

Washington State Bar Association



"On behalf of the lawyers of the State of Washington . . ."

LAWYERS' FUND FOR CLIENT PROTECTION

ANNUAL REPORT

September 2004

Washington State Bar Association
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“There is established the Lawyers’ Fund for Client Protection (Fund). The Fund may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any client by reason of the dishonesty of, or failure to account for money or property entrusted to, any member of the WSBA in connection with the member's practice of law, or while acting as a fiduciary in a matter related to the member's practice of law. The Fund may also be used to relieve or mitigate like loss sustained by persons by reason of similar acts of an individual who was at one time a member of the WSBA but who was, at the time of the act complained of, under a court ordered suspension.”

Admission to Practice Rule 15

**Washington State Bar Association
LAWYERS' FUND FOR CLIENT PROTECTION
2003- 2004**

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I. HISTORY AND ESTABLISHMENT OF THE LAWYERS' FUND FOR CLIENT PROTECTION

The Lawyers' Fund for Client Protection (Fund) was established by the Washington Supreme Court in 1994 at the request of the Washington State Bar Association (WSBA) by the adoption of Rule 15 of the Admission to Practice Rules (APR). Prior to the adoption of that rule, the WSBA had voluntarily maintained a clients' security or indemnity fund since 1960.

Every state in the United States, as well as Canada, Australia, New Zealand, and other countries, maintains such funds. Although common to the legal profession, similar protection funds are unknown in most other professions and callings.

It is a familiar adage that lawyers are privileged to be a self-regulating profession. Only lawyers have the power to decide who may enter the legal profession, who should be disciplined for misconduct, and who should be suspended or disbarred. Unlike members of other trades and professions, such as doctors, accountants, architects, or hairdressers, the Legislature and the Department of Licensing have no control over lawyers' professional activities. The Supreme Court has the exclusive power to regulate the legal profession, and the Bar Association serves as an arm of the Supreme Court in carrying out those functions. But with that privilege goes the responsibility of protecting the public.

Since the inception of an "indemnity fund" in 1960, the lawyers of the State of Washington have given more than \$2,200,000 to the victims of the few dishonest lawyers in this state. No public funds have been involved; these gifts are financed solely by payments from lawyers. Under Admission to Practice Rule 15, the Fund is maintained by a \$13 annual assessment on each of the approximate 25,000 active members of the Bar licensed in Washington. The chart on the following page shows the experience of the past 17 years as the active bar membership has increased from approximately 14,000 in 1988 to 25,000 in 2004.

YEAR	# APPLICATIONS	# APPROVED	AMOUNT PAID
1988	39	19	\$28,494
1989	41	13	\$51,748
1990	30	15	\$35,920
1991	27	12	\$34,609
1992	23	18	\$87,751
1993	29	22	\$100,000
1994	36	23	\$99,902
1995	21	13	\$39,623
1996	42	13	\$134,153
1997	43	17	\$282,629
1998	43	22	\$193,000
1999	95	59	\$132,856
2000	85	41	\$124,012
2001	62	46	\$207,709
2002	69	47	\$247,536
2003	117	51	\$125,913
2004	165	84	\$313,721

II. FUND PROCEDURES

The Fund is administered pursuant to APR 15 (Appendix A) and Procedural Rules adopted by the Board of Governors and approved by the Supreme Court (Appendix B).

Administration: The Lawyers' Fund is managed by Trustees comprised of the members of the Board of Governors of the WSBA. The Trustees appoint and oversee the Lawyers' Fund for Client Protection Committee comprised of eleven lawyers and two non-lawyers who administer the Fund. The WSBA General Counsel acts as staff liaison to the Trustees and Committee.

Application: Anyone who files a grievance with the WSBA which alleges a dishonest taking of funds or property by a lawyer, and any other person making such an allegation, may be provided with an application form for payment from the Fund.

Screening and Investigation: When an application is received, it is reviewed to determine that on its face it is eligible for recovery from the Fund. If not, the General Counsel advises the applicant of the reasons for its ineligibility. In order to be eligible for payment, an applicant must show that he or she has suffered a loss of money or property through the dishonest acts of a lawyer. Dishonesty includes, in addition to theft, embezzlement, and conversion, the refusal to return unearned fees as required by Rule 1.15 of the Rules of Professional Conduct.

One of the more difficult claim areas for the Committee and Trustees involves fees paid to a lawyer for which no valuable service was performed. As a general rule, the Fund Committee and Trustees cannot resolve fee disputes between lawyers and clients (the WSBA maintains a voluntary fee arbitration program for such disputes). However, where it appears that there is a pattern of conduct which establishes that a lawyer knew or should have known at the time the lawyer accepted fees from a client that the lawyer would be unable to perform the service for which he or she was employed, the Committee has concluded that such conduct is dishonest within the context of the purposes of the Fund, and will consider such applications. Similarly, if a lawyer withdraws from representing a client or abandons a client's case without refunding any unearned fee, the Committee may conclude that the lawyer has engaged in dishonest conduct.

The Fund is not available to resolve or compensate in matters of lawyer malpractice or professional negligence.

If the application appears eligible for payment, the General Counsel investigates the application. Because most applications also involve disciplinary grievances and proceedings, action on Fund applications normally awaits resolution of the disciplinary process.¹ Finally, a report and recommendation is prepared for the Committee.

Committee and Trustee Review: On applications for \$10,000 or less with recommendation for payment of not more than \$10,000, the Committee's decision is final. Recommendations on applications for more than \$10,000, or for payment of more than \$10,000, are reviewed by the Trustees. However, in those instances, the Committee is authorized by the Trustees to make interim gift payments of up to \$10,000.

¹ Rule 3.4(i) of the Rules for Enforcement of Lawyer Conduct provides that otherwise confidential information obtained during the course of a disciplinary investigation may be released to the Lawyers' Fund for Client Protection concerning applications pending before it. Such information is to be treated as confidential by the Fund.

Payments regarding any one application are limited to a maximum of \$50,000. Any payments from the Fund are gifts and are at the sole discretion of the Trustees. Similarly, the Trustees must approve any payment on any application during the pendency of a disciplinary proceeding or investigation involving the same act or conduct that is alleged in the claim

Attorney Fees: Lawyers may not charge a fee for assisting with an application to the Fund, except with the consent and approval of the Trustees.

Assignment of Rights and Restitution: In exchange for a gift from the Fund, an applicant is required to sign a subrogation agreement for the amount of the gift. The Fund attempts to recover its payments from the lawyers or former lawyers on whose behalf gifts are made, when possible. Recovery is generally only successful when it is a condition of a criminal sentencing, or when a lawyer petitions for reinstatement to the Bar after disbarment.² To date, the Fund (and its predecessors) has recovered approximately \$181,000.00.

III. LOSS PREVENTION PROGRAMS

The WSBA has initiated two important loss prevention programs which are established by Supreme Court rules.

