

Washington State Bar Association



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

LAWYERS' FUND FOR CLIENT PROTECTION

ANNUAL REPORT

September 2007

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

Admission to Practice Rule 15

**Washington State Bar Association
LAWYERS' FUND FOR CLIENT PROTECTION
2006- 2007**

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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 or fail to account for client funds or property in an amount totaling **more than \$3.5 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 \$15 annual assessment on each of the approximately 26,700 active members of the Bar licensed in Washington. The chart on the following page shows the experience of the past 20 years as the active Bar membership has increased from 14,000 in 1988 to 26,700 in 2007.

YEAR	ACTIVE MEMBERS	APPLICATIONS RECEIVED	APPLICATIONS APPROVED	LAWYERS APPROVED ¹	AMOUNT 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 ²	17	\$313,721
2005	25,342	120	47	19	\$147,247
2006	26,084	139	66	26	\$468,696
2007	27,761	69	34	16	\$539,789

¹ Multiple applications concerning a single lawyer may have been approved in more than one year.

² One lawyer was responsible for 60 approved applications in 2004.

II. FUND PROCEDURES

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

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

Application: Anyone who files a grievance with the WSBA which alleges a dishonest taking of, 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 1.16 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.³ Finally, a report and recommendation is prepared for the Committee.

Committee and Trustee Review: On applications for \$25,000 or less with recommendation for payment of not more than \$25,000, the Committee's decision is final. Recommendations on applications for more than \$25,000, or for payment of more than \$25,000, are reviewed by the Trustees.

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 successful only when it is a condition of a criminal sentencing, or when a lawyer petitions for reinstatement to the Bar after disbarment.⁴ To date, the Fund (and its predecessors) has recovered approximately \$300,000.

During this year, the lawyer representing Bernie Potter advised the Fund that Potter had delivered a trust account check to him in the amount of \$22,304.06, stating that he did not know who the funds belonged to. Since they represented unidentified client funds, at the request of the WSBA the Supreme Court authorized the funds to be deposited into the Fund. They also directed the WSBA to notify all known former clients of Potter that, if they believed Potter should have been holding funds belonging to them, they could apply for compensation from the Fund. The bar sent notices to 424 former clients, and to date two additional Fund applications have been filed.

³ 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.

⁴ Admission to Practice Rule 25.1(d) 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.

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 2006 (the last year for which statistics are available), 772 lawyers in 78 law firms were audited. Of the 78 law firms, 32 (41%) 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 2006 based on a random audit.

Trust Account Overdraft Notification: Pursuant to ELC 15.4, every financial institution approved for the deposit of client trust funds must agree to report to the Disciplinary Board whenever a check is presented against a trust account containing insufficient funds, whether or not the check is honored. This rule was drafted with the cooperation of the Washington Bankers Association. During 2006, 103 disciplinary investigations were conducted based on overdraft notices received. The reasons for those overdrafts were varied: bank error (14%), deposit to wrong account (25%), math or bookkeeping error (19%), disbursement before deposit cleared (16%), failure to make timely deposit (10%), and other causes (16%).

IV. FINANCES

The Fund is financed by an assessment of \$15 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 2006, \$90,107 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, 2005 - September 30, 2006), total Fund revenues were \$476,090. Gifts to applicants totaled \$468,696. Committee expenses and overhead, including staff time, totaled \$32,908, or approximately 6.9% of revenue.

As of July 31, 2007, the Fund balance is \$969,449 (See Appendix C). As of that date, in FY 2007 the Fund had made payments totaling \$265,860. 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 10, 2006, February 16, May 25, and August 24, 2007, to consider 93 applications to the Fund involving 47 lawyers. In addition, the Committee asked that the Trustees approve a proposed amendment to the Fund Procedural Rule 6 to authorize administrative closing of an application file if the applicant withdraws the application, or if the applicant receives full restitution of the amount stated in the application.

The Committee also proposed a Procedural Rule amendment to Rule 5(D) (Excluded Losses) to include losses incurred by an assignee, lienholder, or creditor of a client, beneficiary or lawyer, unless application has been made by the client or beneficiary or the client or beneficiary has authorized such reimbursement.

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 2007 Annual Report for submission to the Supreme Court pursuant to APR 15(g).

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 Spanish.

Other Activities: General Counsel Bob Welden continued to serve on the ABA Standing Committee on Client Protection. He attended the ABA 23rd National Forum on Client Protection held in Chicago in June.

VI. RESPONSES FROM APPLICANTS

Although the Fund can never fully compensate a person for the harm done by a dishonest lawyer or one who fails to account for client funds, this year the staff, Committee, and Trustees receive these thank-you notes from recipients of payments made on behalf of the lawyers of the state of Washington:

- I would like to take this opportunity to sincerely thank you and the Lawyers' Fund for Client Protection Committee and Trustees for considering my petition concerning the poor and improper handling of my father's estate by [my previous attorney]. The award is very generous and is greatly appreciated. It will most certainly help offset some of the financial losses I have incurred in dealing with a person such as [my former attorney]; but more importantly, due to the diligent efforts of [my current attorney] and yourself, it has helped to restore my faith in those who practice the profession of law.
- Thank you very much for your favorable adjudication regarding my application to the Lawyers' Fund for Client Protection.
- I do want to express the deep appreciation of [Applicant] and her siblings for the favorable treatment of their claim.
- My husband and I are both speechless. You and the board have truly made us extremely happy and very relieved. Words cannot express how thankful we are. Thank you! Thank you!!!

