### **Washington State Bar Association**



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

# LAWYERS' FUND FOR CLIENT PROTECTION ANNUAL REPORT

September 2006

Washington State Bar Association 2101 Fourth Avenue, Suite 400 Seattle, WA 98121-2330 (206) 727-8232 http://www.wsba.org/lawyers/groups/lawyersfund "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** 

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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 State 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 \$3 million dollars**.

The current Lawyers' Fund for Client Protection was established by the Washington State 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. 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 26,000 active members of the Bar licensed in Washington. The chart on the following page shows the experience of the past 19 years as the active Bar membership has increased from 14,000 in 1988 to 26,000 in 2006.

YEAR	ACTIVE MEMBERS	APPLICATIONS	APPLICATIONS	LAWYERS APPROVED <sup>1</sup>	AMOUNT
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<sup>&</sup>lt;sup>1</sup> Multiple applications concerning a single lawyer may have been approved in more than one

		RECEIVED	APPROVED		PAID
1988	n/a	39	19	8	\$28,494
1989	14,643	41	13	6	\$51,748
1990	n/a	30	15	8	\$35,920
1991	16,368	27	12	5	\$34,609
1992	17,129	23	18	3	\$87,751
1993	17,793	29	22	9	\$100,000
1994	18,563	36	23	6	\$99,902
1995	19,233	21	13	6	\$39,623
1996	19,761	42	13	8	\$134,153
1997	20,316	43	17	12	\$282,629
1998	20,883	43	22	11	\$193,000
1999	21,321	95	59	11	\$132,856
2000	21,813	85	41	14	\$124,012
2001	22,393	62	46	14	\$207,709
2002	23,137	69	47	20	\$247,536
2003	23,925	117	51	20	\$125,913
2004	24,212	165	84 <sup>2</sup>	17	\$313,721
2005	25,342	120	47	19	\$147,247
2006	26,084	139	66	26	\$468,695

#### **FUND PROCEDURES** II.

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

year.  $^{\rm 2}$  One lawyer was responsible for 60 approved applications in 2004.

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, or failure to account for, funds or property by a lawyer, in connection with that lawyer's practice of law, shall be provided with an application form for payment from the Fund. Unless the lawyer is deceased or disbarred, all applicants to the Fund must also file disciplinary grievances with the Office of Disciplinary Counsel.

**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, or failure to account by, 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 questionable 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, or the lawyer simply performs no service of value to the client, and does not return unearned fees, the Committee has concluded that such conduct may be either dishonesty or failure to account 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 or has failed to account for client funds.

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.<sup>3</sup> Finally, a report and recommendation is prepared for the Committee.

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<sup>&</sup>lt;sup>3</sup> 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.

**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.

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.<sup>4</sup> To date, the Fund (and its predecessors) has recovered approximately \$270,000.

#### 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 2005 (the last year for which statistics are available), 1,178 lawyers in 54 law firms were audited. Of the 54 law firms, seven 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 2005 based on a random audit.

Trust Account Overdraft Notification: Pursuant to ELC 15.4, every financial

<sup>&</sup>lt;sup>4</sup> 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.

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 2005, 65 disciplinary investigations were conducted based on overdraft notices received. The reasons for those overdrafts were varied: bank error (23%), deposit to wrong account (28%), math or bookkeeping error (9%), disbursal before deposit cleared (12%), failure to make timely deposit (9%), and other causes (12%).

#### 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 2005, \$3,909 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, 2004 - September 30, 2005), total Fund revenues were \$337,223. Gifts to applicants totaled \$147,306. Committee expenses and overhead, including staff time, totaled \$21,968, or approximately 6.5% of revenue.

As of June 30, 2006, the Fund balance is \$953,932 (See Appendix C). As of that date, in FY 2006 the Fund has made payments totaling \$303,997. 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 up to the \$75,000 limit 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 18, 2005, February 24, May 26, and August 25, 2006, to consider 139 applications to the Fund involving 66 lawyers. In addition, the Committee did the following:

■ <u>Fund Procedural Rules</u>: The Committee proposed that the Trustees approve proposed amendments to the Fund Procedural Rules to clarify the Fund's existing

policies to require that applicants must file disciplinary grievances unless the lawyer is disbarred or deceased, or unless the Committee in its discretion finds that no disciplinary grievance is required; and that notice of a Fund application shall be sent to any and all addresses of the lawyer on file with the Association. The Trustees submitted those amendments to the Supreme Court.

The Committee also proposed a Procedural Rule amendment regarding publication of approved applications, with the provision that if a lawyer makes full restitution to the Fund, at the request of the lawyer any notice posted electronically by the WSBA shall be removed.

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.

**Fund Trustees:** The Trustees considered and approved all Committee recommendations on applications for more than \$25,000. The Trustees also approved the Committee recommendations noted above, and approved the 2006 Annual Report for submission to the Supreme Court pursuant to APR 15(g).

**Other Activities:** General Counsel Bob Welden was reappointed chair of the ABA Standing Committee on Client Protection for 2005 - 2006. In that capacity, he presided over the ABA 22<sup>nd</sup> National Forum on Client Protection held in Vancouver, British Columbia, in June. Committee members Brad Ogura and Paul Fitzpatrick attended the National Forum.

In his capacity as chair of the ABA Standing Committee, on January 16, 2006, Welden met with the Professionalism and Competence of the Bar Committee of the Conference of Chief Justices at Amelia Island, Florida. Chief Justices from 19 jurisdictions were present. Welden discussed the importance of well-funded and stable client protection funds, and strong loss prevention programs. Also, on August 7, 2006, he presented a Report and Resolution, cosponsored by the WSBA, amending the ABA *Model Rules for Lawyers' Funds for Client Protection* to the annual meeting of the ABA House of Delegates meeting in Honolulu, Hawaii, which were unanimously approved.

#### VI. RESPONSES FROM APPLICANTS

The purpose of the Lawyers' Fund for Client Protection is to assist persons who have been the victims of dishonest lawyers. Although the Fund can never fully compensate a person for the harm done by a dishonest lawyer, since October 2005 the Committee and Trustees

received several thank-you notes from recipients of payments made on behalf of the lawyers of the state of Washington:

- On behalf of my client, I wish to thank the Washington State Bar Lawyers' Fund for Client Protection for their efforts in rectifying this apparent defalcation. I must applaud your staff and the members of the Lawyer's Fund Committee for their important work on behalf of our Bar Association.
- Your excellent assistance in this matter is greatly appreciated.
- God bless you. Thank you.

#### VII. 2006 APPLICATIONS AND PAYMENTS

At the beginning of FY 2006, there were 74 pending applications to the Fund. During FY 2006, 127 additional applications were received. The Committee and Trustees acted on 139 applications concerning 66 lawyers. The total amount in approved payments is \$468,695.25. A summary of Committee and Trustee actions is shown below. Complete summaries of all approved applications follow.

Approved for Payment	66
Denied as fee dispute	33
Denied; no evidence of dishonesty	11
Denied as malpractice claim	10
Restitution made	5
Withdrawn	0
Deferred	10
Other	4

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 66 approved applications involved the following:

Theft or conversion	21
Failure to return/account for unearned legal fees	45
Investments and loans with lawyers	0

#### SUMMARIES OF APPROVED APPLICATIONS

#### "On behalf of the lawyers of the State of Washington . . . " 5

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.

**(NOTE:** A copy of each application to the Fund and a request for response is sent to the respondent lawyer. Unless otherwise noted, the lawyer responded either to the Fund application or the underlying disciplinary grievance, or both)

#### DAVID A. AMBROSE - WSBA # 21764 (Edgewood) - Suspended

(The Committee previously approved six applications concerning Ambrose. He did not respond to these applications.) Ambrose stipulated to a two-year suspension. Reinstatement will require meeting several conditions including restitution to various parties.

#### Application 06-04 Pay \$2,000.00

Applicant hired Ambrose regarding a boundary and easement dispute she had with a neighbor. She paid him \$500 for a "site visit." He came to look at the boundaries, and said he needed \$2,000, which she paid. After that, Applicant had difficulty reaching Ambrose, and when she did, he told her he had not filed her case because of illness, vacation, holidays and other excuses. When Ambrose had done nothing by February, Applicant wrote him asking for a return of her money. She received no response. The Committee approved payment of \$2,000 based on failure to account for these funds.

#### Application 06-32 Pay \$750.00

Applicant paid Ambrose \$750 to seek a permit to dig a well. Ambrose did nothing. Applicant left messages that were never returned. He filed a grievance with the WSBA and was advised by the Office of Disciplinary Counsel that Ambrose was suspended. The Committee approved payment of \$750 based on failure to account for these funds.

<sup>&</sup>lt;sup>5</sup> Introductory phrase of transmittal letter to recipients of gifts from the Lawyers' Fund for Client Protection.

#### GROSVENOR ANSCHELL – WSBA # 9756 (Bellevue) – Disbarred

The Committee previously approved one application concerning Anschell. He did not respond to this application.

#### Application 06-87

Pay \$800.00

Applicant paid Anschell \$800 to file a petition for divorce. Anschell prepared a petition that he had Applicant sign pro se. It was filed in the King County Superior Court. Neither party filed anything further. Applicant wrote on her application that "every time I called he gave me a reason and I didn't know anything about law." She was not even aware that Anschell had filed the petition. It was dismissed for failure to comply with the court's orders. The Committee approved a gift of \$800.

## MARY (BOSLEY) BETKER - WSBA # 30429 (Washougal) - Resigned in Lieu of Disbarment

#### Application 06-105

Pay \$1,017.43.

In the statement Betker signed in connection with her resignation in lieu of disbarment, she stipulated to the facts of this application.

