

2023 NJSBA Fall Conference

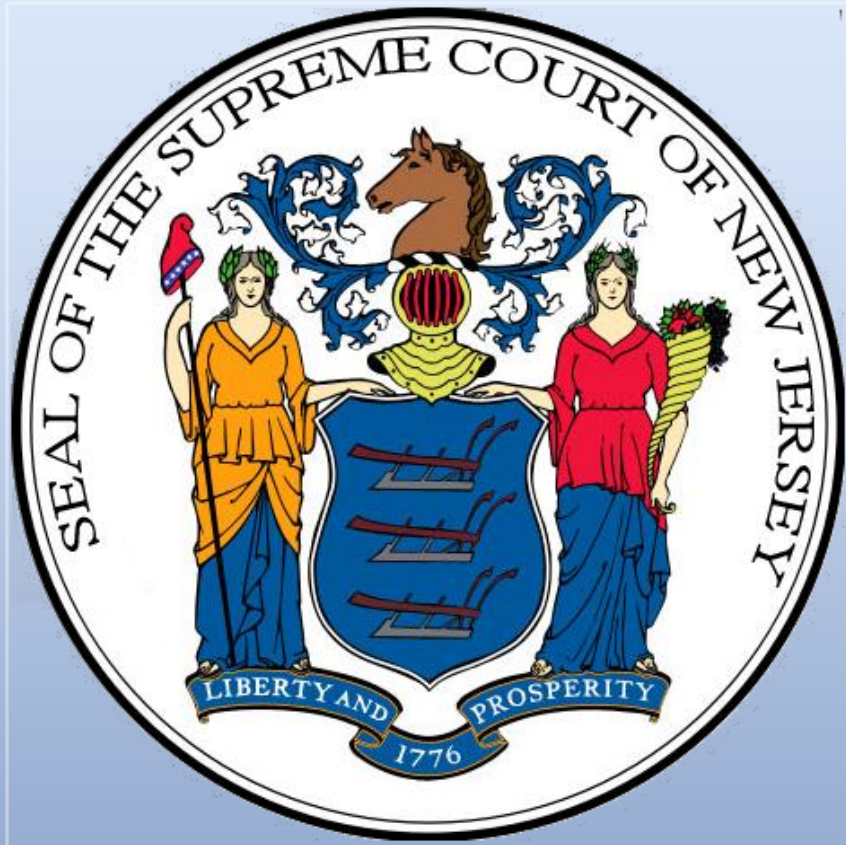
What You Need to Know about The Fund for Client Protection

The NJ Lawyer's Fund for Client Protection is governed by R 1:28. It has served the same noble purpose since its creation more than 50 years ago: to reimburse clients in those rare instances when a lawyer betrays their trust by stealing funds. We all know that portion of the yearly attorney registration fee goes to the fund, but there is much more that the AOC would like you to know!

Speakers:

Michael T. McCormick, Director and Counsel to the NJ Fund for Client Protection

Alicia F. Williams, the Deputy Director of the Fund for Client Protection



NEW JERSEY LAWYERS' FUND FOR CLIENT PROTECTION

THE CONSCIENCE OF THE BAR



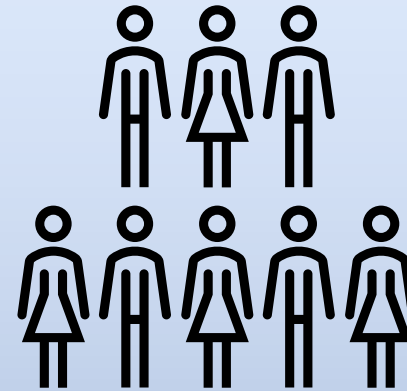
WHAT IS THE NJ CLIENT PROTECTION FUND?

AN ENTITY OF THE NJ SUPREME COURT, AUTHORIZED UNDER RULE 1:28 TO REIMBURSE CLIENTS WHO HAVE SUFFERED A LOSS DUE TO THE MISCONDUCT OF A MEMBER OF THE BAR.