VII. 2007 APPLICATIONS AND PAYMENTS

At the beginning of FY 2007, there were 72 pending applications to the Fund. During FY 2007, 69 additional applications were received. The Committee and Trustees acted on 93 applications concerning 47 lawyers. The total amount in approved payments is **\$539,789.44**. A summary of Committee and Trustee actions is shown below. Complete summaries of all approved applications follow.

Approved for Payment	32
Denied as fee dispute	22
Denied; no evidence of dishonesty	15
Denied as malpractice claim	3
Denied; restitution made	6
Withdrawn	0
Deferred	4
Other	11

The “other” reasons for denial included: the matter was a civil dispute or resolved in litigation; the application was for consequential damages not compensable from the Fund; and the application was time-barred with no showing of excusable neglect or other good cause. The 32 approved applications involved the following:

Theft or conversion	19
Failure to return/account for unearned legal fees	11
Investments and loans with lawyers	2

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.

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.

MARY (BOSLEY) BETKER – WSBA # 30429 (Washougal) – Resigned in Lieu of Disbarment 2/16/06

Application 06-114

Pay \$3,000.00

Applicant paid Betker \$3,000 for representation on a medical malpractice claim. Betker told Applicant that she needed the funds to send his medical records to a doctor to review. She told Applicant that the first doctor who reviewed the records couldn't find much she could use, and she was sending them to a second doctor. She never provided anything to Applicant from these supposed reviews.

Applicant learned that Betker was in trouble with the Bar, and he called her. She told him about personal problems. They met at her office and he asked for his money back. Betker told him that her funds were "tied up" by the WSBA and she could not get to them (the WSBA never took any action which would have "tied up" Betker's accounts). Betker told him that she would have to figure out how much Applicant owed her. He has never received any refund or accounting for his funds. The Committee approved payment of \$3,000 to Applicant.

⁵ Introductory phrase of transmittal letter to recipients of gifts from the Lawyers' Fund for Client Protection.

**STEPHEN B. BLANCHARD – WSBA # 12294 (Edmonds) – Suspended 6 months
10/12/06**

Application 01-75

Pay \$770.29

Applicants, Husband and Wife, hired Blanchard regarding loans they had made to Wife's son totaling \$187,592.87. The loans were consolidated into a single promissory note secured by deeds of trust on three pieces of property owned by Son. Son filed chapter 7 bankruptcy and failed to make payments on the promissory note to Applicants. Through the bankruptcy, two of the properties were sold and Applicants received the proceeds. The third piece of property remained part of Son's bankruptcy estate. Applicants asked Blanchard to represent them in collecting on the loan that Son owed them regarding this third piece of property (Lot A). Blanchard said he would charge an hourly fee for this collection matter.

Blanchard sent Applicants a bill for \$229.71. Shortly after, he requested \$1,000 from Applicants so that he could seek authorization for the sale of Lot A. They paid him \$1,000 which Blanchard deposited into his general account, not his trust account. He did not pursue the foreclosure on Lot A.

Husband died in April 1999. Wife and her other son met with Blanchard in August 1999 regarding collecting on the loan to Son. Wife also asked for an accounting for the fees they had paid. Blanchard said he would send her an accounting. He had no further contact with Wife and did not provide an accounting. Between September 1999 and January 2001 Wife's other son wrote Blanchard five letters on behalf of Wife, requesting an accounting and a refund. Blanchard received all five of these letters; however, he failed to respond to any of them. He did not provide an accounting and he does not have any records to demonstrate that he earned the \$770.29 difference that was paid in October 1998 in excess of the \$229.71 billed. Blanchard did not refund any money to Wife.

The Supreme Court opinion ordering Blanchard's suspension states, "Mr. Blanchard has not denied that he retained an unearned portion of [Applicant's] fee even after his services were terminated." They ordered restitution to Applicant of \$770.29, and the Committee approved payment in that amount. Reported at 158 Wn.2d 317 (2006).

ROBERT E. BRANDT – WSBA # 23058 (Kirkland) – Disbarred 9/19/06

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 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. In early June 2005 the Kirkland Police Department (FBI agents were also present) executed a search warrant on Brandt's Kirkland office. Brandt closed his office shortly thereafter. Brandt stipulated that he could not account for the funds or explain the shortage in his trust account.

Because of allegations that some of the transactions handled by Brandt's office may have been fraudulent, at the request of the Committee all purchase and sale transactions were reviewed for the Committee by an experienced real estate lawyer for his advice on their validity.

Last year, the Committee and Trustees approved 3 gifts regarding Brandt totaling \$76,200.

Application 06-20

Pay \$20,517.08

Applicant was the selling agent on 2 transactions closed through Brandt's office. When he learned of the police search and closure of Brandt's office, he called one of Brandt's associates who told him to come pick up his commission checks, which he did. He deposited the checks in the amounts of \$11,673.45 and \$8,843.63, but they were returned marked NSF. The Committee approved payment of \$20,517.08 to applicant.

Application 06-31

Pay \$10,000.00

Applicant paid \$10,000 to Escrow Authority as earnest money in a real estate transaction. The transaction fell through and Escrow Authority returned his \$10,000 by check which was returned NSF. After several attempts, Applicant reached Brandt by phone. Brandt told him that he was one of many and Brandt would not be able to help him, but to call the following week. Again after several tries, Applicant reached Brandt who said some money was to be "released" the next day and to call him back. That was the last time Applicant was able to reach Brandt. He has never received his funds. The Committee approved payment of \$10,000 to Applicant.

Application 06-33

Pay \$75,000.00

Applicant was the administrator of his son's estate. The estate assets included a condominium which was sold for \$181,500. After expenses, the balance due to the estate was \$155,141.77. Brandt never paid or accounted for those funds. The Committee recommended and the Trustees approved payment of the Fund limit of \$75,000 to Applicant.

