



2008 Annual Report The Washington Lawyer Discipline System

The Washington State Bar Association may

Administer an effective system of discipline of its members, including receiving and investigating complaints of lawyer misconduct, taking and recommending appropriate punitive and remedial measures, and diverting less serious misconduct to alternatives outside the formal discipline system.

GR 12.1(b)(6).

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Senior Disciplinary Counsel Randy Beitel, Editor

***A Foreword From
Chief Disciplinary Counsel and
Director of Lawyer Discipline
Douglas J. Ende***

I am pleased to present the 2008 Annual Report on the Washington Lawyer Discipline System. This is the first comprehensive annual report on the discipline system issued by the Washington State Bar Association since 2004.

The Washington Supreme Court's exclusive responsibility to administer the lawyer discipline and disability system is delegated by court rule to the Washington State Bar Association. These functions are discharged primarily through the Office of Disciplinary Counsel, the Disciplinary Board, and the hearing officer system. The duties and responsibilities of administering the discipline system are numerous and complex, and many departments of the Bar Association are involved. Key components include:

- Reviewing and investigating allegations of lawyer misconduct and disability;
- Prosecuting violations of the Rules of Professional Conduct;
- Seeking the transfer of impaired lawyers to disability inactive status;
- Diverting less serious matters into the Diversion program, administered jointly with WSBA's Lawyer Services Department;
- Informing the public about lawyers, the legal system, and ways of handling difficulties involving lawyers;
- Mediating client-lawyer communication issues and file disputes;
- Administering the Lawyers' Fund for Client Protection;
- Educating members of the Bar about the discipline system and their ethics responsibilities;
- Participating in the development and improvement of the law of ethics and lawyer discipline.

This report summarizes the Washington State Bar Association's efforts in these areas and highlights some of our accomplishments from calendar year 2008.

It is an honor to serve as Chief Disciplinary Counsel at the Washington State Bar Association. Following in the footsteps of a long line of outstanding predecessors, I am privileged to work alongside dedicated lawyer and non-lawyer staff as well as a diverse corps of exceptional volunteers, all of whom are committed to the Washington State Bar Association's mission of serving the public and the members of the Bar, ensuring the integrity of the legal profession, and championing justice.

Douglas J. Ende

HOW THE DISCIPLINE SYSTEM WORKS

Authority and Purpose. The Washington Supreme Court has exclusive jurisdiction within Washington State for the administration of the lawyer discipline system governing Washington lawyers. The Supreme Court has delegated the administration and operation of that system to the Washington State Bar Association (the Bar), although it has reserved to itself the ultimate authority to suspend or disbar lawyers from the practice of law. With a few exceptions, lawyers practicing law in the State of Washington must be members of the Bar and are subject to lawyer discipline.

The lawyer discipline system protects the public by holding lawyers accountable for their ethical misconduct. The system is complementary to, and not a substitute for, any civil right of action that a consumer might have against a lawyer, and any criminal cause of action that might accrue because of the lawyer's conduct.

Structure and Funding. Although the Washington Supreme Court has delegated the responsibility for operating the lawyer discipline system to the Bar, the Court retains authority over and supervises that system. The Bar fulfills its duty to oversee and operate the system through various boards, committees and staff. The Bar's Board of Governors oversees the general functioning of other participants in the system, provides resources to operate the system, and appoints and removes certain staff and volunteers in the lawyer discipline system. Neither the Board of Governors nor the Executive Director of the Bar are involved in individual investigative or adjudicative decisions.

The Bar funds the lawyer discipline system through Bar members' annual licensing fees, about 37% of which are applied to the costs of that system. In FY 2008 the Bar spent \$4,157,066 on lawyer discipline. No public tax revenues or other public funds are spent on lawyer discipline. In addition, the Bar operates a Lawyers' Fund for Client Protection, funded by annual assessments on each lawyer. The Fund makes gifts (\$148,817 in 2008) to client applicants who have been damaged by their lawyers' dishonesty or failure to properly account for money or property entrusted to them.

Separation of Investigative/Prosecutorial and Adjudicative Functions. Although the lawyer discipline system is operated within the Bar, the Bar has clearly separated the investigative and prosecutorial functions from the adjudicative functions.

i) *Investigative and Prosecutorial Functions.* The Bar's Office of Disciplinary Counsel (ODC) receives, investigates and prosecutes allegations of ethical misconduct ("grievances") against Washington lawyers to determine whether the alleged misconduct should have an impact on the lawyer's license to practice law. In effect, the ODC is the statewide complaint bureau and prosecutor for ethical complaints against Washington lawyers.

In receiving grievances about lawyers, the ODC's role is that of an impartial investigator. At the same time, it seeks to educate consumers and lawyers on the ethical duties of lawyers and, where possible, to resolve informally possible disagreements as to those duties. The Consumer Affairs

The Discipline System

staff of the ODC annually handles nearly 10,000 telephone calls and numerous in-person meetings, suggesting possible ways to resolve the problem informally, explaining the Bar's disciplinary jurisdiction and grievance procedures, and suggesting other resources or services that may be helpful in resolving the matter.

Those matters that cannot be informally resolved are investigated and prosecuted by teams of professional investigators and disciplinary counsel with a support staff of paralegals and administrative assistants. Disciplinary counsel determines whether grievances should be dismissed or whether they should be reported to a Review Committee of the Disciplinary Board, which can issue advisory letters, impose admonitions, or order matters to public hearing for consideration of more serious disciplinary action. When matters are ordered to hearing, disciplinary counsel prosecutes the case at a public hearing. If a hearing-level decision is appealed, disciplinary counsel briefs and argues the appeal to the Disciplinary Board and, in some cases, to the Supreme Court.

ii) Adjudicative Functions. The final adjudicative authority in the lawyer discipline system is the Washington Supreme Court. Other persons and entities involved as adjudicators in the system include hearing officers, the Disciplinary Board, and the Review Committees (which are composed of members of the Disciplinary Board).

The all-volunteer Hearing Officer Panel consists of experienced lawyers appointed by the Board of Governors to preside over the public hearings. They enter findings of fact and conclusions of law following a hearing, together with their recommendation as to the discipline to be imposed, if

any. They also are authorized to resolve cases by approving stipulations to disciplinary action not involving suspension or disbarment. They are supervised by a Chief Hearing Officer, who assigns cases to the hearing officers, provides training for the hearing officers, and monitors their performance. An Assistant General Counsel provides staff support to the Hearing Officer Panel.

The Disciplinary Board is made up of fourteen members, ten lawyers appointed by the Board of Governors and four non-lawyers appointed by the Supreme Court. Two of the lawyers serve as chair and vice-chair, respectively, of the Disciplinary Board; the other twelve members break into four Review Committees, each consisting of two lawyers and one non-lawyer.

The four three-person Review Committees serve as gatekeepers to public disciplinary hearings in the lawyer discipline system. Review Committees consider appeals by grievants of grievances dismissed by disciplinary counsel and consider recommendations by disciplinary counsel for public hearings of lawyer discipline matters.

The Disciplinary Board is assisted by Bar staff (independent from the staff that supports the ODC), including an Assistant General Counsel who serves as Counsel to the Disciplinary Board and a Clerk to the Disciplinary Board.

The Disciplinary Board itself serves primarily as an appellate court in the lawyer disciplinary system, hearing appeals of hearing officer decisions, reviewing all hearing officer recommendations for suspension or disbarment, and approving or disapproving proposed stipulations to resolve discipli-

nary proceedings by suspension or disbarment.

If the Disciplinary Board determines a lawyer is to be suspended or disbarred, the determination is automatically reviewed by the Washington Supreme Court; the Court may also, in its discretion, accept review of other actions of the Disciplinary Board. Disciplinary cases reviewed by the Supreme Court proceed in a fashion similar to other Supreme Court appeals, with briefing by the parties and then oral argument, followed by a written opinion by the Court.

Disciplinary Actions, Sanctions, and Stipulations. Disciplinary “actions” include both disciplinary “sanctions” (which result in a permanent public disciplinary record) and admonitions (which result in a temporary public disciplinary record generally retained for only five years).

Disciplinary sanctions are, in order of increasing severity, reprimands, suspensions, and disbarments. A suspension from the practice of law may be for any period of time not to exceed three years, and may include conditions to be fulfilled by the lawyer. A disbarment revokes the lawyer’s license to practice law, with a disbarred lawyer not being able to seek readmission to the Bar sooner than five years after being disbarred. Only the Supreme Court may order a lawyer suspended or disbarred.

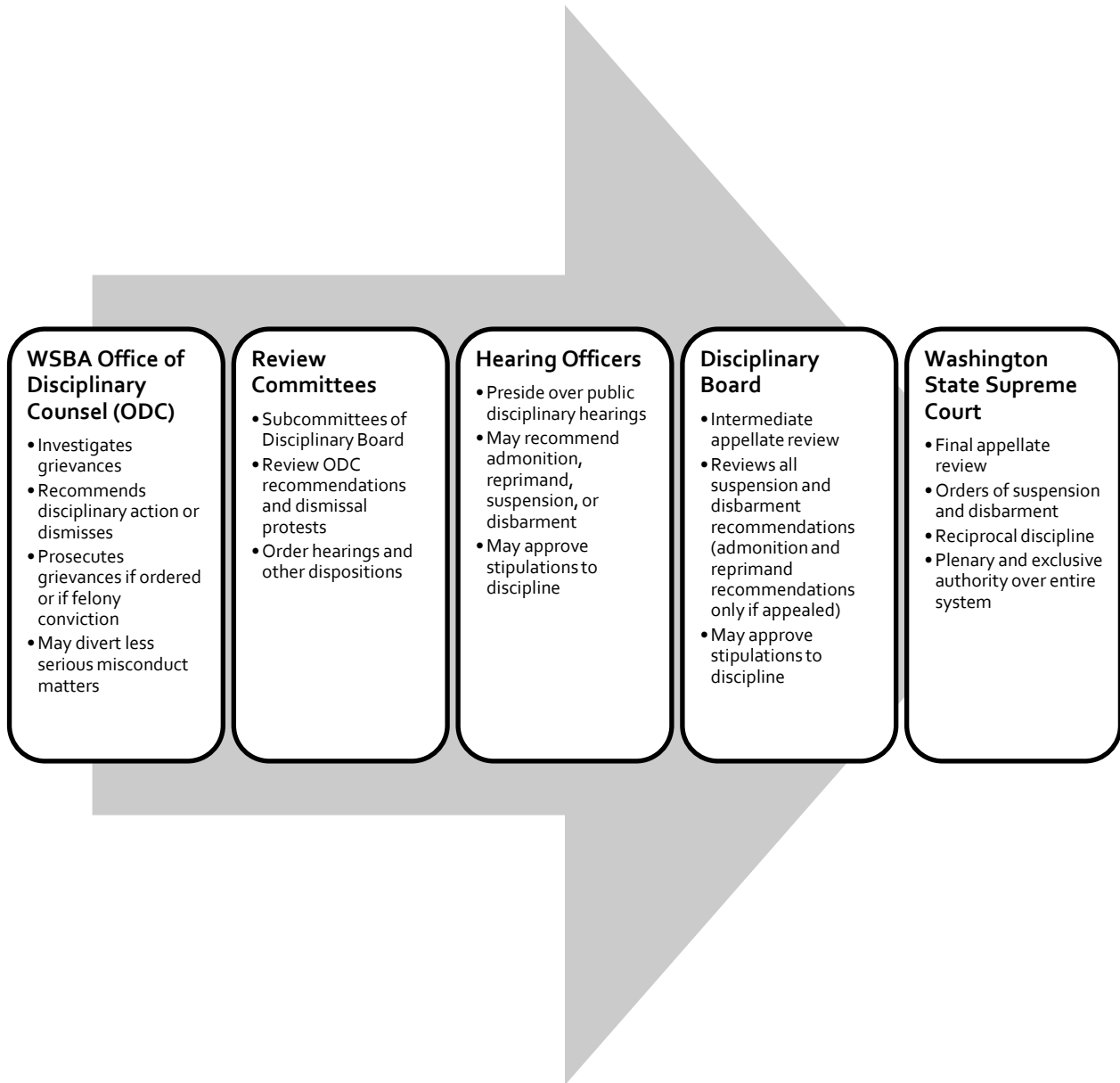
In addition to disciplinary action, a lawyer may be ordered to pay restitution to victims, and may be placed on probation for up to two years during which the lawyer must comply with specified conditions in order to remain in practice.

