

Washington State Bar Association



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

LAWYERS' FUND FOR CLIENT PROTECTION

ANNUAL REPORT

September 2005

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
2004- 2005**

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

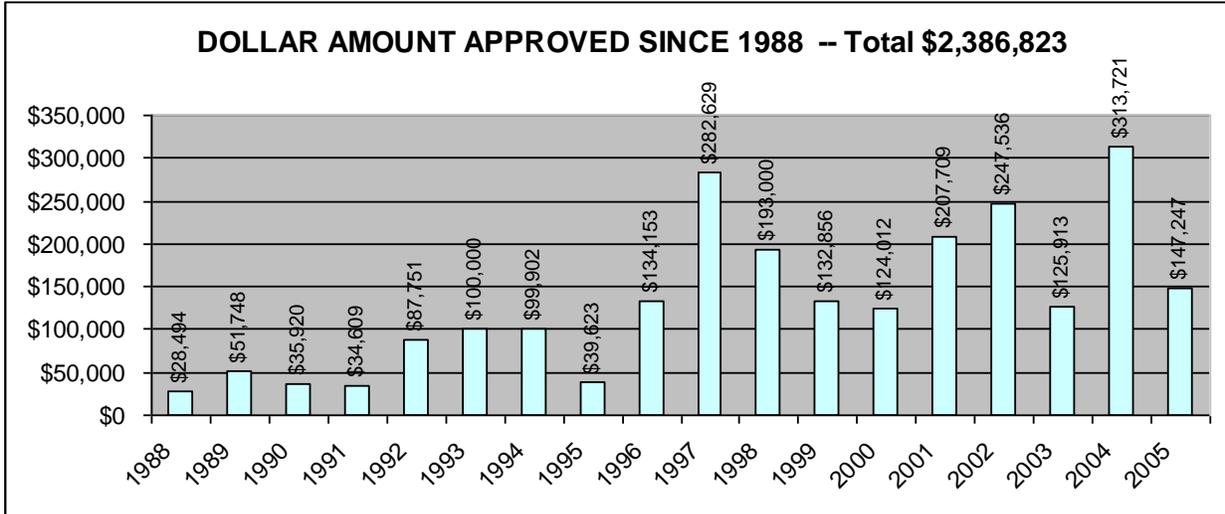
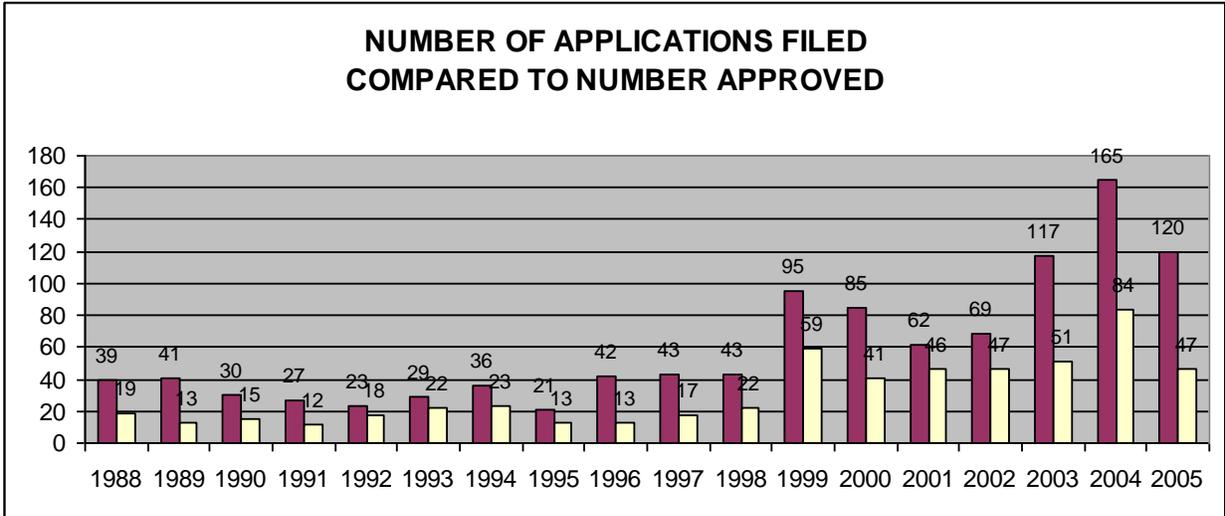
Washington is fortunate to have a stable well-funded Lawyers' Fund for Client Protection that is strongly supported by the Washington Supreme Court and the Washington State Bar Association (WSBA). Washington was one of the first states to establish what was then called a Lawyers' Indemnity Fund in 1960. Since that time, the lawyers of this state have compensated the victims of the few dishonest lawyers who misappropriate client funds or property in an amount totaling more than \$2.3 million dollars.

The current Lawyers' Fund for Client Protection was established by the Washington Supreme Court in 1994 at the request of the 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 out of the Bar's general fund.

Every jurisdiction 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.

Lawyers are privileged to be a self-regulating profession under the authority of the Supreme Court. Only the Supreme Court and the lawyers acting under its delegation of authority 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 professions, such as doctors, accountants, or architects, 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.

Client protection is one of the chief concerns of both the Supreme Court and the Bar Association. The Fund is one of those protections. Gifts from the Fund are financed solely by payments from lawyers; no public funds are involved. Pursuant to APR 15, the Fund is maintained by a \$13 annual assessment on each of the approximately 25,000 active members of the Bar licensed in Washington. The charts on the following page shows the experience of the past 18 years as the active Bar membership has increased from 14,000 in 1988 to 25,000 in 2005.



II. FUND PROCEDURES

The Fund is governed by 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 lawyers and 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: In order to be eligible for payment, an applicant must show by a clear preponderance of the evidence 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. When an application is received, it is reviewed to determine that on its face it appears eligible for recovery from the Fund. If not, the applicant is advised of the reasons for its ineligibility.

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, and does not return unearned fees, 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. It also cannot compensate for loan, investment, or other business transactions unrelated to the lawyer's practice of law.

