# THE SUPREME COURT OF PENNSYLVANIA PENNSYLVANIA LAWYERS FUND FOR CLIENT SECURITY REPORT ON 2002 - 2003 OPERATIONS

The Pennsylvania Lawyers Fund for Client Security (the "Fund") was established by Order of the Supreme Court of Pennsylvania dated April 30, 1982. The Fund was originally established as the "Pennsylvania Client Security Fund." The name was changed to the "Pennsylvania Lawyers Fund for Client Security" by Supreme Court Order dated March 11, 1993. The Fund operates under Pennsylvania Rules of Disciplinary Enforcement, Section 501, et seq.

The Fund was established to reimburse clients who have suffered losses as a result of a misappropriation of funds by their Pennsylvania attorney. There must have been an attorney/client relationship or a fiduciary relationship between the client and the attorney. Funding is received through an annual assessment paid by every licensed Pennsylvania attorney. For the fiscal year ending June 30, 2003, the assessment was \$45. The Fund does not have jurisdiction over malpractice or negligence claims.

In accordance with Pennsylvania Rule of Disciplinary Enforcement 502(d), an independent audit of the Pennsylvania Lawyers Fund for Client Security has been conducted by a certified public accountant and a copy of such audit has been filed with the Supreme Court of Pennsylvania and is a part of this report.

This Annual Report is prepared and published for the Supreme Court of Pennsylvania

and all members of the Pennsylvania Judiciary and Bar. The period covered by this Annual Report is for the Fund's fiscal year, July 1, 2002 through June 30, 2003.<sup>1</sup>

# A. As of the Start of the 2002-2003 Fiscal Year

The Fund commenced the 2002-2003 fiscal year with 128 pending claims, involving 55 attorneys, carrying an award potential of \$3,150,000. This dollar amount is calculated after applying the Fund's \$75,000 award limitation. There were 22 claims in excess of \$75,000 among the pending claims and the gross total amount claimed of the Fund was \$6,470,776.

# B. During the Fiscal Year

The Fund received a total of 297 claims from July 1, 2002 through June 30, 2003, alleging a total loss of \$5,089,790. This was an increase of 100 claims over the amount received during the prior fiscal year. 13 claims filed alleged losses in excess of \$75,000. 96 lawyers were accused of dishonest conduct.

During the 2002-2003 fiscal year, the Fund disposed of 211 claims, awarding \$2,903,591 to 171 claimants. The dollar amount awarded reflects an increase of \$1,734,618 to 75 more claimants than the prior fiscal year. 21 claimants received the Fund's maximum award of \$75,000. 45 claims with an aggregate alleged loss of \$3,517,544 were denied. 16 claims with an aggregate alleged loss of \$212,075 were discontinued. There were 2 fewer denials this year than in the previous fiscal year. The number of discontinued claims increased by 8.

# C. As of the End of the Fiscal Year

On June 30, 2003, the Fund had 214 pending claims alleging an aggregate total loss in the amount of \$4,209,163. Twelve of these claims exceed the \$75,000 maximum reimbursement limit and seek \$3,054,353 in awards. The Fund's potential maximum exposure from the pending claims is approximately \$2,054,814.

Since the establishment of the Fund in April 1982, through June 30, 2003, the Fund has approved 3,042 awards in the aggregate amount of \$30,261,666 as a result of the actions of 516 attorneys.

<sup>&</sup>lt;sup>1</sup> This Annual Report has not been submitted to the Supreme Court of Pennsylvania for prior review.

The assistance provided by the Offices of Disciplinary Counsel of the Disciplinary Board of the Supreme Court of Pennsylvania permits the Fund's processing of its claims within a customary 9 to 12 month time period.

