

IN THE SUPREME COURT OF IOWA

FILED

MAR 01 2018

IN THE MATTER OF THE (
 CLIENT SECURITY COMMISSION (2017 Annual Report
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CLERK SUPREME COURT

This report of the Client Security Commission is submitted as required by Iowa Court Rule 39.4 for the period January 1, 2017 through December 31, 2017.

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INTRODUCTION

The Client Security Trust Fund (the fund) and the Client Security Commission (the Commission) were activated on January 1, 1974, with a \$20,000.00 grant from the Iowa State Bar Foundation. That grant since has been repaid. On December 1, 2017 the Commission filed a certificate with the Court regarding the sufficiency of the fund, under the provisions of Iowa Court Rule 39.6(3). As of December 1, 2017, the actual cash balance of the fund totaled \$1,603,909.18, and the unrestricted balance totaled \$1,514,976.68. Because the unrestricted fund balance totaled more than \$900,000.00, a special assessment will not be payable during 2018 by members of the bar of Iowa who have paid assessments in the total sum of at least \$200.00 to the Client Security Trust Fund in past years. A regular assessment of \$50 will be payable during 2018 as provided by Iowa Court Rule 39.6(2).

THE COMMISSION

Chapter 39 of the Iowa Court Rules provides for the Commission and the fund. Iowa Court Rule 39.1 provides for the appointment of seven members to the Commission, two of whom are not to be lawyers. During the period covered by this report, the non-lawyer members of the Commission were Kenneth H.

Boeke of Des Moines and Ann Powers of Fort Dodge. The lawyer members of the Commission during the period covered by this report were JoAnn L. Barten of Ames, Jennifer A. Clemens-Conlon of Dubuque, Todd A. Geer of Grundy Center, the Honorable Myron L. Gookin of Fairfield, and Joel Vos of Sioux City.

At the fall 2017 meeting, Jennifer A. Clemens-Conlon was elected Chair, JoAnn L. Barten was elected Vice Chair, and Kenneth H. Boeke was elected Treasurer.

RULE CHANGES AFFECTING THE COMMISSION

During 2015 and 2016, the Court adopted changes in Division III (Professional Regulation) of the Iowa Court Rules that affected operations of the Commission during the 2017 reporting season. One of these rule changes allowed for the collection of unpaid fees, costs, and penalties owed the Office of Professional Regulation or any Iowa court by an attorney during the annual client security reporting process. This fee collection was implemented in 2017 and resulted in the recovery of \$30,910.60 in unpaid fees, costs, and penalties owed to the Clerk of Court for the Iowa Supreme Court from 108 Iowa lawyers.

Also adopted in 2015 was a new rule directing that the costs of non-routine trust account audits will be assessed to the attorney when conducted based on specified causes. Assessment to the attorney will occur only if the

audit shows the account was not in substantial compliance with trust account rules. As of the end of 2017, thirty-nine (39) attorneys had received notification that they were subject to the new cost-shifting rule. No funds have yet been assessed against any attorneys for the auditing costs.

Finally, effective December 25, 2017, all active practitioners are now required to complete a mandatory short form designation of an assisting attorney or entity as part of the annual questionnaire filed with the Client Security Commission. The compliance with this rule change will be addressed in next year's annual report.

CLAIMS EXPERIENCE

Claims Considered

During 2017, the Commission authorized payment on twenty-two requests for reimbursement, totaling \$307,380.00. The claims approved during 2017 are summarized as follows:

The Commission authorized payment on one claim in the amount of \$1,500.00 based on the actions of lawyer Karen A. Dales. Ms. Dales' license to practice law in Iowa has been suspended.

The Commission authorized payment on eighteen claims totaling \$300,000.00 based on the actions of lawyer David A. Roth. Mr. Roth is deceased.