Application 06-41

Pay \$42,002.48

Applicants refinanced their home and Brandt's office handled the closing. Escrow Authority issued a check for \$42,002.48 which was to pay off a line of credit. The check was returned NSF. Applicants called Escrow Authority and learned it was closed. The Committee recommended, and the Trustees approved, payment of \$42,002.48 to Applicants.

Application 06-58

Pay \$5,000.00

Applicant was an agent in a real estate transaction handled by Brandt's office. He was to receive \$5,000 on behalf of the seller that was never paid. With Applicant's authorization, the Committee approved payment of \$5,000 directly to the seller.

Application 06-69

Pay \$21,566.20

Applicant sold property he inherited from his mother's estate. Prior to the closing, his lawyer wrote to Escrow Authority regarding a claim made for a judgment against the property in the amount of \$21,566.20. In the letter he said that Applicant was contesting the claim, and he instructed Escrow Authority to withhold distribution of that amount until the matter could be resolved. Escrow Authority agreed to do so. The parties agreed to distribution of the funds. Applicant's lawyer attempted to contact Escrow Authority to authorize release of the funds, and received no response. By that time, Escrow Authority was closed and the funds were never disbursed or accounted for. The Committee approved payment of \$21,566.20.

Application 07-11

Pay \$600.00

Escrow Authority handled the sale of Applicant's condominium. There was a utilities holdback of \$600 that was to be paid to Applicant. She received a check in that amount, but after she deposited it, it was returned NSF. She has never received her funds. The Committee approved payment of \$600 to Applicant.

Application 07-20

Pay \$2,897.00

Applicant used Escrow Authority to refinance his home. His existing mortgage was \$195,078.41, and the refinanced amount was \$261,000. Three days after he signed the paperwork, he was notified by his mortgage broker that his money was ready to be picked up. He received three checks: one for \$11,779 to pay off a line of credit; one for \$42,978.97 to pay for an addition to his home; and one for \$2,897 to pay an account. He deposited the first two checks, which cleared, but he delayed a week to deposit the third, and it was returned NSF. He has never received the \$2,897, and the Committee approved payment of that amount.

MICHAEL A. CLARKE WSBA – #815 (Everett) – Deceased 10/28/06

Application 07-46

Pay \$900.00

Clarke represented Applicant on a personal injury claim. A settlement was agreed to for \$8,750, which was paid to Clarke. Clarke disbursed the funds and withheld \$900 which he agreed to pay to Applicant's medical provider. Clarke never paid the medical bill, and never accounted for the \$900. The Committee approved payment of that amount to Applicant.

TERRY L. DEGLOW – WSBA # 13357 (Spokane) – Suspended pending discipline 5/31/01; Disbarred 9/9/02

Application 07-09

Pay \$10,420.00

Deglow was given \$10,420 by Applicant's former lawyer when the former lawyer transferred to inactive status. The former lawyer was unable to locate his client to pay her the funds. The funds were the proceeds from an insurance payment following a jury trial in 1998.

Applicant was unaware that her lawyer had retired and that he had transferred the funds to Deglow. She believed that they were being held safely in trust earning interest. In late 2006, she contacted her former lawyer who advised her that Deglow had the funds, and that he had been disbarred. The Committee approved payment of \$10,420 to Applicant.

CHRISTOPHER P. EICHHORN – WSBA #7427 (Tacoma) – Two-year Suspension effective 11/7/05

Application 06-121

Pay \$2,300.00

Applicant hired Eichhorn to represent her in a marriage dissolution on an hourly fee basis, which would be deducted from all payments received. There was no written fee agreement. Applicant paid Eichhorn \$650, and agreed to make payments of \$200 thereafter. Eichhorn deposited the \$650 into his general business account even though it was not fully earned.

Eichhorn repeatedly delayed in proceeding with Applicant's case. The dissolution trial was held in October 2000. After the trial, Eichhorn said that he would file the final paperwork and the dissolution would be completed by Thanksgiving 2000. Applicant called Eichhorn after Thanksgiving and he told her that he would finalize her dissolution by Christmas 2000. She called Eichhorn after Christmas, and he told her that he had not yet filed the final paperwork for her dissolution. She reminded Eichhorn that she planned to remarry on April

28, 2001, and Eichhorn assured her that he would finalize her dissolution by then. Applicant continued to leave messages for Eichhorn, but Eichhorn did not respond. In March 2001, Eichhorn filed the final dissolution paperwork.

Applicant asked Eichhorn for an itemized bill. By this time, she had paid him \$4,650. Eichhorn told Applicant that her bill was “around \$3,000,” and he agreed to send her a written bill. He never sent a bill or accounting. He never refunded any money. He stipulated to refund \$2,300. This was approved in the Supreme Court's Order of Suspension, and the Committee approved payment of that amount.

BARRY A. HAMMER – WSBA # 6444 (Everett) – Resigned in Lieu of Disbarment 6/20/05

Application 07-44

Pay \$70,160.75

Application 07-45

Pay \$46,773.84

Applicants, Wife and Husband (Husband died on 6/15/07). Wife had used Hammer to prepare her tax returns since the 1970s and she considered him her “tax account attorney.” He represented Wife and her then-husband in an IRS audit in the mid-1980s, and he also represented Wife in the probate of her mother’s estate. He began preparing Husband’s tax returns prior to his marriage to Wife in 1998. He continued preparing the Applicants' taxes after marriage.

These applications concern promissory notes entered into between Hammer and Applicants individually with their separate property. They did this to supplement their income and to provide savings for retirement. Because Hammer was their tax attorney, he knew that they had substantial savings that were earning low interest rates.

