

2009 Lawyer Discipline System Annual Report

Washington State Bar Association

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

Introduction

We are pleased to present the 2009 Lawyer Discipline System Annual Report. We make this report available to all, with the intent to increase publicly available information about the operations of lawyer discipline in Washington.

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 (WSBA, the Bar, the 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 2009.

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, 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 38% of which are applied to the costs of that system. In FY 2009 the Bar spent \$4,433,320 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 (\$449,050 in 2009) 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

staff of the ODC annually handles approximately 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 are also 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 nonlawyers appointed by the Supreme Court. Two of the lawyers serve as chair and vicechair, 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, 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 resignation is permanent.

Flow Chart of Discipline System

WSBA Office of Disciplinary Counsel (ODC)

- •Investigates grievances
- •Recommends disciplinary action or dismisses
- Prosecutes grievances if ordered or if felony conviction
- Diverts less serious misconduct matters

Review Committees

- Subcommittees of Disciplinary Board
- Review ODC recommendations and dismissal protests
- Order hearings and other dispositions

Hearing Officers

- Preside over public disciplinary hearings
- May recommend admonition, reprimand, suspension, or disbarment
- May approve stipulations to discipline

Disciplinary Board

- Intermediate appellate review
- Reviews all suspension and disbarment recommendations (admonition and reprimand recommendations only if appealed)
- May approve stipulations to discipline

Washington State Supreme Court

- Final appellate review
- Orders of suspension and disbarment
- Reciprocal discipline
- Plenary and exclusive authority over entire 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 19 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 Bruce Redman, 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
Leslie Berg, Administrative Assistant

Colleen Biel, Administrative Assistant

Natalie Cain, Paralegal

Josh Calico, Intake Paralegal

Rolando Costilla, File Clerk

Robbie Dunn, Administrative Assistant

Celeste M. Fujii, Investigator

Natalie Green, Consumer Affairs Assistant

Christopher Hitzfeld, Paralegal

Cynthia A. Jacques, Department Administrator Danielle Johnson, Consumer Affairs Assistant

Narette Lim, Paralegal

Brian McCarthy, Investigator

Vanessa Norman, Investigator

Scott O'Neal, Investigator

Samea Teller, Administrative Assistant

The staff is organized into an Intake Team, four Investigation/Prosecution Teams, and a Department Administrator.

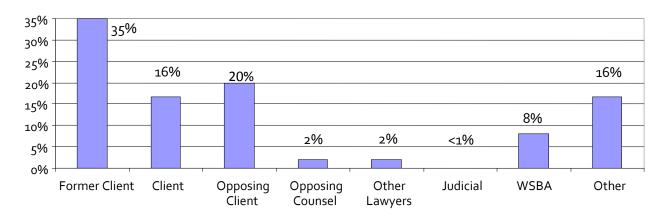
Administrative assistants Marianne Donadio and Elena Montalvo and Consumer Affairs assistant Erica Bush left our staff in 2009.

Intake Staff. Managed by Senior Disciplinary Counsel Felice P. Congalton, the six-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 (more than 10,000 in 2009), the intake unit mediates matters where the client is not able to get the lawyer to call back (94 in 2009) and where there is a dispute in obtaining the client's file from a former lawyer (66 in 2009). The intake unit also obtains initial responses from respondent lawyers and determines whether grievances should be referred to an investigation/prosecution team for investigation, referred to a more appropriate agency, or dismissed.

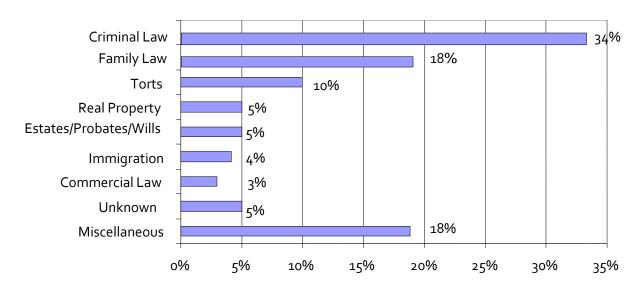
Grievances at a Glance - 2009

Disciplinary Grievances, Mediated Matters and Consumer Affairs Contacts						
	2007	2008	2009			
New Disciplinary Grievances (written) Received During Year	2,029	1,904	1,769			
Disciplinary Grievances (written) Resolved During Year	1,980	1,981	1,916			
Non-Communication Matters Mediated 365 293 94						
File Dispute Mediations 188 130 66						
Consumer Affairs Phone Calls and Interviews	11,093	10,956	10,200			