THE HISTORICAL RECORD

- CLIENT PROTECTION FIRST RAISED IN GREAT BRITAIN BECAUSE OF MARKET VOLATILITY
- FIRST FUND ESTABLISHED IN NEW ZEALAND
- FIRST FUND ESTABLISHED IN THE U.S. BY VERMONT IN 1955
- NEW JERSEY'S FUND WAS ESTABLISHED IN 1969



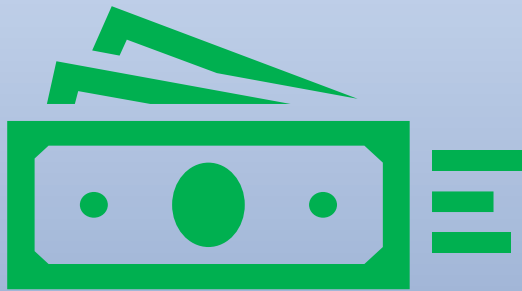
THE FUND IS ADMINISTERED BY A BOARD OF TRUSTEES COMPOSED OF FIVE LAWYERS AND TWO NON-LAWYERS APPOINTED BY THE SUPREME COURT TO SERVE STAGGERED FIVE-YEAR TERMS WITHOUT COMPENSATION. THE BOARD OF TRUSTEES EMPLOYS FULL-TIME STAFF AT THE HUGHES JUSTICE COMPLEX IN TRENTON TO HANDLE THE FUND'S AFFAIRS.

AMONG ITS DUTIES, THE BOARD OF TRUSTEES:

- CONSIDERS
VOLUNTEERS, MONTHLY
MEETINGS, AND
AGENDAS



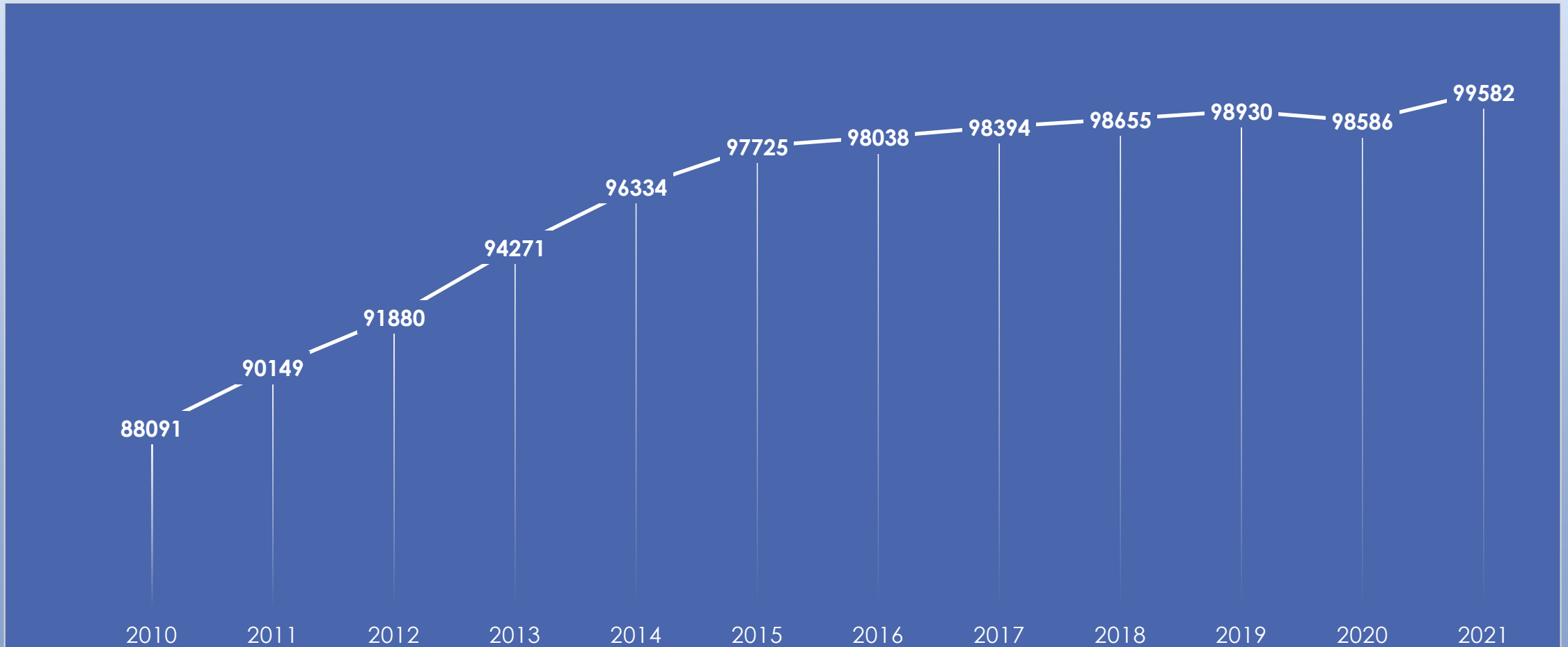
NJ LAWYERS' FUND ESTABLISHED IN 1969



MORE THAN \$90,000,000.00
PAID ON 4,802 CLAIMS SINCE
INCEPTION

.005% OF BAR MEMBERS BECOME RESPONDENTS

BAR POPULATION THE LAST 10 YEARS



THE FUND IS FINANCED BY

- NEW JERSEY'S JUDGES AND LAWYERS
 - PRO HAC VICE ATTORNEYS
- MULTIJURISDICTIONAL ATTORNEYS
 - IN-HOUSE COUNSEL
- FOREIGN LEGAL CONSULTANTS
- FOREIGN IN-HOUSE COUNSEL
- ***NO TAX DOLLARS ARE USED***

**NEW JERSEY
ATTORNEYS**

**\$46 OF YOUR ANNUAL
FEE SUPPORTS THE NJ
LAWYERS' FUND FOR CLIENT PROTECTION**

THANK YOU



TO ESTABLISH JURISDICTION

- ETHICAL CONDUCT IS A PERSONAL OBLIGATION OF A LAWYER. IF A CLAIMANT SUSPECTS AN ATTORNEY HAS BREACHED THE ATTORNEY/CLIENT AGREEMENT, A COMPLETED ATTORNEY GRIEVANCE FORM MUST BE FILED AGAINST THAT ATTORNEY WITH THE OFFICE OF ATTORNEY ETHICS.
- BECAUSE THERE ARE 18 DISTRICT ETHICS COMMITTEES THROUGHOUT THE STATE, A POTENTIAL CLAIMANT IS ADVISED TO CONTACT THE OFFICE OF ATTORNEY ETHICS (OAE) IMMEDIATELY AT 1-800-406-8594

THE GENESIS OF A CLAIM

- A CLAIM IS A REQUEST FOR REIMBURSEMENT DUE TO IMPROPER CONDUCT BY A MEMBER ON THE BAR
- CLAIMANTS MUST SHOW A MISAPPROPRIATION OF FUNDS DURING AN ATTORNEY/CLIENT OR FIDUCIARY RELATIONSHIP.
- CLAIMS MAY ALSO INCLUDE REIMBURSEMENT OF RETAINER FEES WHEN AN ATTORNEY NEGLECTS TO RENDER APPROPRIATE SERVICES






NON-COMPENSABLE “CLAIMS”

ALLEGATIONS OF FEE DISPUTES,
MISSPENT INVESTMENTS PLACED
THROUGH ATTORNEYS, AND
PROFESSIONAL
NEGLIGENCE/MALPRACTICE CLAIMS
AGAINST ATTORNEYS ARE
INELIGIBLE FOR COMPENSATION BY
THE FUND.

**THE NJ LAWYERS' FUND
ALSO INVESTIGATES
SUBPOENA INFORMATION,
CONDUCTS INTERVIEWS
AND TRACES SOURCE
FUNDS FOR PAYMENTS OF
CLAIMS**



The background features a collage of US currency. On the left and bottom, there are stacks of one-dollar bills. On the right, there are close-up details of a one-dollar bill, including the number '95 I', 'D.C.', and the number '6'.