Part of Hammer’s debt to applicants was secured by real property, and they received full compensation for the secured debts in the bankruptcy.

Unsecured Debts: Husband gave Hammer \$50,000 in November 1998, and received a promissory note originally secured by a deed of trust on property in Lake Stevens. Hammer told Husband that he was selling the Lake Stevens property, but would place the deed of trust on different property. He never did.

Hammer learned that Wife received \$75,000 in income in one matter. When meeting with Hammer about preparing her tax return, Hammer recommended that she invest those funds through him. On 4/13/00, she gave Hammer \$75,000 and received a promissory note in that amount. It was unsecured.

In September 2004 the interest payments from Hammer stopped. He filed his bankruptcy petition on 9/17/04. In the bankruptcy proceeding, Applicants received \$8,065.41 as their apportioned share of payments to unsecured creditors.

The Committee recommended, and the Trustees approved, payment to wife of \$70,160.75 (\$75,000 less 3/5 of \$8,065.14 or \$4,839.25) and to the Estate of Husband of \$46,773.84 (\$50,000 less 2/5 of \$8,065.14 or \$3,226.16).

MICHAEL JOHNSON-ORTIZ – WSBA #23580 (Seattle) – Disbarred 9/15/04

Johnson-Ortiz abandoned his high-volume immigration practice in January 2004 and left more than 300 open files. The Committee has reviewed 112 applications and approved 70 totaling \$122,421.91.

Application 07-02

Pay \$4,386.76

Applicant, a U. S. citizen, assisted his parents in filing Petitions for Alien Relative in 1996. However, unknown to Applicant, his parents had previously petitioned for political asylum. They were ordered to appear for a hearing. They hired Johnson-Ortiz to represent them at the hearing, but he failed to appear. They were deported because their petition for political asylum was deemed frivolous.

Applicant continued to make regular payments to Johnson-Ortiz who said he would work to get visas for Applicant's parents. There is no evidence that he did anything in this regard. Applicant paid Johnson-Ortiz a total of \$4,386.76, and the Committee approved payment in that amount.

Application 07-03

Pay \$3,000.00

Applicant and his wife paid Johnson-Ortiz \$3,000 to file a petition for Alien Relative and Application for NACARA (Nicaraguan Adjustment and Central American Relief Act). Johnson-Ortiz filed the Petition for Alien Relative (Form I-130) on December 1, 2003. However, On December 19, 2003, the USCIS stopped processing the petition because the check Johnson-Ortiz used to pay the filing fee was returned NSF. This all occurred within a month of the time he abandoned his practice. He never filed the NACARA application. Applicant is currently in deportation proceedings as a result. The Committee approved payment of \$3,000 to Applicant.

Application 07-55

Pay \$400.00

Applicant hired Johnson-Ortiz for representation following his marriage dissolution. Johnson-Ortiz agreed to file a Petition to Remove the Conditions of Residence, which the USCIS website describes as “For a conditional resident who obtained status through marriage to apply to remove the conditions on his or her residence.” Applicant needed to convince USCIS that, although divorced, his marriage had been entered into in good faith.

The work order set the total fee at \$3,500. Applicant documented payments to Johnson-Ortiz totaling \$2,500. Johnson-Ortiz filed the Petition to Remove the Conditions of Residence, but abandoned his practice before any hearing was held on the petition. Applicant employed new counsel who completed the work.

Based on its extensive familiarity with Johnson-Ortiz’s practice, the Committee determined that he had performed approximately 60% of the work for which he was employed, and that based upon the total documented payments in comparison to the entire agreed upon fee, Applicant should receive payment of \$600 from the Fund.

DONNA L. JOHNSTON – WSBA # 23630 (Seattle) – Active

Application 05-83 Pay \$250.00

Applicant paid Johnston \$250 to seek expungement of a 1996 assault conviction. He said he wanted this to be done quickly because he was applying to dental school and was concerned about disclosure of the conviction on his applications.

Johnston contacted the Superior Court Clerk’s office and discovered that Applicant’s file could not be located. Despite this, Johnston wrote to the school on Applicant’s behalf that he qualified for expungement of his conviction. Later, Johnston learned that Applicant’s conviction was for domestic assault, which required a 5-year waiting period prior to expungement, but because Applicant had not paid all restitution and costs that he owed, a bench warrant had been issued in 1998, and as a consequence the 5-year period had not begun running. The prosecutor agreed to quash the warrant if Applicant paid what he owed, and to issue a certificate that would commence the 5-year waiting period. Johnston did not advise Applicant of any of this. Johnston stipulated that her conduct violated RPC 8.4(c) (dishonesty) and agreed to pay Applicant restitution of \$250 by the end of August. She has not done so. The Committee approved payment of that amount.

DENNIS F. OLSEN – WSBA #22519 (Everett) – Interim suspension 11/10/05, Disbarred 9/19/06

Application 07-27**Pay \$5,000.00**

Applicant was an Albanian citizen who came to the U.S. for her final year of high school in New York. She hired a lawyer in New York to file for asylum. She moved to Seattle and was no longer represented by the New York lawyer. A hearing was set before an immigration judge in Seattle. Just before the hearing, Applicant married a U. S. citizen. They prepared the paperwork to file for adjustment of status based on their marriage, but the judge refused to accept it and said Applicant would need to leave the U. S. and apply through an embassy. She was given a voluntary departure date.