An alternative to formal discipline may be available if the alleged misconduct is “less

serious misconduct,” that is, conduct not involving misappropriation of client money, dishonesty, fraud, deceit or misrepresentation, or serious injury to clients, or conduct of the same type for which the lawyer has previously been disciplined. ODC may divert such cases out of the formal discipline system into various alternatives. For this to happen, the lawyer must admit to the misconduct and sign a contract to do certain things outside the formal discipline system to address the misconduct. The agreement may require, for example, the lawyer to agree to implement better office procedures, agree to arbitrate or mediate fee or other disputes, obtain counseling or treatment, take educational courses, or make restitution for injuries the lawyer has caused. If the lawyer satisfies the diversion contract, the disciplinary grievance is dismissed; if the lawyer does not satisfy the contract, the grievance is reinstated.

Occasionally a lawyer with a pending disciplinary investigation or proceeding will seek to resign from the Bar rather than go through the disciplinary process. The only resignation alternative is for the lawyer to enter into a resignation in lieu of disbarment, which provides that the disbarment is permanent.

Flow Chart of Discipline System



*Lawyer members of the Disciplinary Board and Hearing Officers are appointed by the Board of Governors. Non-lawyer members of the Disciplinary Board are appointed by the Supreme Court.

The Office of Disciplinary Counsel

The Office of Disciplinary Counsel (ODC) is managed by Chief Disciplinary Counsel and Director of Lawyer Discipline Douglas J. Ende and consists of 17 lawyers and 18 non-lawyers:

Lawyer Staff

Joanne S. Abelson, Senior Disciplinary Counsel
Leslie Ching Allen, Disciplinary Counsel
Kevin M. Bank, Senior Disciplinary Counsel
Randy Beitel, Senior Disciplinary Counsel
Craig Bray, Disciplinary Counsel
Jonathan H. Burke, Senior Disciplinary Counsel
Scott Busby, Disciplinary Counsel
Felice P. Congalton, Senior Disciplinary Counsel
Francesca D'Angelo, Disciplinary Counsel
Kathleen A.T. Dassel, Disciplinary Counsel
Linda B. Eide, Senior Disciplinary Counsel
Douglas J. Ende, Director of Lawyer Discipline
Christine Gray, Senior Disciplinary Counsel
Marsha Matsumoto, Senior Disciplinary Counsel
Natalea Skvir, Disciplinary Counsel
Debra Slater, Disciplinary Counsel
Sachia Stonefeld Powell, Disciplinary Counsel
Erica Temple, Disciplinary Counsel

Non-Lawyer Staff

Thea Armour, Paralegal
Erica Bush, Consumer Affairs Assistant
Leslie Berg, Administrative Assistant
Natalie Cain, Paralegal
Josh Calico, Intake Paralegal
Rolando Costilla, File Clerk
Marianne Donadio, Administrative Assistant
Robbie Dunn, Administrative Assistant
Celeste M. Fujii, Investigator
Chris Hitzfeld, Paralegal
Cynthia A. Jacques, Office Administrator
Danielle Johnson, Consumer Affairs Assistant
Narete Lim, Paralegal
Brian McCarthy, Investigator
Elena Montalvo, Administrative Assistant
Vanessa Norman, Investigator
Scott O'Neal, Investigator
Samea Teller, Administrative Assistant

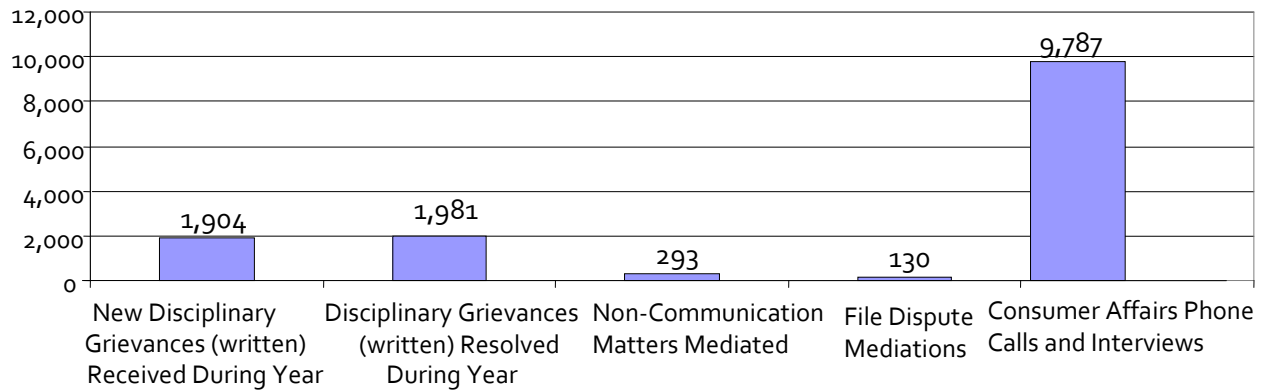
The staff is organized into an Intake Team, four Investigation/Prosecution Teams, and an Office Manager.

Disciplinary counsel Nancy Bickford Miller, disciplinary counsel Fuschia Dulan, consumer affairs coordinator Helen Wharton, and docket assistant/paralegal Emily Shirbroun left our staff in 2008.

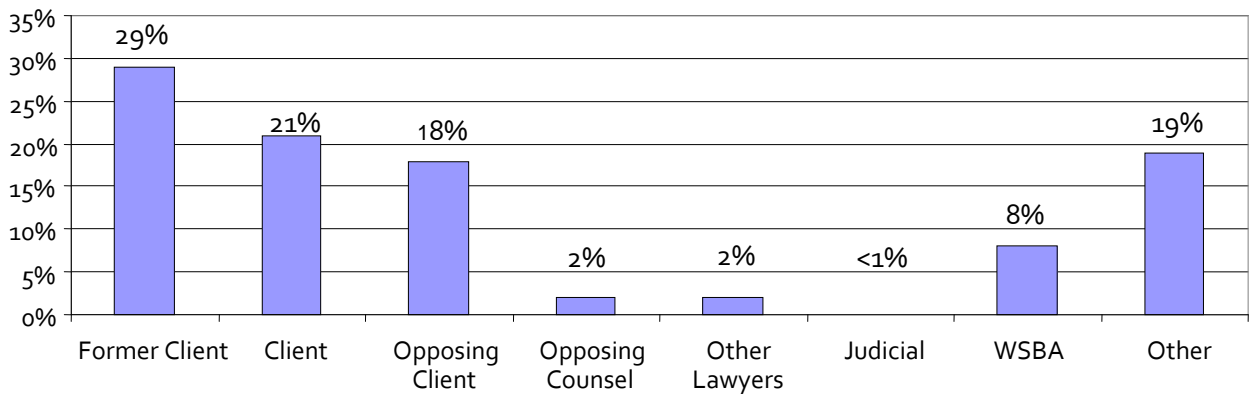
Intake. Managed by Senior Disciplinary Counsel Felice P. Congalton, the five-person intake team is responsible for fielding inquires from the public and the initial processing of about 2,000 written grievances filed each year. In addition to the heavy load of phone calls and other inquiries (nearly 10,000 in 2008), the intake unit mediates matters where the client is not able to get the lawyer to call back (293 in 2008) and where there is a dispute in obtaining the client's file from a former lawyer (130 in 2008). The intake unit also obtains the initial response from the respondent lawyer to the nearly 2,000 written grievances filed each year and determines whether those matters should be referred to an investigation/prosecution team for investigation, referred to a more appropriate agency, or dismissed.

Disciplinary Counsel

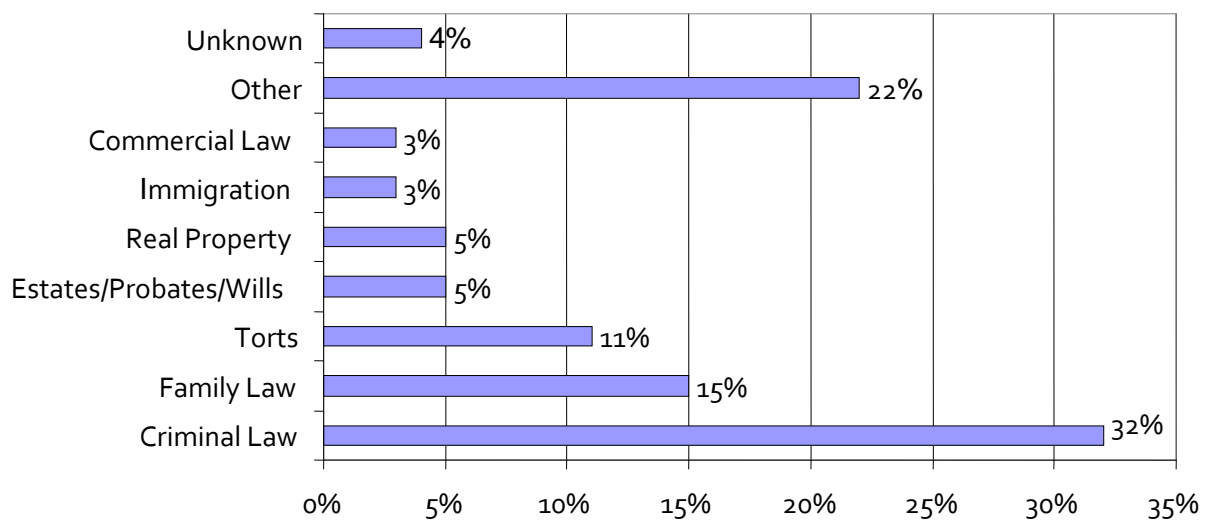
Grievances at a Glance - 2008



Sources of Grievances Filed - 2008



Practice Area of Grievances - 2008



Investigation/Prosecution Staff. Sixteen disciplinary counsel are divided into four investigation/prosecution teams, managed by four of the senior disciplinary counsel: Linda Eide, Joanne Abelson, Randy Beitel, and Kevin Bank. Each team has a professional investigator, a paralegal and an administrative assistant. In addition, an office manager and a file clerk report to the Director. The Office of Disciplinary Counsel has assembled a dedicated staff. The disciplinary counsel are highly experienced, averaging 23 years in practice, with an average of 13 years' experience in lawyer discipline.