**TOTAL SUBROGATION
RECOVERED
\$25,787,615.20**



ANNUAL REGISTRATION

- REGISTRATION IS BASED ON A CALENDAR YEAR.
- CLE REPORTING IS EVERY 2 YEARS.
- IOLTA REGISTRATION IS SEPARATE.

WWW.NJCOURTS.GOV/ATTORNEYS/ATTORNEY-REGISTRATION



User ID is NJ Bar License

Password expires every 90 days.

Options for forgetting passwords

**For technical issues call the Superior Court
Clerk's Office at 609-421-6100**

Or

Email at sccoattyreg.mailbox@njcourts.gov

THE 2022 BREAKOUT

- LAWYERS' FUND FOR CLIENT PROTECTION
- BOARD OF BAR EXAMINERS
- CONTINUING LEGAL EDUCATION
- OFFICE OF ATTORNEY ETHICS
- LAWYERS' ASSISTANCE PROGRAM

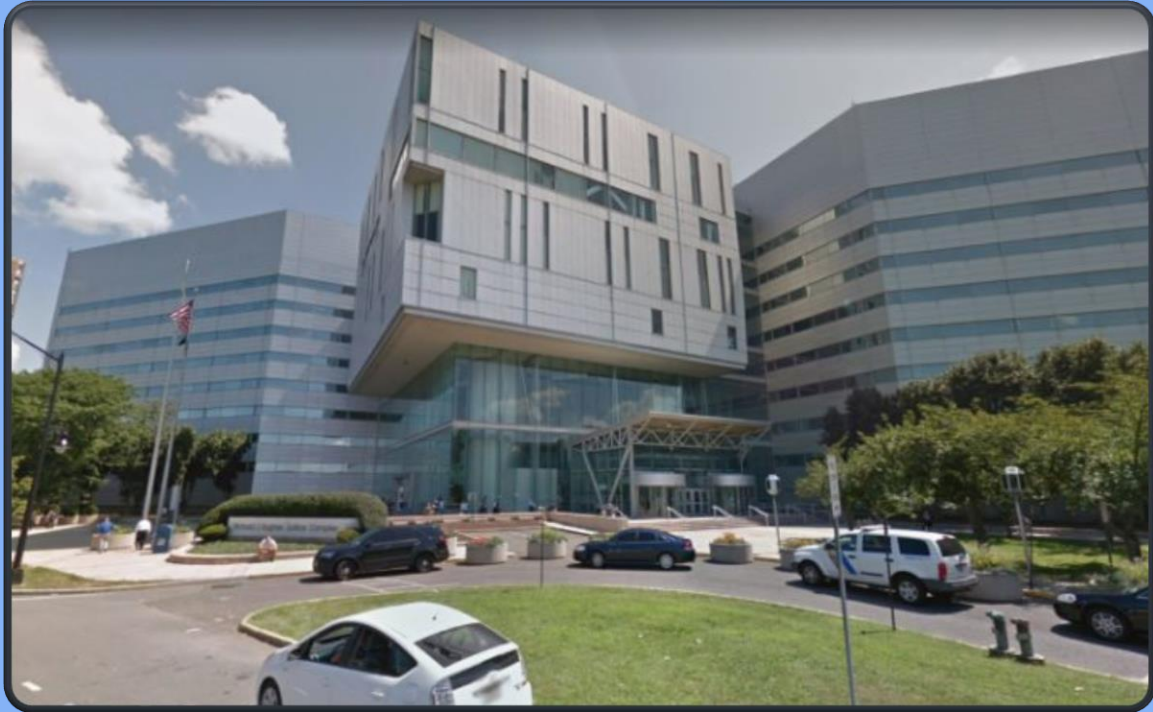




SUCCESSION PLANNING

ONE DISHONEST LAWYER CAN CAUSE SIGNIFICANT HARM TO CLIENTS AND TO THE REPUTATION OF THE BAR. THE LAWYERS' FUND FOR CLIENT PROTECTION IS OFTEN THE ONLY MEANS AVAILABLE TO REIMBURSE VICTIMS WHEN THIS ABERRANT BEHAVIOR OCCURS.





