



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

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## 2022 Annual Report

### History & Purpose:

The Lawyers' Fund for Client Protection of the Hawai'i Supreme Court ("Fund", formerly known as the Client Security Fund) was established in 1981 as a trust by the Supreme Court of Hawai'i. The Fund provides a remedy for clients of attorneys who have suffered financial losses as a result of the dishonest conduct of their attorney.

The 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.

The overwhelming majority of the members of Hawai'i'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 Fund attempts to address.

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

- The dishonest conduct occurred while the attorney was a licensed member of the Bar of Hawai'i;
- The claim originates from the attorney providing legal services in the state of Hawai'i;
- The Claimant engaged the attorney in the state of Hawai'i;
- 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 Hawai'i and cannot be found.



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There are several types of conduct under which the Fund does not reimburse. They are:

- Claims for reimbursement occurring outside of an attorney-client relationship, or outside of the lawyer's fiduciary role.
- Loss not resulting from the lawyer's dishonest conduct.
- Losses due to negligence, malpractice or incidental to the claimant's cause.

The lawyer's failure to refund unearned legal fees accounts for the majority of reimbursement applications.

The Office of Disciplinary Counsel staff who work on the Fund's claims and administration logged a total of approximately 1,500 hours in 2022.

## Claims Experience:

	2022	2021	2020	2019	2018	2017
# Claims Opened during year	57	25	39	16	6	15
# Claims Disposed of during year	39	11	12	8	13	4
# Claims Pending at Year End	90	72	58	31	23	30
\$ Claims Pending at Year End	\$1,985,046	\$2,420,804	\$2,286,205	\$1,516,783	\$181,574	\$293,794
# Claims Approved and Reimbursed	13	2	3	4	6	0
\$ Claims Approved and Reimbursed	\$281,199	\$101,655	\$15,544	\$20,877	\$21,050	\$0
# Claims Dismissed – Fee Disputes	1	1	0	3	3	2
# Claims Dismissed – Lack of Cooperation from Claimant	0	0	0	0	0	0
# Claims Dismissed – Restitution by Attorney or Other	0	2	1	1	4	1



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### Claims Approved in 2022:

Attorney	Type	Number of Claims	Amount
Christopher S. Bouslog	Unearned Fee	5	\$149,044.51
Gerard Lee Loy	Unearned Retainer	2	\$2,550.00
Robert F. Miller	Unearned Fee	1	\$5,232.72
Leon E. Pasker	Conversion	1	\$20,527.30
Stuart E. Ragan	Unearned Fee	1	\$30,445.00
David A. Sereno	Unearned Retainer	2	\$31,430.00
Gary M. Tsuji	Conversion	1	\$41,601.76

### 2022 Considerations:

The Fund saw more than twice the number of claims opened compared to 2021 (i.e., 57 vs. 25). The Fund disposed of claims at an increased pace to manage the growing number of pending claims, which totaled 90 claims at year end. The monetary value of claims pending has likewise increased to \$1,985,046.

The Fund continues to keep a watchful eye on claims considering the \$100,000 per claim and \$300,000 per attorney caps, as well as the Fund's financial balance (approximately \$400,000 as of December 31, 2022). The Fund could potentially be exhausted by a few attorneys with multiple claims. To ensure the continuity of the Fund, the Trustees anticipate increases in assessments may become necessary if the fund balance consistently falls below \$300,000.

Over the last few years, the Fund experienced a significant increase in the number of claims involving attorneys who were transferred to Inactive Status – Medical, as the respondent attorneys were considered to be incapable of defending themselves because of underlying health issues. The Fund continues to monitor the aging demographic of the Hawai'i State bar. We expect incapacity issues related to aging to continue into the foreseeable future. Over 40 percent of the Hawai'i Bar is 60 years old or more.



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### Active Hawai'i Bar Licenses

Age Range	2022	2021	2020	2019	2018	2017
70+	17.74%	16.9%	13.3%	12.5%	11.2%	9.9%
60 – 69	22.65%	24.2%	25.5%	25.4%	26.1%	26.2%
Aggregate of 60 – 70+	40.39%	41.1%	38.8%	37.9%	37.3%	36.1%

*Note: Calculations above based on statistics from:*

*<https://hsba.org/images/hsba/Misc/2022%20Bar%20Statistics%20and%20Summaries.pdf>*