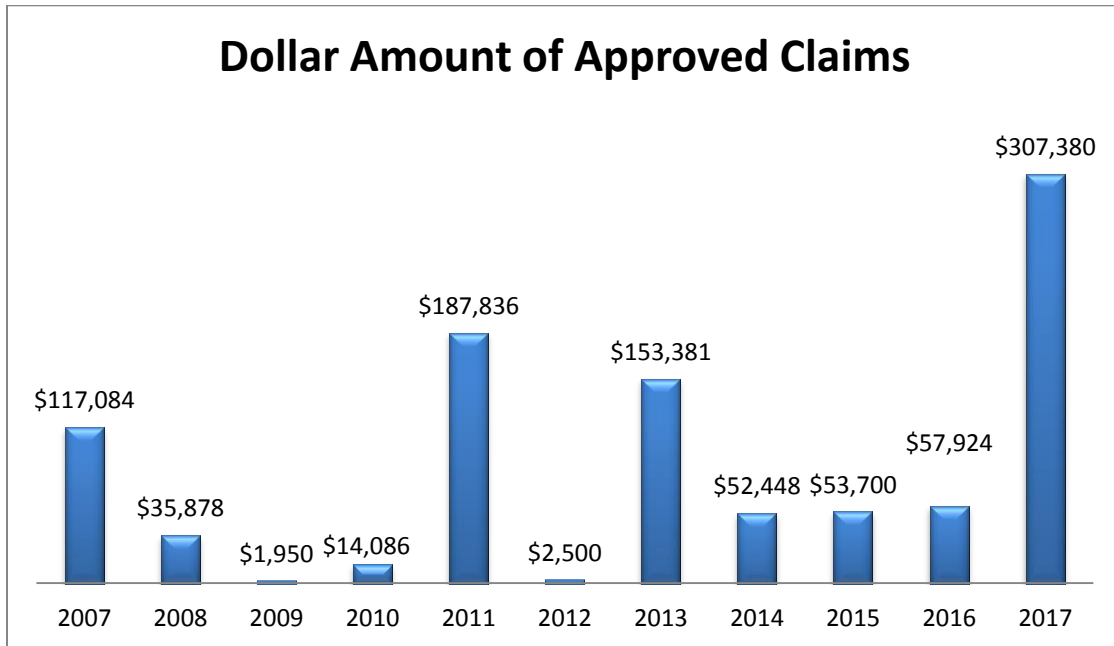
The Commission authorized payment on one claim in the amount of

\$1,750.00 based on the actions of non-Iowa lawyer Richard C. Mendez. Mr. Mendez’s privilege to practice law in Iowa has been suspended.

The Commission authorized payment on one claim in the amount of \$3,130.00 based on the actions of lawyer Sandra E. Suarez Quilty. Ms. Suarez Quilty’s license to practice law in Iowa has been suspended.

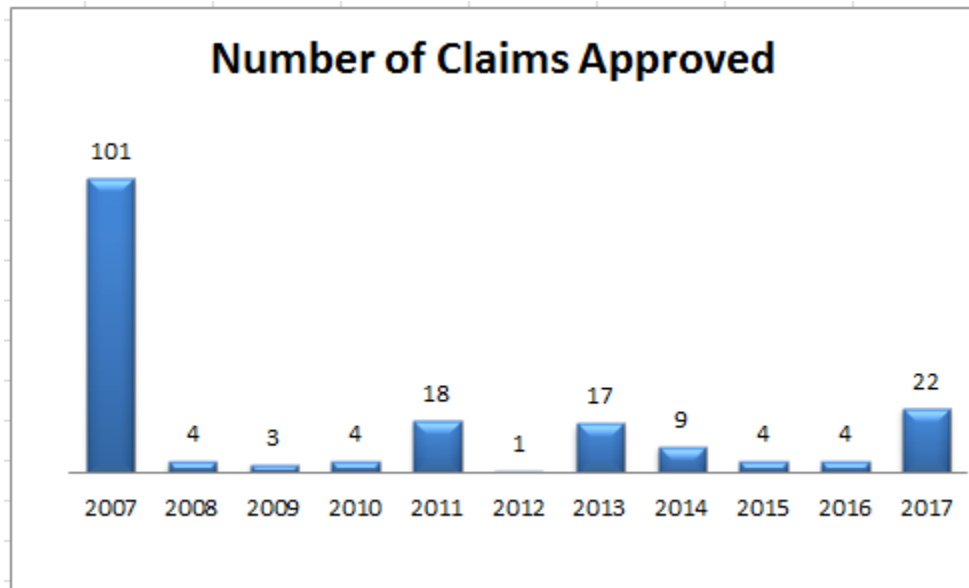
The Commission authorized payment on one claim in the amount of \$2,500.00 based on the actions of lawyer Pamela Vandel. Ms. Vandel’s license to practice law in Iowa has been suspended.

As shown in the following chart, the total amount of money approved for claims during 2017 exceeds the claims experience in prior years:



The number of claims approved by the Commission during 2017 also

exceeds the claims experience in most prior years.¹



Thirty-two requests for reimbursement were pending before the Commission on January 1, 2017. During calendar year 2017, eight new requests for reimbursement were filed. No previously closed requests for reimbursement were reopened. The disposition of these forty pending and new matters during 2017 was as follows:

<u>Disposition</u>	<u>Number</u>
Payment authorized	22
Administratively dismissed	8
Reimbursement denied	6
Pending on December 31, 2017	4

¹ It should be noted that the 101 claims approved in 2007 were for just 4 attorneys, one of whom was the subject of 97 claims. But for that individual, there would have been only four claims that year. 18 of the claims in 2017 were for one attorney.