CONTACT THE FUND

- (609) 815-3030
- MICHAEL.MCCORMICK@NJCOURTS.GOV
- [HTTPS://WWW.NJCOURTS.GOV/PUBLIC/GET-HELP/LFCP](https://www.njcourts.gov/public/get-help/lfcp)

Slide 1



Slide 2



Slide 3



Slide 4

Why Does the NJ Lawyers' Fund for Client Protection Want You to Have a Succession Plan?

Claims Against Deceased Attorneys

- How Does the Fund handle such claims?
- Appointment of Attorney Trustees
R. 1:20-19



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Responsibilities of the Attorney Trustee R1:20-19 (b)

 MONITOR ACTIVE FEES AND DISTRIBUTE THEM TO CLIENTS	 TAKE POSSESSION OF ATTORNEY TRUST AND BUSINESS ACCOUNTS
 DISTRIBUTE IDENTIFIED TRUST FUNDS TO CLIENT OR OTHER PARTIES	 DISPOSE OF ANY REMAINING FUNDS AND ASSETS AS ORDERED BY THE COURT

Slide 6

Attorney Trustee - Things to Remember

- Client Confidentiality – in most cases, client consent is needed to disclose any information
- Immunity – Attorney Trustees shall be immune from liability for conduct in the performance of their official duties.
- Acceptance of Clients is Not Required
- Compensation - Attorney Trustees are entitled to reimbursement for actual expenses and reasonable hourly attorney's fees.

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NJ is only 1 of a few states that does not have a rule or recommendation regarding succession planning



Slide 8

ABA Model Rule 1.3- Diligence

Client-Lawyer Relationship
A lawyer shall act with reasonable diligence and promptness in representing a client.

ABA Model Rule 1.3 - Comment 5
To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action.

Slide 9

A Few Consequences of Not Having a Succession Plan



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Identifying a Successor - Things to Consider

- Expertise in your practice area(s)
- Familiar with you and your practice
- Practices in your geographic area
 - Good reputation
- Do you share the same values?
- How will your successor be compensated?
- Will the successor be taking over files or only making referrals?



Slide 11

Know the Law

Make sure that your successor understands all that is required to successfully operate a law office including all regulatory requirements or restrictions.



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A Few Duties of a Successor

- Review client files to determine where protective action is necessary to avoid missing deadlines, hearings, etc.
- Notify clients and service providers of death or disability
- Notify necessary Courts/Agencies
- Handle outstanding billing/invoices, incoming and recent mail
- Supervise and maintain trust account
- Handle Staffing/Personnel issues



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How to Get Started

- Maintain a list of active clients/open cases which includes current tasks and deadlines
- Maintain a list of employees which includes their salary
- Maintain a list of services providers
- Maintain a list of current passwords
- Identify firm assets
- Identify important data



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- Accountants • Business Consultants • Brokers • Landlords • Utility Providers
- Subscription Providers • Banks • Credit Cards • Insurers
- Payroll Company • File Storage Facility • Leasing Companies • Facilities/Maintenance Company

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Finalizing Your Succession Plan

- Written Agreement
- Training and Development of Successor
- Revise Retainer Agreement to include Client's Consent to your Succession Plan (Optional)
- Leave the Plan with a Trusted Individual or in a Secure Location
- Review the plan every 6 months and update as necessary

Slide 16

- Alice F. Wilkins, Dtd
- alice.wilkins@ricohus.com
- 408.815.9332



About the New Jersey Lawyers' Fund for Client Protection

The New Jersey Lawyers' Fund for Client Protection has served the same noble purpose since its creation more than 50 years ago: to reimburse clients in those rare instances when a lawyer betrays their trust by stealing funds.

Administration

The Lawyers' Fund is managed by a volunteer Board of Trustees. The five lawyers and two non-lawyers are appointed by the New Jersey Supreme Court and each member serves a 5-year term.

Proper Claims and Proof Required

To properly submit a claim, you must prove an attorney/client or fiduciary relationship with the lawyer. You must also prove a "compensable loss", which generally means that the lawyer collected money on your behalf (to be held in trust), and then stole it.

