

# The State Bar of California

## Client Security Fund - 1999 Activities Report

### Public Protection

The Client Security Fund, established in 1972, represents one of the State Bar's major efforts to achieve its public protection goals.

The Client Security Fund, an administrative unit within the Office of the Chief Trial Counsel, operates in conjunction with the discipline system to assist individual clients who have been financially harmed by the dishonest conduct of their lawyers.

The Fund reimburses clients who have lost money or property due to theft or an equivalent dishonest act committed by a California lawyer acting in a professional capacity. Supported entirely by lawyers, the Client Security Fund reimburses eligible applicants up to \$50,000.

In 1999, the Fund processed 767 applications to closure, resulting in 387 awards. In total, the Fund paid out \$2,811,909 in 1999.

The 611 applications filed with the Fund in 1999 was the lowest number received since 1987. From 1989 through 1997, the number of new applications filed never dipped below 1,000 annually. The filing rate began to plummet in June of 1998 when the discipline system was virtually shut down due to the State Bar's fee bill crisis. This crisis impacted the Client Security Fund because the discipline system generates most of the Fund's business. When funding for the discipline system was restored in February of 1999, the monthly filing rate for new applications to the Fund began to gradually increase. It is anticipated that the annual filing rate for new applications will return to historical levels by the year 2000.

Applications Filed Since 1987

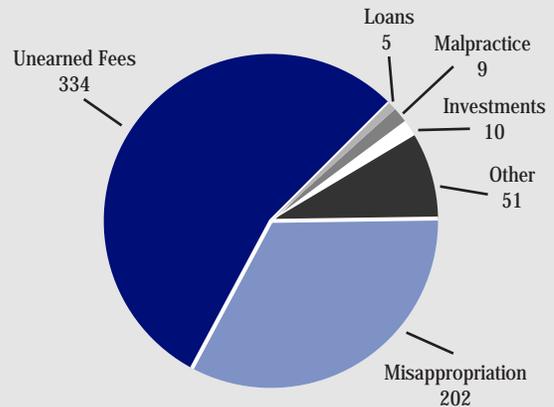
1999	611
1998	643
1997	1217
1996	1082
1995	1007
1994	1081
1993	1278
1992	1189
1991	1060
1990	1041
1989	1032
1988	842
1987	571



### 1999 Number of Applications Filed by Category

Total: 611

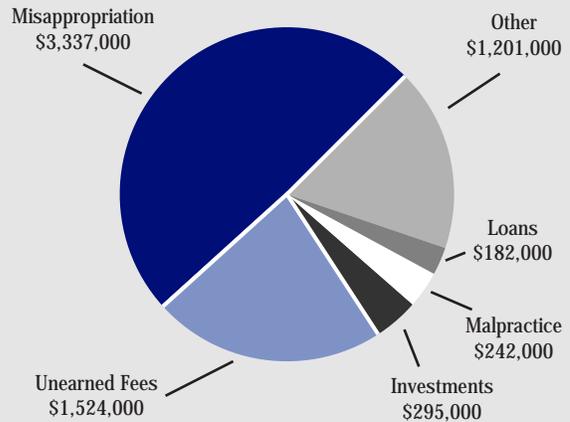
The largest number of applications filed falls in the "unearned fees" category (54.7%). The second largest number of applications filed falls in the "misappropriation" category (33%).



### 1999 Dollar Amount of Applications Filed by Category

Total: \$6,781,000

While "unearned fees" cases comprise the largest number of applications filed, "misappropriation" cases comprise the largest dollar losses reported. Unearned fees cases represented 22.5 percent of all dollar losses reported. Misappropriation cases represented 49.2 percent of all losses reported.



"This letter I am writing to you is to thank you so much for helping me to recover my money from the Client Security Fund. I wanted to also thank you for all your hard work and the promptness in the return of the money I thought I'd never recover again."

Quote from applicant, 1999.