Commission rules in effect during calendar year 2017 for conduct before January 1, 2014, provided \$50,000.00 as the maximum reimbursement one claimant may receive from the fund, and \$150,000.00 as the maximum aggregate amount payable from the fund because of the dishonest conduct of any one attorney. For claims arising from lawyer conduct on or after January 1, 2014, the commission rules provided \$100,000.00 as the maximum reimbursement one claimant may receive from the fund, and \$300,000.00 as the maximum aggregate amount payable from the fund because of the dishonest conduct of any one attorney. The total sum requested for the claims pending on December 31, 2017, as limited by per claim and per lawyer caps, was \$82,935.00.

Substantially all of the claims denied in recent years failed to qualify for reimbursement because they did not arise from the dishonest conduct of a member of the bar of Iowa while acting as an attorney or fiduciary. The Commission is not authorized to approve requests for payment arising out of voluntary joint ventures with lawyers or the personal lending of money to lawyers. The Client Security Trust Fund is not intended and is not authorized to provide protection against malpractice or to resolve disputes about the amount of a lawyer's charges.

No reimbursements were recovered during calendar year 2017 on prior

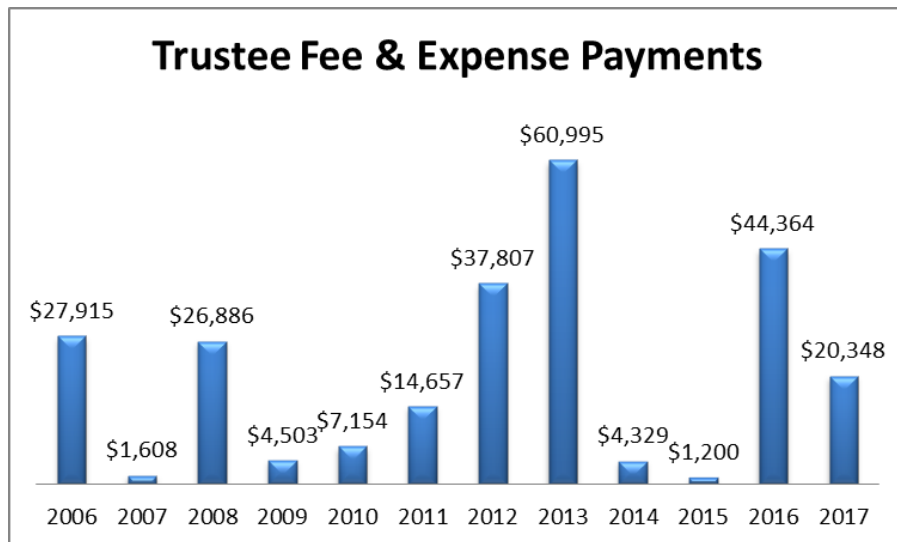
claims paid by the fund. The Commission will continue its policy of seeking reimbursement of paid claims when circumstances warrant.

Trustee Compensation & Expenses

Iowa Court Rule 34.17 provides for disability suspension pursuant to a sworn application on behalf of a county bar association or the Attorney Disciplinary Board, and requires the chief judge of the judicial district in which the attorney has been practicing to appoint a lawyer or lawyers to serve as trustee in connection with matters in progress in the office of the lawyer suspended under the rule. Iowa Court Rule 34.18 provides for appointment of a trustee by the district chief judge upon application of a county bar association or the Attorney Disciplinary Board if a practicing lawyer has died or been suspended or disbarred from practice, provided reasonable necessity exists. Appointment of a trustee to inventory files, sequester client funds, and take other appropriate action to protect the interests of the clients and other affected persons helps identify and assists management of claims for reimbursement filed with the Commission.

Iowa Court Rules 34.17 and 34.18 also provide that a trustee may seek reasonable fees and reimbursement of costs in connection with these matters from the suspended attorney. If unsuccessful, the trustee may submit a fee and

expense claim to the Commission. The Commission, in its sole discretion, determines the merits of the claim and the amount of any payment from the fund. Trustee claims for fees and expenses in the total amount of \$20,348.27 were authorized for payment from the fund during 2017.



No reimbursement was recovered during calendar year 2017 on prior trustee fees and expenses paid by the fund. The Commission will continue its policy of seeking reimbursement of paid trustee fees and expenses when circumstances warrant.