# D. Claims Experience

- 1. <u>Fiduciary Funds</u> Theft of (a) estate funds and (b) trust/escrow funds are the largest categories of claims. During the 2002-2003 fiscal year, these two types of theft cost the Fund \$2,504,378 or 86.25% of its total award dollars. 74 claimants who alleged attorney theft from estate or trust/escrow monies received awards. \$1,332,525, or 53.21%, of the total awards approved in this category were approved to 31 former clients of one attorney.
- 2. Embezzlement of Lawsuit Settlement Proceeds The Fund approved awards totaling \$206,468 to 19 claimants resulting from the misappropriation of lawsuit settlements. The misappropriation of lawsuit settlement funds accounted for 7.11% of the awards approved by the Fund during the 2002 2003 fiscal year. Claims of misappropriation of lawsuit settlement funds often occur when an attorney settles a lawsuit without the knowledge or consent of the client. The attorney would then receive the funds and fail to remit them to the client. Claims involving an attorney who withholds funds from settlement proceeds to pay the client's medical providers and fails to disburse the money to the medical providers also fall under this category. \$128,500, or 62.24%, of the total approved awards in this category were approved to 14 former clients of one attorney.
- 3. Nonperformance The acceptance of unearned fees or retainers represents the third highest payment category, with approved awards totaling \$117,745. Awards were approved to 77 claimants representing 4.06% of the Fund's total approved awards for the fiscal year. Since the Fund does not arbitrate fee disputes, for an award to be considered when the attorney performed any services of value, the claimant must typically first file a complaint with the local bar association's fee disputes committee. If the committee determines that all or a portion of the fees or retainer were not earned, and the attorney does not refund the unearned fee, the Board will consider this type of claim and categorize the award as nonperformance by the attorney. \$53,087, or 45.09%, of the total approved awards in this category were approved to 41

former clients of one attorney.

Notwithstanding the award amounts reported herein, it should be noted that claims are filed against less than one percent of all Pennsylvania licensed attorneys. This very small percentage speaks highly of the integrity of the Pennsylvania Bar.

# E. Lawyers Concerned for Lawyers

During the 2002-2003 fiscal year, the Fund provided \$240,000 for the activities of Lawyers Concerned for Lawyers, as directed by the Supreme Court of Pennsylvania. The funding assistance provided to Lawyers Concerned for Lawyers complements the Fund's mission to ameliorate losses resulting from attorney dishonesty. Often times when an attorney converts client funds, the conduct is related to substance abuse. The financial support for Lawyers Concerned for Lawyers helps to mitigate the losses by providing a resource for impaired attorneys. The Fund anticipates that it will continue to support Lawyers Concerned for Lawyers during the fiscal year 2003-2004 in the approximate amount of \$240,000.

# F. Mandatory Overdraft Notification

Pennsylvania Rule of Disciplinary Enforcement 221 was promulgated by the Supreme Court of Pennsylvania on April 24, 1995, requiring the reporting by financial institutions to the Fund of checks drawn on attorney fiduciary accounts which are presented against insufficient funds. The fiscal year began with 6 pending notices. The Fund received 313 overdraft notices during the 2002-2003 fiscal year, which resulted in 39 overdraft notices being referred to the Office of Disciplinary Counsel for further inquiry. 280 overdraft notices were reviewed, dismissed with a satisfactory explanation, and scheduled for destruction 6 months thereafter. The fiscal year ended with 0 overdraft notices pending.

# G. Restitution and Subrogation Efforts

The Fund received \$112,018 in restitution payments during the 2002-2003 fiscal year.

# H. Board Meetings and Locations

The Board of the Fund continued during the 2002-2003 fiscal year to make a high priority of educating the legal community and Pennsylvania citizenry about the Fund, its mission

and activities. During this fiscal year, the Board of the Fund met in St. Davids, Pittsburgh and Philadelphia. Invitations to the Fund's informational dinners, which are held on the eve of the Board's meetings, were extended to the Judiciary, Bar leaders and prominent local citizens from the county where the Board met, as well as from the surrounding counties.