Volunteers. A number of lawyers assisted the Office of Disciplinary Counsel in 2008 in volunteer capacities. These included: Robert Gould, Jim Horne and Matthew W. Williams who investigated matters as Special Disciplinary Counsel, David C. Ryder who served as a probation monitor, Alexandra Moore-Wulsin and Joann Harris Francis who served as practice monitors; Holly K. Newman who served as an Ethics School Presenter; Richard H. Wooster who served as practice and probation monitor; James Dore, Jr. who served as a probation monitor; H. Paul Gill, Erin Hammond, Alan Souders, and Roger Vanhoy who served as file custodians; Tom Hayton and Zach Mosner who served as Conflicts Review Officers; Ron Schaps who served as Conflicts Review Officer Pro Tem; and Karl B. Tegland who provided evidence training to disciplinary counsel.

Interns. The Office of Disciplinary Counsel was also assisted in 2008 by law student interns K. Peter Palubicki from the University of Washington and James Kim from Seattle University.

Other Activities. In addition to the investigation and prosecution of grievances, ODC performs a number of other functions consistent with our role in the regulation of the profession:

- Overdrafts on lawyer trust accounts are reported directly to the Office of Disciplinary Counsel by banks and other financial institutions, and Senior Disciplinary Counsel Marsha Matsumoto directs the investigation of those matters by the WSBA auditor. In 2008 we received 115 overdraft notifications, resulting in 65 matters that required investigation by the WSBA auditor.
- Lawyers who are applying to other bars or seeking new jobs or judicial endorsements need written summaries of their discipline history. Disciplinary Counsel Natalea Skvir supervises the research and preparation of those summaries, of which there were 441 in 2008.
- Disciplinary Counsel make frequent presentations at continuing legal education and other programs relating to lawyer ethics, discipline and professionalism. There were 24 such presentations in 2008.
- Disciplinary Counsel often provide drafting and staffing for committees proposing that the Supreme Court adopt rules relating to discipline and ethics. In 2008 Doug Ende, Randy Beitel, Scott Busby, Kathleen Dassel and Marsha Matsumoto served on Task Forces of the Board of Governors Discipline Committee that re-

Disciplinary Counsel

- viewed the recommendations made by the ABA's evaluation of the Washington Lawyer Discipline System.
- When grievances are filed against lawyers who either work in the Discipline System or hold a position in the Discipline System, such as disciplinary counsel, hearing officers, or members of the Board of Governors or the Disciplinary Board, these matters are reviewed by a Conflicts Review Officer rather than disciplinary counsel. Conflicts Review Officers act independently of the Office of Disciplinary Counsel. In 2008, 23 matters were referred to a Conflicts Review Officer for review.
 - The Office of Disciplinary Counsel is an active participant in the National Organization of Bar Counsel (NOBC), the professional organization of disciplinary counsel. In 2008, Senior Disciplinary Counsel Linda Eide was elected President Elect of NOBC and in 2009 will take office as President.
 - The Office of Disciplinary Counsel works closely with the Bar Association's Lawyer Services Department, which administers the Diversion Program. When it appears that a lawyer facing discipline for less serious misconduct could benefit from being diverted from discipline, disciplinary counsel refers the lawyer for evaluation by Dan Crystal, Psy.D., the Lawyer Services psychologist who is the Diversion Administrator. Upon a lawyer being diverted, disciplinary counsel continues to work with Dr. Crystal regarding the lawyer's compliance with the terms of diversion.
 - The Office of Disciplinary Counsel also works closely with the Lawyer Services Department staff who administer the Custodianship Program, by which custodians are appointed to protect client interests when a lawyer dies, disappears, or is transferred to disability inactive status and the interests of clients are not being protected.
 - Washington lawyers who are also licensed to practice law in other jurisdictions are sometimes disciplined by those other jurisdictions. When that happens, ODC pursues a reciprocal discipline proceeding to determine whether the same disciplinary action should be imposed in Washington. In 2008 there were 8 reciprocal discipline matters filed.
 - The Office of Disciplinary Counsel conducts an Ethics School twice a year. It is attended by lawyers who are participating in the Diversion Program and other lawyers who have agreed to Ethics School as part of a stipulated resolution of a matter. The day-long Ethics School focuses on a range of ethics and professionalism topics and is taught by a mix of disciplinary counsel, Bar Staff, and lawyers from private practice. In 2008, 37 lawyers attended the Ethics School.

Cost of the Discipline System

As one might expect, substantial resources are required to fund the Washington Lawyer Discipline System. In 2008, even after collecting \$124,513 from respondent lawyers who were assessed costs, the Bar spent another \$4,157,066 on lawyer discipline. The discipline system is funded solely by lawyers' licensing fees; there is no public funding of any sort. The total cost of the Discipline System for 2008 was \$4,157,066, representing 37% of member licensing fees. Below is a breakdown of 2008 costs.

Expenditures

Funding the Discipline System (Fully funded by lawyers' license fees – no public funding)			
Discipline System Expenses:	FY 2006	FY 2007	FY 2008
Investigation/Prosecution (net of costs collected from respondents)	\$3,222,928	\$3,554,239	\$3,761,614
Trust Account Audits	212,644	214,539	203,922
Disciplinary Board Expenses	8,238	*145,794	156,880
Hearing Officer Expenses	33,281	37,599	34,650
Total Discipline System Expenses	\$3,477,145	\$3,952,171	\$4,157,066
Percentage of Bar License Fees Spent on Discipline	34 % of fees	37 % of fees	37 % of fees
* Prior year's figures for Disciplinary Board expense did not include cost of the staff that supports the Disciplinary Board.			

Costs Assessed and Collected

Costs Collected from Disciplinary Respondents		
FY	Costs Collected	Costs Assessed
FY 2006	\$120,159	\$161,708
FY 2007	\$76,375	\$146,959
FY 2008	\$124,513	\$185,123

The Disciplinary Board

The Disciplinary Board has 14 members, of which 10 are lawyers appointed by the WSBA Board of Governors, and four are non-lawyers appointed by the Washington Supreme Court. Each member has an equal vote, regardless of whether the member is a lawyer. The Disciplinary Board is staffed by the Clerk to the Disciplinary Board, Becky Crowley, and Counsel to the Disciplinary Board, Julie Shankland.

The Disciplinary Board meets as an appellate body six times a year. At those meetings the Board reviews the record in all cases in which a suspension or disbarment has been recommended, as well as any other discipline case where either the respondent lawyer or disciplinary counsel has filed an appeal. The Board also reviews appeals from lawyer disability cases. If requested, the Board hears oral argument on the cases, much like an appellate court. The Board then issues its decision, and has broad discretion to modify the legal conclusions and disciplinary recommendation of the hearing officer.

In addition to hearing appeals, the Disciplinary Board reviews stipulations that the parties submit, which, if approved, will resolve the disciplinary proceeding

without a hearing. While hearing officers can approve a stipulation not involving suspension or disbarment (usually to an admonition or reprimand), only the Disciplinary Board can approve a stipulation for suspension or disbarment (and those must ultimately be approved by the Supreme Court).

Also, with the exception of the two lawyers who serve as chair and vice-chair of the Disciplinary Board, the other twelve members break into four groups, with each group comprising a Review Committee, each consisting of two lawyers and one non-lawyer. The four three-person Review Committees meet three times a year and serve as gatekeepers to public disciplinary hearings in the lawyer discipline system. Review Committees consider appeals by grievants of grievances dismissed by disciplinary counsel and consider recommendations by disciplinary counsel that advisory letters or admonitions be issued, or that a public hearing be held to consider imposing more substantial lawyer discipline. One of the Review Committees meets each month. On average, the Review Committee system considers 45 or more matters each month. During 2008, Review Committees considered 612 matters.

Disciplinary Board Members¹

William J. Carlson – Chair, 2008-2009, Private Practice, Bellevue. [Lawyer Member, term 2006-2009].

Larry J. Kuznetz – Chair, 2007-2008, Private Practice, Powell Kuznetz & Parker PS, Spokane. [Lawyer Member, term 2005-2008].

Seth Fine – Vice Chair, 2008-2009; Snohomish County Prosecutor's Office, Everett. [Lawyer Member, term 2007-2010].

Carrie M. Coppinger – Private Practice, Bellingham. [Lawyer Member, term 2007-2010].

Henry (Ted) Stiles – Private Practice, Spokane. [Lawyer Member, term 2008-2011].

Norris Hazelton – Non-lawyer Member, Lake Forest Park. [term 2007-2010].

Thomas Cena – Private Practice, Tacoma. [Lawyer Member, term 2006-2009].

Michael Bahn – Washington Department of Health, Olympia. [Lawyer Member, term 2008-2011].

Melinda Anderson – Non-lawyer Member, Bellevue. [term 2007-2010].

Shea C. Meehan, Private Practice, Walker Heye & Meehan, Richland. [Lawyer Member, term 2007-2010].

Norma Urena - Private Practice, Seattle. [Lawyer Member, term 2007-2010].

Frederick M. Meyers - Private Practice, Seattle. [Lawyer Member, term 2007-2008].

Brian Romas – Non-lawyer Member, Seattle, [term 2005-2008].

Thomas Andrews – University of Washington School of Law, Seattle. [Lawyer Member, term 2005-2008].

Susan Madden – Non-lawyer Member, Seattle. [term 2005-2008].

Tamara J. Milligan-Darst – Private Practice, Montesano. [Lawyer Member, term 2006-2009].

Grace Greenwich – Non-lawyer Member, Seattle. [term 2008-2011].

James V. Handmacher – Private Practice, Morton McGoldrick PS, Tacoma. [Lawyer Member, term 2008-2011].