If the application appears eligible for payment, the Fund 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 \$25,000 or less with recommendation for payment of not more than \$25,000, the Committee's decision is final. Recommendations on applications for more than \$25,000, or for payment of more than \$25,000, are reviewed by the Trustees.

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 single application are limited to a maximum of \$75,000. There is no limit on the aggregate amount that may be paid on claims regarding a single lawyer. Any payments from the Fund are gifts and are at the sole discretion of the Trustees.

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 \$190,000.

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 WSBA Disciplinary Board conducts random audits of lawyers and law firms. During FY 2004 (the last year for which statistics are available), 527 lawyers in 69 law firms were audited. Of the 69 law firms, 18 were found not to be in compliance with the trust account rules. After consultation, they all came into compliance.

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. No disciplinary action was initiated in FY 2004 based on a random audit.

- **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 2004, 122

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.

disciplinary investigations were opened based on overdraft notices received. The reasons for those overdrafts were varied: bank error (32%), improper endorsement (5%), deposit to wrong account (14%), math or bookkeeping error (18%), disbursement before deposit cleared (11%), failure to make timely deposit (4%), and other causes (16%).

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 2004, \$9,325 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, 2003 - September 30, 2004) total Fund revenues were \$350,297. Gifts to applicants totaled \$313,191. Committee expenses and overhead, including staff time, totaled \$27,992, or approximately 7.9% of revenue.

As of June 30, 2005, the Fund balance is \$632,469 (See Appendix C). As of that date, the Fund this year has made payments totaling \$86,905. The total amount approved for payment this year, including the payments already made, is \$147,247.09. 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 11, 2004, February 4, May 20, and August 19, 2005, to consider 121 applications to the Fund involving 51 lawyers. In addition, the Committee did the following:

- Amendment to APR 15: The Committee recommended that the Trustees ask the Supreme Court to add a new section to APR 15 to provide for exoneration from liability for the Fund, committee members, trustees, staff, and persons communicating with the Fund regarding applications. The rule is based on the

exoneration from liability rule in the Rules for Enforcement of Lawyer Conduct. The Trustees approved the recommendation and submitted the proposal to the Supreme Court.

- Fund Procedural Rules: Acting on recommendations from the Committee and Trustees, the Supreme Court approved amendments to the Procedural Rules to increase the payment “cap” to \$75,000, and to increase the Committee’s authority to approve gifts without Trustee review from \$10,000 to \$25,000. The Supreme Court also approved amendments regarding exhaustion of remedies and the Committee’s authority to waive any time limitations for good cause.
- Fund Assessment Increase: The WSBA Budget and Audit Committee asked the Committee for its view on increasing the annual \$13 assessment in the next license-fee cycle (2007 – 2009). After discussion of the impact of increasingly large claims, the importance of maintaining a reserve against future catastrophic losses, and the desire to maintain a Fund that is responsive to the public need, the Committee recommended an increase in the annual assessment to \$15. The Trustees approved this increase and, pursuant to APR 15(c), recommended that it be approved by the Supreme Court.
- Public Information: The Lawyers’ Fund for Client Protection maintains a website 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 Fund information and application forms are also available in the Spanish language.
- Use of Fund to Pay Costs of Custodianships: The Committee again this year discussed a proposal that the Fund be used to pay fees and costs to lawyers appointed pursuant to ELC 7.7 as custodians to protect the interests of clients of lawyers who become disabled or abandon their practice. As it did last year, the Committee agreed that payment of lawyer fees from the Lawyers’ Fund for Client Protection would be an inappropriate use of the Fund. That recommendation was approved by the Trustees.
- Other Activities: General Counsel Bob Welden was reappointed chair of the ABA Standing Committee on Client Protection for 2004 - 2005. In that capacity, he presided over the ABA 21st National Forum on Client Protection held in Chicago, Illinois, in June. He also made a presentation at a National Client Protection Organization (NCPO) Regional Workshop in Santa Fe, New Mexico, in April. He was also reappointed as chair for 2005 – 2006 and will preside over the ABA 22nd National Forum on Client Protection to be held in Vancouver, B. C., in June 2006.

Fund Trustees: The Trustees considered and approved all Committee recommendations on applications for more than \$25,000. In July, they approved an emergency interim payment of \$3,000 to the former client of a lawyer in pending disciplinary proceedings. The interim payment was approved based on the fact that available evidence shows that the

applicant lost in excess of \$60,000 which may be eligible for compensation from the Fund, and he is currently in danger of eviction and loss of visitation rights with his children. The Trustees also approved the Committee recommendations noted above, and approved the 2005 Annual Report for submission to the Supreme Court pursuant to APR 15(g).

VI. 2005 APPLICATIONS AND PAYMENTS

At the beginning of FY 2005, there were 60 pending applications to the Fund. During FY 2005, 129 additional applications were received. The Committee and Trustees acted on 121 applications concerning 51 lawyers. The total amount in approved payments is \$147,247.09. A summary of Committee and Trustee actions is shown below. Complete summaries of all approved applications follow.

Approved for Payment	47
Denied as fee dispute	31
Denied; no evidence of dishonesty	21
Denied as malpractice claim	7
Restitution made	8
Withdrawn	1
Deferred	2
Other	5

The “other” reasons for denial included investments with lawyers not made in an attorney/client context; the matter was resolved in litigation; and the application was for consequential damages not compensable from the Fund. The 47 approved applications involved the following:

Theft or conversion	11
Failure to return unearned legal fees	36
Investments and loans with lawyers	0

SUMMARIES OF APPROVED APPLICATIONS

*"On behalf of the lawyers of the State of Washington . . ."*³

Pursuant to the Fund Procedural Rules, Committee recommendations on applications for \$25,000 or less, or for payment of no more than \$25,000, are final. Recommendations on applications for more than \$25,000, or for payment of more than \$25,000, must be reviewed and approved by the Trustees.