To date, the Fund has held its informational dinners and meetings in the following counties: Allegheny County (1983, 1986-1989, 1991, 1993-1998, 2000-2003); Cambria County (1998); Centre County (1995); Chester County (1990, 1998); Cumberland County (1998 and 2002); Dauphin County (1984 -1985, 1989, 1991, 1993, 1996-1997, 1999, 2001); Delaware County (1994, 1997 and 2002); Erie County (1989, 1992, 1994 and 2000); Fayette County (1992); Lackawanna County (1990, 1999); Lancaster County (1990 and 2000); Lehigh County (1989); Luzerne County (1996); Monroe County (1992); Montgomery County (1999); Northampton County (1994); Philadelphia County (1982-1988, 1990-1993, 1995-1996, 1998, 2001 and 2003).

## I. National Ranking

According to the American Bar Association's Survey of Lawyers' Funds for Client Protection for the years 1999 through 2001, the Fund ranks in the top 5 funds in the United States for claims received and processed during that three year period. The funds in California, Florida, New Jersey and New York are the other most active organizations in the United States.

# J. Board Membership and Fund Personnel

Board Chair, Paul S. Diamond, Esquire was originally appointed to the Board in May 1998. He had served as Vice Chair of the Fund from April 2001 to February 2003. Mr. Diamond was reappointed to the Board in March 2001 and was subsequently appointed as Board Chair in February 2003 when the then Board Chair, William H. Lamb, was elevated to fill a vacancy on the Supreme Court of Pennsylvania. Mr. Diamond's term expires in March 2004. Mr. Diamond is a partner with Obermeyer, Rebmann, Maxwell and Hippel, LLP in Philadelphia, Pennsylvania.

Other members of the Board include attorneys Carl D. Buchholz, III, Vice Chair,

and Joseph H. Jacovini, both from Philadelphia, Zygmunt R. Bialkowski, Jr., from Scranton, and Kelly Beaudin Stapleton from Indiana, Pennsylvania.

By Supreme Court Rule, the Board consists of two non-lawyer members. Derek C. Hathaway of Camp Hill is the Chairman and CEO of Harsco Corporation. Mr. Hathaway's business experience has been an asset to the Fund. The second non-lawyer Board member is Beth Lang, the Chief Operating Officer of Gateway Financial Group, Inc., in Pittsburgh. Ms. Lang currently serves as Treasurer of the Fund.

Kathryn J. Peifer, Esquire, Executive Director of the Fund, is in charge of the Fund's headquarters, its daily administrative affairs, the processing and investigation of claims received by the Fund, preparing summaries thereof for Board consideration, scheduling and attending meetings and, when necessary, hearings. The Fund employs one administrative assistant, Susan L. Erdman, who has made a significant contribution to the operations of the Fund through her thoughtful and professional demeanor in dealing with all those who have reason to contact the Fund.

Lisa A. Watkins, Esquire, of Wyncote, Pennsylvania serves as Counsel to the Board. Ms. Watkins reviews summaries of claims with regard to legal issues, oversees the collection and litigation matters involving the Fund, attends meetings and hearings of the Board, as well as advising the Board on all legal matters.

Respectfully submitted,

Paul S. Diamond, Board Chair Derek C. Hathaway Carl D. Buchholz, III Joseph H. Jacovini Beth Lang Zygmunt R. Bialkowski, Jr. Kelly Beaudin Stapleton

FINANCIAL STATEMENTS
FOR THE YEARS ENDED
JUNE 30, 2003 AND 2002
AND
INDEPENDENT AUDITORS' REPORT

HAMILTON & MUSSER, P.C. Certified Public Accountants

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For the Years Ended June 30, 2003 and 2002

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# HAMILTON & MUSSER, P.C.

Certified Public Accountants • Consultants to Management

DAVID A. HAMILTON, CPA BARRY E. MUSSER, CPA JAMES A. KRIMMEL, MBA, CPA, CFE ROBERT D. MAST, CPA

#### INDEPENDENT AUDITORS' REPORT

To the Board of Trustees of Pennsylvania Lawyers Fund for Client Security Mechanicsburg, Pennsylvania

We have audited the accompanying statements of financial position — modified cash basis of the Pennsylvania Lawyers Fund for Client Security, Inc. as of June 30, 2003 and 2002, and the related statements of activities — modified cash basis and cash flows — modified cash basis for the years then ended. These financial statements are the responsibility of the Fund's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As described in note 1, these financial statements were prepared on the modified cash basis of accounting, which is a comprehensive basis of accounting other than generally accepted accounting principles.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position — modified cash basis of the Pennsylvania Lawyers Fund for Client Security as of June 30, 2003 and 2002 and the changes in its net assets — modified cash basis and its cash flows — modified cash basis for the year then ended in conformity with the basis of accounting described in note 1.

