

# Washington State Bar Association



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

## LAWYERS' FUND FOR CLIENT PROTECTION

### ANNUAL REPORT

**October 2008**

Washington State Bar Association  
1325 Fourth Avenue, Suite 600  
Seattle, WA 98101-2539  
(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**

**Washington State Bar Association  
LAWYERS' FUND FOR CLIENT PROTECTION  
2007- 2008**

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

Washington is fortunate to have a history of maintaining 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 \$3.65 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 and inherent 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 21 years as the active Bar membership has increased from 14,000 in 1988 to 27,700 in 2008.

YEAR	ACTIVE MEMBERS	APPLICATIONS RECEIVED	APPLICATIONS APPROVED	LAWYERS APPROVED <sup>1</sup>	AMOUNT PAID
1988	14,000	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	\$468,696
2007	27,761	69	34	16	\$539,789
2008	27,786	125	30	18	\$148,817

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

<sup>2</sup> One lawyer was responsible for 60 approved applications in 2004.

## II. FUND PROCEDURES

The Fund is governed by Admission to Practice (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 Washington 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 Washington 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.

Another difficult claim area is those applications concerning loans or investments made to or through lawyers. In instances where there is an existing client/attorney relationship where the lawyer learns of his or her client's financial information, and persuades the client to loan money or to invest with the lawyer without complying with the disclosure and other requirements of RPC 1.8,<sup>3</sup> and does not return the client's funds as agreed, the Committee may consider that to constitute a dishonest act for purposes of the Fund.

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>4</sup> 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.

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<sup>3</sup> In relevant part, RPC 1.8 provides:

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
- (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
- (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

<sup>4</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.

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.<sup>5</sup> To date, the Fund (and its predecessors) has recovered approximately \$300,000.

**Barry Hammer Applications and Restitution:** During this year, the Trustee in the Barry Hammer Chapter 7 bankruptcy proceeding advised the Fund that when he took custody of Hammer's trust account, there were funds remaining in the account the ownership of which he could not determine. Since they represented unidentified client funds, at the request of the WSBA and the concurrence of the Bankruptcy Trustee, the Supreme Court authorized the funds to be deposited into the Fund. The Fund received \$15,260. The Fund and the Bankruptcy Trustee both sent notices to the creditors in the bankruptcy proceeding of the existence of the Fund and the criteria for applying to it, setting a deadline of June 2008, three years from the date that Hammer resigned in lieu of disbarment. More than 50 applications were received. Some were administratively closed because there was no attorney/client relationship between the applicants and Hammer. Forty-three were opened for investigation.

At the August Committee meeting, the Committee began reviewing the Hammer applications, but did not have time to review them all. The recommendations on those applications, all of which were for more than \$25,000, were reported to the Board of Governors (Fund Trustees) at their September meeting. Because, if all of the recommendations were approved, the approved amounts would exceed the balance in the Fund, the Board deferred action until all of the Hammer recommendations are submitted to them.

**Catastrophic Losses:** The potential impact of the Hammer applications on the stability of the Fund highlights an issue that has been growing in recent years, which is that while the number of lawyers who cause payments from the Fund remains relatively stable, the amount of the losses has been increasing

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<sup>5</sup> 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.

significantly. During this year, the Board of Governors appointed a task force, chaired by President-elect Mark Johnson with two members of the Board, the chair and vice-chair of the Committee, and the WSBA General Counsel and Assistant General Counsel, to study the options available and make recommendations to the Board. While the task force has not completed its work, they have concluded that the WSBA must reaffirm its intent to maintain the Fund. Matters being considered are the definition of an eligible claim, particularly to clarify when loans or investments may qualify for recovery from the Fund; a change in the per-lawyer cap, or the addition of a cumulative cap; increasing the amount of the annual assessment; imposition of a special assessment; a special rule for dealing with “catastrophic” losses; and the possibility of some form of catastrophic loss insurance policy.

### III. LOSS-PREVENTION PROGRAMS

The WSBA has established two important loss-prevention programs, which are established by Supreme Court rules:

**Random Trust Account Examinations:** Pursuant to Rule 15.1(a) of the Rules for Enforcement of Lawyer Conduct (ELC), the WSBA Disciplinary Board authorizes random examinations of the books and records of lawyers and law firms conducted by WSBA auditors. During FY 2007 (the last year for which statistics are available), 388 lawyers in 40 law firms were audited. Of the 40 law firms, 31 (78%) were found not to be in compliance with the trust account rules. After consultation, they all came into compliance.

The results of these examinations 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 2007 based on a random examination.

**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 2007, 89 disciplinary investigations were conducted based on overdraft notices received. The reasons for those overdrafts were varied: bank error (25%), deposit to wrong account (15%), math or bookkeeping error (18%), disbursement before deposit cleared (18%), failure to make timely deposit (10%), and other causes (15%).

## 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 2007, \$32,860 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, 2006 - September 30, 2007), total Fund revenues were \$476,090. Gifts to applicants totaled \$481,852. Committee expenses and overhead, including staff time, totaled \$35,988, or approximately 7.4% of revenue.