Sources of Grievances Filed - 2009



Practice Area of Grievances - 2009



Investigation / Prosecution Staff. Seventeen 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 admistrator and a file clerk report to the Director. ODC has assembled a dedicated staff. The disciplinary counsel are highly experienced, averaging 23 years in practice, with an average of nine years experience in lawyer discipline.

Volunteers. A number of lawyers assisted the ODC in 2009 in volunteer capacities. These included Thomas R. Andrews, Erika Balazs, Robin H. Balsam, Susannah Carr, Kathy Cochran, Douglas M. Fryer, Robert Gould, Spencer Hall, Thomas W. Hayton, James Horne, Michael Hunsinger, Paul Luvera, Marijean Moschetto, Alexandra Moore-Wulsin, Stevan Phillips, Randall Redford, Jeff Tilden, Raymond Weber, Les Weatherhead, and Matthew W. Williams who served as Special Disciplinary Counsel; Joann H. Francis, Don M. Gulliford, and Alexandra Moore-Wulsin who served as Practice Monitors; Robert Cumbow, James Dore, Jr., David LaCross, Stephen Mansfield, Thomas Overcast, and Richard Wooster who served as Probation Monitors; Zachary Mosner and Ronald Schaps who served as Conflicts Review Officers; Les Weatherhead who served as an expert witness, and Professor John Strait who served as an Ethics School presenter.

Interns. ODC was also assisted in 2009 by law student interns Matthew Anderson from the University of Washington and Matthew Skau 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 ODC by banks and other financial institutions, and Senior Disciplinary Counsel Marsha Matsumoto directs the investigation of those matters by the WSBA auditor. In 2009, we received 101 overdraft notifications, resulting in 60 matters that required investigation by the Bar 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 526 in 2009.
- Disciplinary Counsel make frequent presentations at continuing legal education (CLE) and other programs relating to lawyer ethics, discipline and professionalism. There were 40 such presentations in 2009.
- Disciplinary Counsel often provide drafting and staffing for committees proposing that the Supreme Court adopt rules relating to discipline and ethics. In 2009, Randy Beitel served on the Enforcement of Lawyer Conduct (ELC) Drafting Task Force; Scott Busby served as Reporter for the ELC Drafting Task Force; Natalie

- Cain provided staff support for the ELC Drafting Task Force; and Doug Ende served as Ex-Officio for the RPC Committee.
- 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 are appointed by the Supreme Court and act independently of the ODC. In 2009, 23 matters were referred to a Conflicts Review Officer for review.
- The ODC is an active participant in the National Organization of Bar Counsel (NOBC), the professional organization of disciplinary counsel. Senior Disciplinary Counsel Linda Eide is serving as President of NOBC in 2009-2010.
- The ODC is an active participant in the Organization of Bar Investigators (OBI).
 In 2009, ODC Investigator Scott O'Neal was elected to serve as President of OBI in 2010.
- The ODC 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 to 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 ODC also works with the Office of General Counsel 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 2009, seven reciprocal discipline matters were opened.
- The ODC 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 2009, 31 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 2009, even after collecting \$62,303 from respondent lawyers who were assessed costs, the Bar spent another \$4,371,017 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 2009 was \$4,433,320, representing 38% of member licensing fees. Below is a breakdown of 2009 costs.

Expenditures

Funding the Discipline System (Fully funded by lawyers' license fees – no public funding)								
Discipline System Expenses: FY 2007 FY 2008 FY 2009								
Investigation/Prosecution (net of costs collected from respondents)	\$3,554,239	\$3,761,614	\$3,951,236					
Trust Account Audits	\$214,539	\$203,922	\$265,666					
Disciplinary Board Expenses	\$145,794	\$156,880	\$184,375					
Hearing Officer Expenses	\$37,599	\$34,650	\$32,043					
Total Discipline System Expenses	\$3,952,171	\$4,157,066	\$4,433,320					
Percentage of Bar License Fees Spent on Discipline	37 % of fees	37 % of fees	38% of fees					

Costs Assessed and Collected

Costs Collected from Disciplinary Respondents					
FY	FY Costs Collected Costs Assessed				
FY 2007	\$76,375	\$146,959			
FY 2008	\$124,513	\$185,123			
FY 2009	\$62,303	\$113,671			

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, Alison Sato, 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 threeperson 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 2009, Review Committees considered 563 matters.