DAVID A. AMBROSE – WSBA # 21764 (Edgewood) – suspended

Application 04-36

Pay \$145.00

Applicants hired Ambrose to file suit against the builder of their home over defective siding. They paid him \$1,500 and advanced filing and service fees. Ambrose drafted a complaint which was reviewed and agreed to by the Applicants but Ambrose says that on the day that he was prepared to file and serve the complaint, he checked with the Office of the Secretary of State and discovered that the defendant had voluntarily dissolved. As a result, he did not file the complaint. After that, there were a great many communications between Applicants and Ambrose. In the disciplinary investigation, Ambrose asserted that he fully earned the \$1,500 fee. He did not, however, account for or refund the filing and service fees totaling \$145. The Committee approved payment of \$145 and denied the balance of Applicants' application because it is a fee dispute the Fund Committee cannot resolve.

Application 05-06

Pay \$1,800.00

Applicant hired Ambrose to represent him in seeking a parenting plan regarding his 8-year-old daughter. Applicant's mother paid Ambrose \$1,800 on behalf of her son. Ambrose prepared a draft parenting plan but when Applicant reviewed it, he found that it was full of inaccuracies, spelling errors, and was incomplete. After a few weeks, Ambrose would not return Applicant's phone calls and did not open his door when Applicant went to his office. Applicant wrote Ambrose to demand that he either finish the work or refund the \$1,800. He received no response. Finally, Ambrose left a message that Applicant could pick up his

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

file. He went to Ambrose's office and received an envelope with his file and a handwritten note from Ambrose that said that Applicant had failed to decide on a "single, integrated strategy" and that "THE MOTHER NEEDS AT LEAST A STERN TALKING TO BY SOMEONE" [sic]. He received no refund or accounting. In his stipulation, Ambrose agreed to pay \$1,800 to Applicant's mother. The Committee approved payment of that amount.

Application 05-09

Pay \$10,757.00

Applicants hired Ambrose to represent them regarding a dispute with neighbors over a road easement on Applicants' property. They made fee payments totaling \$9,645 plus \$112 to pay costs of service. Before Ambrose filed suit, the neighbors filed against Applicants. The neighbors filed a motion for order of default, which was granted. Then Ambrose filed a notice of appearance. According to the lawyer for the neighbors, he had only one telephone conversation with Ambrose who told him that he did not have an office at his mailing address, and gave no other contact information. Ambrose appeared in court one time when the order of default was set aside by agreement of the parties. He never filed an answer to the complaint and the trial judge entered a default judgment against Applicants. Ambrose then told Applicants that he would sue the neighbors. Applicants paid him an additional \$2,000. Ambrose did nothing further on their case. The Committee approved payment of \$10,757.

Application 05-75

Pay \$2,200.00

Applicants hired Ambrose for representation in a family real estate dispute. They paid him \$2,900 in fees and costs. Ambrose filed a lawsuit on behalf of Applicants but after that, he did little more work. He did not respond to discovery requests until the defendants moved for sanctions. He cancelled scheduled depositions. On the scheduled date for trial he filed an untimely motion for a new judge. Even though it was untimely, the judge chose not to proceed. Ambrose agreed to arbitrate the claim but took no steps to do so. Ambrose stipulated that although he did no work on Applicants' case after December 2003, between 12/13/03 and 9/17/04 he collected an additional \$2,200 in fees from them. He stipulated to \$2,200 restitution and the Committee approved payment in that amount.

Application 05-91

Pay \$4,000.00

Applicants paid Ambrose for representation in a property dispute with their neighbors. Their neighbors had filed a timber trespass action against them, and Applicants had filed a pro se Superior Court complaint against the neighbor and 2 fence companies. Ambrose said he would seek a summary judgment, and that it would cost no more than \$4,000 and he would likely recover attorney's fees. Ambrose filed a Notice of Appearance but there

were no other court filings or appearances by Ambrose.

Applicants heard nothing from Ambrose so began calling him and left messages on his door, with no response. Ambrose called and apologized for the delay. He said that to complete the process, he needed \$1,000 more. Applicants mailed him a check for \$500.

Ambrose scheduled an appointment to meet with Applicants to complete interrogatories. At the meeting, they went over the interrogatories, and Ambrose said that he had been in contact with the neighbor's lawyer and that there was a strong possibility that they could settle the case. During that meeting, Applicants gave Ambrose a check for \$500. Ambrose said he would send them a copy of the interrogatories when they were filed. They never received any copy, and nothing was ever filed.

About 2 weeks later, Applicants spoke with Ambrose who told them he was in negotiations with the opposing lawyer, and that he needed another \$500 to file for summary judgment. Applicants mailed him a check for \$500 on 11/6/04. They also gave Ambrose checks for \$250 on 12/5/04 and \$250 on 12/7/04.

The next time Applicants heard from Ambrose was a letter stating that he was withdrawing from representation of them because of "a stipulated suspension due to major depression," and that they should seek legal counsel immediately. They then learned that an order had been entered dismissing the neighbors from the lawsuit and that a judgment was entered awarding attorney's fees against Applicants in the amount of \$10,875. They also learned that Ambrose had never filed any pleadings or appeared in court.

During the investigation of this matter, the opposing counsel said that after an initial contact with Ambrose, he couldn't figure out what was happening. His calls and letters went unanswered, and Ambrose never responded to motions he filed in court. He said that there were never any offers of settlement, and that as far as he could tell, Ambrose did nothing on Applicants' case.

The Committee approved payment of \$4,000.

Application 05-105

Pay \$500.00

Applicant paid Ambrose \$500 to evict a tenant from a mobile home. When Applicant had not heard from Ambrose, she called him. He told her he was preparing the necessary documents, and that he would mail her copies.

When she heard nothing further, she called him again and he said he would mail the documents immediately. After another week, she tried calling him repeatedly from her home phone, but got no answer. In mid-February she was told by the mobile home park owners that they were going to remove the mobile home because the tenant was not

paying the ground rent. She called Ambrose from a friend's phone and he answered. He told her that everything was under control, that he had spoken with the mobile home park owner, and that they owner was evicting the tenant. Applicant called the owner and he said he was not evicting the tenant.

Applicant went to Ambrose's office but he said he was too busy to see her. She returned and after waiting 2 hours, Ambrose opened his door. He gave her a copy of a letter that he said he had mailed to the tenant. In his stipulation to discipline, Ambrose admitted that he had never mailed the letter. Applicant fired Ambrose and asked for a refund. Ambrose did not respond.