As of August 31, 2008, the Fund balance was \$1,060,862 (see Appendix C). As of that date, in FY 2008 the Fund had made payments totaling \$71,177. It is important for the Fund to maintain a sufficient balance to meet anticipated future needs. However, it is anticipated that the Barry Hammer applications, if all approved by the Board of Governors, will exceed the available Fund balance. At their September 2008 meeting, the Board voted to prorate all Hammer gifts against 75% of the available Fund balance, thus preserving some reserve for the future. This is not a unique situation, unfortunately. 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.

## V. COMMITTEE AND TRUSTEE MEETINGS

**Fund Committee:** The Lawyers' Fund for Client Protection Committee met four times this fiscal year, November 30, 2007, February 29, May 16, and August 15, 2008, to consider 114 applications to the Fund involving 48 lawyers.

**Fund Trustees:** The Trustees considered and approved all but two Committee recommendations on applications for more than \$25,000, except for the Barry Hammer recommendations which were deferred. The two that were not approved were denied on the basis that they were business transactions that did not arise in an attorney/client relationship. The Trustees also approved the 2008 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 was elected President-elect of the National Client Protection Organization, which is foremost an educational resource for the exchange of information among law client protection funds throughout the United States and Canada. He, Committee member Efreem Krisher, and Assistant General Counsel Elizabeth Turner attended the ABA 24<sup>th</sup> National Forum on Client Protection held in Boston in May.

## VI. 2008 APPLICATIONS AND PAYMENTS

At the beginning of FY 2008, there were 53 pending applications to the Fund. During FY 2008, 125 additional applications were received. The Committee and Trustees acted on 116, including the Hammer applications concerning 48 lawyers. The total amount in approved payments is **\$148,817**. A summary of Committee and Trustee actions is shown below. Complete summaries of all approved applications follow.

<b>Approved for Payment</b>	<b>31</b>
<b>Denied as fee dispute</b>	<b>16</b>
<b>Denied; no evidence of dishonesty</b>	<b>10</b>
<b>Denied as malpractice claim</b>	<b>2</b>
<b>Denied; restitution made</b>	<b>6</b>
<b>Withdrawn</b>	<b>1</b>
<b>Deferred</b>	<b>44</b>
<b>Other</b>	<b>6</b>

The “other” reasons for denial included: the applicant failed to exhaust available remedies; the application was ineligible for recovery; there was no attorney/client relationship; there was inadequate documentation; and payment would be unjust enrichment. The 31 approved applications involved the following:

<b>Theft or conversion</b>	<b>19</b>
<b>Failure to return/account for unearned legal fees</b>	<b>10</b>
<b>Investments and loans with lawyers</b>	<b>2</b>

## SUMMARIES OF APPROVED APPLICATIONS

*“On behalf of the lawyers of the State of Washington”<sup>6</sup>*

Pursuant to the Fund Procedural Rules, Committee approval of applications for \$25,000, 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.

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A copy of each application to the Fund and a request for response is sent to the respondent lawyer at the address(es) on file with the WSBA. Unless otherwise noted, the lawyer responded either to the Fund application or in the underlying disciplinary grievance, or both.

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**COURTENAY D. BABCOCK – WSBA # 22674 (Blaine) Suspended nonpayment of dues 6/12/06; disbarred 3/31/08**

**Application # 07-13**

**Pay \$4,000.00**

Applicant, a Canadian citizen, paid Babcock \$8,000 to apply for permanent residency in the U. S. A year later, Applicant became concerned because Babcock had never had him sign any documents. He talked to Babcock, who assured him that the forms had been prepared and things were going ahead. Applicant then talked with another lawyer who told him that “if things were going ahead I should have been called in to sign documents.” Applicant met with Babcock, who admitted that little if any work had been done. Applicant asked for a refund of his \$8,000. Babcock said he didn’t have the money, but after repeated requests, he paid Applicant \$4,000 and also gave him a promissory note for the \$4,000 balance, due by 7/1/06. On 7/1/06, Applicant went to Babcock’s office and found it vacated. He never received the remaining \$4,000. The Committee approved payment of that amount to Applicant.

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<sup>6</sup> Introductory phrase of transmittal letter to recipients of gifts from the Lawyers’ Fund for Client Protection.

**Application # 07-07**

**Pay \$2,000.00**

Applicant, a Canadian citizen, paid Babcock \$2,000 to obtain lawful entry into the U. S. Babcock advised her that she would need to apply for a non-immigrant waiver (I-192) and that first she needed to obtain a Royal Canadian Mounted Police criminal record check. Applicant says that, while waiting for the record check, she spoke with another lawyer who advised her that she did not need a non-immigrant waiver to enter the U.S. Over the next year, Applicant made numerous phone calls to Babcock without being able to reach him. She then wrote to him requesting return of her \$2,000. Babcock did not respond. She hired another attorney who successfully completed her entry into the U.S. without seeking an I-192 waiver. Babcock never accounted for the \$2,000, and the Committee approved payment to Applicant in that amount.