Disciplinary Board Members¹

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

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

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

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

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

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

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

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

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

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

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

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

Vincent T. Lombardi II – US Department of Justice, Seattle. [Lawyer Member, term 2009 – 2012].

Thomas Alan Waite – The Boeing Company. Seattle. [Lawyer Member, term 2009-2012].

John R. Wilson – Private Practice, Tacoma. [Lawyer Member, term 2009-2012].

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 2009.

Hearing Officers

Hearings for disciplinary and disability cases are presided over by volunteer hearing officers. The Board of Governors has appointed 52 experienced lawyers to serve as hearing officers. The Chief Hearing Officer, lawyer David A. Summers, appoints a hearing officer to each discipline or disability case and monitors the progress of the hearings. During 2009, the Chief Hearing Officer made 50 assignments from the list of hearing officers to preside over disciplinary and disability cases.

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 findings 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 H. Amini, Bellevue	William Scherer Bailey, Seattle	Erik S. Bakke Sr, Wenatchee				
J.C. Becker, Mill Creek	Craig Charles Beles, Seattle	Kimberly Ann Boyce, Seattle				
David L. Broom, Spokane	Lewis W. Card, Wenatchee	Carl Jerome Carlson, Seattle				
Donald William Carter, Everett	David Bruce Condon, Tacoma	Gregory A. Dahl, Mill Creek				
James Danielson, Wenatchee	Julian Correll Dewell, Seattle	Malcolm L. Edwards, Seattle				
Scott M. Ellerby, Seattle	Frederic G. Fancher, Spokane	Bertha B. Fitzer, Tacoma				
William E. Fitzharris Jr., Seattle	Kelby D. Fletcher, Seattle	Deirdre P. Glynn Levin, Seattle				
Lee Grochmal, Bellingham	Lyle O. Hanson, Olympia	Vernon W. Harkins, Tacoma				
Octavia Hathaway, Tacoma	Stephen J. Henderson, Olympia	Paul M. Larson, Yakima				
John H. Loeffler, Spokane	Peter Andre Matty, Silverdale	Lawrence R. Mills, Seattle				
Dennis W. Morgan, Ritzville	William Murphy, Federal Way	Joseph Nappi Jr., Spokane				
Linda Diane O'Dell, Spokane	Timothy J. Parker, Seattle	Barbara Peterson, Vancouver				
Randolph Petgrave II, Seattle	Richard B. Price, Omak	Jane Bremner Risley, Asotin				
Sidney S. Royer, Seattle	Anthony A. Russo, Seattle	Terence M. Ryan, Spokane				
David Martin Schoeggl, Seattle	Andrekita Silva, Seattle	Dennis Smith, Seattle				
David A. Summers, Seattle	David A. Thorner, Yakima	John J. Tollefsen, Lynnwood				
Gregory J. Wall, Port Orchard	Mary H. Wechsler, Seattle	Lish Whitson, Seattle				
Charles K. Wiggins, Bainbridge Is	David Wiley, Seattle					

THE LAWYERS' FUND FOR CLIENT PROTECTION

The Lawyers' Fund for Client Protection (Fund) 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 Bar 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 \$30 annual assessment.

The Fund is governed by APR 15 and Procedural Rules adopted by the Board of Governors and approved by the Supreme Court, available at the wsba.org website. The Fund is managed by Trustees who are the members of the Board of Governors of the WSBA. The Trustees appoint and oversee the Fund Board, the group of lawyers and non-lawyers who administer the Fund. The WSBA General Counsel, Robert Welden 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 ODC. 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 RPC

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 staff 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 Fund Board.

