.  
David A. Mestas

**OFFICE OF ATTORNEY REGULATION COUNSEL**

James C. Coyle, Attorney Regulation Counsel  
Matthew A. Samuelson, Chief Deputy Regulation Counsel  
Margaret B. Funk, Senior Deputy Regulation Counsel  
April M. McMurrey, Deputy Regulation Counsel  
Dawn M. McKnight, 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.

**Charles Goldberg, Esq.** Chair of the Board, is a partner in the Denver firm of Lewis Roca Rothgerber Christie 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.** is the former Executive Director of the Colorado/Denver Bar Associations. Mr. Turner is involved locally and nationally in many professional organizations.

**Yolanda M. Fennick, Esq.** 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, CPA** 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 damages, business disputes, investigatory services, fraud investigations, due diligence, solvency, lost earnings, employment disputes,

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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.

**Katayoun A. Donnelly, Esq.** received her J.D. from the Sturm College of Law at the University of Denver, having earned an honorable mention as Best Oralist at the Willem E. Vis International Commercial Arbitration Moot in Vienna, Austria. She

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received her LL.B., with honors, from Tehran University and an LL.M. from Azad University. Following law school, she worked in the Appeals Section of the Office of the Prosecutor at the International Criminal Tribunal for the Former Yugoslavia in The Hague and served as a law clerk to the Honorable Edward W. Nottingham, Chief Judge of the U.S. District Court for the District of Colorado, and to the Honorable Stephanie K. Seymour of the U.S. Court of Appeals for the Tenth Circuit. In 2010, the American Inns of Court selected Ms. Donnelly as one of four Temple Bar Scholars to represent the law clerks of the United States Circuit Courts and the United States Supreme Court in the United Kingdom. For the past decade, Ms. Donnelly has litigated cases at many levels, from county court to the Tenth Circuit, handling criminal trials, civil trials, and appeals for clients ranging from indigents to Fortune-200 companies. In each of the past three years, she has been selected as a Colorado Super Lawyers Rising Star in the area of Appellate Practice.



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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, 2016 and ending December 31, 2016.

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 from forty dollars 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 an 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 in Part IX.)

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.

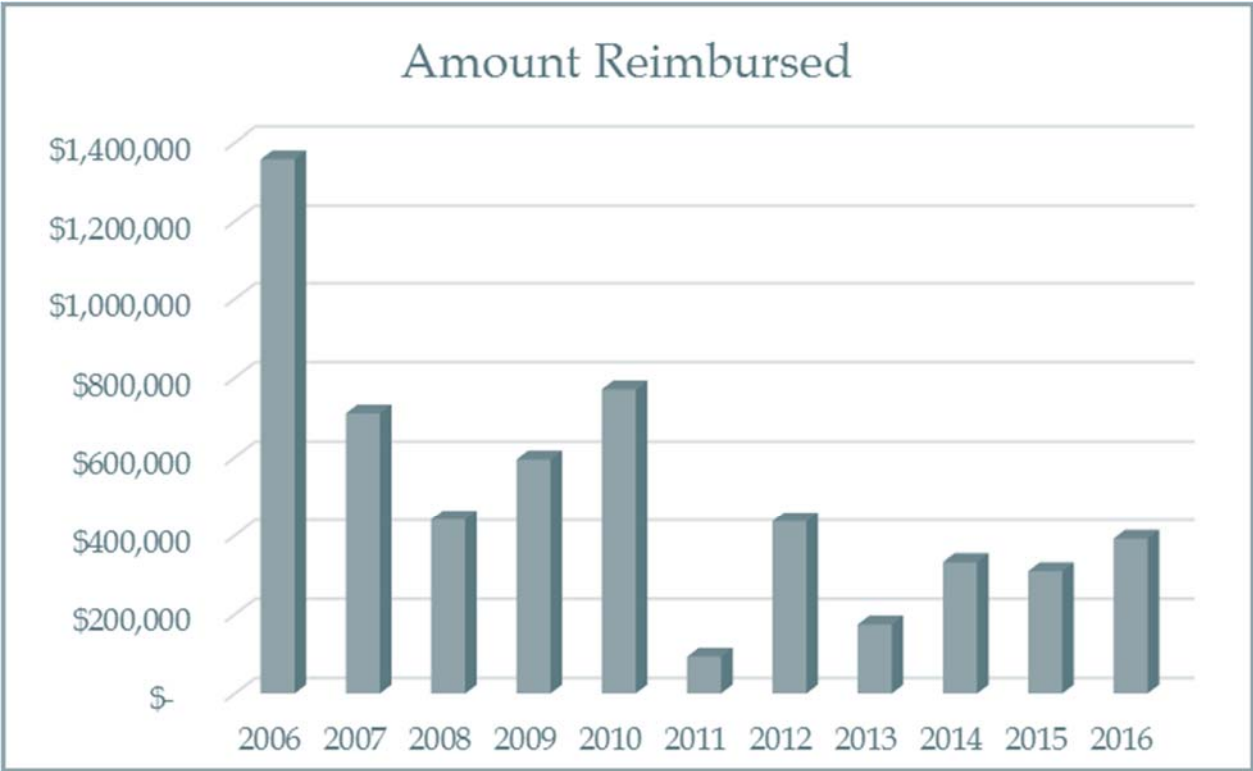
The Trustees subsequently set a \$50,000 per claim limit and a \$100,000 limit for losses caused by any one attorney. The amount of any award made is within the sole discretion of the Trustees.