**Application # 07-57**

**Pay \$2,000.00**

Applicant paid Babcock \$3,000 for future preparation and processing of an immigration application. Subsequently, Applicant decided not to pursue the immigration application, and he contacted Babcock and requested a refund of the \$3,000. Up to that time, Babcock had performed no services for Applicant. Babcock told him he had spent the \$3,000, but that he would return the funds. He returned \$1,000. Over the course of the next several months, Applicant made numerous unsuccessful attempts to contact Babcock. He never received the balance of the funds. The Committee approved payment of \$2,000 to Applicant.

**Application # 07-43**

**Pay \$4,767.00**

Applicant hired Babcock for representation on a personal injury claim on a 1/3 contingent fee basis. The fee agreement included a power of attorney provision authorizing Babcock to settle the suit and to endorse any check on Applicant's behalf. Babcock repeatedly told Applicant he was working on her case. Applicant moved out of state and when she tried to reach Babcock by phone, many times his voice mail box was full. She then learned that Babcock's office was closed.

Finally, Babcock contacted Applicant and said that he had been in California dealing with custody of his children, and that he was working out of his home. She contacted the WSBA, and one of the Consumer Affairs Specialists talked to Babcock, who said that he was planning on settling Applicant's case in December. Babcock was suspended from practice at this time. Then Applicant learned that the case had been settled for \$13,900 and that a check in that amount, made out to Babcock and Applicant, had been sent to Babcock and that it had been cashed.

When Applicant learned this, she filed a report with the police. When Babcock was contacted by the police, he paid Applicant \$4,500. He said he was retaining

the balance in trust to pay medical and insurance claims. He never paid her any additional money and never accounted for the balance of her funds. The Committee approved payment to Applicant of \$4,767.

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**MARY BETKER – WSBA # 30429 (formerly of Washougal) – Resigned in lieu of disbarment 2/16/06**

**Application # 07-67**

**Pay \$1,387.50**

Applicant hired Betker to represent her in an action against her former employer. Their fee agreement provided for a \$3,000 “non-refundable deposit” and a provision that Applicant would be charged against this deposit at a rate of \$125/hour for Betker, \$100/hour for her legal assistant, and \$75/hour for “law clerk, legal assistant, or legal secretary.” In August 2005 Applicant received an invoice showing charges of \$1,612.50 and a balance of \$1,387.50. In December 2005, Applicant received a letter from Betker saying that she was quitting her practice due to health issues. She tried to reach Betker for recommendations of other attorneys and to obtain a refund of her unearned deposit. She got no reply. She searched the Internet and discovered that Betker had resigned from the Bar in lieu of disbarment.

In March 2006, Applicant wrote another letter to Betker and got no response. She then filed a Small Claims Court action. Judgment was entered in Applicant’s favor in the principal amount of \$1,487.50, plus costs, for a total judgment of \$1,586.14.

Applicant received a letter from Betker stating, “I am willing to settle our case quickly for \$1,000.00. Call me, if so & I’ll have a cashier’s check and satisfaction of judgment for your signature.” Applicant told Betker that the time to settle the case was before going to court, not after, and she demanded full payment of the amount of the judgment. No payment was made. The Committee approved payment to Applicant of \$1,387.50.

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**THOMAS J. BROTHERS – WSBA # 9653 (Lynnwood) – Disbarred 1/16/07**

**Application # 07-75**

**Pay \$350.00**

Applicant, with the assistance of his son, hired Brothers to make changes to a family trust after his wife died. After some delay, Brothers sent Applicant a letter enclosing an Affidavit of Successor Cotrustees to be signed Applicant and his son, along with a letter with various instructions. It said that after the papers were returned to him along with the mother’s death certificate and Social Security number, he would record the Affidavit and obtain a new Tax Identification Number (TIN). He also sent a bill for \$350.

Applicant mailed a check for \$350 and the signed affidavit to Brothers, along with the death certificate and Social Security number. Applicant and his son heard nothing further from Brothers. Brothers never advised them that he had been disbarred in January.

Brothers' letter of instruction was not clear and did not provide Applicant with necessary and understandable information. Brothers never secured the TIN. He did complete the affidavits, but the affidavit was never recorded and thus was of no value to Applicant. The Committee approved payment of \$350 to Applicant.

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**JACK L. BURTCH – WSBA # 4161 (Aberdeen) – Suspended pending discipline 5/17/07; disbarred 1/31/08**

**Application # 05-65**

**Pay \$2,000.00**

Applicant paid Burtch \$2,000 to bring a bad-faith claim against an insurance company and to remove a lien that had been filed by a contractor against Applicant's property. Applicant explained that action needed to be taken promptly on the claim against the insurer, as the statute of limitations would expire at the end of the year. Burtch told Applicant that he would have the lien taken care of in a week and would file the lawsuit within two weeks.

In the disciplinary proceeding, the Supreme Court opinion stated that Burtch took no action for several months. Eventually, Applicant discharged him less than 30 days before the statute of limitations was due to expire. She requested a refund of \$1,600. Burtch refused and instead produced an accounting showing that she owed more than the \$2,000 she had paid. The Hearing Officer did not find this accounting credible. The Supreme Court opinion states: "There is no evidence, other than his testimony, that Mr. Burtch did anything other than make one phone call to [a contractor] regarding the services he allegedly provided [Applicant]." The Court found that Burtch failed to adequately and accurately explain his fee agreement to Applicant; that he failed to return unearned fees; and that he failed to diligently represent Applicant. The Hearing Officer recommended that Burtch pay restitution to Applicant of \$1,900. The Committee approved payment of that amount.