Applicant hired Betker for representation in a wrongful-termination lawsuit against his former employer on a contingent fee plus hourly fee basis. He paid her a "nonrefundable deposit" of \$3,000. Applicant discussed filing bankruptcy with Betker at a time when Betker was a debtor of Applicant's, since she should have been holding \$1,387.43 of advanced fees and costs in her trust account. Betker agreed to handle Applicant's bankruptcy knowing that she had a conflict of interest. Betker paid a nonlawyer \$300 to prepare Applicant's bankruptcy petition without any supervision from Betker. The petition contained errors and did not list the wrongful-termination claim that Betker was handling. Betker signed the petition and it was filed without being signed by Applicant. The bankruptcy court advised Betker that unless Applicant signed the petition and provided Social Security numbers, the petition would be dismissed. Betker did not correct these deficiencies. Betker then commenced the wrongful-termination action without the knowledge or consent of the bankruptcy trustee. Betker was aware that the trustee must authorize such a lawsuit and must approve any fee agreement. The bankruptcy petition was dismissed for failure to comply with the filing requirements. Betker filed a new Ch. 7 bankruptcy proceeding using the same petition that had previously been filed but which she had the Applicant sign. Betker decided not to attend the meeting of creditors as required, and instead sent her paralegal. During this meeting, the trustee learned of the wrongful-termination lawsuit. At mediation on the wrongful-termination claim, defendant's

counsel used the fact that the bankruptcy trustee had not authorized the lawsuit to negotiate a low settlement.

Betker and the Office of Disciplinary Counsel agreed that she would pay Applicant restitution of \$1,017.43 within 60 days of the effective date of her resignation. She has not done so. The Committee approved payment of that amount to Applicant.

#### ROBERT E. BRANDT - WSBA # 23058 (Kirkland) - Stipulated to Disbarment

Brandt was mailed copies of all Fund applications, which were also all the subject of disciplinary grievances filed against him. His counsel responded to them.

Brandt operated his law practice under the assumed business name Escrow Authority. Brandt said that he conducted his escrow business in connection with his law practice under the assumed business name Escrow Authority, and used his IOLTA trust account to receive and disburse funds associated with the transactions handled by Escrow Authority. He stipulated that all such funds were client funds. Brandt employed a nonlawyer who allegedly stole between \$3,000,000 and \$4,000,000 from the trust account. Brandt stipulated that he could not account for the funds or explain the shortage in his trust account. In addition to these applications, the Committee continued 11 others to their November meeting for further investigation.

#### Application 06-42 Pay \$75,000.00

Applicant contacted Brandt in 2004 for legal assistance in a financial matter. In 2005 she sold her family home, and Brandt offered to handle the escrow. When the sale closed, Brandt deposited the funds into his IOLTA trust account. Applicant agreed to let Brandt continue to hold the funds while she decided what to do with them. Brandt said that he would disburse funds to her as she needed them, and she received two payments of \$5,000 and \$3,000. At that point, Brandt should have been holding \$82,327.04, plus accrued interest, in trust for Applicant. He has never paid or accounted for those funds. The Committee recommended and the Trustees approved payment of the fund limit of \$75,000.

#### **Application 06-117 Pay \$600.00**

Applicant was the seller in a real estate transaction handled by Brandt's office. He was to hold \$600 as a utility holdback. Brandt never distributed or accounted for these funds. The Committee approved payment of that amount to Applicant.

#### **Application 06-06 Pay \$600.00**

Brandt withheld \$600 from a real estate closing as a utility holdback. On 6/29/05, he

issued a check payable to Applicants in that amount. The check was returned NSF and Brandt has never paid or accounted for the funds. The Committee approved payment in that amount.

#### ARMANDO R. COBOS - WSBA # 27006 (Seattle) - Disbarred

The Committee previously approved one application concerning Mr. Cobos. A copy of this application was sent to all known addresses for Mr. Cobos and was returned undeliverable.

#### Application 06-47

Pay \$1,500.00

Applicants paid Cobos \$1,500 to file a petition for alien relative (I-130) and for adjustment to status (I-485); and \$1,500 to file for cancellation of removal. Cobos never filed the petition for cancellation of removal and did not refund the fee. The Committee approved payment of \$1,500 to Applicant.

#### J. RODNEY DEGEORGE - WSBA # 22931 (Tacoma) - Disbarred

DeGeorge stipulated to disbarment based on a number of matters, including his conduct related to these applications. He stipulated to restitution and to repay the Lawyers' Fund for Client Protection.

#### Application 06-65

Pay \$1,000.00

Applicant paid DeGeorge \$1,000 represent her fiancé who had been convicted on criminal charges. DeGeorge agreed to (1) try to get the charge and sentence reduced; or (2) get the client out on work release; or (3) seek credit for time served prior to sentencing. DeGeorge gave Applicant a copy of a Notice of Appearance, but he never filed it and he did not prepare or file any motion or other documents. During a deposition conducted by the Office of Disciplinary Counsel, he produced a document purporting to be a letter to client regarding his legal options. DeGeorge stipulated that he prepared that document for the purpose of the deposition. He stipulated to pay \$1,000 restitution to Applicant, and the Committee approved payment in that amount.

#### Application 05-72

Pay \$22,000.00

Applicant paid DeGeorge \$22,000 to represent her son on criminal charges. For over a year, DeGeorge misrepresented to Applicant that he had hired an investigator to work on her son's case. DeGeorge stipulated that he never hired an investigator in this case. When he received discovery documents, he gave copies to Applicant in violation of

criminal rules. The prosecutor learned of this and brought a motion seeking sanctions against DeGeorge. At a hearing on the motion, DeGeorge falsely represented to the court that he had hired Applicant to do paralegal work, and falsely represented that he had a written employment contract with her. DeGeorge stipulated to pay \$22,000 restitution, and the Committee approved payment in that amount.

#### Application 06-38

Pay \$1,000.00

Applicant paid DeGeorge \$1,000 to represent her son on criminal charges. DeGeorge agreed to file a motion for a new trial. He gave Applicant a copy of a Notice of Appearance and a Motion for New Trial, and told her he had filed them. In fact, he had not. He took no further action on the case, and did not refund the fee. He stipulated to pay restitution to Applicant of \$1,000, and the Committee approved payment in that amount.

#### **Application 06-81**

#### Pay \$2,200.00

Applicant hired DeGeorge in January 2003 to represent her son in sentencing following his plea of guilty to criminal charges. She agreed to pay a fee of \$10,000, and made an initial payment of \$2,200. The client's previous attorney had referred him to a certified sex-offender-treatment provider for consideration of his eligibility for Special Sex Offender Sentencing Alternative (SSOSA). The examiner concluded that client was not amenable to treatment. DeGeorge arranged for client to have a second polygraph examination. The examiner concluded that he did not attempt deception during that examination.

The original treatment provider wrote DeGeorge that he would need to review the report of the new polygraph examination and interview client again. He met with client and advised DeGeorge that he was still not amenable to SSOSA treatment. DeGeorge also referred client to a psychologist who was not a certified sex-offender-treatment provider. By statute, SSOSA examinations are required to be performed by certified sex-offender-treatment providers, with some exceptions not applicable in client's case.

At sentencing, the prosecutor opposed a SSOSA sentence. In arguing why the court should accept the psychologist's report, DeGeorge falsely represented that he talked with the original certified treatment provider who told him he could not prepare a report in time for the sentencing.

The judge found that client did not qualify for SSOSA and sentenced him to 131 months in prison. After sentencing, DeGeorge told client and Applicant that the judge had made a mistake and he would seek reversal. DeGeorge filed a Motion for Reconsideration but on the date it was set for hearing, he struck the hearing. He took no further action on client's behalf. DeGeorge stipulated to pay restitution to Applicant of \$2,200 and the Committee approved a gift in that amount.

Forbes abandoned his law practice and disappeared. Pursuant to ELC 7.7, an attorney was appointed custodian to protect Forbes' clients' interests. He took custody of Forbes' trust account which contained \$71,603.37. Because of the state of Forbes' trust account records, a WSBA auditor was unable to determine the ownership of those funds. The Supreme Court authorized the bank holding those funds to transfer them to the Lawyers' Fund for Client Protection, and all known clients have been advised that if they believe Forbes was to have been holding their funds, they may make application to the Fund.

#### Application 05-85

Pay \$72,580.45

Applicant was selling his house, and Forbes agreed to represent him. Forbes deposited into his trust account a check payable to Applicant from a title insurance company in the amount of \$86,380.45. Forbes made three payments to Applicant from his trust account totaling \$13,800. At that point, Forbes should have been holding \$72,580.45 in his trust account on behalf of Applicant. About this time, Forbes abandoned his law practice and disappeared. Applicant hired a new lawyer who tried unsuccessfully to contact Forbes. In August 2005, the Board of Governors approved an emergency payment to Applicant of \$3,000. The Committee recommended that the Board approve an additional payment to Applicant of \$69,580.45.

#### Application 05-97

Pay \$19,862.60

Applicant hired Forbes to probate the estate of her grandmother. There were 25 beneficiaries named in the will. Forbes prepared an accounting showing the amounts due to each. He failed to pay 13 beneficiaries. From the proceeds of the estate, \$19,862.60 remains unaccounted for. The Committee approved payment of that amount to the estate.

#### Application 05-87

Pay \$24,464.26

Forbes represented Applicant on a personal injury claim arising from an auto accident. The case settled for \$149,305. Forbes gave Applicant a settlement statement that showed that he was to hold \$24,464.26 in trust to pay three insurance subrogation claims. They were never paid and Forbes never accounted for or paid Applicant the funds. Applicant contested the insurance subrogation claims because she felt that the insurers had denied full coverage. One insurer never made any contact with Forbes' office, and the others were told that they would contest any subrogation claim and they did not pursue the matter further. The Committee approved a gift of \$24,464.26 to Applicant.

#### JAMES E. GRAHAM - WSBA # 15290 (Renton) - Suspended pending discipline

Application 06-42

Pay \$5,290.00

Graham was a family friend of Applicant and lived in an apartment owned by her in

exchange for legal services for her and her businesses. They agreed she would pay actual costs incurred. Graham never provided any bills, receipts or accountings, and did not maintain records of his receipts and disbursements for Applicant's matters. To support his requests for payments, Graham often gave Applicant copies of purported court documents or legal correspondence. Several of the documents were falsifications, and some bore forged signatures of judges and others. One of these fictitious documents was a purported court order that stated that a hearing transcript would be filed with the court within 10 days, and that Applicant had to pay \$5,290 as her share of the transcript cost. Applicant paid Graham \$5,290. The Hearing Officer found that Graham created the falsified documents for the purpose of defrauding Applicant and inducing her to give him money, and that he committed theft against her. Because of the state of both Graham's and Applicant's record keeping, the only payment from Applicant that could be directly tied to Graham's falsifications was the \$5,290 "transcript" payment. A default hearing was held, and the Hearing Officer ordered restitution in that amount, and the Committee approved a gift in that amount.