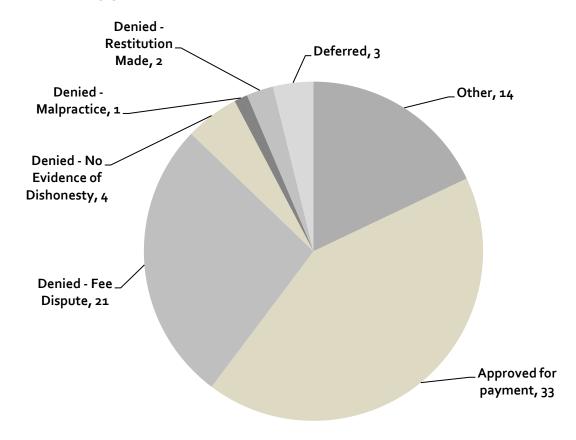
In exchange for a gift from the Fund, an applicant is required to sign a subrogation agreement for the amount of the gift. The Fund attempts to recover its payments from

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 \$330,000.

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.

2009 Applications and Payments. For Fiscal Year 2009, the Board and Trustees acted on 80 applications. The total amount in approved payments was **\$499,050**. A summary of Fund Board actions is shown below. Complete summaries of all approved applications are available on the Fund's Annual Report at the above website.

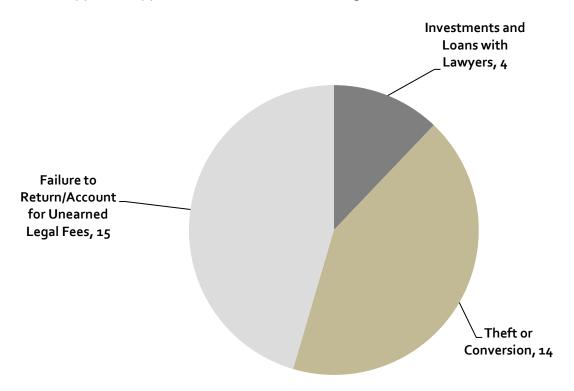
2009 - 80 Applications



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.

Approved Applications

The 33 approved applications involved the following:



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

FISCAL YEAR	APPLICATIONS RECEIVED	APPLICATIONS APPROVED	LAWYERS APPROVED ¹	AMOUNT PAID
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
2009	80	33	13	\$449,050

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 2008-2009

BOARD OF TRUSTEES					
Mark A. Johnson, President	Seattle				
Salvador A. Mungia, President Elect	Tacoma				
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Janice L. Schurman		Vancouver			
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	STAFF				
Paula C. Littlewood	aula C. Littlewood Executive Direc				
Robert D. Welden	General Counsel and Staff Liaison				
Elizabeth Turner	А	ssistant General Counsel			

WSBA AUDIT PROGRAM

Audit Staff. The Bar has three auditors, Rita Swanson, Audit Manager, Cheryl Heuett, Senior Auditor, and Lainie Patterson, 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. In 2009, 59 random audits were performed. These 59 audits involved firms with a total of 1,430 lawyers. Following the audit, the Bar 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 ODC for investigation .

Trust Account Overdraft Notification. Whenever an overdraft occurs on a lawyer trust account, the bank automatically sends a notification to the ODC, where Senior Disciplinary Counsel Marsha Matsumoto directs the overdraft investigation, which is conducted by the Bar auditors. An overdraft on a trust account is an indication that something is amiss. While some overdrafts are caused by bank error 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 2009, 60 trust account overdrafts were investigated by the Bar audit staff.

For Cause Audits. The Bar 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 2009, there were 27 audits for cause, 15 of which arose out of overdraft notifications.

Audit Education. The Bar 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 Bar website at www.wsba.org.

Audit Staff Activity			
	2007	2008	2009
Investigatory "For Cause" Audits	23	13	27
Trust Account Overdraft Investigations	74	65	6o
Random Audits of Law Firms/ Number of Lawyers	40/388	6/45	59/1430

2009 Discipline Statistical Summary

DISCIPLINARY ACTIONS

Disciplinary Actions	2004	2005	2006	2007	2008	2009
Disbarments	16	12	19	23	15	13
Resignation in Lieu of Disbarment	3	1	4	2	3	3
Suspensions	24	32	26	26	26	20
Reprimands	20	22	17	17	21	16
Admonitions	13	17	3	5	16	10
Total Disciplinary Actions	<u>63</u>	<u>84</u>	<u>69</u>	<u>73</u>	<u>81</u>	<u>62</u>
Matters Diverted from Discipline	32	74	69	63	43	22
Transferred to Disability Inactive* *Non-Disciplinary Action, based on incapacity to practice law	3	4	2	3	1	0