Applicant hired Olsen to represent her in the immigration proceedings. They signed a fee agreement that provided for total fees of \$5,000, with an initial payment of \$1,000 to begin work, which Applicant paid along with a check for \$250 to pay the filing fee. Olsen agreed to petition to extend her departure date; petition for alien relative; and petition for waiver of a two-year out-of-country requirement of her exchange program visa; and to file a motion to reopen her Immigration Court proceeding.

Olsen called and said that Applicant needed to leave the country by the date ordered and if she didn't, the voluntary departure would convert to a deportation order and she would be prevented from returning to the U.S. for 10 years. She reminded him that the departure date had already passed. "When I told Mr. Olsen that, he didn't say anything."

Applicant's husband went to Alaska for the fishing season, and while he was gone she repeatedly tried to contact Olsen but could only reach his paralegals who said Applicant and her husband needed to make additional payments on the account. They made additional payments totaling \$4,000. Over the next several months, Olsen did nothing on the case. When the husband returned, he was able to reach Olsen who said there was nothing more he could do and that "all we could do was wait for the immigration laws to change." He asked about the \$5,000 they had paid and Olsen said they could talk about that when the laws changed.

They decided they needed to get a new lawyer. They arranged to get their file from Olsen's office. In it, they found the check they gave Olsen for the filing fee, but other than copies of letters requesting the hearing tapes, there was nothing in the file. The petitions were never completed and filed. The Committee approved payment of \$5,000 to Applicant.

Application 07-38**Pay \$750.00**

Applicant paid Olsen \$750 to file a Petition for Alien Relative for his son. Olsen gave Applicant incomplete and incorrect immigration forms. Applicant returned them to Olsen with corrections, and never heard from Olsen again. The petition was never filed and the fee was never refunded or accounted for. The Committee approved payment of \$750 to Applicant.

Application 07-48**Pay \$1,250.00**

Applicant paid Olsen \$2,500 to file a Petition for Alien Relative and related documents. At that time, Olsen had been suspended from practice before the immigration courts for four months. Olsen sent Applicant petitions that contained many errors. Applicant returned them with corrections. He called Olsen who said he had filed the petitions. Applicant later found that Olsen never filed them. The Committee approved payment of \$1,250 to Applicant.

OLEG E. ORDINARTSEV – WSBA # 27574 (Bothell) – 2-year Suspension, 11/29/04; disbarred 4/11/07

Application 06-01**Pay \$75,000.00**

Applicant and her husband held a mortgage on real property in British Columbia. Husband was deceased at all times relative to this application. Applicant received a letter from a Canadian lawyer, stating that the owner of the property was selling and he wanted to pay off the mortgage. However, as “joint tenants,” Husband’s ½ interest in the mortgage passed to his estate. Because he died without a will, the estate had never been probated. The letter stated that Applicant would need to have an Administrator appointed for the estate, who could be her, and the Administrator would need to sign a “Form C - Release.” At that point, the funds could be released. The letter said that the Canadian lawyer would need to hold the funds in trust “until we have received at least a lawyer’s undertaking to provide us a discharge through an Administrator.”

Applicant, who is described as elderly and infirm, had a business manager who also had her power of attorney. He arranged for Applicant to hire Ordinartsev to represent her in this matter. He also hired Ordinartsev to represent himself. Ordinartsev wrote the Canadian lawyer about their “mutual client,” Applicant. He said that Applicant would like to receive her ½ share of the mortgage proceeds so she could hire a lawyer in Canada. He enclosed the Form C signed by Applicant in her personal capacity (the signature line for the Administrator was left blank) and instructions for funds transfer to his trust account.

The Canadian lawyer wrote to Ordinartsev, noting that Applicant was not a “mutual client” and that he only represented the seller. He wrote that “I have determined that your client may have a bigger comfort zone in knowing that you hold the funds in trust.” He proposed that in the undertaking, Ordinartsev warrant that he would hold the funds in trust until such time as he was able to provide a registerable discharge. Ordinartsev replied:

Please consider this letter as a confirmation that the funds belonging to the Estate of the late [husband] will be held in our law firm's Trust Account. No distribution of the Estate's funds will be effectuated until the probate is finished and the release is filed in the Kamloops Land Title Office.

Based on this, the Canadian lawyer wire transferred \$56,603.36 US into Ordinartsev's trust account. A few months later, he faxed Ordinartsev inquiring about the status of the estate. Getting no response after several more months, he sent a letter to Ordinartsev demanding that he either provide the signed Form C or return the funds previously wire transferred to his trust account.

In the meantime, a Vancouver attorney wrote to the other Canadian lawyer that he was representing Applicant in trying to determine what happened to her funds. In August 2005, Applicant filed a grievance against Ordinartsev with the WSBA and a Fund application. A copy was sent to Ordinartsev. He responded stating that the funds were disbursed to Applicant or as directed by her, and the balance of \$17,301.68 was applied to her legal fees. He also stated that he had complied with his undertaking to the Canadian lawyer, and he enclosed a photocopy of a Form C release bearing Applicant's signature on her own behalf, and a second signature purporting to be Applicant's as Administrator for the estate, but clearly in different handwriting. The document was notarized by Ordinartsev.

The ensuing investigation disclosed that Ordinartsev never arranged the probate, hence Applicant was never appointed Administrator, but instead Ordinartsev immediately began disbursing the funds to himself and others totaling \$48,301.68 without the knowledge or consent of Applicant.

A law suit was brought by Applicant against her former business manager. Olsen was subpoenaed to testify and to bring his trust account records. After delay, he submitted what he claimed were all of his records. Because of his uncooperativeness, counsel for Applicant also subpoenaed his bank records. In his testimony, Ordinartsev claimed the money he took from Applicant's funds was for legal fees. However, the billing records he submitted did not show any credit for the amounts taken. Because the billing records showed evidence of recent fabrication, an expert was hired to examine them. He testified that the billing records had been fabricated, most likely in 2006 (the trial started 12/12/05).