Ryan Barnes – Non-lawyer Member, Seattle. [term 2008-2011].

¹ Terms on the Disciplinary Board are for three years, beginning in October and ending in September. This list includes all members who served at any time during 2008.

Hearing Officers

Hearings for disciplinary and disability cases are presided over by volunteer hearing officers. The Board of Governors has appointed 55 experienced lawyers to serve as hearing officers. The Chief Hearing Officer, Wenatchee lawyer James Danielson, appoints a hearing officer to each discipline or disability case and monitors the progress of the hearings. During 2008, the Chief Hearing Officer assigned 30 lawyers from the list of hearing officers to preside over disciplinary and disability cases. *(Lawyers assigned to a matter in 2008 are designated with an asterisk* below)*

Most disciplinary hearings are open to the public. Proceeding much like a civil trial, disciplinary counsel prosecutes the matters on behalf of the Association. At the conclusion of the hearing, the hearing officer prepares written find-

ings of fact, conclusions of law, and, if violations are found, makes a recommendation as to the disciplinary action. In addition to dismissing a case, the hearing officer has discretion to recommend an admonition, a reprimand, a suspension of up to three years, or disbarment. In addition, the hearing officer can recommend a probationary period with conditions that can be placed on the lawyer's continued practice.

If a hearing officer recommends an admonition or a reprimand, the matter is concluded unless either party appeals to the Disciplinary Board. If the hearing officer recommends a suspension or disbarment, the matter is automatically reviewed by the Disciplinary Board. The Hearing Officers and the Chief Hearing Officer are assisted by Assistant General Counsel Elizabeth Turner.

Hearing Officers		
Susan Amini, Bellevue*	William Bailey, Seattle*	Eric Bakke SR, Wenatchee
J.C. Becker, Mill Creek	Craig Beles, Seattle*	Kimberly Boyce, Seattle*
David Broom, Spokane	Lewis Card, Wenatchee*	Carl Carlson, Seattle
Donald Carter, Everett*	David Condon, Tacoma*	Gregory Dahl, Mill Creek*
James Danielson, Wenatchee*	Julian Dewell, Seattle*	Malcolm Edwards, Seattle*
Scott Ellerby, Seattle	Frederic Fancher, Spokane*	Bertha Fitzer, Tacoma
William Fitzharris, Sr., Seattle	Kelby Fletcher, Seattle*	Deidre Glynn Levin, Seattle*
Lee Grochmal, Bellingham*	Lyle Hanson, Olympia*	Vernon Harkins, Tacoma
Octavia Hathaway, Federal Way*	Stephen Henderson, Olympia	David Hiscock, Seattle
Paul Larson, Yakima	Margita Latsinova, Seattle*	James Lawrie, Bellevue
John Loeffler, Spokane	Peter Matty, Silverdale*	Lawrence Mills, Seattle*
Dennis Morgan, Ritzville*	William Murphy, Federal Way	Joseph Nappi Jr., Spokane*
Linda O'Dell, Spokane*	Timothy Parker, Seattle*	Barbara Peterson, Vancouver*
Randolph Petgrave III, Seattle	Richard Price, Omak	Jane Risley, Asotin
Sidney Royer, Seattle*	Anthony Russo, Seattle	Terence Ryan, Spokane
David Schoeggl, Seattle	Andrequita Silva, Seattle*	Dennis Smith, Seattle
David Summers, Seattle*	David Thorner, Yakima	John Tollefsen, Lynnwood
Gregory Wall, Port Orchard	Mary Wechsler, Seattle*	Lish Whitson, Seattle
Charles Wiggins, Bainbridge Island*		

THE LAWYERS' FUND FOR CLIENT PROTECTION

The 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 since 1960, having been one of the first states to do so. 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 \$4.75 million dollars**.

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. In exercising that authority, the Bar has also assumed the responsibility of protecting the public. 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.

The Fund is governed by Admission to Practice Rule (APR) 15 and Procedural Rules adopted by the Board of Governors and approved by the Supreme Court, available at the wsba.org website. 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 Board, the group of lawyers and non-lawyers who administer the Fund. The WSBA General Counsel acts as staff liaison to the Trustees and Fund Board.

Unless the lawyer is deceased or disbarred, all applicants to the Fund must also file disciplinary grievances with the Office of Disciplinary Counsel. 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.

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.

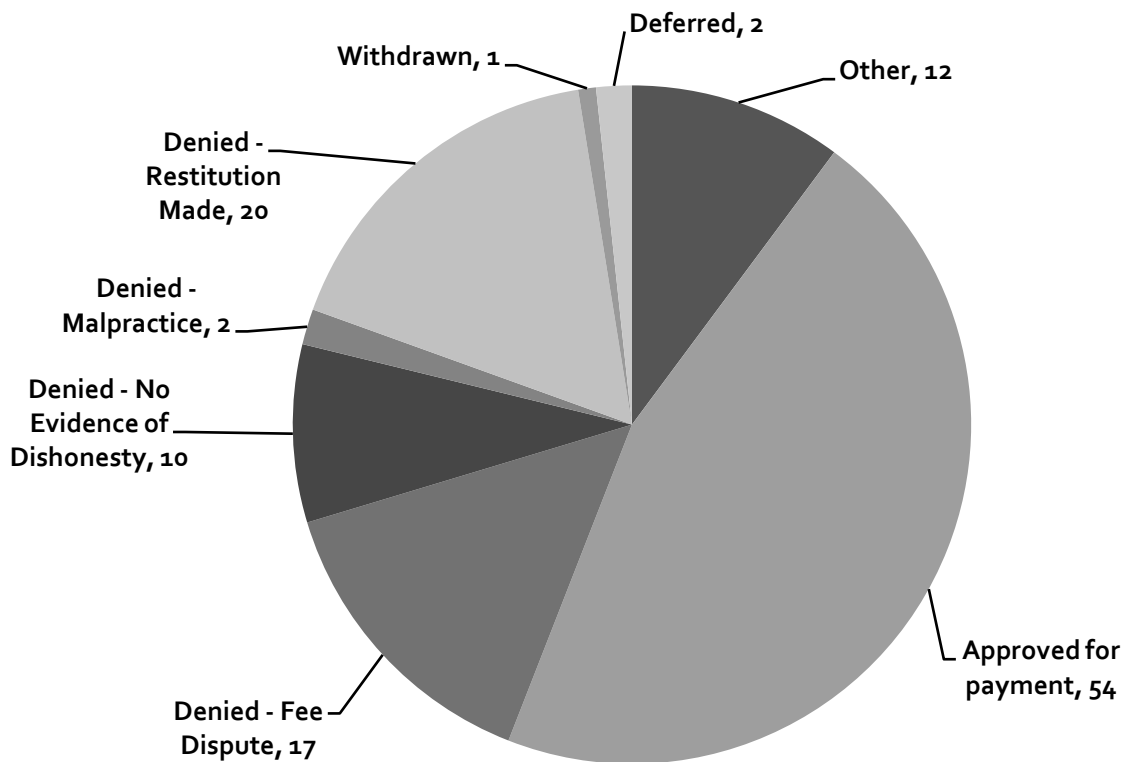
If the application appears eligible for payment, the Fund investigates the application. Because most applications also involve disciplinary grievances and proceedings, action on Fund applications normally awaits resolution of the disciplinary process. Finally, a report and recommendation is prepared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

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. To date, the Fund (and its predecessors) has recovered approximately \$300,000.

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.

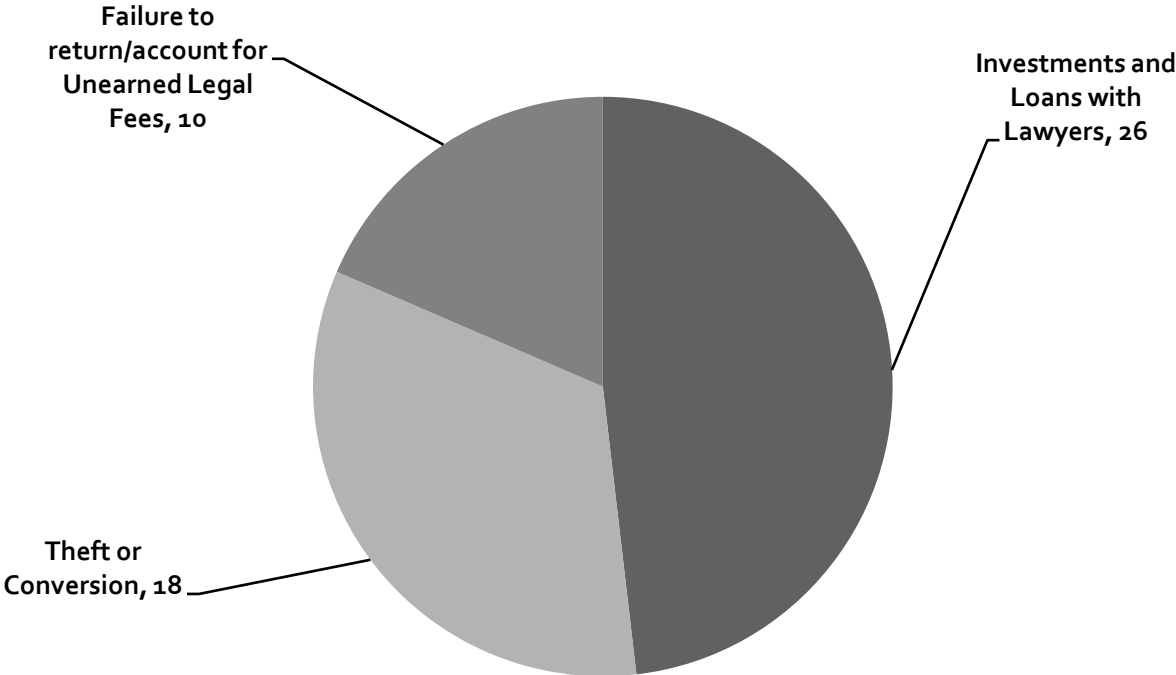
2008 APPLICATIONS AND PAYMENTS: For Fiscal Year 2008, the Board and Trustees acted on 125 applications. The total amount in approved payments was \$899,672. A summary of Committee and Trustee actions is shown below. Complete summaries of all approved applications are available on the Fund's Annual Report at the above website.

2008 - 125 Applications



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 30 approved applications involved the following:

Approved Applications



Lawyers' Fund for Client Protection Applications Received and Payments Made In Recent Years

FISCAL YEAR	APPLICATIONS RECEIVED	APPLICATIONS APPROVED	LAWYERS APPROVED ¹	AMOUNT PAID
2002	69	47	20	\$247,536
2003	117	51	20	\$125,913
2004	165	84 ²	17	\$313,721
2005	120	47	19	\$147,247
2006	139	66	26	\$468,696
2007	69	34	16	\$539,789
2008	125	54	18 ³	\$899,672

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.
 3 One lawyer was responsible for 24 approved applications totaling \$695,409 in 2008.