## Legislation

Oversight of the Client Security Fund is provided by the Legislature through a series of statutes, and by the Bar's Board of Governors through the Rules of Procedure, Client Security Fund Matters.

The State Bar's authority to operate the Client Security Fund is found in Business & Professions Code section 6140.5. This Legislation, effective March 4, 1972, was a result of a Board resolution dated June 17, 1971 and a Bar-sponsored bill. Section 6140.5(a) currently requires the Board to maintain a Client Security Fund.

Section 6140.5(b) provides a special statute of limitations whereby the Bar may bring an action to enforce its subrogation rights within three years of the date of payment to an applicant. Another part of the Bar's effort to collect against the errant lawyer is section 6140.5(c) which allows the Bar to add any CSF payout, plus interest and processing costs, to the membership dues bill of any lawyer who has been disciplined or resigns with discipline matters pending and seeks to be reinstated.

Section 6140.55 allows the Board to assess up to \$40 per active member to support the Fund. This assessment is to be used only for the purposes of the Fund. In 1999, the assessment was \$40.00.

Section 6149.5 requires insurers to provide written notice to a claimant of settlement payments of \$100 or more delivered to the claimant's lawyer or other representative in settlement of any third-party liability claim.

Another statute that affects the Fund is section 473 of the Code of Civil Procedure. Under this section, when a court sets aside a default judgment due to a party or attorney's mistake, inadvertence, surprise or excusable neglect, it may (1) impose a penalty of no more than \$1,000, (2) direct the offending attorney to pay up to \$1,000 to the Client Security Fund, or (3) grant such other relief as appropriate. Under this statute, the Fund received \$10,050 in 1999.

## Rules and Coverage

The Fund is governed by the Rules of Procedure, Client Security Fund Matters which were adopted by the Board of Governors on December 21, 1985. Under these Rules, a seven-member Commission, appointed by the Board, acts as the Board's delegate in administering the Fund. From time to time, the Commission recommends to the Board amendments to the Rules of Procedure. Proposed rule changes are circulated for public comment before final action is taken by the Board.

The rules set forth the scope and purpose of the Fund, the authority of the Commission, the requirements for reimbursement, the application process, the confidentiality of the Fund records, and judicial review of Commission decisions.

## General Basis for Reimbursement

An applicant must establish the loss of money or property which came into the hands of an active member of the State Bar while acting as a lawyer, trustee or fiduciary as defined in the Rules of Procedure, Client Security Fund Matters.

## Statute of Limitations

Applications for reimbursement from the Fund must be filed within four years after the applicant discovers or reasonably should have discovered the loss.

## Status of the Lawyer

In order for reimbursement to be paid, the lawyer whose dishonest conduct caused the loss must have been acting as a lawyer, or in a specified fiduciary capacity, such as the trustee of an express trust or as an escrow holder.

Also, the lawyer must have been disciplined, voluntarily resigned, died, been found mentally incompetent or been judged guilty of a crime that involved the loss. The Rules do give the Commission the discretion to waive this requirement under certain limited circumstances - for example, in clear cases when formal charges have been filed but the lawyer has not yet been disciplined.

## Dishonest Conduct

A lawyer's dishonest conduct that can lead to payment from the Fund includes:

- theft or embezzlement of money or the wrongful taking or conversion of money or property;
- refusal to refund unearned fees received in advance where the lawyer performed no services or an insignificant part of the services contracted for such that the lawyer can be regarded as having lacked the intention to perform at the time payment was received;
- the borrowing of money from a client without the intention or the reasonably anticipated ability to repay it;
- obtaining money or property from a client by representing that it would be used for investment purposes when no investment is made; or
- an act of intentional dishonesty or deceit which directly leads to the loss of the money or property.

## Losses not Covered

The Fund will not repay a loss if:

- it was covered by insurance, a bond or another fund;
- it was caused by negligence or malpractice; or
- it was a bad business loss such as a failed investment.