#### BRUCE E. HAWKINS - WSBA #25414 (Gig Harbor) - Disbarred

**Application 05-95** 

Pay \$6,417.00

Hawkins stipulated to disbarment based, in part, on his conduct in representing Applicants. Hawkins associated with several nonlawyers who maintained websites that promoted a program to reduce or eliminate consumer credit card debt through private arbitrations based on the premise that national banks could not lawfully issue credit cards. Debtors throughout the United States made "application" to the "program" through the websites. They paid fees and were referred to a private arbitration service organized to facilitate the "program." Hawkins stipulated that he knew that since 1996 the Department of the Treasury, Office of the Comptroller of the Currency had decided it is well established that national banks can issue credit cards. He stipulated that of the approximately 100 clients he represented, he knew of none who achieved the promised zero credit card balance. He stipulated that debtors following his program achieved the goal of having accounts closed with a "paid as agreed" notation in about 5% of his cases, and that he would consider such cases "a mistake on the part of the bank." He also stipulated that a lot of attorneys called him to "make huge accusations of fraud and illegality."

Applicants found one of the websites and paid \$200 to "apply." They were referred to Hawkins. They paid him a fee of \$5,722.00. Hawkins sent Applicants documents for the arbitrations, and he referred them to an arbitration service without disclosing that he had a financial interest it. Applicants paid the arbitration service \$139 for each arbitration and received five "arbitration awards." Hawkins then advised them to hire another lawyer to "confirm the awards." They did so, but when they filed the "awards," two of the banks filed oppositions and won. In the others, after the banks communicated with them, Applicants stipulated to dismissal. The Committee approved payment to Applicants of \$6,417 representing the \$5,722 in fees paid to Hawkins plus the five payments of \$139 paid to his

#### TODD H. HUTCHINSON – WSBA # 14389 (Vancouver) – Disbarred

The Committee previously approved two applications concerning Mr. Hutchinson. He did not respond to this application.

#### **Application 06-30**

Pay \$1,000.00

Applicant's mother established a trust shortly before she died. Applicant and her children were the beneficiaries. Applicant paid Hutchinson \$1,000 to represent her to seek an accounting for their funds from the trustee. The attorney representing the trustee met one time with Hutchinson. Hutchinson proposed that a bank be substituted as the trustee. He said he would draft a letter formally setting forth this proposal. He did nothing and Applicant never heard from him again. The Committee approved payment of \$1,000.

#### JUAN GABRIEL IBARRA – WSBA # 29461 (Seattle) – Deceased

Ibarra died in a car accident. He had no will. In going through Ibarra's records in order to wind down his law office and pay all due taxes, the attorney hired to probate the estate found one case in which Ibarra had a 30% contingent fee agreement with clients, but had mistakenly taken 33%, and another where the client had paid Ibarra a fee shortly before he was killed, and for which little or no work was done. The attorney suggested that these clients file creditors' claims with the estate and also advised them to file applications to the Fund.

#### **Application 06-76**

Pay \$3,442.98

Applicant paid Ibarra \$5,000 to defend his son on criminal charges shortly before Ibarra was killed. On the creditor's claim, the court ordered that Applicant's claim for \$5,000 be approved. He was paid \$1,557.02 from the assets of the law firm. The Committee approved a gift to Applicant of \$3,442.98 based on failure to account for these funds.

#### Application 06-75

Pay \$5,013.79

Applicants hired Ibarra to file a wrongful-death claim regarding their son on a 30% contingent fee basis with the proviso that it would be 33% if it the matter went to trial. This was the case where the probate attorney discovered that Ibarra paid himself 33% instead of 30%. Their creditor's claim was allowed by the court against Ibarra's personal estate, but because of the insolvency of the estate, they received no payment. The Committee approved a gift of \$5,013.79 based on failure to account for these funds.

#### JOHN B. JACKSON III - WSBA # 5208 (Bremerton) - Suspended pending discipline

Jackson entered a plea of guilty to six counts of felony theft. All of those charges related to funds misappropriated from his trust account.

#### Application 05-16

#### Pay \$18,240.51

Applicant hired Jackson for representation on a personal injury claim. She made a cost advance payment of \$300, and they agreed on a 1/3 contingent fee. The claim was settled for \$50,000. When Applicant later received her file and met with a new lawyer, there was a handwritten note that Jackson had paid himself \$16,000. He never accounted for Applicant 's funds. Eventually, Jackson sent Applicant's new lawyer a check payable to Applicant for \$32,333. The new lawyer deposited the funds into his trust account. However, Jackson then told him that those funds belonged to other clients and asked him to return the check. After consulting with Professional Responsibility Counsel at the WSBA, he did not return the funds. The new lawyer also represented another of Jackson's former clients, and he had been contacted by a third. The three of them agreed to each receive a pro rata share of the funds from Jackson. This Applicant received \$14,092.49. The Committee approved payment to Applicant of \$18,240.51.

#### Application 06-02

#### Pay \$9,257.67

Applicant hired Jackson for representation in a personal injury claim on a 1/3 contingent fee basis. The claim was settled for \$25,000. Jackson paid himself fees in the amount \$7,086.31 (1/3 of \$25,000 would be \$8,333.33). He was also to pay some medical bills and pay the balance to Applicant. She never heard from him after that, the medical bills were not paid, and she never received any of her funds. After learning of Jackson's suspension, Applicant went to a new lawyer. Jackson sent him a check payable to Applicant for \$16,271.36. It was returned NSF. As noted above, Applicant agreed to a pro rata share of \$32,333 to be divided among three of Jackson's former clients. Applicant received \$7,013.69. That leaves \$9,257.67 unaccounted for. The Committee approved payment of that amount.

#### Application 05-35

#### Pay \$12,590.76

Applicant first hired Jackson in 1999 for representation on a personal injury claim arising from an auto accident. It was settled for payment of \$22,500. Jackson prepared an undated Settlement Distribution accounting showing fees of \$7,333.33; costs of \$218.52; and partial payment of settlement to Applicant of \$5,000. It also showed payment of one medical bill or lien, and said Jackson was holding \$7,637.41 to pay a lien to a chiropractic clinic in an amount to be verified. The total owing the clinic is \$4,725.19.

Jackson also filed an uninsured-motorist claim from this same accident that was settled on 8/10/04 by payment of \$10,000 from another insurer. Jackson was entitled to a 1/3 contingent fee. Applicant never received any settlement accounting from Jackson.

Jackson also represented Applicant in a second car accident personal injury claim. Applicant had been driving a company car and the Department of Labor and Industries was initially handing the matter. However, because Jackson was representing him regarding the first accident, Applicant asked him to handle the second one as well. The claim was settled by payment from an insurer of \$14,405.92. L&I entered an order dated 8/5/05 distributing these funds as follows: \$4,628.42 attorney's fees and costs; \$2,444.38 net share to Applicant; \$7,333.12 self-insurer share. In the distribution of funds paid by Jackson as described in the previous reports, Applicant received \$11,490.91.

With Applicant's approval, the Committee approved payment of \$4,725.19 directly to the chiropractic clinic; \$4,000 directly to the self-insurer; and \$3,865.57 to Applicant.

#### **Application 06-15**

Pay \$6,666.66

Jackson represented client in a personal injury lawsuit. She was insured by Applicant insurance company. The case settled for \$70,000 and another insurer issued a check in that amount to client and Jackson. Jackson agreed to pay Applicant \$10,000 less a 1/3 contingent fee to reimburse them for PIP payments. Jackson never paid Applicant. The Committee approved payment of \$6,666.66.

#### Application 05-24

Pay \$4,000.00

Applicant hired Jackson for representation of herself and her two minor children regarding injuries they received in a car accident. They agreed on a 1/3 contingent fee. The claims were settled for \$6,000 for Applicant and \$759.50 each for the children. However, the checks in payment to the children were written for \$579.50 instead of \$759.50 and were returned to the insurer to be reissued. Jackson provided no accounting for any costs due, and never paid any sums to Applicant. The Committee approved payment of \$4,000.

#### Application 05-90

Pay \$200.00

Applicant hired Jackson to represent her in a personal injury claim on a contingent fee basis. The fee agreement provided that she was to "maintain a fund of \$200 to be held in trust to cover expenses." She paid him \$200. Jackson repeatedly assured her that he was attempting to negotiate a settlement. When she learned of his suspension, she consulted a new lawyer who obtained her file from Jackson and filed the lawsuit before the statute of limitations had run. There was no evidence that Jackson had done anything on Applicant's case. The Committee approved payment of \$200.

#### Application 05-50

#### Pay \$9,000.00

Applicant hired Jackson for representation in a personal injury claim. The case was mediated and insurer agreed to pay Applicant \$29,000. Applicant was to receive \$10,000, Jackson was to receive \$10,000, and he was to hold the remaining \$9,000 in trust to pay medical liens and bills. Jackson mailed her the \$10,000. However, Jackson did not pay the medical liens and bills. Applicant first learned of this when she was contacted by a collection agency. Jackson never accounted for the remaining \$9,000. The Committee approved payment of that amount.

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

Johnson-Ortiz abandoned his high-volume immigration practice in January 2004 and left more than 300 open files. The Committee has previously approved 66 applications totaling \$100,420.31.

#### Application 05-64

#### Pay \$8,214.84

Applicant was arrested and placed in removal proceedings in 1997. He paid Johnson-Ortiz \$2,500 to file an Application for Adjustment of Status. Johnson-Ortiz filed the petition, and an INS interview was held, at the conclusion of which Johnson-Ortiz was sent a letter directing Applicant to submit various financial records relating to his sponsor. On 6/11/01, the INS wrote to Johnson-Ortiz that the documents were never submitted, and that the INS intended to deny the application for adjustment unless, within 30 days, he submitted the documents. Johnson-Ortiz did not file them and Applicant was not aware that Johnson-Ortiz had not filed these documents until May 2004 when he received a Notice to Appear for a removal hearing. Applicant's current lawyer filed a new Application for Adjustment to Status in January 2005, and Applicant was granted permanent residency status on 7/18/05. He accomplished in seven months what Johnson-Ortiz failed to do in seven years.

In addition, for reasons that are not clear, Johnson-Ortiz advised applicant to file for marriage dissolution. Applicant paid Johnson-Ortiz \$1,500 plus costs. Johnson-Ortiz filed a summons and petition and did nothing more. The petition was dismissed on the clerk's motion. The Committee approved payment of \$8,214.84.