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**ROBERT LOUIS BUTLER – WSBA # 448 (Seattle) – Disbarred 10/20/81; reinstated 6/10/88; resigned in lieu of disbarment 5/7/07**

**Application # 07-87**

**Pay \$15,000.00**

Butler was the personal representative of Estate A. He had previously held the decedent's power of attorney. He filed an "appraisal" he prepared that valued the

estate assets at around \$200,000.

One of the estate beneficiaries was a family friend who had cared for the deceased. He left her 25% of his estate. Butler made various distributions to the heirs, including three to the friend totaling \$42,500. The friend died in April 2003. At that time, Butler had not filed an accounting or closed Estate A. For this reason, the attorney for the friend's estate, Estate B, did not know the value of Estate B. Butler told the attorney for Estate B that at least \$15,000 was due to the estate. When Butler did not close Estate A, the attorney for Estate B filed a petition to remove Butler as PR of Estate A. Butler was removed and Applicant was appointed the new PR (he was also the PR of Estate B). Butler was ordered to deliver the Estate A files and pay costs of \$2,625 to the attorney. He failed to do so. In September 2005, he was ordered to pay an additional \$1,575 to the attorney. He failed to do so. He never filed an accounting for the Estate A assets.

The Office of Disciplinary Counsel subpoenaed bank records for Estate A from June 1998 until the account was closed in June 1999. The highest balance during that period was \$7,000.

Bank records were subpoenaed for a second Estate A account for the period January 1995 until the account was closed in September 1998. As of August 1995, the account balance was \$42,736. In September 1995, a deposit of \$25,000 was made to the account, leaving a balance of \$70,281. After September 1995, funds were withdrawn in a series of checks and wire transfers until the account was closed in September 1998. In his resignation, Butler promised to pay restitution to Estate A of \$15,000. He has not done so and the Committee approved payment of that amount to the estate.

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**JAMES E. GRAHAM – WSBA # 15290 (Renton) – Suspended nonpayment of dues 8/3/05; disbarred 10/5/06; deceased 6/6/07**

**Application # 07-78**

**Pay \$3,455.00**

Applicant contacted the WSBA after he read that Graham had been killed in a car accident, and said that Graham was handling four cases for Applicant. He wanted to know who to contact to get his files. After contacting Graham's family, no files or records were located.

Graham represented Applicant in several matters including drafting of will, a dispute with Medicare, a matter relating to a child daycare center run by Applicant, and a landlord-tenant dispute. The Committee found that Graham never advised Applicant that he was suspended from practice or that he was disbarred, and that he continued to collect fees for allegedly ongoing representation after he was suspended. The Committee approved payment to

Applicant of \$3,455.

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**BRUCE E. HAWKINS – WSBA #25414 (Gig Harbor) – Disbarred 2/3/06**

**Application # 07-66**

**Pay \$17,729.76**

Hawkins associated with several nonlawyers who maintained websites that promoted a program to reduce or eliminate consumer credit-card debt through private arbitrations. He allowed his name to be used in promotional materials and allowed an interview explaining this theory to be posted on these websites. He represented that credit card debtors were not bound to the arbitration services specified in their cardholder agreements and that, because national banks cannot lend credit, debtors should not have to repay their debts. (For further background on Hawkins, see *Bar News*, June 2006, p. 39.)

Hawkins told Applicant that credit-card companies were lending credit in violation of the law, and that for \$26,622.01, he would help her expunge her total debt. She says she told him she was then current with all her creditors, and he told her to stop paying them because now that she had discovered the “fraud,” continuing to pay them would constitute her agreement with the fraud. She stopped making payments.

Applicant paid Hawkins fees totaling \$15,644.76. Hawkins sent her a letter she was to mail to her creditors, along with a brief and other documents. He instructed her that after 90 days, she should contact Solomon Arbitration Group and ask them to arbitrate the claims. Hawkins did not disclose that he was an owner of Solomon Arbitration Group. She sent them a total of \$2,085 as arbitration fees, and they sent her arbitration awards.

She then learned that these “arbitration awards” were worthless unless entered in a court. She contacted Hawkins, who told her that if she wanted his help in enforcing the awards, she would need to pay \$250/hour. She told him she had no money. He told her she could do it herself, that the attorneys for the credit-card companies wouldn’t show for court. She filed the arbitration awards, “and all the attorneys did show and I wasn’t prepared to represent myself so I was forced to drop the case.”

Applicant then filed for bankruptcy. She disclosed the arbitration awards, which the Trustee researched and deemed worthless. A discharge was entered and it was dismissed as a “no asset” case. The Fund Committee advised the Trustee that it might make a payment to Applicant, and the Trustee responded that she did not intend to reopen the bankruptcy. The Committee approved payment of \$17,729.76 to Applicant.