Random Trust Account Audits: Pursuant to Rule 15.1(a) of the Rules for Enforcement of Lawyer Conduct (ELC), the Board of Governors of the Washington State Bar Association conducts random audits of lawyers and law firms. During FY 2003 (the last year for which statistics are available), 704 lawyers in 53 law firms were audited. The results of these audits are reported to the chairperson of the Disciplinary Board. If they disclose serious irregularities or deficiencies in the lawyer's or law firm's handling of client funds, they may be referred to disciplinary counsel for investigation and any appropriate action.

Trust Account Overdraft Notification: Pursuant to ELC 15.4, every financial institution approved for the deposit of client trust funds must agree to report to the Disciplinary Board whenever a check is presented against a trust account containing insufficient funds, whether or not the check is honored. This rule was drafted with the cooperation of the Washington Bankers Association. During 2003, 47 disciplinary investigations were opened based on overdraft notices received. The reasons for those overdrafts were varied: bank error (23%), improper endorsement (4%), deposit to wrong account (32%), math or bookkeeping error (17%), disbursement before deposit cleared (17%), failure to make timely

² Admission to Practice Rule 21(c) provides that no disbarred lawyer may petition for reinstatement until amounts paid by the Fund to indemnify against losses caused by the conduct of the disbarred lawyer have been repaid to the Fund.

deposit (3%), and other causes (4%).

IV. FINANCES

The Fund is financed by an assessment of \$13 on each active status lawyer licensed to practice in Washington. The Fund is maintained as a trust, separate from other funds of the WSBA. In addition, interest on those funds accrues to the Fund, and any restitution paid by lawyers is added to the Fund balance. During FY 2003, \$25,482 in restitution was received by the Fund.

The administrative costs of the Fund, such as Committee expenses and bar staff support, are paid from the Fund.

During the last audited fiscal year (October 1, 2002 - September 30, 2003) total Fund revenues were \$357,274. Gifts to applicants totaled \$125,913. Committee expenses and overhead, including staff time, totaled \$24,083, or approximately 6.7% of revenue.

As of June 30, 2004, the Fund balance is \$765,109 (See Appendix C). As of that date, the Fund this year has made payments totaling \$184,291. The total amount approved for payment this year, including the payments already made, is \$313,721.29. It is important for the Fund to maintain a sufficient balance to meet anticipated future needs. In 1997 and 1998, because of the limitation on funds available to pay approved applications, payments over \$3,000 were prorated, by a factor of .912 in 1997 and .984 in 1998. This year, the Fund was able to pay all approved applications and is able to carry forward a positive Fund balance and gradually build a Fund reserve against increased and possibly catastrophic future losses.

V. COMMITTEE AND TRUSTEE MEETINGS

Fund Committee: The Lawyers' Fund for Client Protection Committee met four times this fiscal year, November 21, 2003, February 20, May 14, and August 20, 2004, to consider 164 applications to the Fund involving 40 lawyers. One lawyer, Michael Johnson-Ortiz, accounted for 97 of the applications considered by the Committee. In addition, the Committee did the following:

- Fund Procedural Rules: The Committee and the Trustees considered three important issues: (1) whether the current payment "cap" of \$50,000 per applicant should be increased; (2) whether the Fund should consider payment of consequential damages, such as lost interest or costs of seeking restitution or recovery; and (3) whether the Fund should require exhaustion of other available remedies before payment is made.

The Committee recommended to the Trustees that the “cap” be increased to \$75,000, which was approved by the Trustees at their meeting on September 16, 2004. The Trustees also approved amendment to Procedural Rules 6(J) and 7 to increase the Committee’s authority to approve gifts without Trustee review from \$10,000 to \$25,000, as follows:

RULE 6 J. COMMITTEE ACTION.

(1) Actions of the Committee Which Are Final Decisions. A decision by the Committee on an application for payment of ~~\$10,000~~ \$25,000 or less -- whether such decision be to make payment, to deny payment, to defer consideration, or for any action other than payment of more than ~~\$10,000~~ \$25,000 -- shall be final and without right of appeal to the Trustees.

(2) Actions of the Committee Which Are Recommendations to the Trustees. A decision by the Committee (a) on an application for more than ~~\$10,000~~ \$25,000, or (b) involving a payment of more than ~~\$10,000~~ \$25,000 (regardless of the amount stated in the application), is not final and is a recommendation to the Trustees which shall have sole authority for final decisions in such cases.

RULE 7. ADJUDICATION BY TRUSTEES

A. A recommendation by the Committee (a) concerning applications for more than ~~\$10,000~~ \$25,000, or (b) that payments of more than ~~\$10,000~~ \$25,000 be made to applicants regarding any one lawyer, shall be reported to the Trustees which may, in its discretion, adopt, modify, disapprove or take any other appropriate action on the Committee’s recommendation.

B. A decision of the Trustees shall be final and there shall be no right of appeal from that decision.

The Trustees also agreed to make no change as regards payment of consequential damages, and they approved the recommendation that exhaustion of remedies not be required, but that Procedural Rule 6(H) be amended to become Rule 5(G) and read as follows:

G. Exhaustion of Remedies. The Committee may ~~direct an~~ consider whether an applicant has made reasonable attempts to seek reimbursement of a loss before ~~making a recommendation to the Trustees taking action~~ on an application. This may include, but is not limited to, the following:

- (1) ~~File Filing~~ a claim with ~~the lawyer's~~ an appropriate insurance carrier;
- (2) ~~File Filing~~ a claim on a bond, when appropriate;
- (3) ~~File Filing~~ a claim with any and all banks which honored a financial instrument with a forged endorsement;
- (4) As a prelude to possible suit under part (5) below, Request demanding payment in writing from any lawyer business associate or employer who was a partner of the dishonest lawyer at the time of the dishonest conduct; or any lawyer who was a principal of the professional corporation in which the dishonest lawyer was an employee or member; or against the employer of the dishonest lawyer who may be liable for the actions of the dishonest lawyer; or
- (5) ~~Commence~~ Commencing appropriate legal action against the lawyer or against any ~~third~~ other party or entity who may be liable for the applicant's loss.

The Trustees also approved amendment to Procedural Rule 5(B) as follows:

Time Limitations. Any application must be made within three years from the date on which discovery of the loss was made or reasonably should have been made by the applicant, and in no event more than three years from the date the lawyer dies, is disbarred, is disciplined for misappropriation of funds, or is criminally convicted for matters relating to the applicant's loss, provided that the Committee or Trustees, in their discretion, may waive any limitations period for excusable neglect or other good cause.

The approved Procedural Rule amendments will be submitted to the Supreme Court for adoption pursuant to APR 15(f).