Also missing from Applicant's safety deposit box was \$95,490 in gold kilos and \$11,000 worth of jewelry (the values were determined by the trial judge). When asked about the gold, Ordinartsev pled the Fifth Amendment. He also refused to answer any more questions about the money taken from his trust account.

The testimony at trial indicated that Ordinartsev and the business manager were to take possession of the gold and jewelry for the benefit of Applicant. Instead, they removed the

gold and jewelry from Applicant's safe deposit box and placed it in other safe deposit boxes. The judge found that over a period of months, the business manager sold the gold and that there is no documentation regarding the use of the funds. Judgment was entered against the business manager in the amount of \$1,027,505.57.

Based on Ordinartsev's conduct, the Committee recommended and the Trustees approved payment to Applicant of the Fund limit of \$75,000.

SATWANT SINGH PANDHER – WSBA #17269 (Everett) – Disbarred 2/6/07

Application 07-29

Pay \$900.00

Applicant hired Pandher to represent him in a boundary and trespass dispute with his next-door neighbor, who was alleged to have moved fence posts dividing the properties and to have committed other forms of trespass on Applicant's property. Pandher advised Applicant that it would be necessary to obtain an injunction to prevent further trespass by the neighbor. Applicant paid Pandher \$600.00 to prepare an injunction action.

Pandher sent a letter to the neighbor which threatened legal action if he failed to return the boundary fence posts to their original position. The neighbor's attorney replied. He contested the location of the property line, and requested replacement of a tree which he claimed was improperly removed by Applicant. Pandher told Applicant that there would be an additional fee of \$300.00 for Pandher to resolve the issue of tree replacement, which Applicant paid.

Over the next several months, Applicant repeatedly called Pandher to report further trespass by the neighbor, and to request that Pandher take legal action. Pandher repeatedly told Applicant that he would "take care of it." From March until October, 2004, there was no activity by Pandher on the case. In October, 2004, Pandher requested that Applicant obtain a survey of his property. Applicant immediately had his property surveyed at a cost of \$2,200. Applicant sent Pandher a copy of the survey which showed that the felled tree was on the Applicant's property, and that the boundary fence had been moved. The survey was never used by Pandher.

Pandher took no further action on the matter. He abandoned the case. There was no further written communication by Pandher to Applicant. Pandher never prepared or filed the injunction he was hired for, and he never informed Applicant he was not pursuing his case.

Pandher claimed to have visited Applicant's property to view the disputed property line which Applicant denied. Pandher also claimed to have written to Applicant advising him that there was no basis for any legal action against the neighbor. Applicant denies ever

receiving any such letter, and there was none in the file. Applicant 's file that he retrieved from Pandher had no attorney notes, legal research, pleadings, time sheets, billing statements or any answer to the neighbor's lawyer's letter. The Committee approved payment of \$900 to Applicant.

BERNIE W. POTTER – WSBA #23076 (Seattle) – Suspended pending discipline 11/17/04; Disbarred 11/13/06; Deceased

Copies of some of these Fund applications were originally sent to Potter's business address. They were returned. Copies of all applications were mailed to Potter's lawyer. Potter did not respond to any of these applications except for one that was denied.

Application 05-48

Pay \$4,000.00

Applicant, a minor, was represented by Potter in a personal injury claim that was settled for \$6,000. The settlement order said that either a parent or a guardian ad litem (GAL) could sign a release on behalf of Applicant. It allowed attorney's fees to Potter of \$2,000. GAL fees were to be paid directly by the insurer, and the net proceeds of \$4,000 were to be paid to Applicant. Because Applicant was a minor, Potter was ordered to place the funds in a blocked account and file a receipt with the court. He never did this.

Applicant's parents do not speak English and when her father signed the settlement release, he did not know what it was. Applicant only learned the claim had been settled when she consulted with another lawyer on a separate matter and they reviewed the court file. The Committee approved payment of \$4,000.00.

Application 05-63

Pay \$49,000.00

Applicant was previously represented by two attorneys who had filed a law suit on a personal injury claim, but they failed to serve the defendant and the statute of limitations had run. She then hired a new lawyer who refiled the suit in the hope that the insurer would not notice the statute of limitations issue, but they did and Applicant's new case was dismissed.

Potter filed a malpractice lawsuit against Applicant's three former lawyers, and also filed suit against additional parties involved in a second traffic accident. The claim against one of the lawyers was settled for \$40,000. The Settlement and Full Release states that payment would be made to Potter. Also, the claim arising from the second accident was settled for \$20,000. That payment was made jointly to Potter and Applicant.

When the case settled, Potter agreed to reduce his fee to 10%, or \$6,000, because according to Applicant "his original promises of how much I should have received were

reduced due to some fault of his." Potter paid her \$5,000 from the settlements, and said he was holding the balance until he determined the costs to be paid out, including medical fees and costs in the remaining suit against the other lawyers. He later told her the total costs would be about \$10,000 and she would receive about \$35,000. There is no evidence that any costs were paid. Despite repeated promises to pay her, Potter never did so.

The other lawyer filed a motion to dismiss, which was granted. Applicant only learned of this after Potter was suspended from practice and she received a letter from Potter's lawyer. The dismissal order has a hand-written notation which reads:

Plaintiff's counsel [Potter] has repeatedly failed to comply with the Cts. orders & conditions. Counsel was warned that the Ct. would dismiss if he failed to comply.