Ethical Violations with Disciplinary Actions Imposed in 2009							
Violation	Disbarments	Resignations in Lieu of Dis- barment	Suspensions	Reprimands	Admonitions	TOTAL	% of TOTAL
Dishonesty	4	1	2	4		11	18%
Diligence/ Competence/ Com-							
munication	3		3	7	2	15	23%
Theft / Trust Account	2		3	3	3	11	18%
Criminal Conduct	3	2	6	1	1	13	21%
Conflicts			1			1	2%
Fees				1		1	2%
Practice While Suspended	1		3		1	5	8%
Client Confidences					2	2	3%
Litigation Misconduct			2		1	3	5%
TOTAL	13	3	20	16	10	62	100%

Practice Areas of Disciplinary Actions and Diversions in 2009								
Area of Practice	Disbarments	Resignations in Lieu of Disbarment	Suspensions	Reprimands	Admoni- tions	Diversions	TOTAL	% of TO- TAL
Family Law	1	1	4		1	7	14	17%
Torts	3	1	1	1	1	1	8	9%
Criminal Law	3		4	3	2	3	15	18%
Estates/Probates	1		2	1		1	5	6%
Labor Law				2			2	2%
Immigration			2			2	4	5%
Bankruptcy	1		1	1			3	4%
Real Property	2				1	1	4	5%
Commercial								
Corp./Banking								
Administrative			2	1		2	5	6%
Juvenile						1	1	1%
Intellectual Prop.							-	
Taxation			1				1	1%
Other	2	1	3	7	5	4	22	26%
TOTAL	13	3	20	16	10	22	84	100%

Supreme Court Disciplinary Opinions

In re Disciplinary Proceeding Against Eugster, 166 Wn.2d 293, 209 P.3d 435 (2009)

The Court suspended Stephen Eugster for 18 months for failing to abide by a client's objectives, revealing client confidences, engaging in conflicts of interest, and filing a guardianship petition against the client after she fired him.

The client's relationship with her son had become somewhat strained when he began managing her affairs after her husband's death. The client hired Eugster to restructure her estate plan, with the specific goal of removing her son's control of her estate and person. She also asked Eugster to reclaim items of her personal property from Initially Eugster appeared to her son. comply, reworking the client's estate plan and making himself trustee of her supplemental needs trust, with the son as successor trustee. But Eugster then began to advocate for his client to put her affairs back into her son's hands. The client hired another lawyer who informed Eugster that he was fired. Instead of withdrawing, Eugster shared the client's confidential information with her son and filed a quardianship petition against the client, alleging that she was delusional and incompetent to handle her own affairs. The client was found competent, but spent \$13,500 defending the quardianship action.

The hearing officer found that Eugster had violated the following former RPC: 1.2(a) when he failed to abide by the client's wishes regarding her son's control over her estate; 1.6(a) when he told the client's son that he believed the client was delusional and when he used her personal information

in the guardianship petition; 1.8(b) and 1.9(b) when he used the client's personal information to her disadvantage in the quardianship petition; 1.9(a) when he represented himself in the quardianship action to advance interests adverse to his client; 1.15(d) by failing to turn over the client's files when she hired another lawyer; 3.4(c) when he failed to make a reasonable inquiry as to his client's mental condition before filing the quardianship petition; and 8.4(d) when he pursued the guardianship petition against his client to put himself in place as trustee over her assets. The hearing officer recommended disbarment. A unanimous Disciplinary Board affirmed the hearing officer's findings and recommendation.

In a 5-4 decision, the Supreme Court reduced the sanction to a 18-month suspension. The Court left the hearing officer's and Disciplinary Board's findings substantially intact, but construed Eugster's actions as two acts of misconduct involving a single legal action lasting just two months and limited to one client. The Court gave great mitigating weight to the fact that Eugster had 34 years in practice without a disciplinary action. The dissent would have applied the Court's "well-settled sanction analysis" and affirmed the disbarment recommendation.