#### **Application 06-13**

#### Pay \$4,000.00

Applicant was a Polish seaman who entered the U. S. as a crewman in 1990 and stayed. He applied for asylum, which was denied. In 1997 he was ordered to appear for hearing. He appeared, and the hearing was continued to allow him to obtain counsel. He was given notice that the new hearing date was 9/18/97. He failed to appear in court, and he was ordered removed. Applicant moved to reopen on 9/9/98, arguing that he was eligible for benefits under the Nicaraguan Adjustment and Central American Relief Act (NACARA).

The motion was denied on 2/18/99 on the grounds that as an arriving crewman, Applicant was not eligible for an adjustment of status. That decision was affirmed by the Board of Immigration Appeals on 5/13/02.

On 6/18/02, Applicant paid Johnson-Ortiz \$4,000 to represent him. Johnson-Ortiz filed a Petition for Adjustment to Status, for which Applicant paid \$1,425 in filing fees, even though the 1999 decision determined that Applicant was not eligible for an adjustment to status. Johnson-Ortiz also filed a new motion to reopen before the Board of Immigration Appeals. It was denied. First, it was filed untimely, one day beyond the deadline. Second, because Applicant was still subject to the 1998 order of deportation, the Board had no jurisdiction over the matter.

Johnson-Ortiz then moved to reopen the removal proceedings before the original trial judge on the basis of ineffective assistance of counsel. Johnson-Ortiz asserted that the reason Applicant did not appear for the 1997 hearing was bad advice of counsel. The immigration judge denied the motion on the basis that it was untimely, and he denied the request that he reopen it on his own motion because there was no evidence that Applicant had been misled by his earlier attorney other than Johnson-Ortiz's statement, which was not evidence; and also that a claim for asylum relief based on changed country conditions was "clearly not shown as to Poland which after all has gone through repeated rounds of open and democratic elections and has since 1998 been admitted to NATO."

Johnson-Ortiz also applied for a work authorization permit for Applicant in which he failed to disclose that Applicant had a removal order, which made him ineligible for a permit. The Committee determined that Johnson-Ortiz did nothing of value for Applicant and he filed false information in connection with the work permit application. The Committee approved payment of \$4,000.

#### Application 05-61

Pay \$2,000.00

Applicant hired Johnson-Ortiz to file a Motion to Reopen his removal proceedings. Applicant documented payment of \$2,000. Johnson-Ortiz never filed the Motion to Reopen. The Committee approved payment of \$2,000.

#### WILLIAM R. JOICE – WSBA # 19944 (Seattle) – Resigned in Lieu of Disbarment

Joice stipulated to a one-year suspension in connection with these applications. He was subsequently convicted by a jury of first-degree attempted murder in the shooting of another attorney. Following his conviction, he voluntarily resigned in lieu of disbarment.

#### Application 05-27

Pay \$600.00

Applicant paid Joice \$600 for representation on a domestic violence charge. Prior to his arrest, the only service Joice performed was to get a continuance of a hearing date. In his

Stipulation to Discipline, Joice agreed to pay \$600 restitution to Applicant and the Committee approved payment of that amount.

#### Application 05-20

Pay \$2,500.00

Applicant paid Joice \$2,500 for representation on a DUI and related license suspension proceeding. Prior to his arrest, the only service Joice performed was to get a continuance of a hearing date. In his Stipulation to Discipline, Joice agreed to pay \$2,500 restitution to Applicant and the Committee approved payment of that amount.

#### CRAIG E. KASTNER - WSBA # 8141 (Seattle) - Deceased

#### Application 06-97

Pay \$10,000.00

Applicant hired Kastner for representation regarding injuries sustained in a car accident. Kastner filed suit but he never filed proof of service. He settled Applicant's claim without Applicant's knowledge or consent. The insurer issued a check payable to Applicant and Kastner for \$10,000. Kastner endorsed the check, someone falsified Applicant's endorsement, and it was deposited into Kastner's trust account. The funds were never accounted for. Applicant filed a claim against Kastner's estate. The claim was allowed, but the estate was insolvent and no creditors' claims were paid. The Committee approved a gift of \$10,000.

#### KEVIN M. KOPRA - WSBA # 29651 (Seattle) - Inactive

The Committee previously approved three applications concerning Mr. Kopra. He did not respond to this application.

#### Application 06-27

Pay \$1,250.00

Applicant paid Kopra \$1,500 to file a lawsuit against his father and a finance company regarding a dispute over a piece of real property. Applicant kept calling Kopra to find out what was happening, and Kopra always promised he was about to file suit. Finally, Kopra told Applicant that he could not do it, and that he would refund Applicant's money. Kopra sent Applicant a check for \$250 which bears the notation "#1 payment – Bal. Due \$1,250." That was the only payment Applicant received. The Committee approved payment of \$1,250.

#### DONNA J. LIGHT - WSBA # 22465 (Kent) - Disbarred

Light did not appear for her disciplinary hearing, which included grievances from some of these applicants, and she did not respond to any of these applications, except that she appeared for a deposition regarding one of them.

#### Application 04-123

#### Pay \$1,200.00

Applicant paid Light \$1,200 to appeal a decision of the Employment Security Department finding that he had been overpaid by \$947.00. Light filed a two-page petition for review. She received a scheduling order setting the hearing date and other deadlines. After August 2003, Applicant was unable to reach Light. The Hearing Officer in Light's disciplinary case found, among other things, that she failed to file a trial brief and failed to respond to the brief filed by the Employment Security Department; that when Applicant tried to reach her about the hearing date, she disregarded his message; and that she failed to prepare for or appear at the hearing. The court entered findings presented by the Department, and a copy was sent to Light. She never advised Applicant of entry of the findings or took any action regarding them. The Hearing Officer found that Light charged Applicant an unreasonable fee, and she was ordered to pay restitution of \$1,200. The Committee approved payment in that amount.

#### Application 06-03

#### Pay \$1,500.00

Applicant paid Light \$1,500 to file a Chapter 13 bankruptcy. Light prepared a bankruptcy petition which Applicant signed. Between October 2003 and October 2004, Light did not respond to messages from Applicant regarding the status of his bankruptcy. The petition was not filed until 5/12/04. Light did not pay the filing fee, and did not file the required schedules, statement of financial affairs, Chapter 13 plan, list of creditors and other documents. Light did not tell Applicant the petition had been filed. Light received several notices from the court that the petition would be dismissed for deficient filing unless she filed the required documents. She took no action in response to the notices. Subsequently, Light was notified that the petition had been dismissed. She never told Applicant, and took no remedial action. Applicant learned for the first time from a loan officer that his bankruptcy had been dismissed. Applicant contacted Light and demanded the return of his fee. Light told him she did not have the funds to repay him, but that she would refile the bankruptcy. She never refiled and never returned any of Applicant's money. The Hearing Officer ordered restitution of \$1,500 and the Committee approved payment in that amount.

#### Application 05-39

#### Pay \$300.00

Applicant paid Light \$300 to file a Chapter 13 bankruptcy, and agreed to pay an additional \$250 and the filing fee. She had lost her job and a creditor was threatening to repossess her truck. The Hearing Officer found that Light knew that since Applicant was unemployed, she did not qualify to file a Chapter 13. However, Light filed a Chapter 13 petition. Light also knew that Applicant had previously filed a Chapter 7 bankruptcy and had received a

discharge in 2001. The bankruptcy petition and schedules Light filed did not disclose the previous bankruptcy as required; falsely stated that Applicant was employed; falsely certified that Applicant had not paid any fees to Light, so that she could qualify to pay the filing fee in installments; and showed that she had negative income after paying expenses, which meant that she could not confirm a Chapter 13 plan. Without Applicant's knowledge, Light filed a Chapter 13 plan that proposed to make payments of \$125 per month, but did not list any payments on the truck which was the only debt listed in the bankruptcy. In a deposition taken by bar counsel, Light testified that she knew when she filed Applicant's plan that it was not confirmable. The Chapter 13 Trustee filed an objection to the plan because it was not feasible on its face. Applicant got a new job and hired a new lawyer who was able to correct the problems and effectuate a Chapter 13 plan. The Hearing Officer found that Light's falsifications on the bankruptcy filings were false and misleading, and the Committee approved payment of \$300.

#### Application 05-31

Pay \$2,000.00

Applicant hired Light in three separate matters:

Child support: Applicant filed a pro se petition for modification of child support for her daughter who was in the custody of the child's father. Her support payments had been raised from \$150 to \$485 a month. The petition was denied. On 4/7/04, Applicant paid Light \$500. Light told her she could have the support lowered to \$25/month. Light told her to start making payments of only \$25 per month, saying "What can they do?" Applicant followed Light's advice and never heard from her on the matter again. As a result, she was found in contempt of court and her driver's license was suspended for nonpayment of support.

Parenting plan: Applicant met with Light at her home to discuss seeking modification of her parenting plan. She gave Light a check for \$1,500 and heard nothing further from her on it.

Protective order: Applicant paid Light \$200 regarding a protective order against her former husband. She was to meet Light at the Regional Justice Center in Kent. Applicant purchased the necessary forms. Light arrived late. She said she would fill out the forms, which she did incorrectly. Applicant's former husband appeared, and a temporary restraining order was entered and a hearing for a permanent order was set for 11/15/04. At that hearing, Light arrived late, and had misplaced a supporting doctor's note. The motion was denied. That evening, Light faxed Applicant a "Declaration in Support of Civil Contempt" and said she wanted an additional \$1,100. Applicant says that after looking over her work, she discharged Light as her lawyer. Applicant asked Light about the \$1,500 she had paid for modification of her parenting plan that Light had failed to prosecute. Light told her she had spent it but that she would pay it back. Applicant went to Light's office to seek return of her files and documents and the \$1,500. All of Light's clothing, furniture and client records were on her front porch, and a notice of eviction was posted on the front door. Light never returned any of Applicant's fees. The Committee approved payment of

\$2,000 representing the fees paid in the child support and parenting plan matters.