The Fund also does not cover "interest," "incidental or consequential losses" or "expenses" caused by the attorney. Examples of incidental or consequential losses would include fees applicant paid another attorney or damages caused by malpractice, negligence or incompetence.

## Maximum Payment

The maximum allowable payment is \$50,000 for covered losses.

"You have gone a long way in restoring our faith in the legal profession and we are grateful. Please extend our thanks to everyone who worked on our behalf."  
Quote from Applicant, 1999.

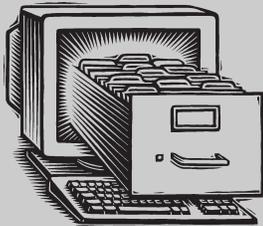
## Applications Paid by Category

In 1999, the Fund paid out \$2,811,909 on 387 awards.

The largest number of applications paid was in the “unearned fees” category (58.1%). The second largest category by size was “misappropriation” (38.7%) with “investments” (1.8%) and “loans” (1.3%) representing only a few of the applications paid.

### 1999 Number of Applications Paid by Category Total: 387

Unearned Fees	225
Misappropriation	150
Investments	7
Loans	5



### 5-Year Summary of Applications Paid

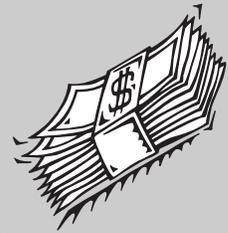
1999	387
1998	546
1997	708
1996	578
1995	543

## Dollars Paid by Category

While “unearned fees” cases represented the largest number of applications paid, “misappropriation” cases represented the largest dollar amount of applications paid. \$1,884,505.00, or 67 percent, of all dollars was paid out in the “misappropriation” category. “Unearned fees” cases represented 23.5 percent of all dollars paid out with “investments” (6.9%) and “loans” (2.6%) representing less than 10 percent of the total payouts.

### 1999 Dollars Paid by Category Total: \$2,811,090

Unearned Fees	\$661,245
Misappropriation	\$1,884,505
Investments	\$193,340
Loans	\$72,000



### 5-Year Summary of Applications Paid in Dollars

1999	\$2,811,000
1998	\$4,159,000
1997	\$4,661,000
1996	\$5,539,000
1995	\$3,229,000

## Applications Closed

Applications “closed” include those that are paid, rejected and withdrawn.

### 5-Year Summary of Applications Closed

1999	767
1998	1018
1997	1230
1996	1043
1995	998

## Applications Pending

The year 1999 closed with 758 applications pending, representing \$10,345,650 in reported losses.

### 5-Year Summary of Applications Pending at Year's End

1999	758
1998	913
1997	1223
1996	1236
1995	1197

# Decision Making

Policy oversight of the Client Security Fund is a joint responsibility of the Board of Governors and the Client Security Fund Commission.

The Board monitors the Fund through its: appointment of seven commissioners; approval of recommended changes and additions to the Rules of Procedure; consideration and approval of the Fund's annual administrative budget; and power to seek legislative authority to increase the lawyer's fees that support the Fund.

The Board exercises its authority as an entity and through its Board Committee on Regulation & Discipline.

Of the seven volunteer members who comprise the Commission, no more than four of them may be lawyers. They are assisted by a professional staff who screen, analyze, investigate and present cases to the Commission.

Among the Commission's key functions are:

- determining applications made to the Fund after a written and oral presentation of the matter by CSF staff and, occasionally, after hearing held before the Commission;
- recommending to the Board of Governors necessary staffing levels to carry out the Fund's business in a professional, timely fashion;
- taking steps to increase the efficiency and timeliness with which the Commission and staff process applications;
- monitoring the Fund balance and recommending to the Board of Governors necessary fee increases to guarantee its continued solvency;
- interpreting the Rules of Procedure through policy statements and recommending necessary amendments and additions;
- and providing for the efficient inner workings of the Commission itself.



THE STATE BAR OF CALIFORNIA  
Client Security Fund  
1149 South Hill Street  
Los Angeles, CA 90015-2299  
(213) 765-1140