Ambrose stipulated to pay restitution of \$500, and the Committee approved payment in that amount.

JOHN M. COOPER – WSBA # 22977 (College Place) – Interim Suspension

Application 00-17

Pay \$2,990.00

Applicant hired Cooper to probate her mother's estate. She paid him \$250 at that time. The estate was valued at approximately \$50,000, consisting mainly of the house Applicant's mother owned and in which Applicant lived. There were also numerous creditors' claims. Cooper recommended that she take out a mortgage to raise \$5,000 to pay the creditors. Applicant gave Cooper a cashier's check for \$5,750. \$750 was an advance fee payment to Cooper, and \$5,000 was to be used to pay creditors, with any remaining balance to be refunded to Applicant. She would contact Cooper periodically, and he assured her everything was fine. However, soon he stopped returning phone calls, and creditors began contacting Applicant because their claims were not paid.

Applicant and her husband confronted Cooper at his home. During that meeting, Cooper gave Applicant a trust account check for \$3,010, and a promissory note for the balance of fees and costs plus interest, plus \$2,000 "to make matters right." He has made no payments on the note.

Examination of Cooper's trust account showed that after he deposited Applicant's check, he used her funds to pay the expenses of other clients and to make cash withdrawals. His payment of \$3,010 to her from the trust account depleted the account. The Committee approved payment to Applicant of \$2,990 representing the \$6,000 paid in fees and costs, less the \$3,010 repayment.

DAN P. DANILOV – WSBA # 170 (Seattle) – Interim Suspension

Application 04-14

Pay \$2,000.00

Applicant paid Danilov \$4,000 to take over representation of him on an application for Adjustment to Status to become a lawful permanent resident that had been filed by a previous attorney. Before the Adjustment to Status could be allowed, Applicant needed to submit a Motion to Reopen a 1996 order of deportation. During the next year, Danilov became ill and was unable to continue to practice, and no motion was filed. One of Danilov's associates determined that \$2,000 would be a fair refund, but Danilov made no refund. The Committee approved that amount.

THOMAS J. EARL – WSBA # 10902 (Moses Lake) – Disbarred

Application 04-149

Pay \$5,000.00

Earl was a contract public defender for Grant County. He was appointed to represent client on a felony charge, for which he was convicted. Earl met with client to discuss an appeal and told client that he could hire Earl to represent him on appeal for a fee of \$5,000. Applicant, client's mother, paid the fee. At that time, client had not been sentenced and Earl was still his court-appointed counsel. The Hearing Officer found that by accepting \$5,000 while still serving as client's court-appointed counsel, Earl had a conflict of interest. He also found that Earl had failed to make full and fair disclosure to Applicant and client regarding client's right to appointed counsel on appeal when soliciting payment from them. Another lawyer wrote the appeal brief and argued the appeal, for which Earl instructed client to pay an additional \$750 as a "cost." Restitution of \$5,000 was ordered, and the Committee approved payment of that amount.

Application 04-190

Pay \$3,000.00

Earl was appointed to represent Applicant on a criminal charge. When Applicant was released from jail he went to Earl's office and "as soon as I walked in the room he said I was looking at 3 – 8 months. So I asked him if I would get the same amount of jail time if I hired him as my attorney and he guaranteed me no jail time and no felony." Applicant paid Earl \$3,000. The Hearing Officer found that "the initial receipt of the flat fee, while Thomas Earl was under an obligation to represent [Applicant] as appointed counsel, was unreasonable." Restitution of \$3,000 was ordered, and the Committee approved payment of that amount.

Application 05-19**Pay \$3,000.00**

Applicant's brother had been previously represented by Earl as appointed counsel. He was charged with violating the conditions of his sentence, and he was also charged with a new felony offense. Earl was appointed as counsel for Applicant's brother in both of these new matters. Applicant called Earl and asked what it would cost to represent her brother. Earl did not tell Applicant that he was already appointed counsel for her brother. She paid him \$3,000. The Hearing Officer found that "there was no proper reason for the payment, and that had full and fair disclosure of [Earl's] obligations under his appointment been made to [his client] and his sister, no money should have been offered or accepted." Restitution of \$3,000 was ordered, and the Committee approved payment of that amount.

TERRY O. FORBES – WSBA # 5626 (Everett) – Interim Suspension**Application 05-85****Pay \$3,000.00**

The Fund Trustees approved an interim emergency payment pending the outcome of discipline against Forbes. Forbes deposited \$86,380.48 into his trust account from the proceeds of sale of Applicant's house. After a few disbursements, he should have been holding \$72,230.48 belonging to Applicant. He has never accounted for Applicant's funds. Forbes admitted during a deposition that large sums of money were missing from his trust account.

DANA P. GELMAN – WSBA # 20147 (Tacoma) – Disbarred**Application 04-20****Pay \$1,990.00**

Gelman represented Applicant in a personal injury claim that was settled for \$11,000. He gave Applicant a settlement statement showing a 31.5% contingent fee (\$3,465), which he paid to himself; \$200 for "close file"; \$163 withheld to pay a medical bill; and \$1,827 to reimburse an insurer for their PIP claim. He paid the balance of \$5,345 to Applicant.

Subsequently, Applicant received a letter from her doctor's office that they had spoken with Gelman about the \$163 they were owed, and he told them that Applicant had agreed to pay the bill. Gelman never paid the insurer's reimbursement or the medical bill, and never accounted for the \$1,990 he withheld from Applicant's settlement. He stipulated to pay \$1,990 restitution to Applicant, and the Committee approved payment of that amount.

Application 04-49**Pay \$795.00**

Gelman represented Applicant in a personal injury claim that was settled for \$2,545.

Gelman paid himself a 1/3 contingent fee of \$847.49, and costs reimbursements of \$84.77. He paid Applicant \$817.74. Gelman told Applicant he was retaining the balance of \$795 to reimburse an insurer for their PIP claim. He never paid the claim and instead converted the funds to his own use. Gelman stipulated to pay Applicant restitution \$795, and the Committee approved payment in that amount.