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**DAVID R. HELLENTHAL – WSBA # 18311 (Spokane) – Suspended for 18 months 9/6/07**

**Application # 08-22**

**Pay \$5,130.87**

In 2004, Applicant's mother died and left him approximately \$170,000. Applicant hired Hellenthal because he was concerned about the potential effect of the inheritance on his continued eligibility for government benefits. The inheritance proceeds were deposited into Hellenthal's trust account.

In a fee agreement letter to Applicant, Hellenthal said he would charge 20% of Applicant's inheritance, which he set at \$33,500. He proposed forming a limited liability company (LLC) to purchase a residence for Applicant, and he said he would co-sign for a loan. He said he would form a Supplemental Needs Trust which would allow Applicant to receive Medicaid benefits for the rest of his life, and that the trust would be made a partner in the LLC. He also agreed to provide care management services for Applicant "for the rest of your life or mine." He said he would not charge any extra fees, but he would have a 10% interest in the LLC. Applicant signed this agreement. Between November 2004 and January 2005, Hellenthal paid himself \$33,000 from Applicant's trust account funds.

He prepared a Supplemental Needs Trust which designated Hellenthal as both trustor and trustee. It provided that Applicant could replace him as trustee. It also provided that upon Applicant's death, the trust estate would be distributed according to Applicant's will or, if he had no will, it would revert back to the trustor, who was Hellenthal. Hellenthal knew at that time that Applicant had no will. At some point he and Applicant discussed drafting a will, but none was ever created.

Hellenthal did not discuss any conflicts of interest with Applicant and did not have Applicant's consent to waive any conflicts. According to Hellenthal's stipulation to discipline, Applicant did not understand that Hellenthal would receive his entire estate if he died without a will, and he did not intend that result. Hellenthal executed the trust and on 1/12/05 transferred \$125,000 from his trust account which he used to fund the trust.

Under Medicaid regulations, a Supplemental Needs Trust would need to include a provision that all benefits paid to the trustor would be repaid to the state upon Applicant's death, and the trust would need court approval. The trust prepared by Hellenthal did not comply with Medicaid regulations and was not approved by a court. It could have made Applicant ineligible for Medicaid benefits and could have subjected him to financial penalties. This was not disclosed to Applicant.

In January 2005, Applicant hired a new lawyer who had Hellenthal removed as trustee. Hellenthal transferred \$125,000 plus interest to Applicant's new trustee. The new lawyer also asked Hellenthal to reduce his fees. Hellenthal refunded a

total of \$23,630 in fees, and \$2,169.13 of Applicant's funds that remained in his trust account. The total fees he retained were \$7,130. The Stipulation states that other Spokane-area lawyers charge \$1,000 to \$3,500 for creation of a special needs trust. Hellenthal stipulated to repay Applicant \$5,130.87. He has not done so, and it appears he currently has no means to do so. The Committee approved payment of that amount to Applicant.

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**PAUL HERNANDEZ – WSBA # 21015 (Seattle) – Suspended pending discipline 5/25/06**

**Application # 07-30**

**Pay \$2,756.26**

Hernandez is Respondent in a default disciplinary proceeding in which it is recommended that he be disbarred. He represented Applicant on a personal injury claim that was settled for \$22,000. Hernandez's settlement accounting showed that he was withholding settlement funds to pay PIP funds to Applicant's insurer (\$1,095.90), and funds owed to a chiropractor (\$1,660.36).

Applicant received a letter from a collection company on behalf of the insurer advising him that their reimbursement had never been paid after Hernandez contacted them to verify the amount of their lien and stating that he was "finally ready to resolve." They demanded payment from Applicant. Subsequently, Applicant received a copy of a letter to Hernandez from another collection agency that the funds owed to the chiropractor remained unpaid. The Committee approved payment of \$2,756.26.

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**ROBERT W. HUFFHINES, JR. – WSBA # 11279 (Kelso) – Suspended nonpayment of dues 7/28/04; suspended pending discipline 3/25/05; disability inactive status 11/16/07**

**Application # 05-40**

**Pay \$2,642.93**

Huffhines was hired by Applicant to represent him on appeal in a matter where he won a partial judgment in 2000. The defendant deposited \$9,663.54 with the court pending the outcome of the appeal. Applicant's lawyer at the trial had filed an attorney's lien for \$6,123.39. Those funds were released to him on 6/18/01. The balance continued to be held by the court. The Court of Appeals issued its decision on 8/10/01, affirming the trial court.

On 8/27/03, the county clerk's office wrote to Huffhines stating that they had been holding \$2,742.93 since 6/19/01, and that unless they heard from Huffhines within 30 days, the funds would be submitted to the state as unclaimed property. On 9/24/03, Huffhines' legal assistant wrote to Applicant, enclosing a motion to

release the funds. It read:

Mr. Huffhines would like to know your opinion as to the amount of funds recovered you would feel it would be fair for him to retain for his services in recovery. It would be greatly appreciated if you could contact the office as soon as possible to advise us as to your thoughts on the matter. Please send a letter in the enclosed envelope stating any amount you are agreeable to, and we will forward the remaining balance to you as soon as we receive the funds from the clerk.