#### **Application 06-05**

#### Pay \$1,500.00

Applicants paid Light \$1,500 to file a Chapter 13 bankruptcy. They signed a petition prepared by Light, and Light had them also sign a number of blank pages, including the signature pages for the bankruptcy schedules and statement of financial affairs. For several months, Light failed to respond to numerous messages from the Applicants regarding the status of their case. Later, Applicants advised Light that they were no longer employed and thus not eligible to file a Chapter 13 proceeding. Light said she would file a Chapter 7 petition. She didn't file. A few weeks later, Applicants told Light they were employing a new lawyer, and requested return of their \$1,500. Light said she would file the Chapter 7 petition immediately, and schedule a meeting of creditors prior to Applicants' planned move to Florida. She also said she would return \$900 unearned fees. The Hearing Officer found that Light had no intention to return any unearned fees.

Light filed the Chapter 7 petition with schedules she completed using the blank pages signed by the Applicants, who did not review the information before it was filed. They contained significant inaccurate information; they failed to properly exempt the Applicants' automobile; and improperly omitted information about the husband's retirement plan. When Applicants attended the meeting of creditors, they could not respond to questions by the trustee about the schedules and statement of financial affairs because they had never seen them. Light never returned on of the fees to the Applicants. The Committee approved payment of \$1,500.

#### Application 04-182

#### Pay \$800.00

Applicants paid Light \$800 plus \$209 costs to file a Chapter 7 bankruptcy. Their mortgage holder was threatening foreclosure. Light filed the bankruptcy petition without having it reviewed by Applicants. The Hearing Officer found that Light knew or should have known that the bankruptcy schedules contained many significant errors, including failing to list any exemptions; failing to list any assets; and listing the market value of the Applicants' home as zero when its true market value was \$210,000. The mortgage company filed a motion for relief from stay to pursue foreclosure. Light told the Applicants that she would file a response to the motion, but she did not do so. She also told the Applicants that they did not need to attend the hearing on the motion. Light did not attend the hearing, and the court granted the mortgage company's motion. Light took no remedial or corrective action. When the Applicants received a copy of the order, they asked Light what it meant. She told them not to worry because she was going to convert the bankruptcy from Chapter 7 to Chapter 13.

The meeting of creditors was set and Light told Applicants that they did not need to appear because of her plan to convert the bankruptcy from Chapter 7 to Chapter 13. Light filed a motion to convert the proceeding, but did not file the required new schedules. She did not attend the meeting of creditors and the Chapter 7 petition was dismissed. When the

Applicants received the order, they contacted Light. She again assured them that it did not matter because she was going forward with a Chapter 13 proceeding. They received a notice stating that failure to cure the debts owed on their residence within 30 days could lead to foreclosure. Light continued to claim that she was filing a Chapter 13 proceeding, and told the Applicants that the plan would require monthly payments of \$1,825. At her direction, they gave her a cashier's check in that amount. Light falsely told them the Chapter 13 petition had been filed, but it would not show up on the court's records the following Monday. Applicants checked with the court and were told nothing had been filed. They contacted a new lawyer who agreed to represent them on the condition that they discharge Light. They went to her office and discovered she had moved out. They then went to Light's apartment. After some delay, she opened the door and the Applicants gave her a letter discharging her. Light gave them their file and a hand-written note reading, "I agree to a refund of some of your money." She also returned the cashier's check. She never refunded any of their fees. The Committee approved payment of \$800.

#### Application 04-199

#### Pay \$2,500.00

Applicant paid Light \$2,500 for representation in a marriage dissolution proceeding filed by his wife. Applicant called her several times, but she did not file a Notice of Appearance until more than one month after she was hired. Applicant continued to have difficulty reaching Light. In May, he received a letter from Light saying that mediation was scheduled at her office on June 17, 2004.

Applicant and his wife entered into counseling, and he told Light to hold off on the mediation until they knew whether they could reconcile. They reached an agreement, and Applicant called Light and told her that his wife's lawyer would send her a stipulation to dismissal. He also told her he would expect a portion of his fee returned, and she replied that she would have to work out a payment schedule as she had "never had a client reconcile and file for dismissal before."

The wife's lawyer sent the stipulation to Light five times, and made numerous phone calls to her, but she never responded and never returned the stipulation. Finally, Applicant wrote a letter discharging Light, and he signed the stipulation pro se. Wife's lawyer said he has no record and no recollection that he and Light ever agreed to a mediation date. He also did not recognize the name of the person who Light told Applicant would be the mediator. The Committee approved payment of \$2,500.

#### **Application 04-197**

#### Pay \$750.00

Applicants paid Light \$750 to file a Chapter 7 bankruptcy. She filed the petition but failed to appear for the first meeting of creditors. The Trustee continued the meeting date and told Applicants that the schedules and statements of financial affairs Light had filed were inaccurate and incomplete. At the continued meeting of creditors, Light brought amended schedules and statements. However, because they were not filed prior to the meeting, it was again rescheduled. The Trustee also asked for specific documents regarding

Applicants' assets and liabilities. They provided all of the documents to Light, but she never forwarded them to the Trustee. Before the next creditors' meeting, the Applicants discharged Light and contacted the Trustee to determine which documents were still needed. They provided them, and a discharge of debtor was entered. The Trustee wrote Light a five-page letter relating the history of her representation of the Applicants. He noted the many times she failed to comply with directions from the Trustee. He directed her to refund her \$750 fee to the Applicants. Light never returned the fee. The Trustee described Light's representation of Applicants as "horrible" and "worthless." The Committee approved payment of \$750.

#### Application 04-174 Pay \$2,150.00

Applicants paid Light \$500 regarding a dispute in purchase of a boat. Subsequently, Light advised the Applicants to file a Chapter 13 bankruptcy petition. In the disciplinary proceeding, the Hearing Officer found that this was incompetent advice because Light "knew or should have known that the Applicants would lose the boat if they filed a bankruptcy." She also "incompetently" advised the Applicants to stop making payments on other bills, including their vehicles. The Applicants accepted Light's advice, filed for bankruptcy, and stopped all bill payments.

A new fee agreement was signed providing for a fee of \$1,500. The Applicants paid \$1,400 in several installments. They also paid \$250 for filing fee and a credit report. The total fees paid to Light, including the original \$500, were \$2,150. The Applicants signed the bankruptcy petition but Light did not file it. However, she told the Applicants it was filed. She set a meeting with the Applicants, but failed to appear. The next day, Applicants' car was repossessed.

Applicants hired a new lawyer, who filed a bankruptcy petition that same day. At a meeting of creditors, Applicants learned that a few days previous, Light filed a bankruptcy petition on behalf of the Applicants without advising them. She was notified by the court clerk that the petition had been filed without the required filing fee, and without required Social Security numbers. The notice advised that if the fee and information was not supplied, the case would be referred to the judge for dismissal. She received a second notice that the Trustee would move for dismissal unless she filed missing schedules, statement of financial affairs, and Chapter 13 plan. Light did not comply with the notices. The Trustee moved to dismiss, which was granted. As a result of all this, the Applicants were required to sell the boat that they had originally hired Light to protect. The Hearing Officer ordered restitution and the Committee approved payment of \$2,150.

#### Application 05-101 Pay \$700.00

Applicant paid Light \$700 to represent him in a Chapter 7 bankruptcy that he had filed pro se. A creditor was trying to execute against his father's credit union savings accounts on which Applicant was listed as joint owner. The credit union filed a Motion for Relief from Stay. Light advised Applicant that he did not need to attend, and Light failed to appear. The

credit union's motion was granted and Applicant's petition for bankruptcy was dismissed for failure to appear at the meeting of creditors. The Hearing Officer found that Light received notice of the dismissal but did not advise Applicant. She took no further action, and the creditor executed on the credit union account. The Hearing Officer found that Light intentionally failed to return any fees to Applicant. He ordered restitution of \$700, and the Committee approved payment in that amount.

#### **Application 04-195**

#### Pay \$900.00

Applicant paid Light \$900 to represent her in a child custody proceeding that Applicant had filed pro se. Applicant told Light that the father of her child was willing to stipulate to allow Applicant to have full custody of their child. She gave Light all of her paperwork relating to the custody issues. Light said she would draft the necessary papers in 48 hours. After their initial meeting, Applicant could not reach Light who performed no services for Applicant. The Hearing Officer found that Light obtained "funds from [Applicant] through fraud and theft by deception and by engaging in deceitful conduct." He ordered restitution of \$900 and the Committee approved payment in that amount.

#### Application 05-51

#### Pay \$500.00

Applicant's boyfriend had been involved in an accident and an insurance company was seeking to recover \$67,000 from him. Applicant, her boyfriend, and Applicant's mother met with Light who arrived with no briefcase, notepaper, or business cards. Applicant's mother lent Light her notepad to make notes. Her mother noticed that when Light returned her notepad to her, Light's notes were still in it. They later learned that Light paid \$10 to use the office of another lawyer to meet with them.

Some years previous, Applicant had bought a home and later added her boyfriend's name to the title. Light advised them to quit claim the house to Applicant. They told her that they had previously consulted a bankruptcy attorney who advised against that as it could be considered fraud. Light told them that she knew what she was doing because she had previously worked for the insurance company. She told them to buy a quit claim deed form, which they did.

They agreed on a fee of \$1,500. Applicant paid Light \$100 in cash (for which she was given no receipt) and \$400 by check. She also gave Light a post-dated check for \$250. They agreed to pay an additional \$750 in the following week. Later, Applicant told Light that she had stopped payment on the post-dated check and would not write another one unless Light returned their original documents and provided a receipt for the \$100 cash payment. Light said she would mail them that day. Later that day Applicant got a call from her bank that Light was trying to cash the stop-payment check. The bank confiscated it from Light, and Applicant picked it up. When she got home, there were two messages from Light on the answering machine saying Applicant owed her \$3,500 and threatening to sue. Applicant discharged Light and requested a receipt for the \$100 and return of her original documents. Light never responded. The Committee approved payment of \$500.

#### Application 05-99

#### Pay \$450.00

Applicants paid Light \$450 to represent them in a step-father adoption. They told Light that the father had agreed to terminate his parental rights in exchange for a waiver of back child support. Light drafted a document titled "Father's Consent to Adoption, Consent to Termination of Parent-Child Relationship and Waiver of Right to Receive Notice of Proceedings." The Hearing Officer found that had Light "performed minimal and/or reasonable research" she would have known that this was inadequate to effectuate an adoption. Among other things, King County has mandatory forms to be used for adoptions: an adoption requires filing a petition for adoption in addition to the father's consent; all pleadings for adoptions must be reviewed by a Family Court social worker to determine whether the consent was voluntary; and there must be findings of fact, conclusions of law and a decree of adoption. He found that "at the time [Light] drafted the Consent to Adopt, [she] knew that she did not know the procedures for effectuating an adoption by consent." After the document was signed, Light tried to file it but the court clerk refused to accept it because it did not comply with the court rules. Light refused to return Applicants' fees. The Hearing Officer ordered restitution \$450 and the Committee approved payment of that amount.