Applications 05-17; 05-102 Pay \$2,083.87

Gelman represented Applicant in personal injury claims from 2 automobile accidents. He failed to file the first claim within the statute of limitations. He agreed to represent her on the second claim for no fee.

The second claim settled for \$14,027.40. Gelman paid Applicant \$9,925.02, reimbursed himself \$181 for costs, and withheld \$3,921.38 to pay PIP reimbursement to an insurer. He and the insurer agreed that Gelman was entitled to 1/3 of the \$3,921.38 as his fee.

When Applicant learned that the insurer had not been paid, she called Gelman. He said there was a “mix-up” and that he would take care of it. He said he would pay her one-third of the amount of the insurer’s PIP claim, apparently representing their proportionate share of his fees. He told Applicant to meet his mother at a bank to receive her check. Gelman’s mother gave her a cashier’s check for \$1,307.13. Gelman also agreed to pay the balance to the insurer within 2 weeks. Gelman did not pay the balance of \$2,083.87 to the insurer but instead converted the funds to his own use. In his stipulation, Gelman agreed to pay restitution to Applicant and the Committee approved payment of \$2,083.87.

Application 05-49 Pay \$1,500.00

Applicant paid Gelman \$1,500 to represent his son in a marriage dissolution. He complained that Gelman “made no effort to proceed in a diligent and satisfactory manner.” A search of the county Superior Court docket disclosed that Gelman never filed a dissolution proceeding.

Gelman would not respond to Applicant’s or his son’s phone calls, letters, e-mails, or faxes. They hired a new lawyer who commenced a dissolution proceeding. The new lawyer received Applicant’s file from Gelman and found “it was a mess.” It had incomplete drafts of pleadings that Gelman had prepared, but nothing was completed or filed. The Committee approved payment of \$1,500 to Applicant.

MICHAEL R. HUTTON – WSBA # 5673 (Seattle) – Suspended

Application 04-09 Pay \$500.00

Applicant paid Hutton \$500 to seek reinstatement of his right to own a firearm. For the next year, Hutton regularly and repeatedly told Applicant he was working on his case, but the Hearing Officer found that Hutton did not perform any work on Applicant's matter. The Committee approved payment of \$500.

Application 04-179

Pay \$1,100.00

Applicant hired Hutton to represent her in a marriage dissolution. Because she had no funds, Hutton accepted a 30-06 rifle in lieu of a fee deposit. Hutton agreed to seek an order for temporary maintenance. When Hutton would not respond to her calls, Applicant tried to get a temporary maintenance order on her own, but was unsuccessful. She called Hutton to ask his help in appealing that decision. Hutton agreed to meet her at a restaurant. She paid Hutton \$1,000. She says that she subsequently spoke with her husband's attorney who told her that he never received responses to interrogatories that Applicant had provided to Hutton, and that Hutton had never spoken with him. The Committee approved payment of \$1,100 to Applicant.

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

The Committee previously reviewed 105 applications regarding Johnson-Ortiz and approved 66. Johnson-Ortiz had a high-volume immigration law practice which he abandoned in January 2004 and left more than 300 open files and many more closed files. Counsel was appointed to protect Johnson-Ortiz's clients' interests. The WSBA examined his trust account, which had no funds.

Application 04-26

Pay \$2,500.00

Applicant is a U.S. citizen and her husband is a Mexican citizen who was illegally in the U.S. when they were married. They hired Johnson-Ortiz, who advised the husband to seek permanent resident alien status by means of a Petition for Alien Relative which he filed on September 7, 1999. In May 2000, Johnson-Ortiz was advised the petition had been approved, and that the file had been sent to the National Visa Center for processing.

In September 2000, Johnson-Ortiz advised the husband to return to Mexico because he would need to be there for at least 90 days prior to his anticipated interview at the U.S. Consulate in Mexico City, which he did. On December 21, 2000 President Clinton extended the Legal Immigration Family Act (LIFE) which allowed illegal immigrants with a sponsor – such as a spouse who was a U. S. citizen – to apply for legal residency without leaving the country. Among the requirements was that the alien had to have been in the U.S. on December 21, 2000.

Johnson-Ortiz advised husband on December 27, 2000, that he should return to the U.S.

so that he could qualify under LIFE. On January 18, 2001, husband re-entered the U.S. illegally. Johnson-Ortiz filed a petition for change of status under LIFE. During a subsequent INS interview, husband was informed that he did not qualify for permanent resident status because he was not in the U.S. on December 21, 2000. The INS then initiated removal proceedings. He was deported. Subsequently, Applicant and her husband learned that by having been in the U.S. for more than one year, and entering the U.S. illegally twice, he is permanently barred from the U.S. He can apply for a waiver of this ban after 10 years. Applicant is in the U.S. and cannot join her husband in Mexico, as she has a daughter and “her natural father would never let her leave.”

Based on Johnson-Ortiz’s dishonesty in advising his client to commit an illegal act, which rendered valueless any service Johnson-Ortiz performed, the Committee approved payment to Applicant of \$2,500.

Application 04-117

Pay \$350.00

Applicant paid Johnson-Ortiz \$350 to file a Petition for Alien Relative. Johnson-Ortiz forwarded to her blank forms which she completed and returned. Johnson-Ortiz requested additional documents (marriage certificate, birth certificate, photos, etc.) which Applicant sent. She never heard from him again. She was advised that Johnson-Ortiz was on vacation and that she could not submit the petition until he came back as his signature was necessary on the form. He never returned. The Committee approved payment of \$350.

Application 04-200

Pay \$4,500.00

Applicant paid Johnson-Ortiz \$4,500 to petition for permanent residency status for himself, his wife and his daughter. Despite the fact that Applicant is a Mexican citizen, Johnson-Ortiz persuaded him to claim to be a citizen of El Salvador so that they could apply under the Nicaraguan Adjustment and Central American Relief Act (NACARA). Johnson-Ortiz also advised Applicant to apply for Temporary Protected Status, which is not available to Mexican citizens. Applicant’s current lawyer confirmed that there was no basis for doing this, and that essentially Johnson-Ortiz advised his clients to engage in fraudulent conduct. As a result, Applicant and his family face deportation. The Committee approved payment of \$4,500 to Applicant.