Applicant responded, "I asked an attorney friend regarding this matter, who indicated \$100.00 would be adequate. Please let me know if this is not satisfactory."

On 9/15/03 an order was entered releasing the funds to Huffhines and stating "Attorney Huffhines will have the responsibility of delivering the funds to the plaintiff." Huffhines never paid the funds to Applicant and never provided any billing or accounting. The Committee approved payment of \$2,642.93 to Applicant.

**Application # 04-130**

**Pay \$200**

Applicant paid Huffhines \$700 to file a Chapter 7 bankruptcy proceeding. Applicant says that he had difficulty reaching Huffhines, and when he did, Huffhines would only say that that he was waiting for some paperwork to clear. Applicant went to New York to seek employment. He received a letter from Huffhines enclosing a Chapter 7 petition which he noted was out of date and incomplete. He recommended that Applicant consult a lawyer in New York. He also wrote "I can arrange in the future to refund some of the fee that you paid in." A few weeks later, Applicant called Huffhines and Huffhines said he could not file any petition and he refused to return any of Applicant's money. The Committee approved payment of \$200 to Applicant, representing the unused filing fee, and denied the balance as a fee dispute.

**Application # 04-180**

**Pay \$230**

Applicant paid Huffhines \$495 to file a Ch. 7 bankruptcy proceeding along with a \$200 filing fee. Applicant gave Huffhines the necessary information and documentation to prepare the petition. Subsequently, Applicant contacted Huffhines, who told him the petition and papers were ready for signature. Applicant and his wife signed them. At the time, they were missing at least two creditors' addresses. When Huffhines was asked in a deposition during the disciplinary investigation why he had the Applicants sign the petition when he didn't have all the information, he testified, "I'm not sure exactly."

Applicant continued to receive calls from creditors, so he contacted Huffhines who said that he had not filed the petition because he needed \$30 for postage to mail the petitions to the bankruptcy court, which Applicant paid. He heard nothing further until he called Huffhines in April 2004, and Huffhines told him his office was closing and to pick up his paperwork. He told Applicant he could have his money back at some future date. He never refunded any funds. The Committee approved payment of \$230 to Applicant, representing the unused filing fee and postage costs, and denied the balance as a fee dispute.

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

**Application # 07-35**

**Pay \$1,500.00**

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.

Applicant, an immigrant from El Salvador, hired Johnson-Ortiz in 1997 to obtain legal status in the United States. Johnson-Ortiz said he would file for Temporary Protected Status (TPS) and attend any interview or hearing required (however, under TPS there is no interview). Applicant paid Johnson-Ortiz \$3,000 at that time. He understood “that the TPS portion of my case was about half of the cost, while the court or interview would be the other half, about \$1,500.” Applicant received TPS and a work permit in 1998, without any hearing or interview. He also filed an application for asylum. Over the next few years he paid Johnson-Ortiz \$750 annually to renew his TPS and work permit.

In 2000 Applicant met with Johnson-Ortiz, who told him that there was a new law, the Nicaraguan and Central American Relief Act (NACARA), that would allow him to adjust his status to permanent resident. Applicant paid him \$750 plus the filing fees. Johnson-Ortiz told him that there would be an interview or hearing on this application. Applicant says he “told him that I had already paid for this, under our initial agreement, and he agreed.”

After 2002, Applicant concluded that he could file his TPS renewal himself rather than continue paying Johnson-Ortiz. He heard anything further from Johnson-Ortiz.

In 2005, Applicant received notice to attend a hearing on his NACARA application. He tried to contact Johnson-Ortiz, but he could not be found. He attended the interview by himself. He later hired another immigration lawyer who told him that Johnson-Ortiz had left the country. The Committee approved payment to Applicant of \$1,500.

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**WILLIAM H. KNOWLES – WSBA # 17211 (Seattle) – Interim suspension 9/14/07; resigned in lieu of disbarment 9/20/07**

Knowles resigned in lieu of disbarment based in part on a jury verdict on 8/17/07 finding him guilty of interstate travel with the intent to engage in sex with a minor, and of coercion and enticement, felonies under federal law.

**Application # 04-201**

**Pay \$3,000.00**

Applicant paid Knowles \$3,000, which their fee agreement said was payment for 14 hours of attorney's time on three matters relating to her former employment with the United States Postal Service (USPS): (1) an Office Workers Compensation Program (OWCP) hearing; (2) an EEO proceeding pending with the USPS; and (3) a potential Office of Personnel Management (OPM) appeal. She had previously been represented by Knowles on related issues.

After Knowles' arrest, Applicant received a letter advising her that Knowles' office was closing and she should arrange to pick up her files. When she did, the people at Knowles' office had difficulty finding all of her files, and what was found was in disarray.

In response to Applicant's grievance, Knowles claimed to have spent seven or eight hours on Applicant's matters, including speaking with officials at USPS, preparing EEO and appeal papers, and reviewing medical records. He wrote that he would estimate that Applicant would be entitled to a refund of approximately \$1,500. The Office of Disciplinary Counsel concluded that it did not appear that Knowles provided any meaningful representation to Applicant. The OWCP hearing occurred while Knowles was in jail, and Applicant represented herself. The USPS EEO investigator sent Applicant a request for additional information which, because of Knowles' incarceration, she had to respond to herself. And, from a review of the files, it did not appear that Knowles did anything regarding the possible OPM appeal. The ODC concluded that Knowles' fee was unreasonable, and the Committee approved payment of \$3,000 to Applicant.

