

FILED

FEB 28 2019

CLERK SUPREME COURT

IN THE SUPREME COURT OF IOWA

IN THE MATTER OF THE (
CLIENT SECURITY COMMISSION (**2018 Annual Report**
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This report of the Client Security Commission is submitted as required by Iowa Court Rule 39.4 for the period January 1, 2018, through December 31, 2018.

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, 2018, 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, 2018, the actual cash balance of the fund totaled \$1,802,784.71, and the unrestricted balance totaled \$1,567,779.88. Because the unrestricted fund balance totaled more than \$900,000.00, a special assessment will not be payable during 2019 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 2019 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 D. Vos of Sioux City.

At the fall 2018 meeting, the Honorable Myron L. Gookin was elected Chair, JoAnn L. Barten was elected Vice Chair, and Kenneth H. Boeke was elected Treasurer.

CLAIMS EXPERIENCE

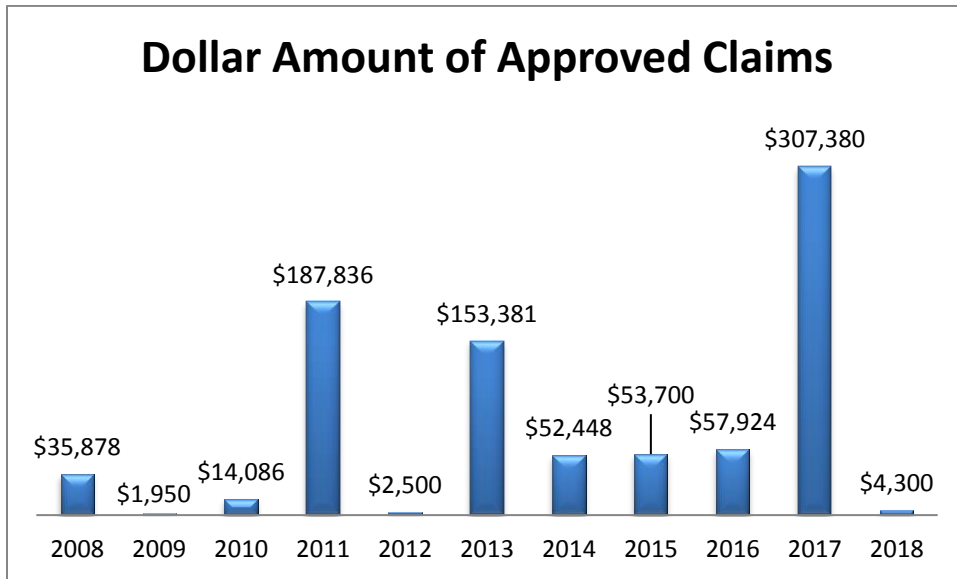
Claims Considered

During 2018, the Commission authorized payment on two requests for reimbursement, totaling \$4,300.00. The claims approved during 2018 are summarized as follows:

The Commission authorized payment on one claim in the amount of \$2,500.00 based on the actions of lawyer Pamela Vandel. As of the date of this report, Ms. Vandel's license to practice law in Iowa is under suspension.

The Commission authorized payment on one claim in the amount of \$1,800.00 based on the actions of lawyer Kyle Earley. As of the date of this report, Mr. Earley's license to practice law in Iowa is under suspension.

