

# Lawyers' Fund for Client Protection

## *2019 Annual Report*

The Maine Lawyers' Fund for Client Protection (Fund) was created by an Order of the Maine Supreme Judicial Court, dated July 1, 1997. The purpose of the Fund is to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing clients who suffer losses caused by an attorney's dishonest conduct. The Fund was not designed to address losses caused by professional malpractice and no amounts are payable to clients for such activity.

### **TRUSTEES**

The Fund is administered by a Board of seven trustees appointed by the Maine Supreme Judicial Court. The trustees determine the eligibility of claims filed with the Fund and manage the Fund's assets. Trustees are appointed to three-year terms and may serve no more than two consecutive terms. Trustees are volunteers and serve without compensation but are reimbursed for their actual and necessary expenses incurred in the discharge of their duties.

### **OFFICERS**

Stephen J. Schwartz, Esq., Chair  
Marci A. Alexander, Esq., Treasurer  
Sarah McPartland-Good, Esq., Secretary

### **COURT LIAISON**

Honorable Jeffrey L. Hjelm

### **STAFF**

The Fund retains the Board of Overseers of the Bar for its administrative, financial, and case investigation functions.

### **CLAIM INTAKE AND EVALUATION**

A claimant seeking reimbursement from the Fund must complete a claim form. Upon receipt, the Special Counsel of the Board of Overseers of the Bar investigates the alleged loss, prepares a record, and submits a report with recommendation to the Trustees. The claimant has the duty to supply relevant evidence to support the claim.

### **TRUSTEES**

Martha Gaythwaite, Esq.  
Suzanne L. Johnson, Esq.  
Gary M. Koocher  
Timothy J. Winkeler

**TRUSTEE REVIEW**

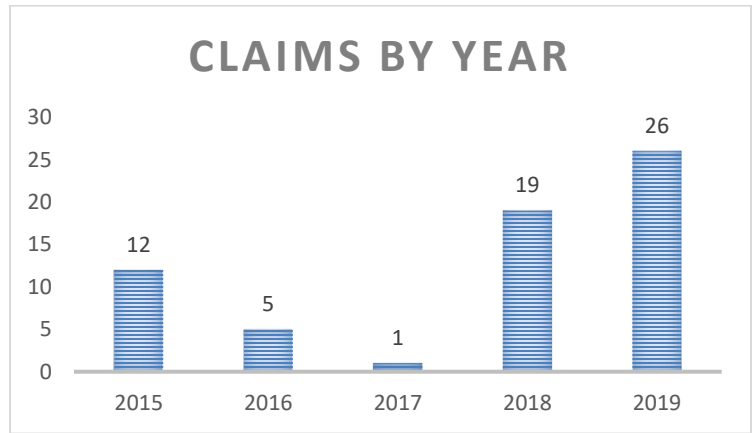
When the report and recommendations are complete, the trustees act on the claim. The approval or denial of a claim requires the affirmative votes of at least four trustees. Notice of the decision is given to the claimant and the lawyer. Reimbursement from the Fund is a matter of grace. No person has the right to reimbursement from the Fund whether as claimant, third-party beneficiary, or otherwise. The decisions and actions of the Fund trustees are not reviewable on any ground in any court or other tribunal.

**CLAIMS RECEIVED AND PROCESSED**

Twenty-six claims for reimbursement were received by the Fund in calendar year 2019. Comparatively, nineteen claims were received in 2018.

**CLAIMS REVIEWED BY TRUSTEES**

The Trustees held four meetings to conduct duties and responsibilities defined in the Rules for Lawyers’ Fund for Client Protection.