#### Application 05-33

#### Pay \$1,100.00

Applicant hired Light to represent her boyfriend, who was in jail on criminal assault charges and a child custody matter. Light agreed to represent him in both matters for \$1,500. Light told Applicant she would appear at the arraignment, and that Applicant should have a cashier's check for \$1,100 at that time. Light arrived after the arraignment was over and the boyfriend had been returned to jail. Applicant gave Light the check for \$1,100. Light told her she would file for temporary custody of the boyfriend's child. Light told her that this could be done even though he was in jail because she knew a commissioner who would sign the papers without asking any questions. She indicated that she was then going to the jail to meet with him. However, she did not meet with him until 1 week later. Applicant became concerned when Light failed to visit her boyfriend in jail, and decided to hire another lawyer. Applicant told Light she wanted her money back, but Light told her she had done too much work on the case and could not give her a refund, and also that the boyfriend was her client and that only he could fire her. As of that time, Light had never spoken with him.

The new lawyer entered a Notice of Appearance and Request for Discovery (Light had not done so). On that day a hearing was held, the boyfriend's bail was reduced and he was released from jail. When Applicant and her boyfriend talked, they discovered that Light had told each of them that she had been hired by the other.

When they asked Light about the custody case, she told them that she had done nothing on it. She gave them some blank forms to fill out. Following that meeting, Applicant and her boyfriend sent a letter telling Light she was terminated, and they requested a refund.

The Hearing Officer found that Light "intentionally failed to provide legal services to [Applicant's boyfriend]" and that she "intentionally engaged in deceit and/or misrepresentation intended to deceive [Applicant and/or her boyfriend]." He ordered restitution to Applicant of \$1,100, and the Committee approved payment in that amount.

#### **Application 06-24**

#### Pay \$500.00

Applicant paid Light \$500 to write a demand letter after her boyfriend signed a lease and then failed to pay rent. Applicant left messages, but Light did not return her calls and then her phone was disconnected. The Hearing Officer found that Light had no intention of providing legal services to Applicant, and intended to obtain funds by fraud and/or theft by deception. He ordered restitution of \$500 and the Committee approved payment in that amount.

#### Application 06-45

#### Pay \$1,000.00

Applicant paid Light \$1,000 for representation in a criminal case. Light told him she worked out of her home, but gave him no mailing address. When Applicant left messages on her phone, Light did not return his calls, and later her phone was disconnected. Applicant obtained a post office box address for her and he mailed her a letter discharging her and asking for a refund. It was returned because the post office box was closed. He never heard from Light and received no refund. The Hearing Officer found that Light never intended to perform legal services for Applicant, and intended to obtain funds from him by fraud or deception. He ordered restitution of \$1,000 and the Committee approved payment of that amount.

#### Application 05-100

#### Pay \$2,050.00

Applicant prepared a pro se petition for dissolution and petition for temporary restraining order with the assistance of a Courthouse Facilitator. Light was in the room when they discussed looking for an attorney, and she offered to take Applicant's case. Applicant filed the petitions and then called Light. She paid fees to Light totaling \$2,050. Light never filed a notice of appearance. Applicant prepared declarations from her family and friends which she gave to Light who filed them. A hearing was set. When Applicant and Light went to court, the court commissioner said that Light could no longer represent Applicant because she was suspended and that Applicant would need to find another attorney. The Committee approved payment of \$2,050 to Applicant.

#### RICHARD J. MCKAY – WSBA # 19987 (Federal Way) – Disbarred

Requests for response were sent to McKay's office and home addresses. The one to his office was returned undeliverable; the one to his home was not returned. He did not respond.

#### Application 06-86

#### Pay \$41,204.87

McKay was the Administrator and attorney for the estate of Applicant's father. Applicant and her brother were each entitled to ½ the net assets of the estate, approximately \$250,000 apiece. McKay had previously represented Applicant's brother in various matters. In a subsequent judgment entered against McKay, it was noted that he accepted this appointment despite the "obvious conflict of interest" in administering the estate of his client's father where the client was one of the beneficiaries.

Despite not having nonintervention powers, and without approval of the court, McKay sold estate assets, entered into estate contracts, made loans of estate funds, made distributions of real estate and cash, and so forth. This included selling real property and making cash advances to Applicant's brother without court authority. McKay paid himself fees totaling \$26,204.87 without approval of the court. Applicant filed a petition for an accounting from McKay. At that point, McKay paid \$15,000 to a lawyer who alleged that she was hired as the attorney for the estate. It was the position of Applicant that McKay hired the lawyer to represent him personally regarding Applicant's petition for an accounting.

A judgment was entered against McKay for \$331,762.27 for breach of fiduciary duty; awarded attorney fees in the amount of \$57,889.37 to Applicant; and awarded \$56,909.59 in additional attorney's fees. McKay has disappeared and the judgment remains uncollected. The Committee and Trustees approved a gift of \$41,204.87 to the estate.

#### JOHN O. MCLENDON – WSBA # 1187 (Spokane) – Disbarred

The Committee previously approved five applications concerning McLendon. He did not respond to this application.

#### Application 06-25 Pay \$25,000

Applicant paid McLendon \$25,000 for the purchase of a piece of vacant land by himself and his brother. McLendon was acting as the closing agent. McLendon used those funds to purchase a cashier's check payable to his trust account for \$25,000. McLendon never paid the seller.

Subsequently, Applicant and his brother bought the adjacent property. When they received the deed for that piece, it showed two parcels of property had been merged, and Applicant says he assumed that the county had merged the property he thought he bought through McLendon with this new purchase. Applicant applied for a building permit on the two pieces of property and learned that he and his brother were not listed as the owners of the first piece of property. Based on McLendon's failure to account for Applicant's funds, the Committee approved payment of \$25,000.

#### PHILLIP E. MILLER - WSBA # 7703 (Bellevue) - Disbarred

#### Application 06-26

Pay \$3,000.00

Miller did not respond to this application. Miller accepted a legal fee of \$3,000 from Applicant to represent his son on a criminal traffic charge and in a license suspension proceeding before the Department of Licensing (DOL). Applicant also paid Miller \$100 for the DOL hearing fee. Three days later, Miller was suspended from the practice of law.

Miller transferred the case to attorney who filed a request for the license suspension hearing. The first that Applicant learned of this was when he received a letter from DOL advising that the request was filed untimely and therefore was denied. The letter said the \$100 would be refunded in approximately four to six weeks.

The same day Applicant got the letter from DOL, he received a letter from Miller stating that he had been placed on interim suspension and would be unable to represent Applicant's son. The letter stated he had made arrangements with another attorney to take over the representation. Applicant then hired a new lawyer to represent his son. He wrote to Miller demanding a refund, but received no response. The Committee approved payment of \$3,000.

#### MARK. A. PANITCH - WSBA # 12393 (Seattle) - Suspended pending discipline

Panitch was mailed a copy of this application but did not respond. He also failed to respond to the underlying grievance.

#### Application 05-76

Pay \$3,000.00

Panitch agreed to represent Applicant in a wrongful death action. Applicant's mother sent Panitch a check for \$3,000 that he had requested to cover litigation costs. In the written contingent fee agreement, Panitch provided that "I will not obligate you to any cost in excess of \$500 without notice and consultation."

Panitch was served with interrogatories to be answered by Applicant. Rather than obtaining Applicant's answers by phone, he told her he was coming to Phoenix where she was living. He did not explain that she would be responsible for the costs of this trip, which would exceed \$500.

The defendant filed a motion for summary judgment. Panitch requested and was granted several extensions of time to file his response because of health issues. After he did not respond to inquiries from the court, the Motion for Summary Judgment was granted, and

statutory attorney fees were assessed against Applicant. Panitch did not inform Applicant of this.

Applicant asked another attorney to review the case. He examined the court file and learned that it had been dismissed. He contacted Panitch who said that he would file a motion to vacate the dismissal order and would file a response to the motion for summary judgment. Five months later, he filed a motion to vacate. The motion for summary judgment was heard for the second time. Panitch did not tell his clients that the motion was granted for the second time.

Applicant wrote to Panitch requesting a written accounting. His only response was an email saying that he had "used about \$2,000" and that "most of that went for the trip to Phoenix." Panitch has never rendered an accounting for the \$3,000 paid to him, nor has he refunded any of it to Applicant or her mother. The Hearing Officer recommended restitution of \$3,000 and the Committee approved payment in that amount.

#### R. STUART PHILLIPS - WSBA #29701 (Indianola) - Disbarred

The Committee previously approved one application concerning Phillips. He did not respond to this application.

#### Application 06-11

#### Pay \$25,000.00

Phillips represented Applicant's mother, for whom Applicant was trustee, on a 1/3 contingent fee basis in a claim against a hospital. Mediation resulted in a settlement of \$150,000. Payment was made to Phillips. Applicant received a check from Phillips for \$75,000. In an accompanying letter, Phillips wrote that he had to make sure that there was no subrogation claim to be satisfied, and "I can distribute the remainder in 10 days (after their notice period runs)." Applicant did not hear from Phillips again until he reached him in December 2004. Phillips told him he would send the money by Christmas. Applicant heard nothing more from Phillips and the following February he was disbarred. Applicant sent an e-mail to Phillips:

What do I do now, Sir? My mother is coming home today after 6 days in the hospital and 6 weeks in a nursing center. She needs 24 hour care. You sat in her front room and lied to her. I thought you were an honest man. How could you do this to my mom? Would you do this to your mother? I await your response.

On May 12, Phillips responded with "What is your mailing address to send a check to?" Phillips never paid the balance of funds to Applicant nor rendered any accounting for them. The Committee approved payment of \$25,000. (After payment was made from the Fund to

Applicant, Phillips sent Applicant a check for \$9,000 which Applicant endorsed over to the Fund).