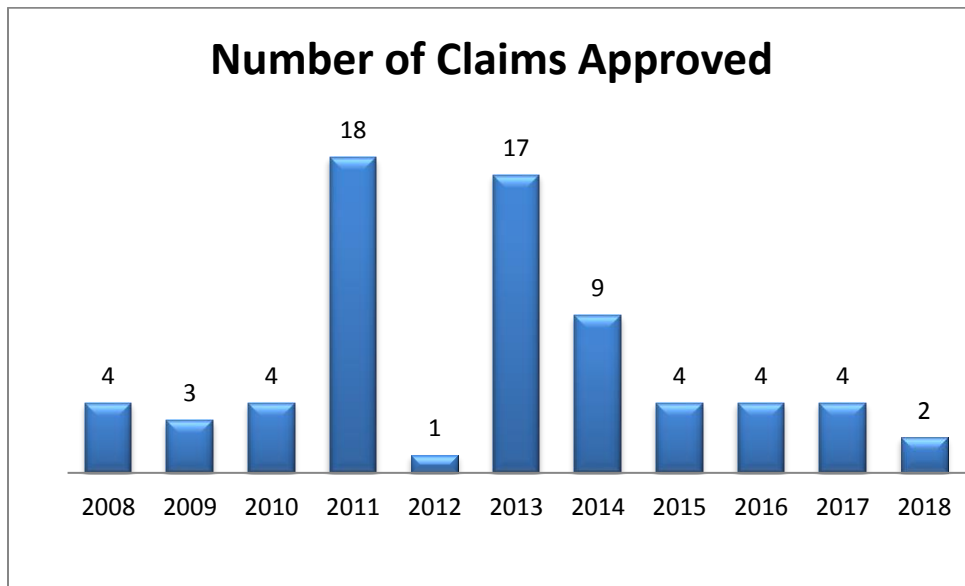
As shown in the following chart, the total amount of money approved for claims during 2018 is atypical of the claims experience in prior years:



The number of claims approved by the Commission during 2018 is on par with the claims experience in most prior years. Only four requests for reimbursement were pending before the Commission on January 1, 2018. During calendar year 2018, nineteen new requests for reimbursement were filed. No previously closed requests for reimbursement were reopened. The disposition of these twenty-three pending and new matters during 2018 was as follows:

<u>Disposition</u>	<u>Number</u>
Payment authorized	2
Administratively dismissed	9
Reimbursement denied	4
Pending on December 31, 2018	8

The number of claims approved during 2018 was half that of each of the preceding three years, although that statistic can be misleading as the number of claims has little relevance to the amount of the claims paid.



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, 2018, as limited by per claim and per lawyer caps, was \$219,929.23.

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.

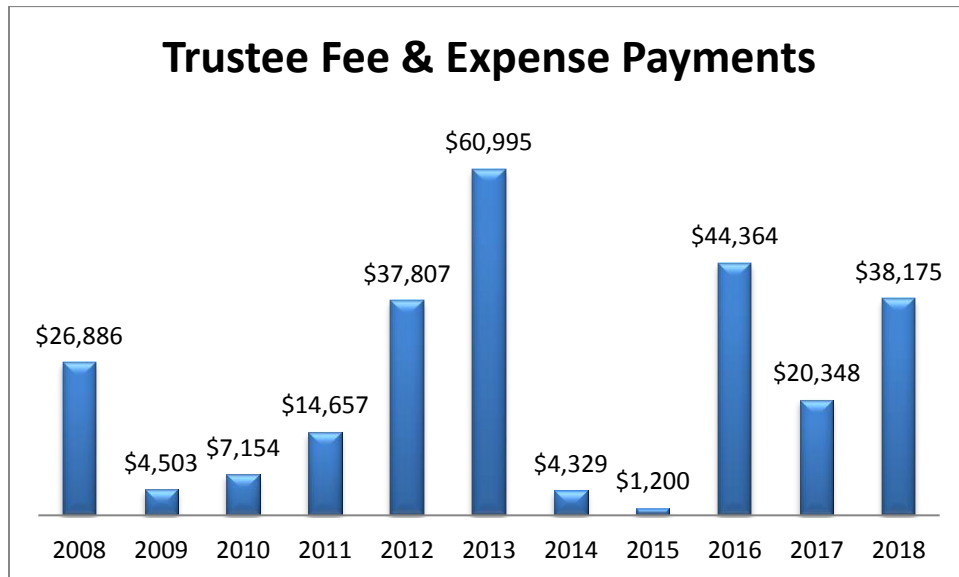
No reimbursements were recovered during calendar year 2018 on prior claims paid by the fund. The Commission will continue its policy of seeking reimbursement of paid claims when circumstances warrant.

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 \$38,175.14 were

authorized for payment from the fund during 2018. This relatively low amount was due in large part to the trustees who volunteered their services as a *pro bono* service to the Iowa legal profession.



During calendar year 2018, \$8,997.73 was recovered 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, 2018, there were 18,128 lawyers licensed to practice law in Iowa, an increase of 634 lawyers from the previous year. Of these 18,128 licensed attorneys, 9,649 were in active status in Iowa and able to engage in the practice of law. This is 118 more than 2017's 9,531 active lawyers.

