



Lawyers' Fund for Client Protection of the Hawai'i Supreme Court

2018 Annual Report

History & Purpose:

The Hawaii Lawyers' Fund was established in 1981 as a Trust by the Supreme Court of Hawai'i and members of the Hawaii State Bar Association. The Hawaii Lawyers' Fund provides a remedy for clients of attorneys who have suffered financial losses as a result of the dishonest conduct of their attorney.

The Hawaii Lawyers' Fund is financed entirely by assessments from attorneys in private practice. No taxpayer dollars are involved. Our legal profession is one of the few professions that take on the challenge and responsibility of making victims of dishonest conduct whole. The Fund exists because of the good lawyers who practice law in our state.

Most of the members of Hawaii's legal profession are honest, hardworking professionals who do their best for their clients. However, despite the profession's best efforts to establish and maintain high ethical standards, there are a few dishonest lawyers who take advantage of their clients. And unfortunately, these lawyers usually do not have the financial wherewithal to make restitution to their victims. This is the gap that the Hawaii Lawyers' Fund attempts to address.

The Hawaii Lawyers' Fund considers all claims resulting from the dishonest conduct of a member of the Hawaii State Bar, provided that:

- The dishonest conduct occurred while the attorney was a licensed member of the Bar of Hawaii;
- The claim originates from the attorney's providing legal services in the State of Hawaii;
- The Claimant engaged the attorney in the state of Hawaii;
- The claim stems from an attorney-client relationship or a fiduciary relationship such as when an attorney acts as an administrator, executor, or trustee of a trust or estate; and
- The attorney has either:
 - ✓ Died
 - ✓ Become bankrupt
 - ✓ Been declared incompetent or incapacitated
 - ✓ Has been disbarred or suspended from the practice of law
 - ✓ Voluntarily resigned from the practice of law
 - ✓ Has become a judgment debtor of the claimant because of his or her dishonest conduct
 - ✓ Has been judged guilty of a crime based on his or her dishonest conduct
 - ✓ Left the state of Hawaii and cannot be found.

There are several conditions under which the Hawaii Lawyers' Fund does not reimburse. They are:

- We do not reimburse claims occurring outside of a client-lawyer relationship nor outside of a lawyer's fiduciary role.



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- The loss must be the result of a lawyers' dishonest conduct.
- The Fund does not reimburse for losses due to negligence nor malpractice.

Unearned legal fees account for the majority of reimbursement applications.

Claims Experience:

| | 2018 | 2017 | 2016 | 2015 | 2014 |
|--|-----------|-----------|-----------|-----------|-----------|
| # Claims Opened during year | 6 | 15 | 7 | 8 | 16 |
| # Claims Disposed of during year | 13 | 4 | 7 | 8 | 16 |
| # Claims Pending at Year End | 23 | 30 | 19 | 19 | 19 |
| \$ Claims Pending at Year End | \$181,574 | \$293,794 | \$438,351 | \$401,090 | \$377,293 |
| # Claims Approved and Reimbursed | 6 | 0 | 2 | 2 | 7 |
| \$ Claims Approved and Reimbursed | \$21,050 | \$0 | \$200,000 | \$33,980 | \$65,781 |
| # Claims Dismissed – Fee Disputes | 3 | 2 | 5 | 5 | 11 |
| # Claims Dismissed – Lack of Cooperation from Claimant | 0 | 0 | 0 | 1 | 0 |
| # Claims Dismissed – Restitution by Atty or Other | 4 | 1 | 0 | 1 | 0 |

At year end 12/31/18, the Fund also had four claims that were approved for reimbursement totaling \$21,687 with payments pending the completion of documentation requirements. All claims were for Unearned Retainers where little or no work was performed by the respondent.

The Fund experienced personnel turnover in 2017 and 2018. Operations were affected by these staffing issues, which have since been addressed.

A new claims management system was installed in 2018. In addition to providing a desktop solution to managing documents and cases, the new system now provides staff and Trustees with timely data that has improved the Fund's ability to oversee and manage pending claims.

Public and professional education about the Fund is an ongoing effort. Copies of the Fund's informational brochures were sent to various City & County of Honolulu offices as well as care homes. Future mailings will be undertaken in 2019. The Fund is also planning to hold CLE workshops with the Hawaii State Bar Association in 2019 to provide licensed attorneys with more information about the Fund and the disciplinary process. The Fund's website will undergo revisions and upgrades in 2019, to make it easier to find and more user friendly.