Application 05-10

Pay \$2,000.00

Applicant paid Johnson-Ortiz \$2,000 to seek Adjustment to Status in removal proceedings. Before it was filed, Johnson-Ortiz abandoned the case. The Committee approved payment of \$2,000 to Applicant.

Application 05-11**Pay \$1,630.00**

Applicant first employed Johnson-Ortiz in 1997 to file a Petition for Alien Relative for him as the brother of a U. S. citizen. In 2003, Applicant hired Johnson-Ortiz to represent him in removal proceedings after it was alleged that he had improperly entered the U. S. from Canada. Applicant agreed to pay a fee of \$3,000. He documented payments totaling \$1,630 before he learned that Johnson-Ortiz had abandoned his case. Applicant hired a new lawyer who advised that Johnson-Ortiz performed no service related to the removal proceeding. The Committee approved payment of \$1,630 to Applicant.

KEVIN M. KOPRA – WSBA # 29651 (Seattle) – Suspended**Application 04-186****Pay \$12,575.00**

Applicant paid Kopra \$1,500 for representation regarding his debts. He was being evicted from his condominium. Kopra filed a Chapter 13 bankruptcy petition. Applicant also gave Kopra \$17,500 to try to negotiate with the condominium association and to settle the bankruptcy. Kopra also agreed to represent Applicant on a DUI. Kopra transferred \$1,500 from his trust account as a “retainer” for the DUI.

Subsequently, Kopra gave Applicant \$2,725 of his money back to pay some expenses. Kopra used \$250 to pay a court cost, and gave Applicant \$500. At this point, Kopra should have been holding \$12,575 of Applicant’s money in his trust account.

Kopra never completed the bankruptcy, which was dismissed. Applicant then hired a new attorney to complete the bankruptcy and to recover his funds from Kopra. Kopra did not respond to the attorney’s letter demanding return of the funds.

Kopra filed for personal bankruptcy. Applicant filed an adversary proceeding for recovery of the funds and obtained a default judgment. He has been unable to collect on the judgment. The Committee approved payment of \$12,575.

Application 04-151**Pay \$1,500.00**

Applicant paid Kopra \$1,500 regarding a claim against a truck driver for damage when delivering Applicant’s travel trailer. After that, Applicant heard nothing from Kopra. Finally Applicant was able to speak with him, and Kopra said he was having personal problems. He offered to return Applicant’s \$1,500 but he failed to do so. The Committee approved payment of \$1,500.

Application 05-82**Pay \$1,700.00**

Applicant hired Kopra to file a lawsuit on behalf of his fiancée against a roofing company. He paid \$1,500 as fees and \$200 for advanced costs. Kopra never filed the lawsuit and failed to respond to Applicant's requests for information about the case. On the occasions that he was able to speak with Kopra, Kopra would say he was about to file the lawsuit, but he never did. In reviewing Applicant's client file, it appeared that Kopra had done no work on the case. Applicant fired Kopra and demanded a refund. Kopra told Applicant he would refund his money, but he never did so. The Committee approved payment of \$1,700.

ROBERT C. LYONS – WSBA. #22275 (Tacoma) – Disbarred**Application 05-46****Pay \$2,500.00**

Applicant hired Lyons to seek custody of his 14-year-old son. Applicant paid Lyons \$2,500. Lyons never filed any petition or took other action on his behalf. After Lyons closed his office and disappeared, Applicant says that he was able to reach Lyons' former secretary who said, "good luck finding him." The Committee approved payment of \$2,500.

OLEG E. ORDINARTSEV – WSBA # 27574 (Redmond) – Suspended**Application 03-86****Pay \$20,000.00**

Ordinartsev had represented Applicants for approximately 3 years in connection with construction companies owned by them. Ordinartsev had another client who was involved in caviar production and distribution. Ordinartsev agreed to stop taking new clients in order to wind down his private practice and work full-time for this client and his caviar businesses. During a meeting at his office, Applicants were introduced to Ordinartsev's caviar business clients. As events ensued, Applicants decided to invest in the caviar business. Ordinartsev did not advise Applicants to seek independent counsel and he did not advise Applicants of the conflicts of interest he had in being involved in a transaction where one client would invest in another client's business. He also did not advise the Applicants that his other client was involved in litigation where it was alleged that he had misused corporate funds for private purposes. He obtained no written waiver of conflicts from any of the parties involved.

Applicants gave Ordinartsev \$65,000 to hold in his IOLTA trust account until all details of the "caviar project" were worked out. Applicants were to receive 65,000 shares of stock in the caviar business. Ordinartsev gave Applicants no documentation for their investment other than 2 receipts for the funds. Applicants never received any shares of stock. Ordinartsev disbursed the \$65,000 as follows: he paid \$20,000 to his other client, which

Ordinartsev wrote was “for purchasing processing equipment, personal expenses, etc.”; \$25,000 to a subsidiary company “for purchasing processing equipment and operation expenses”; and \$20,000 to himself “for legal services associated with ‘caviar project.’” Ordinartsev stipulated that when he made these distributions, he knew that was not what the Applicants intended be done with their money. Applicants never authorized any of their funds to be paid to Ordinartsev.

Among other misconduct, the Stipulation to Discipline provides that “by disbursing [Applicants’] investment funds in a manner inconsistent with what [Applicants] had been led to believe would be done with, and what they wanted done with, those funds, [Ordinartsev] violated . . . RPC 8.4(c) [“Engage in conduct involving dishonesty, fraud, deceit or misrepresentation”].” Ordinartsev stipulated to payment of restitution to Applicants of \$20,000. The Committee approved payment of that amount, and denied the balance as an investment transaction not compensable from the Fund, which was approved by the Trustees..