From the \$60,000 Potter received on Applicant's behalf, he paid her \$5,000 and was entitled to pay himself \$6,000. This left \$49,000 unaccounted for. The Committee and Trustees approved payment to Applicant of that amount.

Application 05-66

Pay \$8,100.00

Applicants paid Potter \$3,000 to represent their son on theft-related charges. He was already representing them on personal injury claims arising from a car accident. Potter entered a Notice of Appearance and appeared at arraignment. Potter settled the PI claims for \$18,890.75 for Husband and \$11,300 for Wife. He prepared disbursement statements showing net recovery to Husband of \$4,801.05 and for Wife of \$3,520. Potter told them that their son's case was very serious, and he would need \$8,100 more to represent him, which he paid himself from their settlement funds. After that, the court docket only shows a series of continuances of the trial date with no reason given and no indication that any hearing or pleadings were involved in obtaining them. Potter took no further action on the son's case, and never rendered any billing or accounting for the \$8,100. The Committee approved payment of that amount to Applicants.

Application 06-14

Pay \$1,570.00

Applicant is an acupuncturist who treated one of Potter's clients. Potter prepared a declaration for Applicant's signature stating that his bill totaled \$1,570.00. Potter used this document in settling the client's claim in arbitration for \$11,496.07. Applicant had filed a medical lien. Potter never paid the funds owed to him from the settlement, and they remain unaccounted for. With the client's authorization the Committee approved payment to Applicant of \$1,570.

Application 07-56

Pay \$5,415.00

Potter represented Applicant on an insurance claim that was settled for \$18,799.20. The disbursement statement prepared by Potter shows that after the settlement was disbursed, he withheld \$5,415 to pay subrogation to Applicant's insurer. However, Potter paid nothing to the insurer. Applicant received a letter from the insurer notifying him that they had not received their funds and demanding payment. Applicant signed a promissory note to pay \$5,415 to the insurer, and he has been making payments on the note. The Committee approved payment to Applicant of \$5,415.

MICHAEL O. RILEY – WSBA #21452 (Tukwila) – Disbarred 1/17/07

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 06-129

Pay \$3,500.00

Applicant's mother, now deceased, paid Riley \$3,500 to update her will and related matters. The mother did not speak English, so Applicant, her daughter, translated for her. Riley came to the mother's home to have her sign a power of attorney, which she did. According to the attorney for the mother's estate, Riley told her he had to take it to his office to "process" it, and that he would mail it to her. They never heard from him again. Riley never delivered the will, power of attorney, or any other document. The Committee approved payment to the estate of \$3,500.

THERESA M. SOWINSKI – WSBA #32549 (Edmonds) – Suspended pending discipline 11/29/06

Sowinski pleaded guilty to two counts of first-degree theft of client funds, including funds of one of these applicants. She was sentenced to one year in jail with credit for time served.

Application 06-127

Pay \$1,000.00

Applicant hired Sowinski to represent her contracting company in a dispute with another contractor over alleged overpayment to Applicant's company. They signed a fee agreement to pay "a retainer in the amount of \$1,000.00, which shall be considered **non-refundable and earned upon receipt.**" (emphasis in the original). Applicant paid the \$1,000 at that time. Applicant understood that Sowinski would contact the lawyer for the

other contractor to try to negotiate an agreed resolution of this dispute. Sowinski did nothing. Applicant was served with a lawsuit filed by the other contractor. She called Sowinski but got no answer and Sowinski's answering machine was full. She says she tried for over a week with no success. She was able to leave messages on Sowinski's cell phone, but got no response.

The only contact the lawyer for the other contractor had with Sowinski was a letter signed by a paralegal advising that Sowinski would be representing Applicant. That lawyer tried several times to contact Sowinski, but she was only able to reach the paralegal who said that Sowinski was out for "medical reasons." Applicant hired a new lawyer. She sent Sowinski a termination letter which requested a return of the \$1,000 fee. No fees were refunded. The Committee approved payment to Applicant of \$1,000.00.

Application 07-40

Pay \$62,010.04

Applicant hired a law firm with which Sowinski was then associated for representation in a dispute over ownership of her home with the man she was living with. Applicant had made the \$105,000 down payment on the property, but both she and the man she was living with were listed on the deed. A complaint was filed seeking partition of the ownership of the home. Applicant was originally represented by another associate in the law firm. He left the firm and Sowinski became Applicant's lawyer.

When Sowinski left the law firm, Applicant elected to continue to be represented by Sowinski. The matter was set for trial but Sowinski and the other party's lawyer agreed to strike the trial date and negotiate a settlement. Sowinski did not involve Applicant to any great extent in the settlement negotiations.

The home sold and a settlement was agreed to. After paying off the mortgage and other obligations, the balance to be distributed to Applicant and the other party totaled \$293,081.09. It was agreed that these funds would be deposited into the other party's lawyer's trust account. He sent Sowinski a check made payable to Applicant in the amount of \$105,000, representing Applicant's original down payment. Sowinski delivered this check to Applicant. On the same date, a check was sent to Sowinski in the amount of \$12,564.06 for her legal fees. The balance in the other lawyers' trust account was to be negotiated between the parties.

Shortly thereafter, Sowinski went to Applicant's home and requested \$5,000 payment of additional legal fees, which she paid on that day. For the next few months, Applicant heard nothing more from Sowinski and received no billing statements from her.

Sowinski and the other lawyer negotiated the disposition of the remaining funds in his trust account. It was agreed that \$112,010.14 would be paid to Applicant. The other lawyer gave Sowinski a check in that amount made payable to "Therese Sowinski – Attorney for

[Applicant].” When she received the check, Sowinski telephoned Applicant and they agreed that Sowinski could take \$10,000 as legal fees and the balance would be paid to Applicant. Subsequent investigation disclosed that Sowinski deposited the \$112,000 into her business account rather than her trust account.