- Use of Fund to Pay Direct Expenses of Custodianships Pursuant to ELC 7.7: The Committee reviewed the issue of whether the Fund should be used to pay for the costs of custodianships pursuant to ELC 7.7. The consensus of the discussion was that the Fund, which is established as a trust, should not be used for purposes beyond those currently set out in APR 15. The Committee voted unanimously to advise the Trustees that the Committee discussed this issue and believes that the purpose of the Fund is to compensate victims of dishonest conduct and should not be invaded for other purposes, and therefore recommends that the Board of Governors consider other funding sources to pay the costs of ELC 7.7 custodianships. The Trustees accepted the Committee's recommendation, and referred the issue of funding ELC 7.7 custodianships to the WSBA Budget and Audit Committee.

- **Public Information:** The Lawyers' Fund for Client Protection maintains a web site at <http://www.wsba.org/lawyers/groups/lawyersfund> that provides information about the Fund, its procedures, and an application form that can be downloaded. The Committee is working on Spanish language Fund information and application forms.
- **Other Activities:** General Counsel Bob Welden presided over the ABA 20th National Forum on Client Protection held in Naples, Florida, in June, and at a National Client Protection Organization (NCPO) Regional Workshop in New Orleans, Louisiana, in March. In addition, Welden was reappointed to a second three-year term on the ABA Standing Committee on Client Protection, and was reappointed as chairperson for 2004 - 2005.

Fund Trustees: The Trustees considered and approved all Committee recommendations on applications for more than \$10,000. They also approved the Committee recommendations noted above, and approved the 2004 Annual Report for submission to the Supreme Court pursuant to APR 15(g).

VI. 2004 APPLICATIONS AND PAYMENTS

At the beginning of FY 2004, there were 46 pending applications to the Fund. During FY 2004, 178 additional applications were received. The Committee and Trustees acted on 165 applications concerning 40 lawyers. The total amount in approved payments is **\$313,721.29**. A summary of Committee and Trustee actions shown below. Complete summaries of all approved applications follow.

Approved for Payment	84
Denied as fee dispute or malpractice claim	47
Denied; restitution made	2
Withdrawn	0
Denied; no evidence of wrongful taking of funds	31
Other	1

The 84 approved applications involved the following:

Theft/Conversion	15
Failure to return unearned legal fees	69
Investments and loans with lawyers	0

SUMMARIES OF APPROVED APPLICATIONS

*"On behalf of the lawyers of the State of Washington . . ."*⁸

Pursuant to the Fund Procedural Rules, Committee recommendations on applications for \$10,000 or less, or for payment of no more than \$10,000, are final. Recommendations on applications for more than \$10,000, or for payment of more than \$10,000, must be reviewed and approved by the Trustees. However, the Committee is authorized to make interim payments up to \$10,000 on approved applications in excess of that amount.

JEFFREY L. BUNCH – WSBA # 21790 (Spokane) -- disbarred

Application 03-96

Pay \$5,756.19

Applicant was represented by Bunch in connection with an industrial insurance claim. The lawyer who took over Applicant's case after Bunch was disbarred learned that a one-time permanent partial disability award of \$8,235.96 was paid to Bunch on behalf of Applicant on June 27, 2001. Bunch was entitled to 30% as his fee, leaving a balance due to Applicant of \$5,765.17. The WSBA audited Bunch's trust account and found that as of December 31, 2001, Bunch should have held \$5,765.19 in his trust account on behalf of Applicant. His account balance was zero. The Committee approved payment to Applicant of \$5,756.19.

BRIAN T. BUTLER – WSBA # 15529 (Spokane) – suspended

Application 03-89

Pay \$250

Applicant paid Butler \$250 to file marriage dissolution. She never heard from Butler after that. Applicant obtained new counsel who filed a dissolution petition in July 2003. The Committee approved payment to Applicant of \$250.

³ Introductory phrase of transmittal letter to recipients of gifts from the Lawyers' Fund for Client Protection.

ARMANDO R. COBOS – WSBA # 27006 (Seattle) – disbarred

Application 03-68

Pay \$500

Cobos had represented Applicant in a marriage dissolution proceeding in 2001. She rehired him in 2002 to enforce certain provisions in the settlement agreement relating to costs of her daughter's education. Applicant paid Cobos \$500. Cobos did nothing on her case after accepting payment. Applicant left messages but could not reach him. Then his phone was disconnected. She contacted the Bar Association and was told that Cobos had disappeared. Cobos never performed the services for which he was hired and failed to return the unearned fee. The Committee approved payment to Applicant of \$500.

JEFFREY DANZIG – WSBA # 13243 (Bellingham) – disbarred

Application 03-83

Pay \$35,603.76

Danzig initially agreed to represent applicants in a medical malpractice claim on a 1/3 contingent fee. Their fee agreement specified that Danzig would not advance costs. Periodically, Danzig would call applicants to have them make additional payments, although he provided no invoices or billing statements. They paid him \$49,436.15. Eventually, they exhausted their resources, and Danzig arranged to associate co-counsel who would advance costs.

Applicants' claim was settled for \$600,000. The co-counsel accounted for his costs, but Danzig never did so. The hearing officer in Danzig's disciplinary proceeding found that Danzig's actual and legitimate costs paid on behalf of applicants totaled \$13,832.39. He found that they were entitled to a refund of \$35,603.76 in unused and unaccounted for advance costs. Danzig made no refund. The Committee recommended and the Board of Governors approved payment to Applicants of \$35,603.76.

ROLFY DEDAMM – WSBA # 20476 (Bellevue) – resigned in lieu of disbarment

Application 04-22

Pay \$1,004.66

Applicant hired the DeDamm law firm to represent her in a child visitation dispute. She paid \$1,500 to the firm. On the fee agreement, the preprinted word "non-refundable" is crossed out and the word "retainer" is written above it; the words "flat fee" are also crossed out. The agreement provided she would be charged \$180 per hour for attorneys' fees and \$90 per hour for legal assistants.

An associate in the DeDamm law firm handled Applicant's case. She was able to resolve the dispute, and on October 10, 2001 Applicant was sent an invoice from the firm showing

charges of \$495.34, and a trust balance of \$1,004.66. The associate performed no additional services after the date of that invoice. She left the firm shortly thereafter, and all client files were retained by DeDamm.

DeDamm never responded to Applicant's attempts to get a return of her unearned fee. He never provided any accounting for the \$1,004.66 he was supposed to be holding in trust. The Committee approved payment to Applicant of \$1,004.66.

GREGORY E. GRAHN – WSBA # 20312 (Lakewood) – disbarred

Application 03-101

Pay \$1,518.75

Grahn represented Applicant for 10 or 11 years in various child custody and support matters. After a several-day trial in 2001 in which custody was awarded to the child's father, Grahn recommended that Applicant file an appeal. Applicant documented payment of fees specifically paid to Grahn for purpose of this appeal in the amount of \$1,118.75. During this period, Grahn's law office burned down. After that when Applicant talked to him, he told her that he was trying to straighten things out after the fire, but he would take care of the appeal. Grahn told her he needed \$1,500 to pay for transcripts for the appeal. She paid him \$400 toward that cost.