August 8, 2003

Mechanicsburg, Pennsylvania

Certified Public Accountants

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Statements of Financial Position – Modified Cash Basis June 30, 2003 and 2002

	2	2003	,	2002
Assets Cash and Cash Equivalents	\$ 5.5	575,835	\$ 7.0	089,430
Investments (Note 2)		61,095		654,060
Total Assets	\$ 9,7	<u>736,930</u>	<u>\$ 10,</u>	<u>743,490</u>
Liabilities Accrued Payroll Taxes	\$	484	\$	457
Net Assets				
Unrestricted	_ 9,7	736,446	10,	743,033
Total Liabilities and Net Assets	\$ 9,7	736,930	\$ 10,	743 <b>,</b> 490

Statements of Activities – Modified Cash Basis For the Years Ended June 30, 2003 and 2002

	<u>2003</u>	2002
Revenue:		
Annual Fees	\$ 1,750,390	\$ 3,466,875
Restitution	112,018	89,208
Investment Income	291,843	379,294
Realized Loss on Investments	(12,226)	(12,813)
Unrealized Gain (Loss) on Investments	(10,758)	70,923
Total Revenue	2,131,267	3,993,487
Expenditures:		
Program:		
Awards	2,539,984	954,767
Funding of Lawyers Concerned for Lawyers, Inc.	240,000	150,000
Management and General	357,870	417,355
Total Expenditures	3,137,854	1,522,122
Increase (Decrease) in Net Assets – Unrestricted	(1,006,587)	2,471,365
Net Assets – Unrestricted, Beginning of Year	10,743,033	8,271,668
Net Assets – Unrestricted, End of Year	\$ 9,736,446	<u>\$ 10,743,033</u>

Statements of Cash Flows – Modified Cash Basis For the Years Ended June 30, 2003 and 2002

	<u>2003</u>	2002
Cash Flows From Operating Activities:	4 (1 00 0 000)	* *
Change in Net Assets	\$ (1,006,587)	\$ 2,471,365
Realized (Gain) Loss on Investments	12,226	12,813
Unrealized (Gain) Loss on Investments	10,758	(70,923)
Increase (Decrease) in:	0.7	4.59
Accrued Payroll Taxes	27	17
Net Cash Provided (Used) by Operating Activities	(983,576)	2,413,272
Cash Flows From Investing Activities:		
Redemption of U.S. Treasury Notes	1,500,000	1,500,000
Purchase of U.S. Treasury Notes	(2,030,019)	
·		
Net Cash Provided (Used) by Investing Activities	(530,019)	1,500,000
Net Change in Cash and Cash Equivalents	(1,513,595)	3,913,272
Cash and Cash Equivalents, Beginning of Year	7,089,430	3,176,158
Cash and Cash Equivalents, End of Year	<u>\$ 5,575,835</u>	<u>\$ 7,089,430</u>
Supplemental Cash Flow Disclosures:		
Interest Paid	\$ -	\$ -
Income Taxes Paid	-	-

Notes To Financial Statements For the Years Ended June 30, 2003 and 2002

#### NOTE 1 NATURE OF ACTIVITIES AND SIGNIFICANT ACCOUNTING POLICIES

#### **Nature of Activities:**

The Pennsylvania Lawyers Fund for Client Security (the Fund) was established by the Supreme Court of Pennsylvania to reimburse clients who have suffered a loss of money or other property as a result of the dishonest conduct of Pennsylvania attorneys. The Fund is a remedy for clients who are unable to obtain reimbursement from other sources, such as third parties or the attorney involved.