COMPLIANCE

As of December 31, 2017, 16,729 lawyers were licensed to practice law in Iowa, an increase of 252 lawyers from the previous year. Of these 16,729 licensed attorneys, 9,542 were in active status in Iowa. This is 126 attorneys fewer than 2016's 9,668 active attorneys. With regard to the active 9,524 attorneys, they break down into the following categories based on Iowa Court Rules 39.6 and 39.7:

	2017	2016	2015	Difference '16 to '17
Full Time	5,352	5,369	5,235	(17)
Part Time	1,260	1,312	1,379	(52)
Corporate	1,032	1,053	1,021	(21)
Government	1,281	1,329	1,347	(48)
Judge	254	265	271	(11)
New Attorney	241	204	293	37
Military Service	57	60	63	(3)
House Counsel	54	61	54	(7)
Emeritus	5	8	9	(3)
Multijurisdictional Practitioners	4	8	7	(4)
Foreign Legal Consultant	2	2	1	0

As will be noted by the table above, the decrease in active attorneys was across the board in all categories. The decrease appears to be primarily due to the change in requirements concerning inactive status and an increased number of filings to go inactive before the end of 2017. Attorneys who took “inactive” status were not required to file annual reports with the Commission, and are exempt from payment of assessments for the fund or annual fees for support of the disciplinary system.

Starting on January 1, 2018, inactive status was eliminated and a new “exempt” status created—one that now requires an annual exempt attorney report and a \$50 per year exemption fee. Attorneys who were in inactive status on or before December 31, 2017, fell under the prior rule and could avoid paying the \$50 exemption fee. Hence there was a dramatic increase in the number of attorneys choosing to take inactive status in 2017 versus prior years: 462 attorneys who went inactive as compared to 296 in 2016.

During 2017, lawyers admitted within the past two years were exempt from payment of assessments into the fund. Lawyers in active duty military service status or emeritus status were also exempt from payment of assessments into the fund. Lawyers categorized as full-time practitioners, government employees, full-time corporate employees, judges, multijurisdictional practitioners, or part-time practitioners contributed an

assessment of \$50.00 to the fund unless they had paid assessments totaling \$200.00. The majority of these lawyers previously had paid the full \$200.00 in assessments. House counsel and foreign legal consultants paid a \$200.00 assessment to the fund at the time their registration was approved.

During calendar year 2017, the licenses of eleven attorneys were suspended by the Court for failure to comply with the reporting and fee payment provisions of chapter 39 of the Iowa Court Rules. Failure to file the required annual questionnaire and statement with the Commission by March 10th of the year resulted in payment of a late filing penalty ranging from \$25 to \$200 under the Commission's rules by 394 lawyers during 2017.

ANNUAL FEE TO FINANCE DISCIPLINARY SYSTEM

In addition to providing indemnification for losses caused to the public by the dishonest conduct of members of the bar of this state, the fund also supports administration of the lawyer disciplinary system and other programs that impact the disciplinary system, including but not limited to the Iowa Lawyers Assistance Program.

As a condition to continuing membership in the bar, every bar member is required to pay to the Commission an annual fee as determined by the Court to finance the disciplinary system, unless exempt. The annual fee during 2017 was

\$175.00. Annual fees received to finance the disciplinary system totaled \$1,564,150 during 2017. The fees received to finance the disciplinary system were expended to pay operating expenses of the Iowa Supreme Court Attorney Disciplinary Board, the Grievance Commission of the Supreme Court of Iowa, the Iowa Supreme Court Commission on the Unauthorized Practice of Law, and a portion of the operating expenses of the Iowa Lawyers Assistance Program. The annual fee to be paid by each attorney to support the attorney disciplinary system for calendar year 2018 was increased to \$200.

The Commission has established separate bookkeeping records and accounts for funds received to finance the disciplinary system. A disciplinary fund checking account has been established for disciplinary operations. The annual fees received from attorneys to finance the disciplinary system are deposited in the investment account of the Commission as part of the online reporting system for lawyers, and then transferred to the disciplinary fund checking account. Funds deposited in the disciplinary fund checking account are diverted to interest-bearing certificates of deposit or a deposit savings account to the extent not necessary to support current operations of the entities supported by the annual fee.

AUDIT

The audit report prepared by Brooks Lodden, P.C., Certified Public Accountants, for the accounting period ending June 30, 2017, previously has been submitted to the Court. The financial report includes a section entitled *Management Discussion & Analysis*, which was prepared by Commission staff. Examination of the *Management Discussion & Analysis* is recommended in lieu of any separate analysis the Commission might provide regarding financial operations of the Commission.