When Applicant contacted Grahn's office in the spring of 2003, she learned he had been disbarred. She later talked with another lawyer and learned that an appeal had to have been filed within 90 days. No appeal was filed. The Committee approved payment to Applicant of \$1,518.75.

MICHAEL J. HARRIS – WSBA # 18240 (Tacoma) – suspended

Application 04-21

Pay \$9,500

Applicant paid Harris \$7,500 as fees to represent her son to appeal a marriage dissolution decision. Harris filed a Notice of Appeal on September 3, 1996 without proof of service, which was not filed until after the court moved to dismiss the case. Over the next year, Harris repeatedly failed to meet filing requirements in a timely manner, and sanctions were assessed against him. After granting Harris extensions of time to file the Appellant's Brief, the court dismissed the appeal for failure to file the brief on October 2, 1997. Harris did not advise his client or Applicant of the sanctions or the dismissal.

Over the next year, Applicant repeatedly inquired about the status of the appeal, and Harris told them he was waiting for the opposing party to file his brief. In September 1998 Applicant reviewed the court file and discovered the appeal was dismissed a year earlier. Harris told Applicant that he knew nothing about the appeal being dismissed, and that the

court had made a mistake that he would correct. Thereafter, Applicant called Harris several times and he always told them he had straightened out the appeal. In November 1998, Harris told Applicant that he needed an additional \$2,000 to pay for the trial transcripts which Applicant paid.

The Supreme Court ordered restitution to Applicant of \$9,500. The Committee approved payment of that amount.

TRENIDAD HERNANDEZ – WSBA # 25849 (Yakima and Federal Way) – disbarred

Application 04-02

Pay \$1,960.62

Applicant hired Hernandez to settle a claim arising from a traffic accident. On January 23, 2001 the claim settled for \$11,550.00. Hernandez gave Applicant an accounting that showed, among other things, payment of medical bills totaling \$5,763. He told her that he had paid her bills including a subrogated claim for \$1,960. In July 2001 Applicant received a letter from the subrogated creditor that their claim was still outstanding. She received a second letter in August also stating that the claim was still unpaid. Applicant called Hernandez, who told her that he did not have her file. After that, he did not return any of her calls. Applicant paid the bill. Hernandez never repaid her or accounted for the missing \$1,960.62. The Committee approved payment to Applicant of \$1,960.62.

Application 04-01

Pay \$500

Applicant hired Hernandez to represent him on a driving under the influence charge. Hernandez said his fee would be \$1,000. Applicant paid him \$500. Applicant appeared for the pretrial hearing, but Hernandez did not appear. It was continued to April 9. Applicant called Hernandez, who told him he forgot about the hearing, but he would appear on April 9. Applicant appeared for the April 9 hearing, but Hernandez did not appear. Applicant called Hernandez, who told him that his car had broken down. The hearing was continued to April 23. Again, on April 23, Hernandez failed to appear. Applicant called Hernandez and demanded return of his \$500. Hernandez told him he had other things to do and hung up. After that, Hernandez would not return Applicant's phone calls, and he did not return the \$500. The Committee approved payment of that amount to Applicant.

TODD H. HUTCHISON – WSBA # 14389 (Vancouver) – disbarred

Application 03-73

Pay \$650

On January 21, 2003, Applicant paid Hutchinson \$650 regarding an eviction notice she had received. Hutchinson had been suspended from practice on January 17. Applicant had a

court date January 24. On January 23, Hutchinson told her he was suspended. She never heard from Hutchinson again, and he never refunded her money. The Committee approved payment of \$650 to Applicant.

Application 04-08

Pay \$500

Applicant paid Hutchinson \$500 to arrange joint custody of his 14-year-old son. After about 2 months passed, Applicant called Hutchinson, who told him he had been very busy but would "get to it right away." Applicant checked with Hutchinson several times over the next few months and got basically the same response. After more than 6 months, Applicant told Hutchinson it was too late, and he wanted a refund of his \$500. Hutchinson agreed to the refund. Applicant called Hutchinson several times after that and was assured the refund would be mailed, but it never was.

Hutchinson did not respond to the disciplinary investigation into this matter, and he was subpoenaed for deposition. He appeared late after the court reporter had been excused, and Disciplinary Counsel interviewed him. He acknowledged receiving \$500 from Applicant, which he said he deposited into his office account, not a trust account. He claimed he had worked on the matter, but admitted he had not prepared any documents. Hutchinson showed bar counsel a check for \$500 that he said he was sending to Applicant; Hutchinson never sent the check to Applicant or made any refund. The Committee approved payment of \$500.

REGINALD JOHNSON – WSBA # 26726 (Tacoma) – disbarred

Application 04-12

Pay \$475

In January 2003 Applicant hired Johnson to file a Chapter 7 bankruptcy proceeding. He paid Johnson \$250 at that time. Johnson prepared a bankruptcy petition that Applicant signed, and he paid Johnson an additional \$225 on June 19, 2003. Johnson was disbarred March 27, 2003. Applicant got worried about his bankruptcy petition and went to the court to check the file. He learned that the petition had not been filed, and also learned that Johnson was disbarred. The Committee approved payment of \$475 to Applicant.

MICHAEL JOHNSON-ORTIZ – WSBA # 23580 (Seattle) – disbarred

Michael Johnson-Ortiz maintained a high-volume practice chiefly in the area of immigration. He had one associate who was admitted to the Bar in November 2003. In December 2003, Johnson-Ortiz announced that he was going on vacation to Chile, where his wife's parents live. He said he would be gone Jan. 3 to Feb. 6, 2004. Johnson-Ortiz's

staff became increasingly alarmed by the prospect that he would not be returning. The bookkeeper discovered that the firm operating account was overdrawn by about \$5,000. There was no provision to pay staff salaries in his absence. On January 9 his staff learned that Johnson-Ortiz shipped all of his belongings, including his car, to Chile. It was subsequently learned that on December 18, 2003 he had informed his landlord that he would be vacating his offices within 30 days.

Members of Johnson-Ortiz's staff contacted the WSBA. On January 22, 2004 the chair of the Disciplinary Board entered an appointment of counsel to protect Johnson-Ortiz's clients' interests pursuant to ELC 7.7. The WSBA examined his trust account, which had no funds.

Because of the large number of applications, and the fact that many of the applicants were Spanish-speaking, the WSBA employed a temporary investigator who is a law graduate from the Universidad Nacional de Cordoba, Argentina. He previously worked as a legal assistant with a Seattle law firm in the area of immigration. He was able to complete the investigation of these applications as summarized below.

04-104 – Pay \$1,250: Applicant paid Johnson-Ortiz \$1,250 on 12/2/03 for representation in removal proceedings. The only legal service performed by Johnson-Ortiz was to obtain a continuance. The Committee determined that he had performed no services of substantial value and that the fee was unearned and therefore approved payment of \$1,250 to Applicant.