#### MICHAEL O. RILEY - WSBA # 21452 (Tukwila) - Suspended pending discipline

Copies of all applications were mailed to both Riley's office and home addresses. The ones to his office address were returned to the WSBA marked "moved left no forwarding address." The ones to his home address were returned marked "return to sender – no forwarding address on file."

#### **Application 06-85**

Pay \$1,000.00

Applicant's parents paid Riley \$1,000 for representation of Applicant on a DUI charge. The court docket shows no appearance or other action by Riley. Applicant tried repeatedly to reach Riley by phone without success, and finally found that his phone was disconnected. Riley has never accounted for the \$1,000 paid to him, and the Committee approved payment of that amount to Applicant's parents

#### **Application 06-94**

Pay \$2,000.00

Applicant paid Riley \$2,000 to probate his father's estate. Applicant repeatedly called Riley and left messages asking for the status of the estate proceeding. Riley never returned any of the calls. Finally, Applicant sent a certified letter to Riley asking for return of his father's will and the \$2,000. Riley did not respond. Applicant filed a grievance with the WSBA. Riley did not respond and he was subpoenaed for a deposition, but when he appeared, he did not produce all of the subpoenaed records. Riley never returned or accounted for the \$2,000. The Hearing Officer ordered restitution of \$2,000, and the Committee approved payment of that amount.

#### **Application 06-70**

Pay \$1,000.00

Applicant hired Riley regarding a claim against parties who had contracted with him to build a custom-made aquarium. Applicant was served with a lawsuit commenced by the other parties. Applicant and Riley discussed the case, and Applicant paid Riley \$1,000 to respond to the suit. At the time of their next scheduled meeting, Applicant went to Riley's office and he was moving out and too busy to talk. They agreed to meet at Applicant's home. That was the last contact Applicant had with Riley. The Committee approved payment of \$1,000 to Applicant.

#### CHARLES E. ROBBINS - WSBA # 3976 (Puyallup) - Disbarred

The Committee previously approved one application concerning Robbins. He did not

respond to this application.

# Application 05-71

Pay \$8,551.43

Robbins and Applicant entered into a 1/3 contingent fee agreement regarding an automobile accident. Robbins settled Applicant's claim with the other driver's insurer for \$47,500. Robbins was entitled to a 1/3 contingent fee of \$15,833.33, plus costs totaling \$1,012.40. Because he deemed the settlement inadequate, Robbins advised Applicant to file an uninsured motorist claim with the insurer of the vehicle he was in. Robbins paid the balance from the settlement to Applicant, but said that he was keeping \$8,551.43 "as attorney fees and costs in the pending UIM action." Applicant never agreed to any fees to be paid to Robbins other than the 1/3 contingent fee as provided for in the written fee agreement. Robbins filed an UIM claim, but it was never settled, and it is currently in arbitration. The Committee agreed with Applicant's position that all work in connection with the automobile accident was to be done pursuant to the written 1/3 contingent fee agreement, and that Robbins had no right to pay himself \$8,551.43 when he never settled the claim. The Committee approved payment in that amount.

# GAIL SCHWARTZ - WSBA # 28994 (Spokane) - Suspended

Schwartz was sent copies of all applications and requested to respond by both the Fund and the Office of Disciplinary Counsel. She did not respond.

### Application 06-50

Pay \$600.00

Applicant hired Schwartz for representation regarding custody of his daughter. He made a fee payment of \$600. Applicant had worked on Schwartz's unsuccessful judicial campaign in Spokane in 2004. In order to save fees, it was agreed that he and his wife and sister would prepare some of the documents necessary for the proceeding, including their own declarations.

A petition to modify the parenting plan and the declarations of Applicant and his wife and sister were filed. Applicant was told by Schwartz's office assistant that their office had not given proper notice to the other party, and that the hearing was continued. After several delays, including misrepresentations regarding hearing dates, Schwartz called Applicant and said "Sorry, but when you are very busy things get forgotten." He then received a letter from Schwartz that essentially blamed Applicant for whatever happened or didn't happen. She said that she should never have taken his case. She did not address the issue of misrepresentations by her and her office regarding hearings that were missed or never set. The Committee approved payment of \$600 to Applicant.

# **Application 06-57**

Pay \$500.00

Applicant paid Schwartz \$500 to represent her fiancé, who was in jail. He had previously

been convicted of malicious mischief and placed on probation on various conditions. A probation show cause hearing was set. Applicant says she told Schwartz that her fiancé would not be able to appear at the show cause hearing because he was being transferred to Western State Hospital. She says Schwartz was to get the hearing continued. Schwartz did not seek a continuance and a warrant was issued for her client's arrest. Applicant learned of this when her fiancé was to be released from jail. After several attempts, she reached Schwartz and Schwartz got the warrant quashed. The show cause hearing was reset, but Schwartz did not advise them of the hearing date. Later they learned another warrant had been issued for failure to appear.

Applicant called Schwartz and left voicemails but Schwartz never returned her calls. Applicant and her fiancé wrote to Schwartz advising her that they had hired a new lawyer and requesting return of the \$500. Schwartz did not respond and never refunded the fee. The Committee approved payment of \$500 to Applicant.

# Application 06-116

# Pay \$1,500.00

Applicant consulted Schwartz regarding a divorce. They signed a fee agreement that provided for a fee of \$1,500 plus \$120 filing fee. Applicant's father made three payments to Schwartz totaling \$1,500. Schwartz agreed that she would not file the dissolution proceeding until a pending bankruptcy proceeding of Applicant and his wife had been concluded. The Order of Discharge was entered and Applicant tried to contact Schwartz to tell her to proceed. When Applicant finally reached Schwartz, she told him she was suspended from practice. He asked about the money paid to her by his father, and she said she would mail a refund. She never did so. The Committee approved payment of \$1,500.

### Application 06-125

### Pay \$1,900.00

Applicant was convicted of second-degree felony murder. The Court of Appeals overturned his conviction based on a Supreme Court decision that assault may not serve as the predicate crime for second-degree felony murder based on the law in effect at the time of his actions. The case was remanded to Superior Court for further action. Applicant hired Schwartz to represent him on the remand. His mother and a friend paid Schwartz \$1,900 on his behalf.

Schwartz did not meet with Applicant in jail until just before his second arraignment. He told her he was upset with her representation of him, and she responded that she could either continue as his attorney, or withdraw and return his fee. He told her he wanted her to withdraw. Schwartz withdrew and a public defender was appointed. Schwartz never returned any of Applicant's money. The Committee approved payment of \$1,900.

# Application 05-75

# Pay \$2,400.00

Mr. Valero did not respond to this application. Valero represented Applicant in a dissolution of marriage proceeding. Subsequently, Applicant paid Valero \$2,400 for representation in child support issues and to prepare restraining order and contempt motion against his wife. Valero took no action on these matters. The Committee approved payment of \$2,400 to Applicant.

# APPENDIX A Admission to Practice Rule 15

#### APR 15: LAWYERS' FUND FOR CLIENT PROTECTION

- (a) **Purpose.** The purpose of this rule is to create a Lawyers' Fund for Client Protection, to be maintained and administered as a trust by the Washington State Bar Association (WSBA), in order to promote public confidence in the administration of justice and the integrity of the legal profession.
- (b) Establishment. 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 court ordered suspension. The Fund shall not be used for the purpose of relieving any pecuniary loss resulting from an attorney's negligent performance of services or for acts performed after a member is disbarred. Payments from the Fund shall be considered gifts to the recipients and shall not be considered entitlements.
- (c) Funding. The Supreme Court may provide for funding by assessment of members of the WSBA in amounts determined by the court upon the recommendation of the Board of Governors of the WSBA.
- (d) **Enforcement.** Failure to pay any fee assessed by the court on or before the date specified by the court shall be a cause for suspension from practice until payment has been made.
- (e) **Restitution.** A lawyer whose conduct results in payment to an applicant shall be liable to the Fund for restitution.
- **(f) Administration.** The Fund shall be maintained and administered by the Board of Governors acting as trustees for the Fund. The Board shall appoint the Lawyers' Fund for Client Protection Committee (Committee) to administer the Fund pursuant to rules adopted by the Board of Governors and approved by the Supreme Court. The Committee shall consist of 11 lawyers and 2 nonlawyers, who will be appointed to serve staggered 3-year terms.
- **(g) Subpoenas.** A lawyer member of the Committee, or counsel for the Washington State Bar Association assigned to the Committee, shall have the power to issue subpoenas to compel the attendance of the lawyer being investigated or of a witness, or the production of books, or documents, or other evidence, at the taking of a deposition. A subpoena issued pursuant to this rule shall indicate on its face that the subpoena is issued in connection with an investigation under this rule. Subpoenas shall be served in the same manner as in civil cases in the superior court.
- (h) **Reports.** The Board of Governors, in consultation with the Committee, shall file with the Supreme Court a full report on the activities and finances of the Fund at least annually and may make other reports to the court as necessary.

10/02

# APPENDIX B Fund Procedural Rules



#### WASHINGTON STATE BAR ASSOCIATION

# LAWYERS' FUND FOR CLIENT PROTECTION (APR 15) PROCEDURAL RULES

(Adopted by the Washington Supreme Court July 18, 1995; amended February 11, 1997; May 6, 1999; October 5, 2001; December 2, 2004; September 1, 2006)

#### RULE 1. PURPOSE

- A. The purpose of these rules is to establish procedures pursuant to Rule 15 of the Admission to Practice Rules, to maintain and administer a Lawyers' Fund for Client Protection established as a trust by the Washington State Bar Association (WSBA), in order to promote public confidence in the administration of justice and the integrity of the legal profession.
- B. Funds accruing and appropriated to the Fund may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any person 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. Such funds may also, through the Fund, be used to relieve or mitigate like losses 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.
- C. The Fund shall not be used for the purpose of relieving any pecuniary loss resulting from an attorney's negligent performance of services.

#### RULE 2. ESTABLISHMENT OF THE FUND.

- A. <u>Trustees.</u> Pursuant to APR 15, the members of the Board of Governors of the WSBA will serve during their terms of office as Trustees (Trustees) for the Fund to hold funds assessed by the Supreme Court for the purposes of the Fund. The WSBA President will serve as President of the Trustees.
- B. <u>Funding</u>. The Trustees may recommend to the Supreme Court that it order an annual assessment of all active members of the WSBA in an amount recommended by the Trustees to be held by them in trust for the purposes of the Fund.
- C. <u>Enforcement</u>. Any active member failing to pay any annual assessment on or before the date set for payment by the Supreme Court shall, after 60 days written notice sent to his or her last known business address as shown in the records of the WSBA, be ordered suspended from the practice of law until the assessment is paid.