**Application # 05-01**

**Pay \$2,500.00**

In June 2007, Applicant paid Knowles \$2,500 for representation in an EEO complaint against the Bureau of Indian Affairs (BIA). Their fee agreement states that the \$2,500 was a "non-refundable retainer" to cover the first 13 hours of attorney's time. During their initial meeting, Knowles contacted a law firm that had formerly represented Applicant and prepared and faxed a letter signed by Applicant to the BIA. She says she had no further contact with Knowles despite several attempts to contact him.

One month later, she learned that Knowles had been arrested in Portland. She

received a letter advising her that Knowles' law office would be closing and she should pick up her file. She was also told that they would refund any unearned fee. However, she was later told that there were no funds in the trust account.

When Applicant obtained her file, there were some hand-written notes and some documents faxed to Knowles from the BIA. She contacted the BIA and learned that Knowles had not initiated any claims on her behalf.

In its investigation, the Office of Disciplinary Counsel noted that Applicant's file contained no legal research, time records, or any substantiation that Knowles initiated any claim. They concluded that under the circumstances, the \$2,500 fee was unreasonable. The Committee approved payment of \$2,500 to Applicant.

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**BRADLEY R. MARSHALL – WSBA # 15830 (Seattle) – Suspended 5/10/07**

<b>Application # 08-20</b>	<b>Pay \$3,176.70</b>
<b>Application # 08-26</b>	<b>Pay \$3,176.70</b>
<b>Application # 08-38</b>	<b>Pay \$3,176.70</b>
<b>Application # 08-99</b>	<b>Pay \$3,176.70</b>
<b>Application # 08-108</b>	<b>Pay \$3,176.70</b>
<b>Application # 08-109</b>	<b>Pay \$3,176.70</b>

Marshall represented 15 longshoremen in a workplace racial discrimination case, including these applicants. For additional facts, see *In re Discipline of Marshall*, 160 Wn. 2d 317 (2007).

In 1995, several longshoremen contacted Wayne Perryman, who did business as Consultants Confidential. Perryman is not a lawyer, but he and the longshoremen signed an agreement that he would prepare a racial discrimination lawsuit for \$5,000. They also agreed that Perryman would act as their representative throughout the case and that they would pay him and his company 10% of any settlement. Perryman contacted Marshall's law office and Marshall became the lead attorney in the case. The parties agreed to mediation, and 14 of the 15 plaintiffs agreed to a settlement of \$800,000.

The Supreme Court opinion states that Marshall retained slightly less than 30% for attorney fees, and charged the plaintiffs over \$100,000 in costs. It says Perryman initially asked for Marshall to pay him \$80,000, or 10% of the settlement, but at Marshall's urging, he reduced his fee to \$70,000 plus costs of \$1,459. The Court found that Marshall had subtracted \$108,122.91 from the settlement proceeds for costs. This included \$9,473.75 that Marshall paid to other attorneys for work on the lawsuit. However, the fee agreement provided that any lawyer associated with the lawsuit would be associated without additional expense to the plaintiffs. Therefore, this sum should not have been taken as costs.

In addition, the Court found that Marshall admitted inflating the costs by \$41,000 because of an “accounting mistake.” During the litigation, the plaintiffs had collectively advanced \$41,000 to cover costs, with some plaintiffs paying more than others. When the case settled, Marshall returned to each plaintiff the amount they had paid him for costs. When he obtained the settlement, he paid the costs, but he also considered the return of the \$41,000 as an additional cost.

The Court ordered restitution of the \$41,000 he overcharged for costs and the \$3,473.75 he charged in excess of his agreed fee, totaling \$44,473.75. Marshall has paid no restitution. The Committee determined that each client is entitled to 1/14 of \$44,473.75, or \$3,176.70, and approved payment of that amount to each applicant.

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**ROGER D. OST, JR. – WSBA # 22141 (Seattle) – Interim suspension 11/29/07; disbarred 12/7/07**

**Application # 08-76**

**Pay \$4,500**

Applicant paid Ost \$4,500 to pursue a claim against a contractor and its contractor’s licensing bond. Ost contacted the contractor and claimed to have contacted the bonding company. Ost told Applicant that arbitration with the bonding company would be held in September 2006. Applicant contacted Ost in August and Ost told him that the arbitration would be rescheduled. Applicant waited to hear, not knowing how long it would take. He says it wasn’t until early 2008 that he again tried to contact Ost, but his phone calls were not returned. He then checked the WSBA website directory and learned that Ost was disbarred. He called Ost and this time reached him. Applicant asked for return of his \$4,500 and Ost told him to call back in February. That was the last time Applicant was able to reach Ost. Ost returned none of Applicant’s funds. The Committee approved payment of \$4,500 to Applicant.