In re Disciplinary Proceeding Against Vanderveen, 166 Wn.2d 594, 211 P.3d 1008 (2009)

The Court disbarred A. Mark Vanderveen for failing to file a currency report documenting \$20,000 in cash payments on behalf of a client, a felony violation of 31 U.S.C. § 5331(a) and 5322(a).

Lawyer White approached Vanderveen and asked him to represent WC, who was under investigation by the FBI for involvement in a major drug ring. White represented one of the top men in the drug ring and WC's superior. Vanderveen's fee would be paid by White's client. Vanderveen accepted the representation and White paid him \$20,000 in cash. The payments were made in two installments: one delivered in a paper bag in the court chambers at Edmonds Municipal Court, where both White and Vanderveen sat as pro tempore judges, and the other in a bank parking lot. Vanderveen placed the cash in a safe in his home rather than logging the payment into his Quickbooks accounting system. He also failed to report the cash payments, as required by 31 U.S.C. §§ 5331(a) and 5322(a). When White was informed that he was under investigation for involvement in his client's drug ring, he agreed to record a conversation with Vanderveen regarding the cash payments and Vanderveen's failure to report them.

A federal prosecution followed. Vanderveen pleaded guilty to felony violations of 31 U.S.C. §§ 5331(a) and 5322(a). Section 5331(a) requires persons in trade or business, such as lawyers, to report the receipt of more than \$10,000 cash in one transaction (or two or more related transactions) in connection with that trade or business. Section 5322(a) makes it a felony for a per-

son to "willfully" violate the reporting requirement. Vanderveen was sentenced to a three-month prison term to be followed by home detention, which was increased by six additional days in prison and 30 additional days in home detention when Vanderveen prematurely removed his ankle detention bracelet.

The hearing officer found that Vanderveen had violated RPC 8.4(b), 8.4(c), and 8.4(j) by committing the acts underlying his guilty plea. The hearing officer found that Vanderveen's mental state, per his guilty plea, was "willful," and that willful meant intentional conduct. The presumptive sanction was disbarment, but the hearing officer recommended a three-year suspension based on five mitigating factors. The Disciplinary Board struck two mitigating factors and increased the sanction recommendation to disbarment.

In an 8-1 decision, the Supreme Court affirmed the Board's recommendation. It rejected Vanderveen's challenge to the operation of ELC 10.14(c) (conviction is conclusive proof of the underlying conduct) to establish his mental state as intentional. The Court held that while a lawyer may offer evidence in mitigation, he may not offer evidence inconsistent with the criminal conviction under ELC 10.14(c). Therefore, Vanderveen's plea of quilty to willful/intentional conduct conclusively established that he acted intentionally. Court also noted that even though the Association was not required under ELC 10.14(c) to offer additional evidence of Vanderveen's state of mind, evidence in the record supported a finding of intentional misconduct. The dissent would have suspended Vanderveen, noting that dishones-

ty was not an element of the offense to which Vanderveen pled.

In re Disciplinary Proceeding Against Botimer, 166 Wn.2d 759, 214 P.3d 133 (2009)

The Court suspended Larry A. Botimer for six months for conflicts of interest and disclosure of confidential information.

Botimer served for several years as tax preparer and tax advisor to several members of the family of a high-school friend. He also advised the matriarch of the family on estate planning and business matters relating her ownership interests in a pair of nursing homes. One of the facilities was in Seattle and operated by her son, Botimer's high-school friend, and the other by another son in Spokane. Eventually Botimer terminated his representation of the matriarch based in part on her failure to follow his advice that resulted in inaccurate reporting of her true earnings to the IRS. In his termination letter, Botimer threatened to report the discrepancies to the IRS, a threat he later carried out. When the family had a falling out over the proceeds of the sale of one of the facilities, the Seattle son sued his mother. Botimer provided the son and his lawyer a declaration in which Botimer divulged the matriarch's estate plans, details of her business dealings, and her tax issues.

The hearing officer found that Botimer had violated former RPC 1.7(b) by representing his friend, his friend's wife, and his friend's

mother without obtaining informed consent in the form of conflict waivers; former RPC 1.6 and 1.9(b) by disclosing the mother's private information without consent to her son when the two were adversaries in a lawsuit; and former RPC 1.6 and 1.9(b) by disclosing the matriarch's private information without consent to the IRS. The hearing officer recommended a six-month suspension. A unanimous Disciplinary Board agreed.