#### **Basis of Accounting:**

The financial statements of the Fund have been prepared on the modified cash basis of accounting and, consequently, revenue is recognized when received and expenses are recognized when paid. The Fund has elected to record investments and accrued payroll taxes.

#### **Basis of Presentation:**

Financial statement presentation follows the recommendations of the Financial Accounting Standards Board in its Statement of Financial Accounting Standards (SFAS) No. 117, Financial Statements of Not-For-Profit Organizations. Under SFAS No. 117, the Fund is required to report information regarding its financial position and activities according to three classes of net assets: unrestricted net assets, temporarily restricted net assets, and permanently restricted net assets. The Fund had no temporarily or permanently restricted net assets.

#### Revenue Recognition:

Contributions received are recorded as increases in unrestricted, temporarily restricted, or permanently restricted net assets, depending on the existence and/or nature of any donor restrictions.

All donor-restricted contributions are reported as increases in temporarily or permanently restricted net assets depending on the nature of the restriction. When a restriction expires (that is, when a stipulated time restriction ends or purpose restriction is accomplished), temporarily restricted net assets are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions. The Fund had no temporarily or permanently restricted net assets.

#### Fixed Assets:

Fixed assets purchased are recorded as an expense at the time of purchase. Accordingly, no depreciation expense has been provided.

#### Taxation:

The Fund is exempt from Federal Income Tax as provided by Code Section 501(c)(4) of the Internal Revenue Code. Accordingly, no income tax is incurred unless the Fund earns income considered to be unrelated business income. The Fund conducted no activities that were subject to income taxes.

#### Investments:

The Fund records investments based upon the recommendation of Statement of Financial Accounting Standards (SFAS) No. 124, Accounting for Certain Investments Held by Not-for-Profit Organizations. The provisions of the standard require that investments in equity securities with readily determinable fair values and all investments in debt securities be measured at fair value in the balance sheet. The unrealized gain or loss on investments is reflected in the statement of activities.

Notes To Financial Statements For the Years Ended June 30, 2003 and 2002

#### NOTE 1 NATURE OF ACTIVITIES AND SIGNIFICANT ACCOUNTING POLICIES - (CONTINUED)

#### Concentration of Credit Risk:

The Fund maintains its cash in a money market account which is not insured by the FDIC. This money market account invests in short-term debt instruments consisting of A1/P1 commercial paper, repos and similar investments.

#### Use of Estimates:

The preparation of financial statements in conformity with the modified cash basis of accounting requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

#### Cash and Cash Equivalents:

For the purpose of the statement of cash flows, cash and cash equivalents include all highly liquid investments with an initial maturity date of three months or less.

Cash and cash equivalents consisted of the following at June 30, 2003 and 2002:

	<u>2003</u>	<u>2002</u>
Cash Money Market Fund	\$ 35 _ 5,575,800	\$ 2 
Total	<u>\$_5,575,835</u>	<u>\$ 7,089,430</u>

#### NOTE 2 INVESTMENTS

Investments consisted of the following U.S. Treasury Notes at June 30, 2003:

Interest <u>Rate</u>	Maturity <u>Date</u>	Face <u>Value</u>	Cost	Market <u>Value</u>
5.250	8/15/03	\$ 500,000	\$ 500,722	\$ 502,655
3.000	11/30/03	500,000	509,023	504,220
3.000	2/29/04	500,000	509,629	506,720
2.250	7/31/04	500,000	502,656	506,405
5.250	5/15/04	1,000,000	976,875	1,036,560
5.875	11/15/05	500,000	496,992	551,720
5.625	2/15/06	500,000	490,176	552,815
		<u>\$ 4,000,000</u>	\$ 3,986,07 <u>3</u>	<u>\$ 4,161,095</u>

Notes To Financial Statements For the Years Ended June 30, 2003 and 2002

#### NOTE 2 INVESTMENTS – (CONTINUED)

Investments consisted of the following U.S. Treasury Notes at June 30, 2002:

Interest	Maturity	Face		Market
Rate	<u>Date</u>	<u>Value</u>	Cost	<u>Value</u>
5.750	10/31/02	\$ 500,000	\$ 504,531	\$ 506,720
5.500	5/31/03	500,000	498,985	516,250
5.250	8/15/03	500,000	500,722	517,345
5.250	5/15/04	1,000,000	976,875	1,045,310
5.875	11/15/05	500,000	496,992	535,780
5.625	2/15/06	500,000	490,176	532,655
		<u>\$ 3,500,000</u>	<u>\$ 3,468,281</u>	\$ 3,654,060

#### NOTE 3 FUNDING OF LAWYERS CONCERNED FOR LAWYERS, INC.

At the direction of the Supreme Court of Pennsylvania, the Fund has agreed to fund a portion of the 2003 and 2002 operations of Lawyers Concerned for Lawyers, Inc. in the amount of \$240,000 and \$150,000 respectively.

## NOTE 4 COMMITMENTS AND CONTINGENCIES

The Fund had the following outstanding commitments at June 30, 2003 and 2002:

	<u>2003</u>	<u>2002</u>
Awards Award Potential	\$ 864,217 	\$ 687,926 3,200,000
Total	<u>\$ 2,966,453</u>	<u>\$ 3,887,926</u>

Award potential represents the estimated payments related to pending claims filed with the Fund.

#### NOTE 5 LEASES

The Fund entered into an operating lease for its office space. Rent expenditures were \$41,343 and \$30,453 for the years ended June 30, 2003 and 2002, respectively. Future minimum lease payments are as follows for the years ended June 30:

2004	\$	42,156
2005	•	43,160
2006		44,192
2007		22,358
Total	\$	151,866

Notes To Financial Statements For the Years Ended June 30, 2003 and 2002

# NOTE 5 LEASES – (CONTINUED)

The Fund also leases a copier under an operating lease. Rent expenditures were \$2,400 and \$2,400 for the years ended June 30, 2003 and 2002, respectively. Future minimum lease payments are as follows for the years ended June 30:

2004	\$ 2,400
2005	2,400
2006	800
Total	\$ 5,600

# NOTE 6 EXPENDITURES

Expenditures by natural classification for the years ended June 30, 2003 and 2002 were:

	<u>2003</u>	2002
Program:		
Awards	\$ 2,539,984	\$ 954,767
Funding of Lawyers Concerned		
For Lawyers, Inc.	240,000	150,000
Management and General:		
Registration and assessment	41,131	89,208
Travel	17,525	20,429
Salaries	107,250	101,750
Benefits and taxes	31,382	29,464
Office, stationery, supplies, and postage	24,016	37,257
Telephone	3,120	7,380
Occupancy	43,198	31,653
Bank custodial fees and service charges	20,443	19,458
Professional fees:		
General counsel	46,699	65,000
Other	16,890	10,250
Dues and publications	200	271
Insurance	1,340	813
Janitorial Expense	4,434	3,366
Investigation	242	1,056
Total Management and General	357,870	417,355
Total Expenditures	<u>\$ 3,137,854</u>	\$ 1,522,122

Notes To Financial Statements For the Years Ended June 30, 2003 and 2002

#### NOTE 7 RELATED-PARTY TRANSACTIONS

The Fund reports to the Supreme Court of Pennsylvania. The Fund's revenues are collected from active members of the Pennsylvania Bar by the Disciplinary Board of the Supreme Court of Pennsylvania, which periodically remits such revenues to the Fund. The Fund was assessed a charge for registration and assessment collection costs by the Disciplinary Board of the Supreme Court of Pennsylvania in the amounts of \$41,131 and \$89,208 for the years ended June 30, 2003 and 2002, respectively.

#### NOTE 8 EMPLOYEE BENEFIT PLANS

The Fund has a simplified employee pension plan which is available to all employees after one year of employment. The plan permits contributions, including employee and employer, to a maximum of 15% of employee compensation limited to a contribution of \$30,000. The employer contributions amount to \$10,725 and \$10,175 for the years ended June 30, 2003 and 2002, respectively.