

In the rare event that an attorney misappropriates client funds, leaving him or her without recourse, the Clients' Security Fund can help. Drawing from a fund supported by the State Bar of Nevada, clients may be eligible for reimbursement of up to \$50,000. This report outlines the Clients' Security Fund Committee's efforts to make clients whole and in so doing, promote the honor and integrity of the profession.



# Clients' Security Fund Annual Report

2020



### 2020 Clients' Security Fund Committee Members

Brigid Higgins  
*Chair*  
Reed Werner  
*Vice-Chair*

Jeffrey Sloane  
Miriam Rodriguez  
David Rhamy  
Courtney Leverty  
Kirk Brennan  
Dana Dwiggin  
John Naylor  
Chris Cannon  
Mark Thome  
Douglas Moser

### Clients' Security Fund Staff

Theresa Freeman  
*Programs Manager*

## Fund Establishment

The State Bar of Nevada's Clients' Security Fund (Fund) was established in 1970 to reimburse clients for losses sustained when a lawyer betrays a client's trust and misappropriates the client's funds through defalcation or other dishonest acts. As such, the Fund helps the State Bar of Nevada to fulfill several of the Bar's enumerated purposes, including: improving the administration of justice; upholding the honor, integrity, professionalism and dignity of the profession of law; applying its knowledge and experience in the field of law to the promotion of the public good; enhancing the professional competence and ethical conduct of members of the Bar; and seeking fulfillment of the obligations of the legal profession in the courts and in the community.

To some, the Clients' Security Fund can be seen as the Bar's single most public relations function for the State Bar. It provides a source of recovery for those members of the public who have suffered a loss at the hands of dishonest State Bar licensees.

#### *Supreme Court Rule 86.5(1)*

*"Establishment. The board of governors shall maintain, from dues paid by members of the state bar, voluntary contributions and any other sources which may become available, a clients' security fund for the purpose of providing reimbursement, in whole or in part, as a matter of grace and not of right, to persons who have sustained loss by reason of a dishonest act of a member of the state bar, acting in his capacity as an attorney and counselor at law, in the nature of defalcation or embezzlement of money or the wrongful taking or conversion of money, property or other things of value, and shall provide for the administration of such fund. The board of governors is authorized to invest such funds as is provided for in paragraph 11 of Rule 86."*

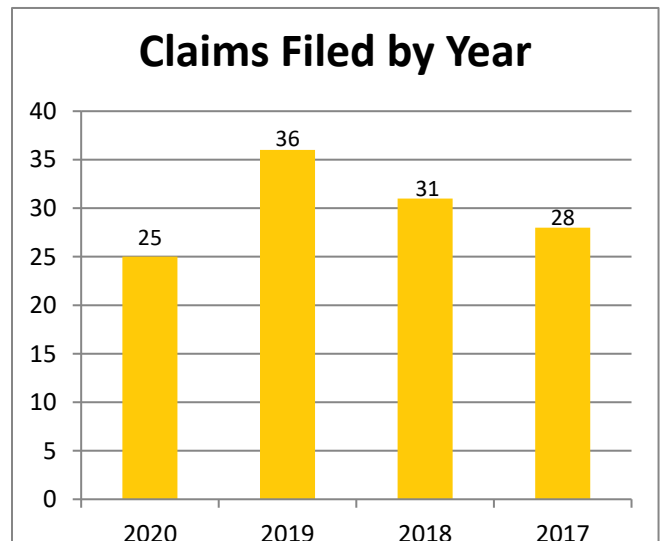
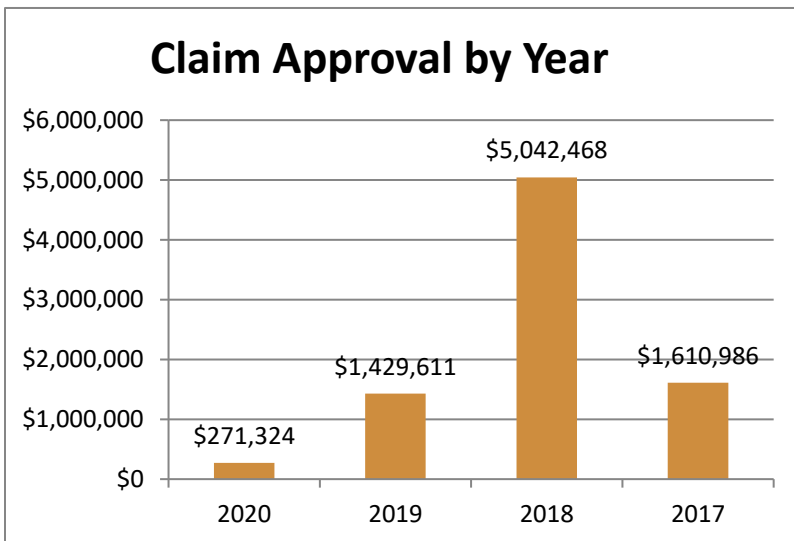
# Clients' Security Fund 2020 Annual Report