04-62 – Pay \$1,450: Applicant paid Johnson-Ortiz \$1,450 on 11/4/03 for representation in removal proceedings. The only legal service performed by Johnson-Ortiz was to obtain a continuance. The Committee approved payment of \$1,450 to Applicant.

04-138 – Pay \$575: Applicant paid \$400 plus \$175 filing fee to seek Temporary Protected Status (TPS). No petition was ever filed. The Committee approved payment of \$575 to Applicant.

04-56 – Pay \$2,750: Applicant paid a total of \$2,750 in September and November 2003 to seek Adjustment to Status and an immigrant visa for her son. Johnson-Ortiz did nothing. The Committee approved payment of \$2,750 to Applicant.

04-115 – Pay \$2,000: Applicant paid \$2,000 on 10/15/03 for representation in removal proceedings. Johnson-Ortiz obtained a continuance and did nothing else. The Committee approved payment of \$2,000 to Applicant.

04-153 – Pay \$375: Johnson-Ortiz was paid \$1,325 to represent Applicant in a Nicaraguan Adjustment and Central American Relief (NACARA) proceeding. He filed the application in 2000. These proceedings take several years, and Johnson-Ortiz abandoned the case leaving a substantial portion of the work to be done. The Committee approved

payment of \$375 to Applicant.

04-133 – Pay \$360: Johnson-Ortiz was paid \$1,200 to petition for Alien Relative for Applicant's brother. He filed the petition and then abandoned the case. The Committee approved payment of \$360 to Applicant.

04-128 – Pay \$176.87: Johnson-Ortiz represented Applicant in several immigration matters over several years. In August 2003 she paid him \$500 for representation in removal proceedings. She went to a hearing and learned that Johnson-Ortiz had arranged a continuance to February 2004. Applicant demanded a refund, and Johnson-Ortiz paid her \$323.77, and claimed the remainder as an outstanding fee balance, but provided no billing information or accounting. The Committee approved payment of \$176 to Applicant.

04-40 – Pay \$666: Applicant paid Johnson-Ortiz \$2,200 in June 2003 for representation in removal proceedings. Johnson-Ortiz appeared telephonically at one hearing, and then abandoned the case. The Committee approved payment of \$666 to Applicant.

04-43 – Pay \$300: Applicant paid Johnson-Ortiz \$1,500 in February 2003 to seek Temporary Protected Status. He filed the petition and then abandoned the case. The Committee approved payment of \$300 to Applicant.

04-113 – Pay \$350: Johnson-Ortiz was paid \$350 on 11/12/03 to petition for Alien Relative. No petition was filed. The Committee approved payment of \$350 to Applicant.

04-61 – Pay \$2,075: Applicant paid Johnson-Ortiz \$2,075 on 3/11/03 to move to rescind an order of deportation. No motion was filed. The Committee approved payment of \$2,075 to Applicant.

04-67 – Pay \$600: Applicant paid \$600 in October 2003 to petition for Alien Relative. No petition was filed. The Committee approved payment of \$600 to Applicant.

04-52 – Pay \$3,000: Applicant paid \$3,000 in February 2003 to file a petition with the 9th Circuit Court of Appeals for review of a removal order. Johnson-Ortiz filed a petition for review but never filed a brief, and the petition was dismissed 11/20/03. The Committee approved payment of \$3,000 to Applicant.

04-76 – Pay \$850: Applicant paid \$2,650 in January 2003 to file for asylum and an application for withholding of removal. Johnson-Ortiz filed the form application for withholding of removal and asylum, but abandoned the case before the July 2004 USCIS interview. Applicant hired new counsel. The Committee approved payment of \$850 to Applicant.

04-94 – Pay \$1,000: Applicant hired Johnson-Ortiz in 2001 to fight deportation.

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She was allowed to remain temporarily in the U. S., but during 2003 she received another deportation order, requiring her to leave by January 18, 2004. Applicant contacted Johnson-Ortiz and was told to send \$1,000 as a fee. She sent a cashier's check in that amount on January 5, 2004. Johnson-Ortiz's staff deposited it into the law firm operating account, which was overdrawn. Applicant was deported. The Committee approved payment of \$1,000 to Applicant.

04-145 – Pay \$1,850: Applicant paid \$2,350 in April 2003 for representation in removal proceedings and to seek Adjustment to Status. Johnson-Ortiz submitted the application and had the removal proceedings continued. Applicant hired new counsel to complete the work after Johnson-Ortiz abandoned the case. The Committee approved payment of \$1,850 to Applicant.

04-51 – Pay \$800: Applicant paid \$2,450 in 2002 to petition for permanent residency and for representation in removal proceedings. Hearing was set for 1/8/04, after Johnson-Ortiz had abandoned his practice. Johnson-Ortiz's former associate obtained a continuance of that hearing and Applicant hired new counsel. The Committee approved payment of \$800 to Applicant.

04-99 – Pay \$5,787.72: Johnson-Ortiz settled a personal injury claim for Applicant for \$11,000. He was entitled to 1/3 as his fee. It was agreed that he would hold the balance to pay a medical lien of \$2,652, and that the remaining balance would be used to pay his legal fees in seeking permanent residency and employment authorization. The medical lien was not paid and, according to Applicant's new lawyer, Johnson-Ortiz filed the petitions but left the remaining work undone. The Committee approved payment of \$5,787.72 to Applicant, representing \$2,652 for payment of the lien, and \$3,103.22 as unearned fees.

04-120 – Pay \$1,100: Applicant paid \$1,100 in July 2003 to file a marriage dissolution proceeding. Johnson-Ortiz never filed anything. The Committee approved payment of \$1,100 to Applicant.

04-148 – Pay \$2,500: Applicant paid \$2,500 in December 2003 for representation in removal proceedings. Johnson-Ortiz's former associate had the matter continued and the Applicant hired new counsel. Johnson-Ortiz did nothing on the case. The Committee approved payment of \$2,500 to Applicant.

04-98 – Pay \$700: Johnson-Ortiz was initially hired to seek to reopen removal proceedings, which was granted. Applicant then paid \$2,200 in January 2003 for representation at the reopened proceeding. The hearing was set for 2/19/04, by which time Johnson-Ortiz abandoned her case. She hired a new lawyer. The Committee approved payment of \$700 to Applicant.

04-38 – Pay \$668.05: Applicant paid \$3,300 in April 2003 to petition for asylum.

Johnson-Ortiz filed the petition and appeared with Applicant at the initial hearing. He abandoned the case before it was completed. The Committee approved payment of \$668.05.

04-93 – Pay \$625: Applicant paid Johnson-Ortiz \$2,200 to represent him in a Nicaraguan Adjustment and Central American Relief (NACARA) proceeding. He filed the application in 2000. These proceedings take several years, and Johnson-Ortiz abandoned the case, leaving a substantial portion of the work to be done. The Committee approved payment of \$625 to Applicant.