Fund Trustees continue to attend the ABA Client Protection Forum as well as the National Client Protection Organization Workshop. Both provide Trustees with opportunities to learn of new developments and trends as well as new approaches to deal with difficult claims.



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The Process of Filing A Claim:

Application.

Claimants seeking reimbursement from the Hawaii Lawyers' Fund must complete an application and submit it to the Fund. The application should be completed with as much detail as possible and include the following information:

- The name and address of the attorney;
- The amount of the loss claimed;
- The date or period of time during which the alleged loss was incurred;
- Name and address of the claimant;
- A general statement of facts relative to the claim;
- Verification by the claimant in the form of copies of receipts, cancelled checks, agreements, legal documents filed, and copies of correspondence;

Where can a claimant obtain an application?

A claimant may obtain an application by calling the Hawaii Lawyers' Fund office at (808) 599-2483. Or they can go to the Fund's website at www.hawaiilawyersfund.com to download a copy of the application form. Claimants are encouraged to call the office to make an initial inquiry.

Claim Applications and supporting documentation may be turned in to the Hawaii Lawyers' Fund office which is located at:

Lawyers' Fund for Client Protection of the Supreme Court of Hawai'i
201 Merchant Street, Suite 1600
Honolulu, Hawaii 96813

(Please note that the Hawaii Lawyers' Fund is located in the same office as the Office of Disciplinary Counsel.)

Claim Limits & Attorney Caps.

The Hawaii Lawyers' Fund has established a limit that it will reimburse of \$100,000 per claim and \$300,000 per attorney. The purpose of claim limits and attorney caps is to prevent the Fund from being depleted by a catastrophic loss, so that it might help a greater number of claimants. Fortunately the Fund has been able to effect 100% reimbursement for most of the claims that have been approved.

Investigation.

Upon receipt, an application is initially screened to determine whether the claim meets eligibility requirements. If it does, then a copy of the claim application is sent to the attorney's last known address. An investigation is then conducted to determine whether the claim is for a reimbursable loss.



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The investigation also serves as a guide for the Trustees in determining the extent to which reimbursement shall be paid. If a claim is found to be for a non-reimbursable loss, or otherwise disqualified, no further investigation will be conducted and the claimant and attorney so advised.

Action by Trustees Upon Report.

Trustees review all qualified applications and may approve, reject, or modify the reimbursement; or order further investigation as they deem necessary. Any Trustee may request that testimony or documentary information be presented. Absent such recommendation or request, claims are processed on the basis of information contained in the report. The alleged defalcating attorney or the attorney's personal representative will be given an opportunity to be heard by the Trustees.

Notice of Determination.

Written notice of the Trustees' decision shall be provided to the claimant and the attorney whose alleged conduct gave rise to the claim or their representatives. The claimant and the attorney whose alleged conduct gave rise to the claim may request that the Trustees reconsider the determination by filing a written request with the Fund no later than 20 days following receipt of the Trustees' decision. The request shall be supported by written reasons for being given an opportunity to be heard by the Trustees. If such a request for reconsideration is made in a timely manner, the Trustees shall set a date, time and place for hearing. The Trustees, in their discretion, may limit the scope of any such hearing, and the Trustees shall not order any reimbursement from the Fund until after the requested hearing has been concluded. If the claimant or the attorney whose alleged conduct gave rise to the claim fails to request reconsideration, or the original determination of the Trustees is confirmed, the Trustees determination shall be final.

Recovery

The Hawaii Lawyers' Fund attempts to recover claim reimbursements from the attorney who committed the dishonest act. Claimants are required to agree to a Subrogation Agreement which assigns their rights to any repayment to the Fund. The Fund then attempts to obtain repayment from the attorney in question. If an attorney wishes to be reinstated, they must, as one of the conditions of reinstatement, repay the Fund for all claims paid on his or her behalf.

Trustees:

The Hawaii Lawyers' Fund is managed by five Trustees who serve voluntarily without compensation. Appointed for five year terms, there are three lawyer Trustees and two non-lawyer Trustees.

For further information about the Hawaii Lawyers' Fund, please refer to the Fund's website which can be found at www.hawaiilawyersfund.com.