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**THOMAS P. SUGHRUA – WSBA # 14117 (Seattle) – Interim suspension 12/12/07; disbarred 2/20/08**

**Application # 08-63**

**Pay \$2,500**

Applicant paid Sughrua \$2,500 to file a lawsuit against a bank. Applicant says that despite the fact that Sughrua assured him that he had a “solid case,” nothing was ever filed. After Sughrua was disbarred, Applicant attempted to contact him for the return of his files, without success. Finally, accompanied by a county sheriff, Applicant went to Sughrua’s home and Sughrua gave him what he said was all he had of Applicant’s files. A review of the materials given to Applicant discloses not a single letter, phone memorandum, draft pleading, or other work

product. The only thing that indicated any work on the case was collection of a few court cases and Securities and Exchange Commission orders. Sughrua never accounted for the \$2,500. The Committee approved payment of that amount to Applicant.

**Application # 08-71**

**Pay \$2,500**

Applicant paid Sughrua \$500 to extend a judgment which was granted. The next step was to levy against property to force a sheriff's sale. Sughrua e-mailed Applicant that he needed "a \$500 cash bond for eviction; and a \$2,000 cash bond for the levy sale." Applicant sent Sughrua a check for \$2,500. A month later, Applicant e-mailed Sughrua regarding the status of the proceeding. He responded that "I have time on Friday to finalize the pleadings for filing." He said the whole process would take about 30 days. A few weeks later, Applicant again e-mailed him, noting that he had not returned several messages she had left for him. On 9/6/07, Sughrua responded that he had been in trial for the past two weeks, but would update her by the following Monday. He said he had a jury trial beginning on 10/9/07 and would have their case completed before that date. That was the last she heard from Sughrua. The court docket shows that nothing was filed with the court after entry of the order extending the judgment. Sughrua has never accounted for the \$2,500, and the Committee approved payment of that amount to Applicant.

**Application # 08-75**

**Pay \$11,557**

Applicant hired Sughrua on a 1/3 contingent-fee basis for representation on a claim arising from a car accident in which she was injured. Sughrua filed suit in the name of Applicant and her husband. The parties agreed to settle for \$40,000. Sughrua did not give the Applicants any accounting for how the proceeds were distributed. He paid himself his fee (1/3 of \$40,000 = \$13,333) plus costs (amount unknown except for filing fee of \$110). He paid her \$10,000 and paid her (by then) former husband \$5,000. Sughrua was to retain the balance to pay medical fees.

Applicant tried to contact Sughrua periodically to confirm that the medical fees had been paid, and he would tell her that he was trying to get more on her claim. Subsequently, Applicant was contacted by a collection agency to collect the unpaid medical bills. This was the first time she knew that Sughrua had not paid the bills. Based on the documentation provided by Applicant, the Committee approved payment of \$11,557.00.

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**TODD W. WETSEL – WSBA # 20720 (Vancouver, WA and Portland, OR) –  
Suspended nonpayment of fees 6/13/07; 18-month suspension 9/6/07;  
resigned in lieu of disbarment 2/25/08**

**Application # 07-58**

**Pay \$1,500**

Applicant's father paid Wetsel \$1,500 to represent Applicant in an action to establish paternity of her child and to seek child support. There was no written fee agreement, so this advanced fee should have been deposited to Wetsel's trust account. Instead, he immediately cashed the check and converted the funds to his own use.

Applicant was scheduled to meet with Wetsel later that month, but he did not show up. She tried reaching him by phone over the next several weeks without success. A week later, Wetsel called her and asked her to come to his office. When she got there, he was on the phone. After one hour, she left because she had another appointment. Her mother then sent Wetsel an e-mail to which he responded that he was having personal issues relating to his divorce. He said he had "[Applicant's] stuff done" and that he would appreciate the chance to finish the work. Wetsel then called Applicant and said there was a court date set for 3/21/07 at 3:00 p.m. She went to court and there was no such hearing. On 3/22/07 she discharged Wetsel as her lawyer and requested return of her fee payment to her father. They never heard from him again. A search of Clark County Superior Court records finds nothing filed by Wetsel on behalf of Applicant. He never accounted for the \$1,500, and the Committee approved payment of that amount to Applicant and her father.

**Application #08-49**

**Pay \$42,185.60 to each**

Applicants were formerly husband and wife. Husband hired Wetsel for representation in a marriage dissolution proceeding. Applicants' house was sold and they disagreed on the disposition of the proceeds. By court order, they each received \$150,000, and the balance of \$243,371.19 was deposited to Wetsel's trust account. Applicants agreed to submit the dispute to mediation, but husband was unable to reach Wetsel. He then hired a new lawyer who was also unable to reach Wetsel.

A pre-trial settlement conference was held where Applicants agreed to an equal division of the remaining proceeds from the house sale. Husband again tried to reach Wetsel, who responded with promises to return the file and the funds. He never did. He agreed to meet with Husband, but about 30 minutes before the scheduled meeting he telephoned saying that he had been in a car accident and was hospitalized. Husband could not reach him after that. He never paid or accounted for Applicants' funds. The Committee recommended and the Trustees approved payment of \$42,185.60 to each Applicant.