04-100 – Pay \$3,000: Applicant paid \$3,300 on 8/7/03 to move to reopen removal proceedings. Johnson-Ortiz did nothing. The Committee approved payment of \$3,000 to Applicant.

04-34 – Pay \$4,000: Johnson-Ortiz had repressed Applicant in 1998 to apply for asylum, which was denied. He represented him on appeal to the Board of Immigration Appeals, which upheld the denial. On 12/3/03, Applicant paid Johnson-Ortiz \$4,000 to file an appeal with the 9th Circuit Court of Appeals. Johnson-Ortiz filed a petition for review but never filed a brief. The Committee approved payment of \$4,000 to Applicant.

04-122 – Pay \$2,500: Applicant paid \$2,500 on 12/22/00 for representation in the United States District Court in proceedings for illegal re-entry after deportation or removal as a felon. Johnson-Ortiz never filed a Notice of Appearance or did any work on the case. The Committee approved payment of \$2,500 to Applicant.

04-169 – Pay \$200: Johnson-Ortiz was paid \$1,350 to petition for Alien Relative for Applicant's husband. He filed a petition, but abandoned the case before it was completed. The Committee approved payment of \$200 to Applicant.

04-70 – Pay \$1,250: Johnson-Ortiz was paid \$1,250 on 12/16/03 to petition for Alien Relative for Applicant's wife. He did nothing. The Committee approved payment of \$1,250 to Applicant.

04-90 – Pay \$2,000: Johnson-Ortiz was paid \$2,000 on 9/2/03 to petition for Alien Relative for Applicant's husband. He did nothing. The Committee approved payment of \$2,000 to Applicant.

04-108 – Pay \$500: Applicant paid Johnson-Ortiz \$1,250 to represent him in a Nicaraguan Adjustment and Central American Relief (NACARA) proceeding. He filed the application in 2000. He abandoned the case before any interview was scheduled. Applicant hired a new lawyer who charged \$500 to complete the case. The Committee approved payment of \$500 to Applicant.

04-107 – Pay \$1,500: Johnson-Ortiz was paid \$1,500 in September 2003 to petition

for Alien Relative for Applicant's husband. Johnson-Ortiz never filed the petition. The Committee approved payment of \$1,500 to Applicant.

04-64 – Pay \$2,739: Johnson-Ortiz was paid \$2,739 in May 2003 to petition for Alien Relative for Applicant's wife. He did nothing. The Committee approved payment of \$2,739 to Applicant.

04-91 – Pay \$2,500: Johnson-Ortiz was paid \$2,500 on 9/22/03 to petition for Alien Relative and Adjustment to Status for Applicant's husband. He did nothing. The Committee approved payment of \$2,500 to Applicant.

04-105 – Pay \$1,400: Johnson-Ortiz was paid \$1,400 on 7/15/03 to petition for Alien Relative and Adjustment to Status for Applicant's husband. He did nothing. Johnson-Ortiz agreed to submit Applicant's demand for return of her fee to WSBA fee arbitration. Applicant was awarded \$1,575 including costs. Johnson-Ortiz never returned the unearned fee. The Committee approved payment of \$1,400 to Applicant.

04-69 – Pay \$700: Johnson-Ortiz was paid \$700 on 12/29/03 to petition for Alien Relative and Adjustment to Status for Applicant's wife. He did nothing. The Committee approved payment of \$700 to Applicant.

04-118 – Pay \$1,000: Applicant paid \$3,000 in June 2002 to seek Adjustment to Status. Johnson-Ortiz filed the required forms, but abandoned the case before a hearing was held. The Committee approved payment of \$1,000 to Applicant.

04-46 – Pay \$1,500: Applicant paid Johnson-Ortiz \$1,500 on 8/14/03 to seek Adjustment to Status. He did nothing. The Committee approved payment of \$1,500 to Applicant.

04-39 – Pay \$950: Applicants paid \$950 to Johnson-Ortiz on 8/19/03 to file an Application for Naturalization for husband and Adjustment to Status for wife. He did nothing. The Committee approved payment of \$950 to Applicant.

04-108 – Pay \$166: Johnson-Ortiz was paid \$627 on 10/8/02 to petition for Alien Relative for Applicant's wife. He submitted the application form and did nothing more. The Committee approved payment of \$166 to Applicant.

04-37 – Pay \$1,750: Applicant paid Johnson-Ortiz \$1,750 in November 2003 for representation at removal proceedings. Nothing was done before Johnson-Ortiz abandoned the case. The Committee approved payment of \$1,750 to Applicant.

04-54 – Pay \$1,550: Applicant hired Johnson-Ortiz in July 2003 to move to reopen removal proceedings. By January 14, 2004, he paid a total of \$2,150. Johnson-Ortiz filed a notice of appearance and requested copies of tapes from the earlier hearing. He never

filed a motion to reopen before he abandoned the case. The Committee approved payment of \$1,550 to Applicant.

04-41 – Pay \$550: Johnson-Ortiz was paid \$1,550 in July 2003 to petition for Adjustment to Status for Applicant's wife. Johnson-Ortiz filed the petition and did nothing more. The Committee approved payment of \$550 to Applicant.

04-44 – Pay \$1,500: Applicant paid \$4,000 in July 2002 for representation in removal proceedings. Johnson-Ortiz filed a notice of appearance and had the case continued before abandoning the case. Applicant hired a new lawyer who charged \$1,500 to complete the case. The Committee approved payment of \$1,500 to Applicant.

04-55 – Pay \$1,200: Johnson-Ortiz was paid \$4,700 in April 2003 to petition for Adjustment to Status for 3 members of Applicant's family. He submitted the required forms and then abandoned the case. The Committee approved payment of \$1,200 to Applicant.

04-88 – Pay \$1,300: Johnson-Ortiz was hired in 2002 to petition for Cancellation of Removal and Adjustment to Status. The application was denied. In November 2003 Applicant paid Johnson-Ortiz \$1,300 to file a motion to reopen. No motion was filed. The Committee approved payment of \$1,300 to Applicant.

04-125 – Pay \$1,110.51: Johnson-Ortiz was originally hired in 2000 to Petition for Alien Relative for Applicant's husband, and for Visa Consular Processing. The agreed fee totaled \$4,500. The Applicants had problems paying the full fee, and in April 2003 it was agreed that Johnson-Ortiz would only represent them on the Petition for Alien Relative for \$700. Johnson-Ortiz told Applicants that they would remain liable to pay all interest fees that had accrued on the original agreement. Applicants paid a total of \$1,110.51. Johnson-Ortiz did nothing on their case. The Committee approved payment of \$1,110.51 to Applicants.

04-82 – Pay \$2,500: Johnson-Ortiz was originally hired in 1997 to seek residency for Applicant's husband. He said it would take as long as 5 years. In 2000, Applicant became a U. S. citizen. On 4/30/03 they paid Johnson-Ortiz \$2,500 to seek Adjustment to Status for husband. He never filed the petition. The Committee approved payment of \$2,500 to Applicants.