The Supreme Court unanimously affirmed the six-month suspension. The Court found no merit to Botimer's argument that he was required to report his client's tax discrepancies to the IRS because he had signed the return as tax preparer. The Court also found that the Disciplinary Board had acted correctly in refusing to re-open the proceedings to allow Botimer to introduce "new evidence." Botimer had wanted to present an order "clarifying" the ruling by the judge in the family's lawsuit allowing Botimer to testify regarding his declaration. The Court ruled that the order did not qualify as new evidence because the information had been available during the disciplinary hearing.

In re Disciplinary Proceeding Against Hicks, 166 Wn.2d 774, 214 P.3d 897 (2009)

The Court suspended S. Richard Hicks for 24 months for trust account improprieties and for lying to the Association during the disciplinary investigation.

In January 2005, the Association investigated a trust account overdraft notice on Hicks' trust account. He responded by letter, saying that the overdraft was caused by a computer data entry error, that all of the funds in the trust account belonged to one client, and that all payments were to or on behalf of that client. Based on this explanation, disciplinary counsel dismissed the pending grievance. A subsequent series of overdrafts triggered an audit of Hicks' trust account, which revealed a number of trust account violations. Among other things, from May 2004 to June 2005, Hicks used his trust account for his personal and business expenses as well as client transactions. Contrary to Hicks' representation in response to the January 2005 trust account overdraft, as of January 2005, he did not have any client funds in the trust account, but was using the account as his personal checking account.

In a deposition during the disciplinary investigation, Hicks testified that he had "fudged things" in his January 2005 response to the Association. At hearing, Hicks admitted that the information in the letter was "different than, you know, the facts," and acknowledged that he had not been fully cooperative when he wrote the letter.

The hearing officer found that Hicks had violated the following former RPC: 1.14(b)(3) by failing to maintain adequate trust account records; 1.14(a) by failing to

deposit and/or maintain all client funds in trust; 1.14(a) by depositing his own funds into his trust account; 8.4(c) by misrepresenting payment procedures that violate the RPC as normal payment procedures to a client; and 8.4(c), as well as ELC 5.3(e)(1), by making a false statement to the Association in his January 2005 letter. The hearing officer found that Hicks had submitted the inaccurate and incomplete information to avoid detection of his trust account violations. The hearing officer recommended a 24-month suspension. A unanimous Disciplinary Board agreed.

In a unanimous decision, the Court rejected challenges to the findings that he had violated ELC 5.3(e)(1) and RPC 8.4(c) in relation to his January 2005 letter to the Association. The Court held that his own admission that he "fudged things" and that he "wasn't being fully cooperative" supported a finding of a violation of ELC 5.3(e)(1). The Court also held that the RPC 8.4(c) violation was supported by both Hicks' admission of "fudg[ing] things" and the fact the letter contained at least two falsehoods.

Both Hicks and the Association disputed the recommended sanction. In a unanimous decision, the Court rejected the Association's argument that ABA <u>Standard</u> 7.1 (disbarment) applied because, while Hicks acted with the intent to benefit himself, the hearing officer had found that Hicks' conduct caused injury, but not serious injury. The Court also rejected the Association's reliance on <u>In re Disciplinary Proceeding Against Whitt</u>, 149 Wn.2d 707, 72 P.3d 173 (2003), in which a lawyer who submitted false information in response to a grievance was disbarred. The Court distinguished

Whitt by noting that Whitt had gone beyond making false representations by submitting falsified documents, while Hicks merely made false statements. Finally, the Court rejected Hicks' argument that a 24-month suspension was disproportionate, distinguishing Hicks' cases on grounds that

the lawyers involved had merely failed to respond to grievances rather than submitting false information.

In re Disciplinary Proceeding Against Marshall, 167 Wn.2d 51, 217 P.3d 291 (2009)

The Court disbarred Bradley R. Marshall for "a number of different violations, which individually would have warranted disbarment." 167 Wn.2d at 58. The violations included demands for additional fees to continue a lawsuit that was paid for on a flat fee basis, filing a lawsuit and a lien against a client who refused to pay him additional fees, a deceptive attempt to compel settlement, failure to obtain consent for a conflict of client interest, and other deceptive practices.