## Fund Overview

The Clients' Security Fund Committee is comprised of 12 members, including two lay members, who investigate claims. The Committee meets twice a year to discuss claims and determine whether reimbursement can be made to the clients. Approved claims may be reimbursed up to \$50,000 per claimant.

In order to qualify for reimbursement from the Clients' Security Fund, there must be an act of theft which occurred within an attorney-client relationship that involves an attorney no longer practicing due to suspension, disbarment, death or incapacitation. In 2020, the Clients' Security Fund Committee received 25 new claims. In addition, they reviewed 38 claims<sup>1</sup>, and approved 25 of those claims for reimbursement totaling \$271,323.73.

As demonstrated by the two charts below, the number of claims reviewed and amounts approved by the Committee vary from year to year.



<sup>1</sup> Includes claims filed, but not resolved in previous years.

## Clients' Security Fund 2020 Annual Report

### Funding

The Clients' Security Fund receives its revenue primarily through three sources: 1) a dedicated portion of every licensed attorney's annual dues; 2) a portion of SCR 42 pro hac vice application and licensing fees; and, 3) restitution from attorneys on whose behalf claims have been paid.

Additionally, the Fund continues to work with the Office of Bar Counsel to seek reimbursement to the Fund from suspended or disbarred attorneys as a condition of their reinstatement. As a result of these efforts, restitution payments to the Fund in 2020 totaled \$5,011.68.

In years when available funding exceeds paid claims from the Clients' Security Fund, the Fund sets aside those dollars in reserve for use in future years. This has helped to ensure stability in available funding year after year. Fund reserves at the beginning of 2020 totaled a little over \$450,000.

The Board of Governors established a policy allowing for the CSF Committee to draw down reserves to 50 percent of the total reserve fund balance each year (with a requisite minimum of approximately \$250,000), should a catastrophic event occur. The Board amended its policy in 2017 to allow for the reserve to be drawn down to a minimum of \$50,000 to cover claims filed each year for the next four years. This amendment in policy was in response to the anticipated large number of claims that may be filed with the Fund over the next four years (2017-2021) regarding the dishonest conduct of former attorney, Robert Graham.

| Revenue & Expenditures <sup>2</sup>   |                     |
|---------------------------------------|---------------------|
| Funding                               | Amount              |
| 2020 Annual Dues                      | \$205,675.00        |
| 2020 Pro Hac Vice Fees                | \$ 99,200.00        |
| 2020 Restitution                      | \$ 5,011.68         |
|                                       |                     |
|                                       |                     |
| <b>TOTAL:</b>                         | <b>\$309,886.68</b> |
|                                       |                     |
| Reimbursements                        | Amount              |
| 2020 Claims Paid to Date <sup>3</sup> | (\$200,039.54)      |

| Reserve Fund            |                     |
|-------------------------|---------------------|
| Funding                 | Amount              |
| Reserve Balance         | \$501,175.98        |
| 2019 Reserves Withdrawn | \$ (47,372.89)      |
| <b>2020 TOTAL:</b>      | <b>\$453,803.09</b> |

<sup>2</sup> 100% of all Fund expenditures are related to claim reimbursement. Committee and staff overhead, salaries, etc. are supported through the State Bar of Nevada.

<sup>3</sup> Represents current reimbursements made after receiving subrogation agreements, not total amount approved (\$271,323.73). There are 3 subrogation agreements outstanding totaling \$71,284.19.