#### RULE 3. LAWYERS' FUND FOR CLIENT PROTECTION COMMITTEE

- A. <u>Membership</u>. The Lawyers' Fund for Client Protection Committee shall consist of 11 lawyers and 2 nonlawyers appointed by the Trustees for terms not exceeding 3 years each.
- B. <u>Vacancies</u>. Vacancies on the Committee shall be filled by appointment of the Trustees.
- C. Officers. The Trustees shall appoint a chairperson of the Committee for a term of one-year or until a successor is appointed. The secretary of the Committee shall be a staff member of the WSBA assigned to the Committee by the Executive Director of the WSBA.
- D. <u>Meetings</u>. The Committee shall meet not less than once per year upon call of the chairperson, or at the request of the staff member of the WSBA, who shall not be entitled to vote on Committee matters.
- E. Quorum. A majority of the Committee members, excluding the secretary, shall constitute a quorum.
- F. <u>Record of Meetings</u>. The secretary shall maintain minutes of the Committee deliberations and recommendations.
- G. <u>Authority and Duties of Committee</u>. The Committee shall have the power and authority to:
- (1) Consider claims for reimbursement of pecuniary loss and make a report and recommendation regarding payment or nonpayment on any claim to the Trustees.
- (2) Provide a full report of its activities annually to the Supreme Court and the Trustees and to make other reports and to publicize its activities as the Court or Trustees may deem advisable.

#### H. Conflict of Interest.

- (1) A Committee member who has or has had a lawyer/client relationship or financial relationship with an applicant or lawyer who is the subject of an application shall not participate in the investigation or deliberation of an application involving that applicant or lawyer.
- (2) A Committee member with a past or present relationship, other than that as provided in section (1), with an applicant or lawyer who is the subject of an application, shall disclose such relationship to the Committee and, if the Committee deems it appropriate, that member shall not participate in any action relating to that application.

#### RULE 4. APPLICATIONS FOR PAYMENT

- A. <u>Application Form.</u> All applications for payment through the Lawyers Fund for Client Protection shall be made by submitting an application on a form approved by the Committee, and shall include all information requested on the form.
- B. <u>Disciplinary Complaints</u>. Any person who has filed a disciplinary complaint with the WSBA alleging a loss occasioned by the dishonest conduct of a lawyer should be provided with a Lawyers Fund for Client Protection application form and given information about the Fund.

#### RULE 5. ELIGIBLE CLAIMS

- A. <u>Eligibility</u>. To be eligible for payment from the Fund, the loss must be caused by the dishonest conduct of a lawyer or the failure to account for money or property entrusted to a lawyer in connection with the lawyer's practice of law, or while acting as a fiduciary in a matter related to the lawyer's practice of law.
- B. <u>Time Limitations</u>. 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.

- C. <u>Dishonest Conduct</u>. As used in these rules, "dishonest conduct" or "dishonesty" means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other thing of value, including but not limited to refusal to refund unearned fees or expenses as required the Rules of Professional Conduct.
- D. <u>Excluded Losses</u>. Except as provided by Section E of this Rule, the following losses shall not be reimbursable:
  - (1) Losses incurred by partners and associates of the lawyer causing the loss;
- (2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety, or insurer is subrogated, to the extent of that subrogated interest;
- (3) Losses incurred by any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;
- (4) Losses incurred by any business entity controlled by the lawyer or any person or entity described in Rule 5 D (1), (2) or (3);
  - (5) Losses incurred by any governmental entity or agency.
- (6) Consequential damages, such as lost interest, or attorney's fees or other costs incurred in seeking recovery of a loss.
- E. <u>Special and Unusual Circumstances</u>. In cases of special and unusual circumstances, the Committee may, in its discretion, consider an application which would otherwise be excluded by reason of the procedural requirements of these rules.
- F. <u>Unjust Enrichment</u>. In cases where it appears that there will be unjust enrichment, or that the applicant contributed to the loss, the Committee may, in its discretion, recommend the denial of the application.
- G. <u>Exhaustion of Remedies</u>. The Committee may consider whether an applicant has made reasonable attempts to seek reimbursement of a loss before taking action on an application. This may include, but is not limited to, the following:
  - (1) Filing a claim with an appropriate insurance carrier;
  - (2) Filing a claim on a bond, when appropriate;
  - (3) 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, demanding payment from any business associate or employer who may be liable for the actions of the dishonest lawyer; or
- (5) Commencing appropriate legal action against the lawyer or against any other party or entity who may be liable for the applicant's loss.

#### RULE 6. PROCEDURES

A. <u>Ineligibility</u>. Whenever it appears that an application is not eligible for reimbursement pursuant to Rule 5, the applicant shall be advised of the reasons why the application may not be eligible for reimbursement.

- B. <u>Investigation and Report</u>. The WSBA staff member assigned to the Committee shall conduct an investigation regarding any application. The investigation may be coordinated with any disciplinary investigation regarding the lawyer. The staff member shall report to the Committee and make a recommendation to the Committee.
- C. <u>Notification of Lawyer</u>. The lawyer, or his or her representative, regarding whom an application is made shall be notified of the application and provided a copy of it, and shall be requested to respond within 20 days. A copy of these Rules shall be provided to the lawyer or representative.
- D. <u>Testimony</u>. The Committee may request that testimony be presented to complete the record. Upon request, the lawyer or applicant, or their representatives, may be given an opportunity to be heard at the discretion of the Committee.
- E. <u>Finding of Dishonest Conduct</u>. The Committee may make a finding of dishonest conduct for purposes of considering an application. Such a determination is not a finding of dishonest conduct for purposes of professional discipline.
- F. <u>Evidence and Burden of Proof.</u> Consideration of an application need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence commonly accepted by reasonably prudent persons in the conduct of their affairs. The applicant shall have the burden of establishing eligibility for reimbursement by a clear preponderance of the evidence.
- G. <u>Pending Disciplinary Proceedings</u>. Unless the Committee or Trustees otherwise direct, no application shall be acted upon during the pendency of a disciplinary proceeding or investigation involving the same act or conduct that is alleged in the claim.
- H. <u>Public Participation</u>. Public participation at Committee meetings shall be permitted only by prior permission granted by the Committee chairperson.

#### I. <u>Committee Action</u>.

- (1) Actions of the Committee Which Are Final Decisions: A decision by the Committee on an application for payment of \$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 \$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 \$25,000, or (b) involving a payment of more than \$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 \$25,000, or (b) that payments of more than \$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.

#### RULE 8. NOTIFICATION OF APPLICANT AND LAWYER

Both the applicant and the lawyer who is the subject of an application shall be advised of any decision of the Committee or the Trustees.

#### RULE 9. LIMITATIONS ON AMOUNT OF REIMBURSEMENT

The Trustees may, at their discretion, set limitations on the amount of reimbursement.

#### RULE 10. NO LEGAL RIGHT TO PAYMENT

Any and all payments made to applicants in connection with the Lawyers' Fund for Client Protection are gratuitous and are at the sole discretion of the Trustees.

#### RULE 11. RESTITUTION AND SUBROGATION

- A. <u>Restitution</u>. A lawyer whose conduct results in payment to an applicant shall be liable to the Fund for restitution, and the Trustees may bring such action as they deem advisable to enforce restitution.
- B. <u>Subrogation</u>. As a condition of payment, an applicant shall be required to provide the Fund with a pro tanto transfer of the applicant's rights against the lawyer, the lawyer's legal representative, estate or assigns; and of the claim ant's rights against any third party or entity who may be liable for the applicant's loss.
- C. <u>Action to Enforce Restitution</u>. In the event the Trustees commence a judicial action to enforce restitution, they shall advise the applicant who may then join in the action to recover any unreimbursed losses. If the applicant commences such an action against the lawyer or another entity who may be liable for the loss, the applicant shall notify the Fund who may join in the action.
- D. <u>Duty to Cooperate</u>. As a condition of payment, the applicant shall be required to cooperate in all efforts that the Fund undertakes to achieve restitution.

#### RULE 12. COMPENSATION FOR REPRESENTING APPLICANTS

No lawyer shall charge or accept any payment for prosecuting an application on behalf of an applicant, unless such charge or payment has been approved by the Trustees.

#### RULE 13. CONFIDENTIALITY

- A. <u>Matters Which Are Public</u>. The facts and circumstances which generated the loss, the Committee's findings of fact and recommendations to the Trustees with respect to payment of a claim, the amount of claim, the amount of loss as determined by the Committee, and the amount of payment authorized and made, shall be public. After payment is authorized, the name of the lawyer causing the loss shall be public.
- B. <u>Matters Which Are Not Public</u>. The Committee's investigation and deliberations of any application; the name of the applicant, unless the applicant consents; or the name of the lawyer unless the lawyer consents or unless the lawyer's name is made public pursuant to these rules, shall not be public.

#### RULE 14. AMENDMENTS

These Rules may be amended, altered or repealed on the recommendation of the Committee by a vote of the Trustees, with the approval of the Supreme Court.

# APPENDIX C Fund Balance Sheet

<b>Unaudited</b> <u>6/30/2006</u> \$ - 7,185
738,903
251,714
997,802
9,516
34,354
953,932

	Statement of Activities	
	Audited	Unaudited
	Year	Year
	Ended 9/30/2005	6/30/2006
<u>Revenue</u>		
Restitution	\$ 3,909	\$ 88,316
Member Assessment	337,223	346,063
Interest	17,334	27,428
Total Revenue	358,466	461,807
<u>Expenses</u>		
Gifts to Injured Clients	147,306	303,997
LFCP Committee	4,600	4,944
Misc.	2,943	2,479
Indirect (overhead)	<u> 14,425</u>	<u> 18,124</u>
Total Expense	169,274	329,544
Net Income (Expense)	\$ 189,192	\$ 132,263

Statement of Changes in Net Assets					
Balance at September 30, 2005	\$	821,669			
Net Income for the nine months ended June 30, 2006		132,26 <u>3</u>			
Balance at June 30, 2006	\$	953,932			