R. STUART PHILLIPS – WSBA # 29701 (Poulsbo) – Disbarred

Application 05-38

Pay \$298.40

Applicant hired Phillips to seek payment on a disability insurance policy she had purchased through her credit union when she took out a car loan. She became disabled and unable to work, so asked the credit union for an insurance claim form. The insurance claim manger refused to allow her to submit a claim on the grounds that her claim was disqualified because of a pre-existing condition. Her insurance policy was cancelled. Phillips wrote letters to the credit union and to the insurance company. As a result of those letters, the insurance policy was reinstated and the insurance paid the loan payments as of the date of Phillips’ letter. However, after that, Applicant could not contact Phillips, his phone was disconnected, and she discovered that his office was closed. Applicant received one billing from Philips. It shows payment of \$500 by Applicant, fees for meeting with client and for the letters totaling \$201.60, and a credit balance of \$298.40. Phillips never refunded the balance or accounted to Applicant for her funds. The Committee approved payment of that amount.

GLENN E. REED – WSBA # 5328 (Mount Vernon) – Disbarred

Application 04-237

Pay \$4,927.82

Reed was hired by Applicant for representation in an auto accident claim on a 1/3 contingent fee basis. The claim was settled for \$12,500. Reed provided an accounting for disbursement of settlement funds that included payment of a medical lien and an insurance lien. Reed said he would pay the medical lien of \$275, and would hold \$6,216.40 in trust.

He wrote, "I propose that we hold on to the \$6,216.40 claimed by [the insurer]. We'll see if we can recover the whole amount for us." Applicant stayed in touch with Reed, who said he continued to hold the funds in trust. Neither lien was paid and Reed did not account for the funds. The Committee approved payment of \$4,927.82, which was the amount owed to Applicant after Reed was credited for his fees.

CURTIS A. SHELTON – WSBA # 9629 (Vancouver) – Disbarred

Application 04-79

Pay \$750.00

Applicant paid Shelton \$750 for representation on charges of driving under the influence and driving with a suspended license. Shelton entered a notice of appearance and a hearing was scheduled for October 28, 2003. Shelton had the hearing continued to November 14, 2003. Applicant went to court, but Shelton did not appear. It was continued to January 26, 2004. Shelton was suspended from practice on November 18, 2003. The Committee approved payment of \$750.

CHUL SHIRTS – WSBA # 24993 (Vancouver) – Disbarred

Application 05-58

Pay \$430.00

Applicant paid Shirts \$430 to seek a modification of child support. She called Shirts nearly weekly for several months, and also went to his office, but she could never reach him. She heard through family members that her ex-husband had been served with papers, but she checked the court file and nothing was filed. Shirts never filed the petition and proof of service. He never accounted for the \$430 and never returned her funds. He was ordered to pay \$430 restitution and the Committee approved payment of that amount.

RANDALL L. ST. MARY – WSBA # 4331 (Everett) – Disbarred

Application 05-15

Pay \$1,225.00

St. Mary represented Applicant in a personal injury lawsuit against the City of Everett. After he filed a complaint, defendant moved for summary judgment, which was granted with prejudice when St. Mary failed to appear in court. St. Mary told Applicant they could reopen her claim after they had obtained an expert witness. At St. Mary's request, Applicant paid him \$1,225 to pay the expert witness's fees. St. Mary had not told her the case had been dismissed with prejudice. When she learned that it was, she requested return of her \$1,225. St. Mary did not respond and has not returned Applicant's \$1,225. The Committee approved payment in that amount.

DAVID S. TESKE – WSBA # 14823 (Edmonds) – Disbarred

Applications 03-74; 04-05 Pay \$15,000.00

Two Applicants hired Teske on a contingent fee basis to file a lawsuit against their former employer, alleging wrongful termination. Teske filed and served a complaint against the employer. Attorney for the defendant and Teske entered into settlement negotiations. Teske discussed settlement with his clients but one client never authorized any specific settlement amount. The other authorized settlement of his claim in the \$15,000 - \$20,000 range.

Without the knowledge and consent of his clients, Teske agreed to settle their claims for \$7,500 each. He instructed the defendant's attorney to make the settlement checks payable to him in trust for his clients, which he sent to Teske along with acknowledgements and receipts to be signed by Teske and his clients. Teske deposited the checks into his law firm business account rather than his trust account. Teske signed an "Attorney's Acknowledgement" stating he had reviewed the settlement with his clients even though they were unaware of it. Someone forged the Applicants' signatures to the settlement documents, and Teske "tricked" a notary into signing the documents, apparently by having her notarize his own signature and then affixing that notarization to the forged signatures of his clients. (The notary kept a photocopy of the documents she notarized, which showed this when compared with the documents Teske returned to the defendant's attorney.) Teske never paid any of the settlement proceeds to his clients. The Committee approved payment of \$7,500 to each of the Applicants.

PHILLIP L. WEINBERG – WSBA # 18622 (Woodinville) – Suspended

Application 04-134 Pay \$9,000.00

Applicant's brother was convicted by a jury of a felony and incarcerated. Through his court-appointed attorney, he filed a notice of appeal. Applicant contacted Weinberg about obtaining an appeal bond and possibly taking over the representation of his brother on appeal. Weinberg agreed to attempt to get the appeal bond. Weinberg instructed Applicant to wire \$5,000 to Weinberg's wife's bank account.

A week later, Applicant called Weinberg to check on the status of his brother's case. Weinberg told him he had been busy and had not started on it. A few weeks later, Weinberg told Applicant that he needed an additional \$5,000. Applicant wired the funds, again to Weinberg's wife's account. Weinberg told Applicant that the appeal bond hearing would be held March 12, 2004, and then told him the hearing was postponed to April. When Applicant did not hear back from Weinberg, he asked his sister, who lives in Olympia, to check on the status of the case. She contacted the court and learned that

Weinberg had filed no pleadings and that no hearing had been set. The Office of Disciplinary Counsel investigation concluded that Weinberg had performed some minimal services. In his stipulation, Weinberg agreed to pay restitution to of \$9,000. The Committee approved payment in that amount.

Application 04-160

Pay \$500.00

Applicant paid Weinberg \$500 toward a total fee of \$2,000 to represent her son on a second-degree assault charge. They never heard from him again. Weinberg wrote, "I believe that Applicant [is] entitled to full refund." The Committee approved payment of \$500.