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

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WSBA AUDIT PROGRAM

Audit Staff. The WSBA has two auditors, Rita Swanson, Audit Manager, and Cheryl Heuett, Auditor. They operate four programs designed to protect clients from financial loss and assist lawyers with proper accounting for client funds.

Random Audits. The auditors select lawyers at random for examination of the books and records of the lawyer to assure that the lawyer is complying with all trust account rules. Ordinarily between 50 and 100 audits are conducted each year. In 2008, however, due to turnover in WSBA audit staff, only 6 random audits were conducted. These 6 audits involved firms with a total of 45 lawyers. Following the audit, the WSBA auditor prepares a report noting whether the lawyer's books and records are in compliance with the trust account rules and provides that to the Chair of the Disciplinary Board, who can accept the audit, order a re-examination of the lawyer's books and records at a later date to follow-up on any problems that were noted, or order that the matter be referred to the Office of Disciplinary Counsel for investigation .

Trust Account Overdraft Notification. Whenever an overdraft occurs on a lawyer trust account, the bank automatically sends a notification to the Office of Disciplinary Counsel, where Senior Disciplinary Marsha Matsumoto directs the overdraft investigation, which is conducted by the WSBA auditors. An overdraft on a trust account is an indication that something is amiss. While some overdrafts are caused by bank error and get quickly dismissed, others are an indication of problems with the lawyer's trust accounting, and on occasion are the harbinger of serious trust account misconduct. In 2008, 65 trust account overdrafts were investigated by the WSBA audit staff.

For Cause Audits. The WSBA audit staff assist disciplinary counsel in the investigation of trust account disciplinary cases. This often entails forensic reconstruction of trust account records that were either not kept by the lawyer or have not been made available to disciplinary counsel. These are often serious and very time-consuming investigations. In 2008 there were 13 audits for cause, 10 of which arose out of overdraft notifications.

Audit Education. The WSBA auditors are frequent speakers at CLE programs on the trust account rules. They are available to answer questions from lawyers regarding trust accounting and publish a booklet "Managing Client Trust Accounts, Rules Regulations and Common Sense," which is available for free, as well as available on the WSBA website at www.wsba.org.

<i>Audit Staff Activity</i>			
	2006	2007	2008
Investigatory "For Cause" audits	26	23	13
Trust Account Overdraft Investigations	85	74	65
Random Audits of Law Firms/ Number of Lawyers	67/840	40/388	6/ 45

Discipline in 2008

Disciplinary Actions (Names and Bar Numbers for 2008 Discipline Listed Below)						
	2003	2004	2005	2006	2007	2008
Disbarments	34	16	12	19	23	15
Resignations in Lieu of Disbarment	2	3	1	4	2	3
Suspensions	31	24	32	26	26	26
Reprimands	18	20	22	17	17	21
Censures*	1	0	0	0	0	0
Admonitions	27	13	17	3	5	16
Total Disciplinary Actions	113	113	76	69	73	81
Matters Diverted From Discipline	43	32	74	69	63	43

* Last Available 10/1/02

Ethical Violations with Disciplinary Actions Imposed in 2008							
	Disbarments	Resignations in Lieu of Disbarment	Suspensions	Reprimands	Admonitions	TOTAL	% of TOTAL
Dishonesty	6	2	3	2	2	15	19 %
Diligence/ Competence/ Communication	1	0	7	8	10	26	33 %
Trust Account /Theft	4	1	0	1	3	9	11 %
Criminal Conduct	3	0	6	3	0	12	15 %
Conflicts	0	0	4	3	1	8	10 %
Fees	1	0	4	0	0	5	6 %
Practice While Suspended	0	0	1	0	0	1	1 %
Litigation Misconduct	0	0	1	3	0	4	5 %
TOTAL	15	3	26	20	16	80	100%

Practice Areas of Disciplinary Actions and Diversions in 2008								
Area of Practice	Disbarments	Resignations in Lieu of Disbarment	Suspensions	Reprimands	Admonitions	Diversions	TOTAL	% of TOTAL
Family Law	0	0	6	2	2	9	19	16 %
Torts	5	0	2	5	4	4	20	16 %
Criminal Law	3	1	7	7	3	6	27	22 %
Estates/Probates	1	0	2	0	0	7	10	8 %
Labor Law	1	0	1	0	2	0	4	3 %
Immigration	1	0	1	3	1	2	8	7 %
Bankruptcy	0	0	0	0	0	0	0	0 %
Real Property	1	2	2	0	0	4	9	7 %
Commercial	0	0	1	1	0	1	3	2 %
Corp./Banking	1	0	0	1	0	1	3	2 %
Taxation	0	0	1	0	0	0	1	1 %
Other	2	0	3	1	4	9	19	16%
TOTAL	15	3	26	20	16	43	123	100%

Supreme Court Disciplinary Opinions

In re Disciplinary Proceeding Against Burtch, 162 Wn.2d 873, 175 P.3d 1070 (2008)

The Washington Supreme Court disbarred Jack L. Burtch for testifying falsely, presenting false evidence, refusing to pay restitution as ordered in a prior discipline case, refusing to return unearned fees to a client, and a long history of misconduct. The charges arose from Burtch's representation of two separate clients. While representing Client A, Burtch had twice incurred monetary sanctions for his conduct toward the court, which he required the client to pay. This conduct became the subject of disciplinary proceedings finalized in 2002 in which the Disciplinary Board ordered Burtch to pay Client A restitution plus interest. Although Client A consistently maintained that Burtch had agreed to a contingent fee agreement, Burtch had claimed that an hourly fee agreement had been converted to a contingent fee on the eve of trial. When Client A brought an action in district court to enforce the restitution award, Burtch testified that the agreement had always been for an hourly rate and argued that he was due an offset for unpaid fees. Burtch's frivolous claim to an offset constituted a violation of RPC 3.1 (frivolous defense) and his refusal to pay restitution as ordered by the Board violated RPC 3.4(c) and 8.4(l).

Burtch neglected Client B's toxic mold case after collecting a \$2,000 "non-refundable retainer." When the client dismissed Burtch and requested a \$1,600 refund, Burtch refused and produced an accounting for more than \$2,000 in services. The hearing officer did not find the accounting credible. Burtch violated RPC 1.3 (diligence), failed to adequately explain the fee agreement in violation of RPC 1.4(b) and 1.5(b), violated RPC 1.5(a) by failing to return unearned fees, and violated former RPC 1.15(d) by failing to withdraw in a timely manner.

On appeal, Burtch argued that the hearing officer improperly considered his pattern of misconduct when it had not been charged in the complaint. The Court stated that aggravating factors under the ABA Standards for Imposing Lawyer Sanctions may be considered without being formally charged in the complaint.

The Court also held that the hearing officer did not abuse her discretion in limiting expert testimony or in giving little or no weight to such testimony.

In re Disciplinary Proceeding Against Trejo, 163 Wn.2d 701, 185 P.3d 1160 (2008)

The Court suspended George P. Trejo for trust account improprieties and failure to supervise a non-lawyer assistant. Trejo maintained only one bank account for his law firm, a trust account in California. He

deposited both client funds and earned fees into this account. Trejo did not keep adequate trust account records: he did not keep individual client ledgers or reconcile the single journal of checks that he did keep

to bank statements. Trejo delegated much of the responsibility for the trust account to his assistant, who later admitted to writing and signing Trejo's name on checks to herself and intending to repay the account later. The assistant's check-floating scheme resulted in overdrafts on the trust account. A WSBA audit of Trejo's trust account, sparked by notice of a trust account overdraft, revealed that the account contained both client funds and earned fees and the deficiencies in Trejo's record keeping.

The hearing officer found that Trejo had knowingly violated former RPC 1.14(b)(3) by failing to maintain adequate records of the funds in his trust account sufficient to identify all client balances, former RPC

1.14(a) by commingling earned fees with client funds and having insufficient funds in the trust account, and former RPC 5.3 by failing to adequately supervise his non-lawyer assistant. The hearing officer recommended a six-month suspension. Trejo had been previously disciplined for similar conduct – a 2001 admonition and a 2003 reprimand, both for conduct that included improper handling of his trust account. The Disciplinary Board affirmed most of the hearing officer's findings, but added the mitigating factor of character and reputation and reduced the suspension to three months with two years probation after reinstatement. The Supreme Court affirmed.

In re Disciplinary Proceeding Against Stansfield, 164 Wn.2d 108, 187 P.3d 254 (2008)

The Court reprimanded Mark Stansfield for (1) purporting to represent a decedent's estate without authority and (2) conflicts of interest in representing both a decedent's estate and the driver charged with vehicular homicide in connection with the decedent's death. On May 9, 2003, Francisco Vargas sped through a stop sign and struck another car, killing the driver and passenger. Stansfield was retained by the widow of the driver to probate his estate. The driver's widow also approached Stansfield about representing the estate of her husband's passenger. Stansfield notified the insurance company that he represented the estates of both the driver and his passenger and wrote to the passenger's widow asking if she wanted him to represent her. The passenger's widow did not respond. Stansfield drafted some documents for the estate but did not file them. Later, the passenger's widow hired other counsel, who

encountered difficulties with the insurance company because Stansfield was listed as counsel of record for the estate. Although the insurance company eventually issued a check to the new lawyer for the estate, he had to reserve some of the money because Stansfield had filed a lien on the proceeds. Stansfield formally released his lien a year and a half later, allowing the remainder of the proceeds to be disbursed to the estate.

In September 2003, Stansfield was retained to represent Francisco Vargas who was charged with vehicular homicide in the deaths resulting from the May 9, 2003 collision. Stansfield accepted the representation even though the driver's and passenger's names were listed in the charging information, which he reviewed. He withdrew after arraignment.

The hearing officer found that Stansfield had negligently violated former RPC 1.2(f) and former RPC 1.9(a) and recommended

two reprimands. The Disciplinary Board majority made substantial changes to the hearing officer's findings of fact and concluded that Stansfield had knowingly violated both rules. It recommended a six-month suspension.

The Court gave deference to the hearing officer's findings of fact relating to Stansfield's state of mind and imposed two reprimands. The Court also ordered Stansfield to pay \$1,000 in restitution to the passenger's widow and to refund his fee for representing Vargas.