On 12/21/04, Sowinski delivered a check to Applicant for \$50,000 with a note which stated, “This is not the final settlement. After fees and costs, another check will be issued immediately. Theresa.”

When Applicant heard nothing more from Sowinski, she hired another lawyer to represent her in obtaining the balance of her funds from Sowinski. He sent several demands to Sowinski for the additional funds and an accounting. In response, he received a letter from Sowinski’s legal assistant stating that the additional funds had been sent to Applicant and that an accounting had been sent to the lawyer. Neither Applicant nor her new lawyer received anything from Sowinski.

Applicant’s new lawyer contacted the other party’s lawyer who told him that he had given Sowinski a cashier’s check in the amount of \$112,010.14 made payable to her as attorney for Applicant. During the criminal investigation of this matter, Sowinski’s bank records were subpoenaed. A review of those records showed the deposit of the \$112,000 payment into her business account. The detective who reviewed the records noted that most of the withdrawals from the account appeared to be for personal expenses (dry cleaning, Radio Shack, wine, a mattress, and Fred Meyer). There were three wire transfers to Sowinski’s personal bank account totaling \$22,000, and seven checks written to Sowinski’s employees totaling \$5,646.29. Two months after the deposit of the \$112,000, the balance in the account was \$1,019.41. Sowinski has never accounted for the \$62,010.14 in funds belonging to Applicant. The Committee recommended, and the Trustees approved, payment to Applicant of \$62,010.14.

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



WSBA

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; November 2, 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. Trustees. 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. Funding. 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. Enforcement. 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. Membership. 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. Vacancies. 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. Meetings. 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. Record of Meetings. The secretary shall maintain minutes of the Committee deliberations and recommendations.
- G. Authority and Duties of Committee. 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. Application Form. 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. Disciplinary Grievances. Before an application for payment from the Fund will be considered, the applicant must also file a disciplinary grievance with the Office of Disciplinary Counsel, unless the lawyer is disbarred or deceased, or unless the Committee in its discretion finds that no disciplinary grievance is required.
- C. Notice by Office of Disciplinary Counsel. Any person who has filed a disciplinary grievance 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. Eligibility. 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. Time Limitations. Any application must be made within three years from the date on which discovery of the loss was made or reasonably should have been made by the applicant, and in no event more than three years from the date the lawyer dies, is disbarred, is disciplined for misappropriation of funds, or is criminally convicted for matters relating to the applicant's loss, provided that the Committee or Trustees in their discretion may waive any limitations period for excusable neglect or other good cause.

C. Dishonest Conduct. 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. Excluded Losses. 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. Special and Unusual Circumstances. 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. Unjust Enrichment. 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. Exhaustion of Remedies. 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. Ineligibility. 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. Investigation and Report. 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. Notification of Lawyer. 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. If the lawyer's address of record on file with the WSBA is not current, then a copy of the application should be sent to the lawyer at any other address on file with the WSBA. A copy of these Rules shall be provided to the lawyer or representative.

D. Testimony. 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. Finding of Dishonest Conduct. 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. Evidence and Burden of Proof. 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. Pending Disciplinary Proceedings. 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. Public Participation. Public participation at Committee meetings shall be permitted only by prior permission granted by the Committee chairperson.

I. Committee Action.

(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. Restitution. 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. Subrogation. 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 claimant's rights against any third party or entity who may be liable for the applicant's loss.

C. Action to Enforce Restitution. 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. Duty to Cooperate. 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. Matters Which Are Public. 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. Matters Which Are Not Public. 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. NOTICE OF ACTION

Notice of approval of an application to the Fund may be published in the *Washington State Bar News* and elsewhere at the direction of the Committee or Trustees. Notice may also be posted electronically on any web site maintained by the WSBA. If the lawyer has made full restitution to the Fund, any notice posted electronically by the WSBA may, at the request of the lawyer, be removed.

RULE 15. 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

Statement of Financial Position

	Audited 9/30/2006	Unaudited 7/31/2007
<u>Assets</u>		
Wells Fargo Checking Account	\$ -	\$ 150,239
Accrued Interest Receivable	4,008	-
Investment in Treasury Bills	795,000	715,059
Wells Fargo Savings Account	<u>135,647</u>	<u>116,688</u>
Total Assets	<u>934,655</u>	<u>981,986</u>
<u>Liabilities and Net Assets</u>		
Approved gifts to injured clients payable	91,155	10,061
Liability to WSBA general fund	47,345	2,476
Net Assets	<u>796,155</u>	<u>969,449</u>
Total liabilities and net assets	<u>\$ 934,655</u>	<u>\$ 981,986</u>

Statement of Activities

	Audited Year Ended 9/30/2006	Unaudited Year 7/31/2007
<u>Revenue</u>		
Restitution	\$ 90,107	\$ 30,981
Member Assessment	347,532	411,520
Interest	<u>38,451</u>	<u>29,645</u>
Total Revenue	<u>476,090</u>	<u>472,146</u>
<u>Expenses</u>		
Gifts to Injured Clients	468,696	265,860
LFCP Committee	6,146	3,434
Misc.	2,625	3,142
Indirect (overhead)	<u>24,137</u>	<u>26,417</u>
Total Expense	501,604	298,852
Net Income (Expense)	\$ (25,514)	\$ 173,294

Statement of Changes in Net Assets

Balance at September 30, 2006	\$ 796,155
Net Income for the ten months ended July 31, 2007	<u>173,294</u>
Balance at July 31, 2007	<u>\$ 969,449</u>