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 2013 meeting, then the committee shall reconsider the claim at the final meeting in 2014 and in 2015. 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 PAID

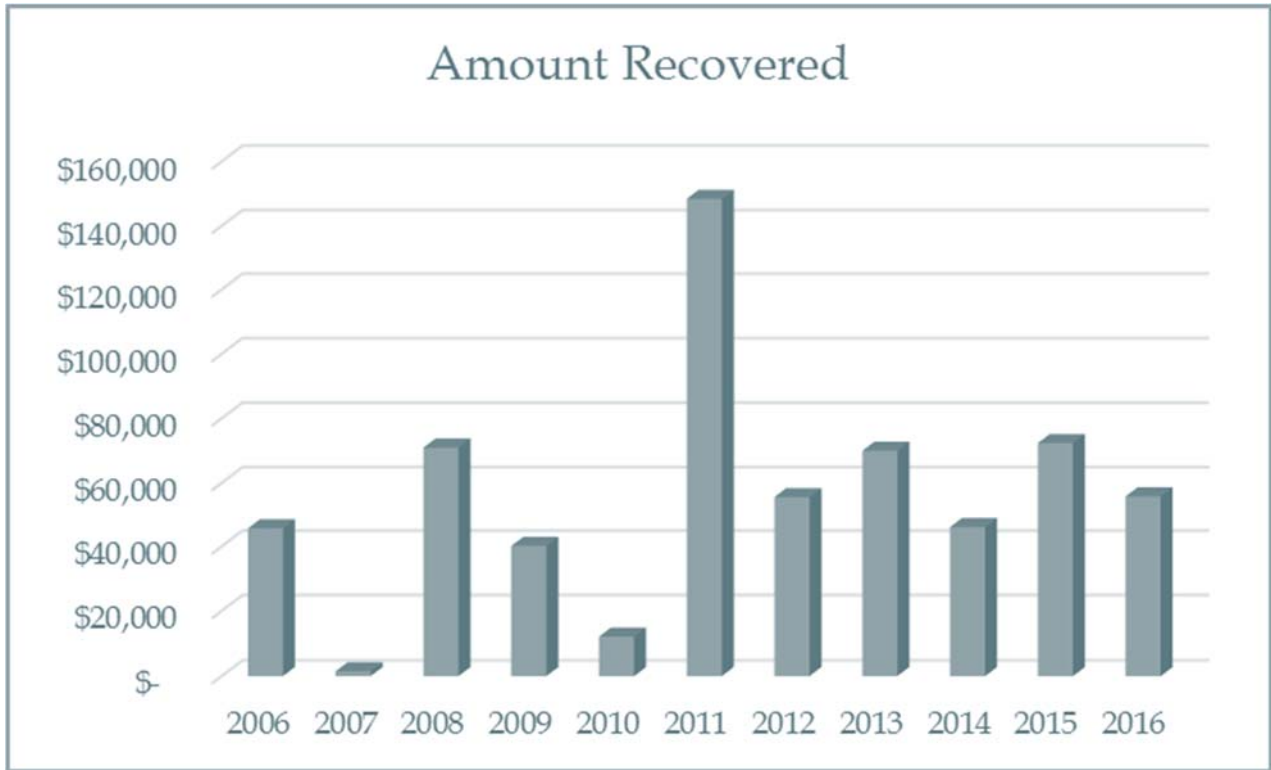
In 2016, the Board approved \$391,438 in payments to claimants.



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## 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 2016, the Board recovered \$55,829 from respondents.



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## VIII. STATISTICS ON REVENUES/EXPENSES

|                                   | <b>2016</b>                     |
|-----------------------------------|---------------------------------|
| <b>Revenue:</b>                   |                                 |
| Attorney Registration Fees        | \$ 639,211                      |
| Collections from Respondents      | 55,829                          |
| Interest Income                   | 4,762                           |
| Miscellaneous Income              | 693                             |
|                                   | <hr/> \$ 700,495                |
| <b>Expenditures:</b>              |                                 |
| Claimant Payments                 | \$ 391,438                      |
| Payroll & Miscellaneous           | 98,631                          |
|                                   | <hr/> \$ 490,069                |
| <b>Net Revenue (Expenditures)</b> | \$ 210,426                      |
| Beginning Fund Balance            | 4,667,082                       |
| <b>Ending Fund Balance</b>        | <hr/> <b>\$ 4,877,508</b> <hr/> |

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|                              |                |
|------------------------------|----------------|
| <b>Cumulative</b>            | <b>CY 2016</b> |
| Collections from Respondents | \$656,811      |

|                   |                |
|-------------------|----------------|
| <b>Cumulative</b> | <b>CY 2016</b> |
| Claimant Payments | \$6,306,829    |