04-73 – Pay \$1,625: Applicant hired Johnson-Ortiz in January 2003 to seek permanent residency and to withhold removal proceedings. He paid a total of \$1,625. Johnson-Ortiz never filed the petition. The Committee approved payment of \$1,625 to Applicant.

04-42 – Pay \$2,500: Applicant hired Johnson-Ortiz in November 2003 to file a petition for writ of habeas corpus to the 9th Circuit Court of Appeals. He paid \$2,400 plus \$100 filing fee. Nothing was filed with the Court. The Committee approved payment of

\$2,500 to Applicant.

04-87 – Pay \$3,550: Applicant paid Johnson-Ortiz \$3,500 in February 2003 to file an appeal to the 9th Circuit Court of Appeals from a decision in removal proceedings. He filed the petition but never filed a brief, and the appeal was dismissed. The Committee approved payment of \$3,550 to Applicant.

04-63 – Pay \$864: Applicant hired Johnson-Ortiz in October 2003 to move to reopen an application for naturalization. He paid \$864. Nothing was done on his case. The Committee approved payment of \$864 to Applicant.

04-152 – Pay \$2,250: Applicant hired Johnson-Ortiz in November 2003 to move to reopen removal proceedings. He paid \$2,250. Nothing was done on his case. The Committee approved payment of \$2,250 to Applicant.

04-158 – Pay \$2,675: Applicant paid Johnson-Ortiz \$2,675 in June 2002 for Adjustment of Status for her son. In November 2002 the son was charged with DUI, and he was convicted on 5/9/03. Johnson-Ortiz advised Applicant that her son could not file a required medical form until the court-ordered alcohol treatment program was completed. He abandoned his practice before anything was ever submitted. The Committee approved payment of \$2,675 to Applicant.

04-142 – Pay \$500: Applicant paid Johnson-Ortiz \$1,500 in March 2003 to petition for asylum and for representation in removal proceedings. Johnson-Ortiz filed the petition but abandoned the case before the work was complete. The Committee approved payment of \$500 to Applicant.

04-58 – Pay \$1,000: Applicant paid Johnson-Ortiz \$1,000 on 12/1/03 to seek Adjustment to Status. Nothing was done when he abandoned his practice. The Committee approved payment of \$1,000 to Applicant.

04-116 – Pay \$500: Applicant hired Johnson-Ortiz in December 2002 to petition for asylum. He paid \$2,000. Johnson-Ortiz filed the required forms but abandoned the case before any interview was scheduled. The Committee approved payment of \$500 to Applicant.

04-60 – Pay \$1,302.16: Applicant paid Johnson-Ortiz \$1,302.16 in January 2003 to Petition for Alien Relative. No petition was ever filed. The Committee approved payment of \$1,302.16 to Applicant.

04-83 – Pay \$1,000: Applicant paid Johnson-Ortiz \$1,000 on 12/29/03 to seek Adjustment to Status. Nothing was done on his case. The Committee approved payment of \$1,000 to Applicant.

04-50 – Pay \$2,500: Applicant paid Johnson-Ortiz \$2,500 in June 2003 to file a motion to reopen and remand before the Board of Immigration Appeals. The motion was never filed. The Committee approved payment of \$2,500 to Applicant.

RICHARD KYAW – WSBA # 21312 (Tacoma) – disbarred

Application 04-150

Pay \$29,620.86

Applicant’s husband died 8/14/99. He left his wife, a teenage son, and 4 adult children from a prior marriage. The will named Applicant the personal representative. Applicant is deaf and foreign-born with limited English language skills. She hired Kyaw in December 1999 to represent her and the estate. She paid a fee of \$2,500. Her contact with Kyaw was “almost at nil.” When she was able to talk with Kyaw, he assured her that the matter was being taken care of. However, he did not seek appointment as personal representative until 10/26/00. Eventually, Applicant learned that Kyaw had closed his office with no new phone number or address. Finally, she located his wife, who told her that her files had been destroyed.

Applicant contacted the WSBA and learned that Kyaw was disbarred. With assistance, Applicant was able to locate records showing that on October 27, 2000, Kyaw received \$14,620.86 from the deceased’s credit union account, and that on November 27, 2000 he received \$12,500 from the sale of the deceased’s Alaska commercial fishing permit. Kyaw never accounted for these funds. A review of the court docket shows that after Kyaw was appointed PR on 10/26/00, there was no further action in the proceeding.

The Committee and Trustees approved payment of \$2,500 to Applicant and \$27,120.86 to the estate.

Application 03-54

Pay \$13,727.14

Applicant hired Kyaw to handle the estate of his sister. Applicant was the sole heir. Kyaw agreed to a fee of \$1,500. The estate assets were \$111,301.46. On January 25, 2002 Kyaw sent Applicant \$70,000 “as a partial disbursement.” On June 14, 2002 Kyaw wrote to Applicant showing disbursements from the balance of \$41,301.46 as follows:

Kyaw’s fee	\$1,500.00
Funeral expense	\$7,748.56
Payment to Applicant	\$18,325.76

Kyaw said he was holding the remaining balance of \$13,727.14 as “reserved for WA State’s Claim.” Applicant says that he gave Kyaw documents showing that no payment was due to the state, which was confirmed by a letter to the WSBA from the Office of the

Attorney General stating that “(1) There was no claim by the state against [Applicant’s sister]; and (2) There were no funds received by the state from Mr. Kyaw.” Kyaw never accounted for the \$13,727.14 and never paid it to Applicant. The Committee and Trustees approved payment of that amount to Applicant.

Application 03-48

Pay \$1,555

Applicant hired Kyaw to represent him on criminal charges. Kyaw agreed to represent him for \$5,000, with an additional \$5,000 if the case went to trial. Kyaw told Applicant he would need an additional \$2,500 to hire a detective to investigate the possibility of an alibi, which Applicant paid Kyaw. Applicant met with the detective for about 15 minutes. The detective told bar counsel that in April 2002 Kyaw paid her \$195 for her work on Applicant’s case. This leaves a balance of \$1,555 unaccounted for. The Committee approved payment of \$1,555 to Applicant.

Application 04-07

Pay \$1,000

Applicant’s mother died in December 2001 without a will. She hired Kyaw to probate the estate. She paid him \$1,000. Kyaw told her it would take about 4 months. In July 2002 Applicant was deployed to the Balkans. When she was home on leave, she tried to contact Kyaw but was told he was in court. In April 2003 she went to his office and was again told he was in court. She got angry and was given Kyaw’s cell phone number. She spoke with Kyaw who told her he would send her papers. Applicant says she returned to the Balkans the next day. On September 1, 2002 she called Kyaw’s office and was told he was no longer there. He never responded to Applicant’s requests or accounted for her fee. The Committee approved payment of \$1,000 to Applicant.