Application 04-173

Pay \$2,500.00

Applicant paid Weinberg \$2,500 for representation on a driving-under-the-influence charge. After that, Weinberg never called him. When Applicant called Weinberg, his voice mail was always full and his fax number was disconnected. On the day he was to be in court for a pre-trial hearing, Applicant called Weinberg who told him, "My wife kicked me out of the house and my car won't start." He told Applicant he could pay for a taxi to pick Weinberg up and take him to court. Instead, Applicant's wife picked him up and took him to court. When Weinberg arrived, he had no paperwork and used the documents Applicant had. That was the last Applicant heard from Weinberg until the night before his driver's license suspension hearing. He reached Weinberg, who said, "I have a drug problem and can no longer be your counsel. Sorry dude, I can't help you anymore." The Committee approved payment of \$2,500.

Application 04-181

Pay \$2,500.00

Applicant paid Weinberg \$2,500 to handle an eviction of a tenant. According to Applicant, when she could reach him by phone, he would tell her of problems he was having contacting the tenant. He also told her he was having personal problems but would get her case done. Later, she discovered that both his office and cell phones were disconnected. She contacted the WSBA and learned that he was suspended. The Committee approved payment of \$2,500.

Application 04-192

Pay \$1,000.00

Applicant paid \$1,000 to Weinberg for representation on a driving under the influence charge. Weinberg failed to appear for the first court date. When Applicant called him, Weinberg said he forgot about it. Weinberg said he would pay back the \$1,000 but later

was rude and told Applicant to go to the WSBA. In a letter to Office of Disciplinary Counsel, Weinberg wrote that he was sorry “for my atrocious failures to represent [Applicant] and for then not being able to refund his money as I intended to do and should have done.” The Committee approved payment of \$1,000.

Application 05-02

Pay \$3,500.00

Applicant paid Weinberg \$3,500 to represent her on a DUI. Weinberg endorsed the check over to his wife. Arraignment was set for April 1, 2004. Fifteen minutes before the arraignment, Weinberg called Applicant to say his wife had thrown him out of his house, and she should get a new arraignment date. A new arraignment date was set and Weinberg appeared. Trial was set for June 4, 2004. Weinberg never filed a notice of appearance and, as a consequence, never got any discovery from the prosecution. Weinberg failed to appear on the trial date. Applicant later spoke to Weinberg and told him she was getting a new lawyer. The Committee approved payment of \$3,500.

Application 05-03

Pay \$750.00

Applicant paid Weinberg \$800 to represent him on a DUI. Weinberg appeared at arraignment, but Weinberg did not appear at a subsequent hearing until after the matter had been heard. Applicant wrote Weinberg discharging him and requesting a refund of unearned fees. Weinberg called him and asked him to let Weinberg continue to represent him for a reduced fee. Weinberg agreed to meet Applicant at a restaurant the next day. He did not show up. He also did not appear for a pre-trial conference. Applicant fired Weinberg. In his Stipulation, Weinberg agreed to refund \$800. He has paid \$50. The Committee approved payment of \$750.

Application 05-34

Pay \$5,750.00

Applicants' son was charged with second degree murder. A public defender was appointed to represent him. One of Weinberg's other clients in jail recommended that Applicants' son hire Weinberg. Applicants paid Weinberg \$12,000. Weinberg never filed a Notice of Appearance, and the appointed public defender continued the representation. When Weinberg asked for an additional \$8,000, Applicants' son fired him and demanded return of any unearned portion of the \$12,000. Weinberg never provided any accounting for any fee charges. He initially returned no money. When he was deposed during the disciplinary investigation, he testified that he visited the crime scene, saw Applicants' son in jail several times, and reviewed the voluminous discovery materials he borrowed from the public defender assigned to the case. Weinberg stipulated to refund \$9,000 to Applicants. To date he has repaid \$3,250. The Committee approved payment of \$5,750.

GREGORY S. WILSON – WSBA # 12012 (Tacoma) – Resigned in Lieu of Disbarment

Application 04-135

Pay \$1,500.00

Applicant hired Wilson on a contingent fee basis. She paid him \$1,000 as an advance fee deposit. No lawsuit was filed. Applicant called him regularly and repeatedly “and he always told me he gonna do it the next day and the next day.” In May 2004, Applicant contacted the WSBA and learned Wilson was suspended from practice. The Committee approved payment of \$1,000.

Application 04-168

Pay \$1,000.00

Applicant’s grandson filed an appeal to the Court of Appeals from a criminal conviction for which he had appointed counsel. Unbeknownst to the appointed counsel, Applicant paid Wilson \$1,000 to represent her grandson. Appointed counsel was advised by the court clerk that Wilson had filed a Notice of Appearance. Appointed counsel prepared a Notice of Withdrawal and Substitution of Attorney which she sent to Wilson for his signature. Wilson never filed the Notice of Withdrawal and Substitution of Attorney. Appointed counsel made numerous attempts to contact Wilson, but he would not return phone calls or reply to correspondence. She concluded that Wilson did not intend to represent Applicant’s grandson, so she continued to do so. The Committee approved payment of \$1,000.

Application 05-62

Pay \$1,000.00

Applicant paid Wilson \$1,000 to apply for permanent residency. One of Wilson’s staff members told Applicant to purchase a cashier’s check for \$470 payable to the INS. After Applicant gave Wilson the cashier’s check, he heard nothing further. The next time he heard from Wilson was when he received a letter dated April 20, 2004, stating that, due to health problems (Wilson was suspended on May 13, 2004), Wilson would be unable to represent him and that he had referred Applicant’s case to another attorney. Applicant called Wilson’s office and was told that they would send his file, his \$1,000 fee payment, and the cashier’s check to the new attorney.

Applicant contacted the new attorney and asked for his files, the \$1,000, and the cashier’s check. The attorney said he never got them from Wilson. A WSBA staff member contacted Wilson, who said that he could not find Applicant’s file. He also said that he had received a \$470 cashier’s check, but he did not know what happened to it except he had never cashed it. Applicant was advised to contact the bank where he purchased the check to seek a refund of the money. The Committee approved payment of \$1,000 to Applicant.