Table of Active Lawyers As of End of Each Calendar Year						
Year	Total Licensed To Practice	Exempt from Reporting	Net Active	Difference from Previous Year	Legacy Inactive (No Filing or Fee)	Exempt (Annual Filing and \$50 fee)
2010	14,945	9,062	8,981	237		
2011	15,259	9,367	9,091	110		
2012	15,656	9,589	9,326	235		
2013	16,021	9,854	9,486	160	6,124	
2014	16,355	10,157	9,582	96	6,344	
2015	16,678	10,482	9,644	62	6,597	
2016	16,922	10,796	9,653	9	6,809	
2017	17,494	11,564	9,531	-122	7,187	
2018	18,128	12,139	9,649	118	7,128	180

As is evident in the above table, in 2017 there was a marked decrease in the number of attorneys that were active in status. This was primarily due to the implementation of a new exempt status which required inactive attorneys to pay an annual \$50 fee. A substantial number of attorneys (462) chose to go inactive

before the start of 2018 so as to avoid the exemption fee requirement.² This accounted for the decrease in active attorneys.

With regard to the active 9,649 attorneys, 78% of them reside within the State of Iowa. This has been consistent for the

Year	Resident Active	Non-Resident Active	Overseas Active	Total Active Lawyers
2018	7,493	2,144	12	9,649
2017	7,454	2,068	9	9,531
2016	7,574	2,070	9	9,653
2015	7,610	2,043	7	9,660
2014	7,569	2,001	12	9,582

past half-decade. There was also a slight increase in Iowa lawyers taking residence outside of the State of Iowa.

During 2018, 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.

² As compared to 296 attorneys in 2016.

During calendar year 2018, the licenses of thirteen 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 \$100 to \$250 under the Commission's rules by 323 lawyers during 2018.

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 2018 was \$200.00. Annual fees received to finance the disciplinary system totaled \$1,916,250 during 2018. 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 2019 remained at \$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, 2018, 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, 2018, 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 2018, auditors employed by the Client Security Commission conducted trust account compliance examinations as shown in the following table. Also during 2018, the auditors reviewed accounts in which lawyers were serving as fiduciaries as shown in the table.

Trust Account Compliance Examinations	457
# of Lawyers Subject to Compliance Exams	892
Fiduciary Account Examinations	159

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.

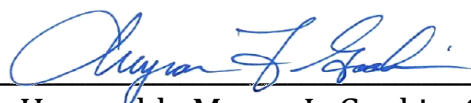
The Commission’s staff has published an outline on trust account procedures and made it available to all Iowa lawyers on the Commission web page. In addition, the director and assistant directors of the Office of Professional

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, 2019.

CLIENT SECURITY COMMISSION OF
THE SUPREME COURT OF IOWA



The Honorable Myron L. Gookin, Chair

CLIENT SECURITY COMMISSION

FISCAL YEAR 2018-2019 BUDGET

OPERATING EXPENSES

Salary and Salary Expenses	
Director	\$26,386.84
Assistant Director	\$114,819.52
Auditors	\$133,200.00
Clerical - Bookkeeping	\$41,891.87
Vacation/Sick Leave Payout	\$0.00
Part-Time Data / Call Center Support	\$150.00
Employee Insurance	\$28,442.64
Deferred Compensation	\$1,665.00
FICA	\$24,208.29
IPERS	\$29,872.71
Travel Expenses - Director, Commissio	\$2,500.00
Travel Expenses - Auditor	\$27,000.00
Rent	\$8,126.00
Auditing	\$2,400.00
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	\$190.00
Banking Fees	\$700.00
Miscellaneous, Including Moving	\$1,000.00
Automation Support	\$600.00
Internet App. Maint. & Development	\$25,250.00
Internet Payment Charges	\$17,000.00
Payroll Processing	\$800.00
Staff Communications Support	\$1,800.00
TOTAL OPERATING EXPENSES	<u>\$497,402.87</u>
CAPITAL EXPENDITURES	\$1,500.00
TOTAL PROJECTED EXPENDITURES	<u>\$498,902.87</u>