The Commission continues to adhere to its longstanding investment philosophy of safety. The Commission's policy is to invest only in United States government or United States government-related securities or fully FDIC-insured brokered certificates of deposit. Commission funds otherwise are placed in deposit accounts covered by FDIC insurance or the Iowa public funds statute, Iowa Code chapter 12C.

OPERATIONS

Commission funds are deposited in accounts at Wells Fargo Bank, Des Moines, Iowa. All checks drawn upon the investment checking account require the signature of two authorized signatories. The operating funds are deposited in a separate checking account with a maximum of one-half of the monthly operating budget being transferred into the account at any one time. The

director and the assistant directors of the Office of Professional Regulation are authorized to sign checks from that account up to a maximum of \$2,000.00, with checks over \$2,000.00 requiring the signature of two authorized signatories. A \$200,000.00 dishonesty insurance policy covers the director, all employees of the Commission, and all Commission members.

For the fiscal year beginning July 1, 2017, the Court approved the attached operating budget.

COMPLIANCE REVIEWS

The Commission's audit staff conducts routine audits of all lawyers in active practice in Iowa and examines their trust accounts, with the goal of examining each trust account every three to four years. The fact that a routine examination is made does not indicate any violations are suspected on the part of the lawyer or lawyers involved. Cooperation by members of the bar continues to be excellent, and the majority of Iowa lawyers properly use their trust accounts.

During 2017, auditors employed by the Client Security Commission conducted trust account compliance examinations as shown in the following table. Also during 2017, the auditors reviewed accounts in which lawyers were serving as fiduciaries as shown in the table.

Trust Account Compliance Examinations	494
# of Lawyers Subject to Compliance Exams	1030
Fiduciary Account Examinations	147

These examinations encourage lawyers to maintain their trust accounts and fiduciary accounts in accordance with the requirements of Iowa Rule of Professional Conduct 32:1.15 and chapter 45 of the Iowa Court Rules.

The Commission's staff has published an outline on trust account procedures and made it available to all Iowa lawyers on the Commission web page. In addition, the director and assistant directors of the Office of Professional Regulation periodically appear at continuing legal education events to discuss proper trust accounting procedures. Also the Commission auditors and staff are happy to share their knowledge and experience to assist any lawyers who have questions regarding trust account management.

Iowa was the first state to periodically examine lawyers' trust accounts and continues to be the leader in that field. It is the Commission's belief that routine examinations of lawyers' trust accounts help deter that small number of lawyers who might otherwise make use of the funds of others, and also help limit losses resulting from attorney diversion of client monies through early detection.

Dated: 28th of February, 2018.

CLIENT SECURITY COMMISSION OF
THE SUPREME COURT OF IOWA

Jennifer A. Clemens-Conlon Chair
JoAnn L. Barten, Vice Chair
Kenneth H. Boeke, Treasurer
Todd A. Geer
The Honorable Myron L. Gookin
Ann Powers
Joel D. Vos

By



Jennifer A. Clemens-Conlon, Chair

CLIENT SECURITY COMMISSION

PROPOSED FISCAL YEAR 2017-2018 BUDGET

OPERATING EXPENSES

Salary and Salary Expenses	
Director	\$25,613.29
Assistant Director	\$55,726.72
Auditors	\$130,800.00
Clerical - Bookkeeping	\$41,453.36
Vacation/Sick Leave Payout	\$0.00
Part-Time Data / Call Center Support	\$0.00
Employee Insurance	\$22,304.24
Deferred Compensation	\$1,215.00
FICA	\$19,399.89
IPERS	\$22,645.89
Travel Expenses - Director, Commissic	\$2,500.00
Travel Expenses - Auditor	\$27,000.00
Rent	\$8,126.00
Auditing	\$2,375.00
Telephone	\$1,900.00
Office Supplies	\$1,400.00
Printing	\$1,000.00
Postage	\$2,500.00
Copier Lease	\$1,200.00
Repairs & Maintenance	\$200.00
Employer Insurance	\$1,200.00
Unemployment Insurance	\$180.00
Banking Fees	\$700.00
Miscellaneous, Including Moving	\$1,000.00
Automation Support	\$600.00
Internet App. Maint. & Development	\$52,350.00
Internet Payment Charges	\$15,000.00
Payroll Processing	\$650.00
Staff Communications Support	\$1,800.00
TOTAL OPERATING EXPENSES	<u>\$440,839.39</u>
CAPITAL EXPENDITURES	\$500.00
TOTAL PROJECTED EXPENDITURES	<u>\$441,339.39</u>