In re Disciplinary Proceeding Against Poole, 164 Wn.2d 710, 193 P.3d 1064 (2008)

The Court suspended Jeffrey G. Poole for one year for conduct relating to earlier disciplinary proceedings against him. The first proceeding concerned Poole sending invoices to clients billing them at his current rates for work performed at a time when a lower rate was in effect. Poole had submitted five billing statements in response to the Association's July 24, 2003 request for all billing statements that included similar charges. After the hearing in that matter, but before the hearing in the current proceeding, the Association discovered nearly 100 billing statements from 2002 that included charges for time over six months old, at least 29 of which should have been produced in response to the July 2003 letter.

The second prior disciplinary proceeding involved improper trust account procedures and resulted in a reprimand and probation. During probation audits, the Association's auditor discovered the aforementioned billing statements and irregularities in Poole's client ledger for S.O., which led the auditor to request Poole's S.O. billing file. Poole refused the auditors request to turn over the billing file and resisted the repeated efforts by disciplinary counsel to obtain the file after a new investigation file was

opened. Eventually the Association filed a petition for interim suspension based on Poole's non-cooperation in refusing to submit the billing file. Poole submitted the file before the show cause hearing on the petition for interim suspension and the Association withdrew the petition. Poole continued to resist the Association's requests for information and documents.

Poole argued that the Association's requests violated his due process and privacy rights. The Court disagreed, holding that the Association's requests were within the scope of ELC 5.3(a) and further that Poole's probationary status "put an increased obligation of cooperation on him."

The Court also rejected Poole's contention that the Association must disprove all reasonable alternative theories when proving facts through circumstantial evidence. The Court noted that the conclusion of law that said that the Association "need only produce facts from which only one reasonable conclusion may be inferred" was a correct statement of the law. Further, the Court stated that it gives great weight to the hearing officer's determinations as to credibility in assessing alternative explanations offered by a respondent lawyer.

In re Disciplinary Proceeding Against Cramer, 165 Wn.2d 323, 198 P.3d 485 (2008)

The Court suspended Stephen D. Cramer for eight months for dealing improperly with client funds and reprimanded him for misrepresenting his actions to the Association during the investigation. Cramer deposited a client's initial payment into his business account as a non-refundable fee without fully explaining to the client that the fee was non-refundable and later deposited an advance payment for the same client into his business account instead of his trust account. During the investigation Cramer claimed to have deposited the advance payment into his trust account, iden-

tifying an unrelated deposit listed on a trust account statement as the client's advance payment.

The hearing officer found that Cramer had acted with knowledge regarding the improper treatment of client funds, but that his misrepresentation to the Association about the second payment deposit was "more than negligent but not knowing." The Board unanimously adopted the hearing officer's recommended sanction of an eight-month suspension and reprimand. The Court agreed.

In re Disciplinary Proceeding Against Behrman, 165 Wn.2d 414, 197 P.3d 1177 (2008)

The Court suspended Bradley G. Behrman for nine months for failure to (1) communicate with a client, (2) pursue her debt collection claim, (3) provide her a billing statement, (4) notify her before withdrawing funds from trust, and (5) cooperate with the Association's investigation. Behrman represented a client in business dealings related to a failed business. His failure, in the face of multiple reminders from the client, to pursue the client's debt collection claim until the debtor had declared bankruptcy resulted in the client losing any opportunity to collect on the debt. After the

client refused to pay Behrman without a complete accounting, Behrman withdrew \$500 from trust without notifying the client. Behrman did not provide a billing statement until the eve of the disciplinary hearing.

The hearing officer recommended a nine-month suspension and more than \$4,000 in restitution. The Board adopted the hearing officer's suspension recommendation, but reduced the restitution recommendation to \$500. The Court affirmed the Board's recommendation.

Discipline Summaries

DISBARMENTS

Courtenay D. Babcock [WSBA No. 22674], Blaine lawyer, disbarred for abandoning his practice, failing to diligently represent and communicate with clients, and charging unreasonable fees. RPC 1.1, 1.3, 1.4, 1.5, 8.4(c), 8.4(d), and 8.4(l).

Stephen B. Blanchard [WSBA No. 12294], Edmonds lawyer, disbarred for failing to provide competent representation, lack of diligence, failure to communicate, and charging unreasonable fees. RPC 1.1, 1.2, 1.3, 1.4, 1.5, 1.14, 3.2, 8.4(c), and 8.4(l).

Jack L. Burtch [WSBA No. 4161], Ocean Shores lawyer, disbarred for failure to act diligently, failure to communicate, charging unreasonable fees, and failing to pay interest on restitution that had been ordered in a previous disciplinary proceeding. RPC 1.3, 1.4, 1.5, 1.15A, 3.1, 3.3, 3.4, 8.4(c), and 8.4(l). See opinion at *In re Disciplinary Proceeding Against Burtch*, 162 Wn.2d 873, 175 P.3d 1070 (2008).

Paul Hernandez [WSBA No. 21015], Seattle lawyer, disbarred for incompetent representation, lack of diligence, lack of communication, settling a case without authorization, misappropriating and converting funds, and trust account irregularities. RPC 1.1, 1.2, 1.3, 1.4, 1.5, 1.14, 8.4(b), 8.4(c), and 8.4(l).

Robert N. Dompier [WSBA No. 10871], Spokane lawyer, disbarred for theft while serving as trustee of his family trust funds, dishonest conduct, and acts of moral turpitude. RPC 8.4(b), 8.4(c), 8.4(i), and 8.4(l).

Jeffrey L. Finney [WSBA No. 15618], Kennewick lawyer, disbarred for conduct involving soliciting and accepting bribes. RPC 8.4(b) and 8.4(i).

Tolan S. Furusho [WSBA No. 25055], Bellevue lawyer, disbarred for conduct involving the commission of a criminal act, making false statements, and engaging in conduct involving deceit or misrepresentation. RPC 4.1, 8.4(b), 8.4(c), and 8.4(i).

Allen C. Hamley [WSBA No. 1028], Bellevue lawyer, disbarred for conduct involving conversion of estate funds and submitting false declarations to the court. RPC 3.3, 4.1, 8.4(c), and 8.4(i).

Stanley I. Lippman [WSBA No. 29661], Seattle lawyer, disbarred for conduct in a number of matters involving misuse of client funds and trust-account irregularities. RPC 1.5, 1.8, 1.15A, and 8.4(a).

John P. Mele [WSBA No. 16381], Bellevue lawyer, disbarred for conduct in a class-action lawsuit involving improper communication with represented class members and misrepresentations of material facts to the court and to opposing counsel. RPC 3.3, 4.2, 8.4(a), 8.4(c), and 8.4(d).

Darrell Marshall [WSBA No. 21600], Sea-Tac lawyer, disbarred for violating criminal laws including driving under the influence, hit and run, assault and multiple probation violations, lack of diligence, failure to communicate, and charging unreasonable fees. RPC 1.3, 1.4, 1.5(a), 1.16(d), 8.4(i), 8.4(j), 8.4(l), and ELC 5.3(e).

Disbarments (cont.)

Tyler Morris [WSBA No. 26190], Walla Walla lawyer, disbarred for conduct involving soliciting and accepting bribes. RPC 8.4(b) and 8.4(i).

Theresa M. Sowinski [WSBA No. 32549], Everett lawyer, disbarred for theft of client funds, failure to communicate, trust-account irregularities, and engaging in dishonest conduct. RPC 1.4, 1.14, 8.4(b), 8.4(c), 8.4(i), and 8.4(n).

Thomas P. Sughrua [WSBA No. 14117], Seattle lawyer, disbarred for failure to maintain complete records of all client funds coming into his possession and intentional misappropriation of client funds. RPC 1.14, 8.4(b), and 8.4(c).

Gregory S. Zoro [WSBA No. 8212], Des Moines lawyer, disbarred for failure to communicate, lack of diligence, trust account irregularities, and forgery. RPC 1.3, 1.4, 1.14, 1.15A, 8.4(b), 8.4(c).

RESIGNATIONS IN LIEU OF DISBARMENT

Kevin G. Healy [WSBA No. 16307], Seattle lawyer, resigned in lieu of disbarment for entering into a business transaction with a client without advising the client to seek the advice of independent counsel, using information relating to the representation of a client to their disadvantage, and engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. RPC 1.8, 1.9, and 8.4(c).

Anthony Z. Szabo [WSBA No. 23210], Enumclaw lawyer, resigned in lieu of disbarment for representing conflicting inter-

ests, failing to maintain client funds in a trust account, failing to supervise nonlawyer assistants, misappropriation of escrow funds and false notarizations. RPC 1.7, 1.14, 5.3, 8.4(a), 8.4(b), 8.4(c), 8.4(i), 8.4(l), and 8.4(n).

Todd W. Wetzel [WSBA No. 20720], Portland, Oregon lawyer, resigned in lieu of disbarment for converting client trust account funds. RPC 1.15A and 8.4(b).

SUSPENSIONS

Bradley G. Behrman [WSBA No. 13420], Seattle lawyer, suspended for nine months for failure to act diligently, failure to communicate, trust account irregularities, and lack of cooperation in a disciplinary investigation. RPC 1.3, 1.4, 1.5, 1.14, 3.2, and 8.4(l). See opinion at *In re Disciplinary Proceeding Against Behrman*, 165 Wn.2d 414, 197 P.3d 1177 (2008).

Jeffrey R. Bivens [WSBA No. 34100], Vancouver lawyer, suspended for 18 months for unreasonable fees, conflicts of interest, failure to account for client funds and property, and dishonest conduct. RPC 1.5, 1.8, 1.14, and 8.4(c).

Suspensions (cont.)

Robert C. Brungardt [WSBA No. 8214], Shelton lawyer, suspended for 30 days for criminal conduct of failing to timely report and pay workers' compensation premiums. RPC 8.4(b).

Jeb E. Burgess [WSBA No. 36891], Bellevue lawyer, suspended for three years for conduct that involved conviction of five gross misdemeanors including indecent exposure, stalking and communicating with a minor for immoral purposes. RPC 8.4(b) and 8.4(i).

Anthony R. Castelda [WSBA No. 28937], Tonasket lawyer, suspended for 60 days for failing to deposit an advance fee into a trust account, failing to promptly provide a client with an accounting of paid fees, and failing to promptly refund an unearned portion of a client's advance fees. RPC 1.5, 1.7, 1.8, 1.14, and 1.15.

Stephen D. Cramer [WSBA No. 9085], Federal Way lawyer, suspended for eight months for failing to keep client funds in a trust account. RPC 1.14 and 8.4(c). See opinion at *In re Disciplinary Proceeding Against Cramer*, 165 Wn.2d 323, 198 P.3d 485 (2008).

John L. Erickson [WSBA No. 4909], Bellingham lawyer, suspended for 60 days for conflicts of interest, practicing law while suspended, and conduct involving dishonesty, fraud, deceit, or misrepresentation. RPC 1.9, 5.5, 8.4(c), and 8.4(l).