D. WILLAS MILLER – WSBA # 25454 (Seattle) – disbarred

Application 00-67

Pay \$1,500

D. Willas Miller was convicted by a jury of 3 felony counts of delivering a controlled substance on July 24, 2000. Following his conviction, he was ordered suspended from the practice of law pending resolution of the related disciplinary charges against him. That proceeding has been continued at his request until he is released from incarceration.

Applicants’ son was charged with domestic violence assault. He was appointed a public defender. However, a friend recommended to Applicants that their son hire Miller to represent them. At their son’s urging, Applicants spoke with Miller and agreed to hire him for \$1,500. Miller mailed Applicants a retainer agreement which they signed on June 28, 2000 and returned to Miller with a cashier’s check for \$1,500. Miller did not advise

Applicants that he was facing a criminal trial of his own in July. Miller did nothing after receiving the fee. The court-appointed attorney continued to represent their son. Miller never returned or accounted for Applicants' fee payment. The Committee approved payment of \$1,500 to Applicants.

S. DON PHELPS – WSBA #21247 (Olympia) – disbarred

Application 03-66

Pay \$9,500

S. Don Phelps was convicted by a jury on November 18, 2002 of 2 counts of 3rd degree child molestation, a Class C felony, for conduct involving a 15-year-old. Applicant first learned of Phelps' problems when she read of his conviction in the newspaper. After Phelps' conviction, a custodian was appointed of Phelps' files and records. He found that Phelps had no funds in his client trust account.

Phelps represented Applicant on a medical malpractice claim. In March 2002 the case settled for \$45,000. After learning of Phelps' conviction, Applicant became concerned that she had not received all that was owed to her. She hired a private investigator who obtained "several thousand" documents from Phelps' office, including copies of e-mails.

One e-mail from Phelps showed that the initial fee agreement between Applicant and Phelps was a 45% contingent fee, but that at the time of the settlement he reduced his fee to 38%, or \$17,100. Phelps noted there was an additional \$3,400 in costs. The e-mail says that Applicant would receive "about \$24,500." It also noted that she would have to pay any outstanding medical bills, but that a subrogation claim would not have to be paid since Applicant had not been made whole.

Phelps paid Applicant \$10,000 on April 23, 2002 and later a second check for \$5,000. He never accounted for the \$9,500 balance of the funds, nor provided any accounting or billing statement. There is no evidence that any medical bills were paid from the settlement. The state has attempted to enforce its subrogation claim against Applicant. The Committee approved payment of \$9,500 to Applicant.

Application 03-88

Pay \$250

Applicant paid Phelps \$250 on September 1, 1999 to write a will and prepare a quit claim deed. She received a receipt showing that payment toward a total fee of \$500. She supplied records regarding her home. She says that she heard nothing further from him, and calls to his office were not returned.

She says that in December 2002 she discovered the receipt for her payment to Phelps. She says, "I had forgotten about the retainer and the services to be provided by Mr.

Phelps.” She wrote requesting a refund and received no response. By that time, Phelps had been convicted of the crime and suspended from the practice of law. The Committee approved payment of \$250 to Applicant.

Application 03-39

Pay \$500

Applicant paid Phelps \$500 on October 31, 2002 to represent her regarding a criminal investigation and possible criminal charge relating to allegations that she had misappropriated funds from her employer. Before any action was taken by the authorities, Phelps was convicted and Applicant could no longer reach him. Phelps never refunded her \$500. The Committee approved payment of \$500 to Applicant.

ANNA-MARI SARKANEN – WSBA # 8984 (Seattle) – suspended

Application 03-42

Pay \$8,000

Sarkanen represented Applicant on criminal charges. After his conviction was affirmed on appeal in the state courts, she recommended that he pursue an appeal in federal court. Applicant paid Sarkanen \$8,000 for the federal case. For several months, Sarkanen told Applicant that she was waiting for the state court to issue a mandate. Applicant then found that Sarkanen had closed her office, and he contacted the WSBA and learned she was suspended. He contacted the court and learned that the mandate had issued 3 years previous. Sarkanen never provided any accounting for Applicant’s funds, and did not respond to the Fund investigation of this matter. The Committee approved payment of \$8,000 to Applicant.

KENNETH P. SCHMIDT – WSBA # 14677 (Yakima) – disbarred

Application 02-49

Pay \$400

Schmidt represented Applicant on claims against the Department of Labor and Industries (L & I). Schmidt established a trust and set up several bank accounts for the benefit of applicant. After Schmidt failed to respond to Applicant’s request for an accounting, applicant obtained a new lawyer and Schmidt was removed as trustee. An investigation by WSBA Office of Disciplinary Counsel accounted for all of Applicant’s funds except \$400 proceeds from one L&I payment. The Committee approved payment of \$400 to Applicant.

Application 03-61

Pay \$50,000

Schmidt was appointed trustee for a trust established on behalf of a minor following his mother's death. As trustee, Schmidt received insurance proceeds totaling \$154,482.62. Applicant's step-father was appointed legal guardian, and he requested accountings from Schmidt, but none was ever provided. Eventually, Schmidt agreed to resign as trustee.

A new trustee was appointed. He continued unsuccessfully to get an accounting from Schmidt. He found some account records and was able to determine that \$80,000 was intact in a certificate of deposit on behalf of the minor beneficiary. The documentation for the remaining \$74,482.62 was sketchy, but the trustee was able to determine that the remaining funds had been all withdrawn by Schmidt. Schmidt never accounted for the \$74,482.62. He was convicted of 1st-degree theft and ordered to pay restitution to this beneficiary of \$75,424.18.

The Committee recommended, and the Trustees approved, payment to Applicant of the Fund maximum gift of \$50,000. With the assistance of the Office of the Yakima County Prosecuting Attorney, the WSBA was listed in Schmidt's restitution order.

JOHN E. WAGENBLAST – WSBA #5850 (Yakima) – disbarred

Application 02-15

Pay \$50,000

Wagenblast stipulated to disbarment based upon his representation of the personal representative of an estate, and stipulated to pay \$58,652.55 in restitution. His former secretary pled guilty to 4 counts of forgery and 1 count of first degree theft involving this matter.

Wagenblast filed a probate proceeding and had the PR open 2 checking accounts, one for the estate and one for a testamentary trust. Wagenblast's office address was listed for the accounts. The PR was the only authorized signatory on the accounts. In February 1999, the PR wrote a check on the testamentary trust account that bounced. He contacted the bank where the account was located and learned that there had been activity on the account that he was unaware of. The PR wrote to Wagenblast discharging him as lawyer, and advising him that he had hired a new attorney. It was subsequently determined that forged and/or unauthorized checks totaling \$19,260 were negotiated through the estate account, and forged and/or unauthorized checks totaling \$42,418.05 were negotiated through the testamentary trust account.

The Committee recommended, and the Trustees approved, payment to Applicant of the Fund maximum gift of \$50,000.