You must be able to show that the lawyer:

- Received money or property from you;
- Improperly took or used the funds received; and
- Caused a loss due to dishonest conduct.

Specific proof of payment to the lawyer can include copies of cancelled checks, escrow agreements, retainer agreements, and settlement statements. You must also provide a detailed explanation of the alleged loss caused by the lawyer's dishonest conduct with each claim form.

Each lawyer charged with wrongdoing in a claim will receive a copy of the claim with its supporting documentation and will be given an opportunity to reply and provide their own proof.

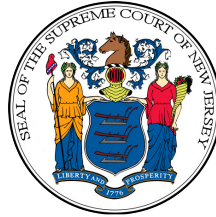
Limits on Claims

There is a limit of \$400,000 for each person who makes a claim (for losses arising after Jan. 1, 2007) with an aggregate maximum for all claims against any single lawyer of \$1.5 million. These limits are among the highest in the country.

**New Jersey Lawyers' Fund
For Client Protection**
Richard J. Hughes Justice Complex
25 Market St.
mail to: P.O. Box 961
Trenton, NJ 08625-0961

For more information, visit
www.njcourts.gov
or call us:
Claims and Billing:
855-533-FUND (3863)
Fax: 609-815-2935

LFCP.Mailbox@njcourts.gov



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ALICIA F. WILLIAMS
DEPUTY DIRECTOR

CN 12229 - FEBRUARY 2023



NEW JERSEY

Lawyers' Fund for Client Protection

Our commitment to law clients



The Fund's Jurisdiction

Before the Lawyers' Fund can begin its investigation, the lawyer who you are filing a claim against must be suspended, disbarred, deceased, placed on disability inactive status, or convicted of embezzlement or theft.

You cannot be reimbursed for claims involving pure fee disputes, unfortunate or ill-advised investments involving a lawyer, or professional negligence or malpractice. The Lawyers' Fund does not pay interest or consequential damages.

How to File a Claim

You can get a claim form by writing, emailing our office, calling us at (855-533-3863, or online at LFCP.Mailbox@njcourts.gov). Our staff will help you with the filing process. The original and one copy of a completed and signed claim form must be returned to us. There is no filing fee.

How Claims are Decided

The Lawyers' Fund has a legal staff that reviews and investigates all claims, which are then reviewed by the Board

of Trustees, who meet monthly to decide claims. Court *Rule* 1:28-3 gives the Trustees sole discretion to decide claims, including the amount, timing, and conditions of payment. The Board of Trustees can also decide to hold a hearing to take testimony from the person who made the claim, the lawyer, and other persons with relevant information.

Recovery of Payments Made

If your claim is successful, the Lawyers' Fund and you will sign a *Release, Assignment and Subrogation Agreement* that will then allow the Lawyers' Fund to pursue your rights against the dishonest lawyer and anyone else who might be liable under the law. The Trustees pursue reimbursement for all claims paid in order to maintain the funds that they administer on behalf of the Bar.

Fund Resources

Payments that are awarded by the Board of Trustees are not tax dollars. New Jersey lawyers and judges, as well as those lawyers granted permission to practice in New Jersey, such as pro hac vice lawyers (PHV), multi-jurisdictional practitioners (MJP), in-house counsel (IHC), and foreign legal consultants (FLC), pay into the Lawyers' Fund each

year. The fee that lawyers pay is \$21 for New Jersey lawyers in their third and the fourth calendar year of admission, and \$46 for those in the fifth through the 49th year. Those admitted more than 50 years in New Jersey are exempt.

Helping Victims and the Profession

One dishonest lawyer can cause significant harm to law clients and also to the reputation of the Bar. The Lawyers' Fund for Client Protection is often the only means available to reimburse victims when this illegal behavior occurs.

New Jersey lawyers can be proud because the Supreme Court and the Bar are committed to protecting the public against lawyer theft by maintaining a healthy and a responsive Lawyers' Fund for Client Protection. Lawyers who help victims with their claims are prohibited from charging a fee (*Rule* 1:28-3(f)).

The Lawyers' Fund is good for the public and good for the Bar, serving both in the highest tradition of the New Jersey Judiciary.