Charles S. Ferguson [WSBA No. 18024], Seattle lawyer, suspended for one year for conduct involving failure to act diligently, failure to communicate, failure to expedite litigation, and trust-account irregularities. RPC 1.3, 1.4, 1.14, 1.15, and 3.2.

Susanne A. Griffin [WSBA No. 16775], Santa Monica, California lawyer, suspended for 30 days by reciprocal discipline based on a suspension imposed by the State of California for violating California's Code of Regulations by mailing her client's letter to another inmate in the same prison without prior approval. California equivalent of RPC 8.4(k).

Todd S. Hammond [WSBA No. 32401], Salem, Oregon lawyer, suspended for 30 days by reciprocal discipline based on a suspension imposed by the State of Oregon for charging unreasonable fees. Oregon equivalent of RPC 1.5.

Joseph A. Holeman [WSBA No. 16320], Federal Way lawyer, suspended for 60 days for lack of communication and failure to promptly disburse client funds from his trust account. RPC 1.4 and 1.14.

Noel Lerner [WSBA No. 29978], Enumclaw lawyer, suspended for six months for false statements to a tribunal, lack of diligence, and lack of competence. RPC 1.1, 1.2, 1.3, 1.4, 1.14, 1.15, 3.2, 3.3, and 8.4(j).

Charles E. Marunde [WSBA No. 16036], Port Angeles lawyer, suspended for six months for failure to act with reasonable diligence, lack of communication, charging unreasonable fees, and failure to terminate representation when he knew his ability to represent the client was impaired. RPC 1.3, 1.4, 1.5, 1.15, 3.2, and 8.4(l).

Mary H. McIntosh [WSBA No. 12744], Mount Vernon lawyer, suspended for 90 days for conduct involving lack of candor to a tribunal and initiating improper ex parte contact with a judge. RPC 3.3 and 3.5.

Suspensions (cont.)

Rodney R. Moody [WSBA No. 17416], Kirkland lawyer, suspended for 18 months for failure to communicate, failure to abide by a client's decisions, and failing to maintain client funds in a trust account. RPC 1.2, 1.4, and 1.14.

Clinton L. Morgan [WSBA No. 22181], Olympia lawyer, suspended for nine months for the conflict of interest of not advising a client of the risks of engaging in an inappropriate intimate relationship with him while the client was being represented by an associate in his law firm with Mr. Morgan's continued assistance in the representation. RPC 1.7(b).

Jonathan Morrison [WSBA No. 31153], Port Orchard lawyer, suspended for six months for failure to appear for court hearings, failure to communicate, and charging excessive fees. RPC 1.3, 1.4, 1.5, 1.15, and 8.4(d).

Hyon C. Pak [WSBA No. 24238], Tukwila lawyer, suspended for one year for representing clients in a court where he was not admitted, failing to act with reasonable diligence, failing to communicate, and charging unreasonable fees. RPC 1.3, 1.4, 1.5, 1.15, 5.5, and 8.4(d).

Gurjit S. Pandher [WSBA No. 28242], Everett lawyer, suspended for 60 days for submitting forged documents in violation of his probation. RPC 8.4(c).

Jeffrey G. Poole [WSBA No. 15578], Everett lawyer, suspended for one year for noncooperation with Bar Association investigations and trust account irregularities. RPC 1.14, 8.4(c), 8.4(d), and 8.4(l). See opinion at *In re Disciplinary Proceeding Against Poole*, 164 Wn.2d 710, 193 P.3d 1064 (2008).

Joseph Y. Prather [WSBA No. 11525], Vancouver lawyer, suspended for one year for charging unreasonable fees, failing to return clients' funds, failing to act with reasonable diligence, lack of communication, and attempting to condition refund of a fee on client signing a hold harmless agreement without advising client to consult independent counsel. RPC 1.4, 1.5, 1.8(h)(2), 1.14, and 1.15A.

Michael B. Roff [WSBA No. 31356], Otis Orchards lawyer, suspended for six months for failure to deposit client funds in a trust account and charging unreasonable fees. RPC 1.5 and 1.14.

Brian J. Sunderland [WSBA No. 22665], Clackamas, Oregon lawyer, suspended for one year by reciprocal discipline based on a suspension imposed by the State of Oregon for assisting a client in fraudulent conduct, disregarding rules of a tribunal, engaging in improper ex parte communication, failing to keep client funds in trust, and failing to keep complete trust records. Oregon equivalent of RPC 1.2(d), 1.15A, 3.4(c), 3.5(b), 5.1, and 8.4(d).

George P. Trejo [WSBA No. 19758], Yakima lawyer, suspended for three months for commingling his own funds with client funds in his trust account, failing to keep complete records for his trust account and failing to supervise a non-lawyer assistant who made unauthorized disbursements to herself from the trust account. RPC 1.14 and 5.3. See opinion at *In re Disciplinary Proceeding Against Trejo*, 163 Wn.2d 701, 185 P.3d 1160 (2008).

Suspensions (cont.)

Joseph P. Williams [WSBA No. 34236], Darrington lawyer, suspended for one year for engaging in criminal behavior, which included fourth degree assault, patronizing a prostitute, attempted possession of cocaine and bail jumping. RPC 8.4(b), 8.4(d), 8.4(i), and 8.4(j).

Jason M. Wong [WSBA No. 34160], Tacoma lawyer, suspended until reinstatement

by the Army or discharge by reciprocal discipline based on a suspension imposed by the United States Army for committing a criminal act of wrongfully importing and possessing controlled substances and engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. United States Army equivalent of RPC 8.4(b) and 8.4(c).

REPRIMANDS

Joey Cano [WSBA No. 31200], Bangkok, Thailand lawyer, reprimanded for removing client files without permission from a firm. RPC 8.4(c).

Kevin L. Cathcart [WSBA No. 32458], Portland, Oregon lawyer, reprimanded by reciprocal discipline based on a reprimand imposed by the State of Oregon for a misrepresentation made to a tribunal. Oregon equivalent of RPC 3.3 and 8.4(c).

Greg Cavagnaro [WSBA No. 17644], Bellevue lawyer, reprimanded by reciprocal discipline based on a reprimand imposed by the U.S. District Court for failure to withdraw from representation in violation of the rules, failure to disclose material facts to the court, and failure to properly supervise a non-lawyer assistant. RPC 1.15, 3.3, and 5.3.

John A. Cimino [WSBA No. 11698], Denver, Colorado lawyer, reprimanded by reciprocal discipline based on a reprimand imposed by the State of Colorado for failure to act with reasonable diligence and failure to properly supervise a non-lawyer assistant. Colorado equivalent of RPC 1.3, 5.3(a), and 5.3(b).

Clinton M. Coons [WSBA No. 27246], Kent lawyer, reprimanded for engaging in conduct that led to a misdemeanor tax conviction for failing to file a tax return for a business entity. RPC 8.4(b).

Stephen D. Cramer [WSBA No. 9085], Federal Way lawyer, reprimanded for making a negligent or reckless misrepresentation to the Office of Disciplinary Counsel. ELC 5.3(c); RPC 8.4(c), 8.4(d), and 8.4(l). See opinion at *In re Disciplinary Proceeding Against Cramer*, 165 Wn.2d 323, 198 P.3d 485 (2008).

Gregory D. Esau [WSBA No. 22404], Seattle lawyer, reprimanded by reciprocal discipline based on a reprimand imposed by the State of California for failure to comply with a notice of suspension. California equivalent of ELC 14.3.

James A. Gauthier [WSBA No. 15767], Kent lawyer, reprimanded for conduct involving the production of documents containing false statements and misrepresenting the origin of documents produced in discovery. RPC 8.4(c) and 8.4(d).

Reprimands (cont.)

James W. Kovac [WSBA No. 11498], Lynnwood lawyer, reprimanded for failure to act with reasonable diligence, failure to communicate, and charging unreasonable fees. RPC 1.4, 1.5, and 1.15.

Andrew T. Mathis [WSBA No. 27090], Kent lawyer, reprimanded for engaging in conduct that led to a misdemeanor tax conviction for failing to file a tax return for a business entity. RPC 8.4(b).

Nicholas A. Nuamah [WSBA No. 25010], Seattle lawyer, reprimanded for failure to provide competent representation, lack of diligence, and failure to communicate. RPC 1.1, 1.3, and 1.4.

Martin E. Nwizubo [WSBA No. 27883], Tukwila lawyer, reprimanded for conduct involving disclosure of a client's confidential information. RPC 1.6.

Adrian B. Pimentel [WSBA No. 23564], Spanaway lawyer, reprimanded for lack of diligence, failure to communicate, and charging unreasonable fees. RPC 1.3, 1.4, 1.5, and 1.15(d).

Antonio Salazar [WSBA No. 6273], Seattle lawyer, reprimanded for conduct involving misrepresentation to a client. RPC 8.4(c).

Mark Stansfield [WSBA No. 11356], Quincy lawyer, received two reprimands from one

disciplinary proceeding for representing an individual without authority and representing conflicting interests. RPC 1.2 and 1.9. See opinion at *In re Disciplinary Proceeding Against Stansfield*, 164 Wn.2d 108, 187 P.3d 254 (2008).

Barbara E. Varon [WSBA No. 17041], Bellevue lawyer, reprimanded for failure to obtain a client's consent regarding limiting her representation, lack of communication, and failure to confirm a client's termination of services prior to withdrawal of representation. RPC 1.2, 1.3, and 1.4.

Dean E. White [WSBA No. 27282], Spokane lawyer, reprimanded for failure to diligently represent a client's interests, lack of communication, and a conflict of interest. RPC 1.3, 1.4, and 1.8.

Catherine S. Willmore [WSBA No. 33459], Seattle lawyer, reprimanded for failure to provide competent representation, lack of diligence, failure to communicate, and trust account irregularities. RPC 1.1, 1.3, 1.4, and 1.14.

T. Reinhard G. 'Ron' Wolff [WSBA No. 4146], Conway lawyer, reprimanded for lack of diligence, failure to communicate, and representing conflicting interests. RPC 1.3, 1.4, and 1.7.

ADMONITIONS

Novelle F. Ballard [WSBA No. 18830], Port Ludlow lawyer, admonished for conduct involving a conflict of interest. RPC 1.7.

Kaaren L. Barr [WSBA No. 22092], Seattle lawyer, admonished for failure to diligently represent clients. RPC 1.3.

Sean P. Cecil [WSBA No. 37575], Federal Way lawyer, admonished for failure to advise clients that he had intimate relations with the judge they were appearing in front of, resulting in prejudice to the administration of justice. RPC 1.4 and 8.4(d).

Admonitions (cont.)

Michael Danko [WSBA No. 14312], Seattle lawyer, admonished for failure to diligently represent a client and failure to communicate. RPC 1.3 and 1.4. Received a second admonition for failure to appear in court and failure to properly supervise a non-lawyer assistant. RPC 5.3 and 8.4(d).