**2019 CLAIMS RECEIVED**

CLAIM NUMBER	RESPONDENT ATTORNEY	PAYMENT *	AREA OF LAW
LFCP-19-007	James M. Whittemore – Brunswick	\$31,472.34	Wills/Estates/Probate
LFCP 19-016	Jonathan C. Hull – Damariscotta	\$300	Wills/Estates/Probate
LFCP 19-024	James M. Whittemore – Brunswick	\$1,430.85	Wills/Estates/Probate
LFCP 19-028	Jonathan C. Hull – Damariscotta	\$18,500	Wills/Estates/Probate
LFCP 19-029	James M. Whittemore – Brunswick	\$834.66	Real Estate Law
LFCP 19-032	James M. Whittemore – Brunswick	\$21,906	Wills/Estates/Probate
LFCP 19-035	James M. Whittemore – Brunswick	\$915.74	Real Estate Law
LFCP 19-047	Jonathan C. Hull – Damariscotta	Claim Denied	Fiduciary
LFCP 19-096	Jonathan C. Hull – Damariscotta	\$3,680	Admin/Municipal
LFCP 19-125	James M. Whittemore – Brunswick	\$866.08	Real Estate Law
LFCP 19-185	James M. Whittemore – Brunswick	\$23,847.50	Insurance Claim
LFCP 19-186	James M. Whittemore – Brunswick	\$23,847.50	Insurance Claim
LFCP 19-196	James M. Whittemore – Brunswick	\$4,772.71	Real Estate Law
LFCP 19-210	Jonathan C. Hull – Damariscotta	\$1,409.09	Family Law
LFCP 19-368	Anthony P. Shusta (deceased)	\$4,000	Family Law
LFCP 19-373	Anthony P. Shusta (deceased)	\$2,000	Criminal Law
LFCP 19-377	Jonathan C. Hull – Damariscotta	\$6,500	Family Law
LFCP 19-385	Anthony P. Shusta (deceased)	\$2,000	Family Law
LFCP 19-391	Anthony P. Shusta (deceased)	\$1,105	Family Law
LFCP 19-405	Anthony P. Shusta (deceased)	\$1,370	Family Law

LFCP 19-410	Anthony P. Shusta (deceased)	\$2,500	Family Law
LFCP 19-414	Anthony P. Shusta (deceased)	\$1,000	Family Law
LFCP 19-426	Anthony P. Shusta (deceased)	\$1,650	Family Law
LFCP 19-431	Anthony P. Shusta (deceased)	\$2,200	Criminal Law
LFCP 19-458	Anthony P. Shusta (deceased)	\$2,245	Family Law
LFCP 19-480	Anthony P. Shusta (deceased)	\$2,000	Family Law
<b>Total:</b>		\$162,352.47	

*\* For the LFCP claims received in calendar year 2019, reimbursement payments were not necessarily issued in 2019, and may have been issued in 2020.*

In calendar year 2019, the Fund approved claims totaling \$233,552. Pursuant to Rule 13 of the Rules for Lawyers' Fund for Client Protection, the maximum amount of reimbursement to a claimant is capped from both an individual claimant and attorney perspective. In April of 2019, the Maine Supreme Judicial Court approved an increase in the per attorney reimbursement cap from \$100k to \$200k. The \$50k per claim cap was not changed. As a result, in 2019, the Fund paid \$219,909 in reimbursement. Since its inception in 1997, the Fund has approved claims totaling \$816,567.64 and has paid \$784,047 to 146 claimants from claims involving 40 attorneys.

#### **RESTITUTION/SUBROGATION**

Attorney Jack Manheimer from Pierce Atwood LLP represented the Fund with respect to obtaining reimbursement from former attorney Dale Thistle of Skowhegan. In 2015 and 2016 the Fund paid out \$100,000 (the Fund's per attorney reimbursement cap at the time) in approved claims to Mr. Thistle's former clients. A writ of Execution was recorded and a judgment lien effected against Mr. Thistle.

In May of 2017, the Fund, through its counsel, entered into a binding Stipulation and Settlement Agreement with suspended former attorney Scott Giese of Saco, by which Mr. Giese, under a formal payment plan, agreed to pay to the fund \$18,000 in full satisfaction of the amount he owes the Fund. In 2018 the Fund received \$225 from Mr. Giese in restitution to the Fund, and \$50 in 2019. Sadly, Mr. Giese passed away in December of 2018. Given the passing of Mr. Giese and the fact that his estate would not be probated, the Trustees voted to discontinue all subrogation efforts against Mr. Giese and his estate.

At the end of 2019, Special Counsel began collection efforts against Jonathan C. Hull and the estate of deceased Attorney Anthony P. Shusta.

#### **FINANCES**

The Fund is supported by an annual assessment against all Maine judges and attorneys. Its fiscal year runs from July 1st through June 30<sup>th</sup>. In FY-2017, the Fund collected \$106,367 in attorney assessments, \$50 from restitution, and generated \$22,284 from investments.

The Fund's accounts were audited by Perry, Fitts, Boulette & Fitton of Oakland, Maine. The fund balance on June 30, 2019, stood at \$968,827.

**CONCLUSION**

This report confirms the fact that the overwhelming majority of Maine attorneys observe the high standards of integrity when entrusted with client monies or property. However, the dishonest acts of a few can affect the public's image and confidence in the legal profession as a whole. The Lawyer's Fund for Client Protection endeavors to restore public confidence in the legal profession by reimbursing clients for losses sustained as a result of the dishonest conduct of their attorneys.

Respectfully submitted,

Stephen J. Schwartz, Esq.  
Fund Chair