## Clients' Security Fund 2020 Annual Report

### Approved Claims

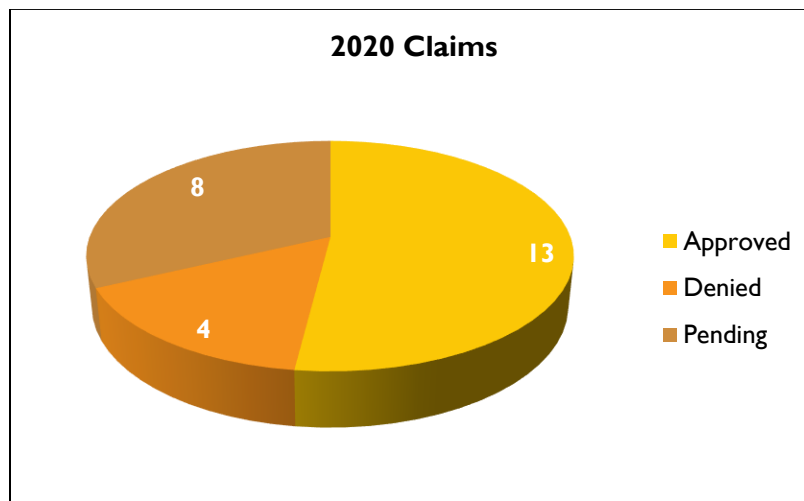
In 2020, the Clients' Security Fund approved 25 claims for reimbursement totaling \$271,323.73. Sixteen of those claims were related to just two attorneys as noted in the chart below.

| 2020 Approved Claims      |           |        |                     |
|---------------------------|-----------|--------|---------------------|
| Attorney Name             | Status    | Awards | Approved w/ Cap     |
| Robert Hempen             | Disbarred | 11     | \$96,971.14         |
| Chad Dennie               | Disbarred | 5      | \$60,902.86         |
| Allan Capps               | Suspended | 2      | \$37,847.23         |
| M. Lani Estenban-Trinidad | Suspended | 2      | \$6,300.00          |
| Robert Graham             | Disbarred | 1      | \$50,000.00         |
| David Lee Phillips        | Suspended | 1      | \$7,000.00          |
| Matthew Dunkley           | Disbarred | 1      | \$6,302.50          |
| Michael Pandullo          | Suspended | 1      | \$1,000.00          |
| William Swafford          | Suspended | 1      | \$5,000.00          |
| <b>Total:</b>             |           |        | <b>\$271,323.73</b> |

### 2020 Claim Breakdown

The Clients' Security Fund received 25 new claims in 2020. Claims were mainly personal injury cases, where the attorney misappropriated clients' settlement funds.

Of the 25 new claims received in 2020, the Committee approved 13 claims and denied 4 claims. The remaining 8 claims received in 2020 are pending and will be considered in 2020 as indicated by the chart below.



# Clients' Security Fund 2020 Annual Report

## Robert Graham Claims Summary

The Clients' Security Fund claims landscape shifted in 2017 with the disbarment of attorney Robert Graham. The nature of the Graham claims created unique challenges for the Clients' Security Fund Committee when determining reimbursement.

The state bar established good working relationships with attorneys who have taken on Graham clients pro bono, to ensure available dollars are distributed appropriately and mechanisms are in place for restitution, should assets become available.

In addition, the Committee has worked with the bankruptcy and probate courts to: determine beneficiaries of an estate, especially if there was a death of a named beneficiary; obtain Proof of Claim forms filed in Robert Graham's bankruptcy proceedings; and, notify the Bankruptcy Court of claimants paid.

From 2017 - 2019, the Clients' Security Fund Committee has reviewed 29 claims from former Graham clients totaling over \$9.5 million. To date, 23 have been approved for \$7,851,111.23 (\$1,098,713.25 w/ claim cap), four have been denied and two are pending as indicated by the chart below.

| Robert Graham Claims |                   |                       |                       |
|----------------------|-------------------|-----------------------|-----------------------|
| Year                 | # Claims Approved | Approved Amount       | Approved w/ Cap       |
| 2019                 | 6                 | \$1,332,472.20        | \$289,981.46          |
| 2018                 | 10                | \$4,461,005.10        | \$458,731.79          |
| 2017                 | 7                 | \$2,057,633.93        | \$350,000.00          |
|                      | <b>Total:</b>     | <b>\$7,851,111.23</b> | <b>\$1,098,713.25</b> |