Michael J. Davis [WSBA No. 25846], Tacoma lawyer, admonished for failure to return a client's file on withdrawal. RPC 1.16(d).

Michael W. Gendler [WSBA No. 8429], Seattle lawyer, admonished for failure to clearly communicate to a client the basis of his fees. RPC 1.5.

Armen L. George [WSBA No. 32290], Sammamish lawyer, admonished for failure to file a 2006 trust account declaration. RPC 8.4(l).

Hiram P. Groshell [WSBA No. 5643], Tacoma lawyer, admonished for failure to file a 2006 trust account declaration. RPC 8.4(l).

William M. Hanbey [WSBA No. 7829], Olympia lawyer, admonished for lack of diligence and failure to communicate. RPC 1.3 and 1.4.

Thomas R. Kamb [WSBA No. 16944], Mount Vernon lawyer, admonished for failure to appear for court hearings. RPC 8.4(d).

Wesley K. McLaughlin [WSBA No. 35374], Tacoma lawyer, admonished for disbursing funds from his trust account before the underlying deposit cleared, and failing to reconcile his trust account. RPC 1.14.

James R. O'Dair [WSBA No. 13182], Lynnwood lawyer, admonished for failure to diligently pursue a client's case and failing to keep the client reasonably informed of the status of his matter. RPC 1.3 and 1.4.

Harold M. Turner [WSBA No. 33341], Auburn lawyer, admonished for failure to file a 2006 trust account declaration. RPC 8.4(l).

William R. Walton [WSBA No. 14712], Tacoma lawyer, admonished for lack of diligence, failure to communicate with a client, and retaining a fee not fully earned. RPC 1.3, 1.4, 1.5, and 1.15. Also admonished in a separate matter for lack of diligence and failure to communicate. RPC 1.3 and 1.4.

Accessing the Discipline System

The Rules. Two sets of rules govern lawyer discipline. The Rules of Professional Conduct set forth the ethical duties with which all Washington lawyers must comply. The Rules for Enforcement of Lawyer Conduct provide the procedural rules for the lawyer discipline system and describe how a grievance is investigated and prosecuted. These sets of rules are too voluminous to print in this report, but they are available in any Court Rules book and are available on the Supreme Court's website at www.courts.wa.gov/court_rules (click on Rules of General Application). Below, we set forth the table of contents of these two sets of rules:

WASHINGTON'S RULES OF PROFESSIONAL CONDUCT (RPC) TABLE OF RULES

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RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)

Adopted: October 1, 2002

As Amended Effective January 1, 2009

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- 10.2 Hearing Officer or Panel
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FREQUENTLY ASKED QUESTIONS ABOUT LAWYER DISCIPLINE

INTRODUCTION

This information is for anyone who is considering filing, or who has filed, a grievance with the Washington State Bar Association. It is published as a public service to explain the lawyer discipline process and related topics. The Washington State Bar Association is an extension of the Washington State Supreme Court, which regulates lawyer conduct. The Washington State Bar Association is not funded by taxpayer money. It is funded by fees paid by lawyers licensed to practice law in Washington State.

Filing a grievance is a very serious matter because you are charging a lawyer with unethical conduct. Before you file a grievance with us, please consider resolving your dispute directly with the lawyer. A lawyer may refuse to continue to represent you after you have filed a grievance against him or her and you may need to find a new lawyer. If you have a disability, or need assistance in filing a grievance, please call us and we will take reasonable steps to accommodate you.

WHAT WE CAN DO

Our only authority is to discipline a lawyer and our resources are limited. Each grievance is evaluated by the Office of Disciplinary Counsel to determine if it contains facts that may show a violation of the Rules of Professional Conduct and what, if any, further action is warranted. The rules can be accessed through www.wsba.org. They can also be obtained from our office.

If we evaluate your grievance and decide that there has been no violation of the rules or that we will not further investigate your grievance, we will tell you why. A three-member Review Committee of the Disciplinary Board, which consists of both lawyers and non-lawyers, can review our decisions. If we investigate your grievance and believe there is enough evidence to warrant further action, a recommendation will be sent to a Review Committee of the Disciplinary Board for its consideration.

WHAT WE CAN'T DO

Reimbursement: Disciplinary proceedings are not a substitute for your own lawsuit against the lawyer. Therefore, in general, you should not expect to receive any money or reimbursement for monetary loss as a result of filing a grievance.

Legal Advice: We cannot give you legal advice or represent you, nor can we recommend a lawyer for you. If you need a lawyer, please check with your local bar association for information on its lawyer referral service. The telephone number for the King County Bar Association Lawyer Referral Service is (206) 623-2551 and its web site is www.kcba.org.

Non-Members: If your grievance involves a non-lawyer who is not affiliated with a licensed lawyer, or a lawyer who is not licensed to practice in the State of Washington, we recommend that you contact the Practice of Law Board by calling (206) 727-8252 or

online through www.wsba.org. We maintain records of all lawyers licensed with us. You may call (206) 727-8207 to inquire about a lawyer's membership status.

Fee Disputes: Generally, you should not expect us to discipline your lawyer to resolve a fee dispute. Discuss your concerns about fees with your lawyer.

Rude Behavior: You should not expect us to discipline a lawyer for conduct that you perceive to be rude or discourteous. Usually, poor customer service does not constitute an ethical violation.

Related Cases: Generally, we will defer action on your grievance if there is related pending litigation.

Opposing Lawyer: Many grievances are filed against an opposing party's lawyer. Although you may disagree with an opposing lawyer's conduct, particularly if it has a negative impact on you, the lawyer's conduct is not necessarily unethical.

Personal Matters: We typically do not investigate matters arising from a lawyer's personal life, such as disputes with neighbors, creditors or spouses.

Judges: We generally do not investigate complaints against judges. The Commission on Judicial Conduct has been created to consider complaints about a judge's or court commissioner's alleged misconduct or disability. These complaints should be sent to the Commission on Judicial Conduct, P.O. Box 1817, Olympia, Washington 98507; telephone (360) 753-4585; www.cjc.state.wa.us.

COMMON COMPLAINTS

Errors in judgment: Many grievances we receive involve disagreements about the way a case should be handled, or should have been handled, but do not involve ethical violations. Similarly, a grievance about a mistake or an error in judgment may not necessarily involve an ethical violation.

File disputes: A lawyer may keep your file by claiming a lien, but a lawyer may not withhold your file if this would materially interfere with your legal interests. If your lawyer will not give you your file, you should consider talking to another lawyer about resolving this problem. If you are considering filing a grievance against your lawyer about a file dispute, please first call our office. Additional information is available in our brochure [Communicating with Your Lawyer](#).

Communication problems: If your lawyer is not returning your telephone calls, write to your lawyer and ask him or her to call you. If you do not receive a response, and you are considering filing a grievance against your lawyer about a communication problem, please first call our office. Additional information is available in our brochure [Communicating with Your Lawyer](#).

Mishandling of money or property: The Rules of Professional Conduct contain strict rules regarding the handling of client funds and property. If, after making reasonable inquiry of your lawyer, you think that your lawyer has not followed these rules, you need to act immediately: file a grievance with our office, contact your local police department or prosecuting attorney, and seek independent legal advice regarding your

legal rights. If you believe that a lawyer has taken funds or property from you dishonestly, you may be eligible for some compensation from the Lawyers' Fund for Client Protection Board. Application forms are available by calling (206) 443-9722 or online through www.wsba.org. Since time limits may apply, you should act promptly.

YOUR RIGHTS AND DUTIES ON FILING A GRIEVANCE

To discuss filing a grievance, call us at (206) 727-8207. Your grievance must be written and signed. We prefer that you use our grievance form, which contains additional instructions. There is no fee for, or time limit on, filing a grievance.

Your grievance will be handled in a manner that is fair to you and to the lawyer involved. Generally, by filing a grievance with us, you consent to disclosure of the contents of your grievance to the lawyer and to others contacted in the investigation, and to disclosure by the lawyer and others contacted in the investigation of relevant information. If you have questions about confidentiality, you should call us to discuss this before filing your grievance.

Grievances filed with our office are not public information when filed, but your grievance may become public. Usually, the lawyer will receive a copy of your grievance. If the lawyer responds to your grievance, you generally will receive a copy of the lawyer's response. If we determine that it is appropriate to investigate your grievance, we will give you the name of the person investigating your grievance and you will have a reasonable opportunity to speak with that person.

If your grievance is investigated, it is difficult to predict how long it will take to complete the investigation. We sometimes assign cases to volunteer lawyers (called "Adjunct Investigative Counsel") to investigate on our behalf. You may be asked to participate in one or more interviews or to submit additional information. You generally have a right to attend any hearing conducted into the grievance and you may be called as a witness and asked to testify under oath. We can recommend, after a public hearing, that a lawyer receives an admonition or reprimand, that a lawyer's right to practice law is suspended, or that a lawyer be disbarred.

When you file a grievance with us, you also have some duties. You have a duty to furnish us with relevant documents and a duty to provide us with the names and addresses of relevant witnesses. You have a duty to assist us in securing evidence and a duty to appear and testify at any hearing. If you do not meet your duties, we may dismiss your grievance.

If your grievance is dismissed, you have a right to dispute that dismissal and request reconsideration. On receipt of a request for review, the Office of Disciplinary Counsel may, at its option, either reopen the investigation or forward your request for review to a Review Committee of the Disciplinary Board. Any request for review of a dismissal must be in writing and must be mailed or delivered to us within 45 days of the dismissal date. If your grievance is dismissed, your file will be destroyed three years after the dismissal first occurred.

GRIEVANCE AGAINST A LAWYER



**Return your completed form to: Office of Disciplinary Counsel
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539**

GENERAL INSTRUCTIONS

- Read our information sheet *Lawyer Discipline in Washington* before you complete this form, particularly the section about waiving confidentiality.
- Type or write legibly but do not use the back of any page.
- Do not fax your form to us or send your form to us via the Internet.
- If you have a disability or need assistance with filing a grievance, call us at (206) 727-8207. We will take reasonable steps to accommodate you.

INFORMATION ABOUT YOU

INFORMATION ABOUT THE LAWYER

Last Name, First Name

Last Name, First Name

Address

Address

City, State, and Zip Code
/

City, State, and Zip Code

Telephone Number (Day/Evening)

Telephone Number

Alternate address/phone where we can reach you

INFORMATION ABOUT YOUR GRIEVANCE

Describe **your** relationship to the lawyer who is the subject of your grievance by checking the box that best describes you:

- Client
- Former Client
- Opposing Party
- Opposing Counsel
- Judicial
- Other: _____

Is there a court case related to your grievance? _____ YES _____ NO

If yes, what is the case name and file number, and who is the lawyer representing you?