Marshall jointly represented Clients A and B in their lawsuit against the Prince Hall Grand Chapter Order of the Eastern Star and two individual defendants. Clients A and B were former members of the Grand Marshall charged a non-Chapter. refundable flat fee of \$15,000 for the complete representation. Later, Marshall agreed to represent Client C, another former member of the Grand Chapter, for a \$7,500 flat fee and joined her to the lawsuit. Client B had previously objected, both orally and in writing, to Client C's involvement in the case because Client B perceived Client C's objectives as far different from her own. Marshall did not advise any of the three clients in writing of the conflict nor did he obtain a written waiver from any of them. Marshall added a fourth plaintiff, Client D, to the lawsuit, also without explaining the ramifications of adding Client D to any of his clients or getting a waiver. Marshall's fee agreement with Client D was for an hourly rate.

In April 2002, Marshall negotiated a settlement on behalf of Clients A, B, and C, in which each of those clients was to receive \$12,500. The settlement funds were deposited into Marshall's trust account. In June 2002, the parties attended a mediation session to attempt to resolve the remaining claims in the litigation. Marshall, the Grand Chapter's attorney, the mediation judge, and some of the clients believed that an agreement had been reached, but no written settlement agreement was signed. Shortly after the mediation, all of the clients informed Marshall that they had not agreed to a settlement. With the previous settlement funds still in his trust account, Marshall demanded additional fees from all of the clients for his continued representation against the Grand Chapter. Client A paid the extra fee. Clients B and C refused, arguing that they had signed a fee agreement for a flat fee that would cover the entire litigation.

In June 2002, Marshall wrote to Clients B and C, demanding that they sign an enclosed settlement agreement and falsely stating that they had been directed by the court to do so. Clients B and C each wrote

to Marshall stating that would not sign the settlement because they disagreed with it and felt threatened by his demands. Marshall told them that their claims had been dismissed. This statement was false. The Grand Chapter filed a motion to compel Clients B and C to sign the settlement agreement. Marshall did not oppose the motion, although he did oppose a similar motion against the Clients A and D, who had agreed to pay additional fees.

When the case went to trial, Marshall represented Client A, who had acceded to his demands for extra fees, and Client D, who had continued to pay on an hourly basis. Marshall did not represent Clients B and C, who had refused to pay the additional fees. A jury made an award as to Clients A and D only.

In January 2003, Marshall agreed to convert Client D's fee agreement to a flat fee of \$5,000 for the remainder of the litigation. Client D paid the \$5,000 with a cashier's check with the notation that it was payment in full for completing the case. Marshall deposited the check into his trust account, but failed to prepare an amended fee agreement reflecting the agreement to a flat fee. After the litigation was complete, Marshall sent Client D an invoice for \$21,787.50 in legal fees. When Client D disputed the fees on the basis of the flat fee agreement, Marshall filed a lawsuit against her. Client D was forced to hire a new lawyer to defend this lawsuit. dropped the suit after Client D filed a grievance against him.

The most serious violations found by hearing officer were:

(1) RPC 1.5(a), 8.4(a), and 8.4(c) by requesting or receiving additional fees from Clients

B and C for representation that had been paid for under a flat fee agreement, causing serious injury to those clients;

- (2) RPC 1.7(b) by representing Client C over the objections of Client B, causing injury or potential injury to his clients;
- (3) RPC 8.4(c) by making a misleading statement in an investigative deposition that he was requesting costs not fees from Clients B and C, causing injury to his clients, the public and the legal system;
- (4) RPC 1.5(a) by agreeing to a flat fee to finish the litigation for Client D and then billing her \$21,787.50 and filing a lawsuit against her to collect that amount, causing serious injury to his client;
- (5) RPC 8.4(c) by making one or more misrepresentations to Clients B and C in his letter demanding that they sign the settlement agreement, causing potential and actual serious injury to his clients; and
- (6) RPC 1.2(a) by not abiding by Client B's and C's decisions not to settle their claims against the Grand Chapter, causing injury to his clients.

The hearing officer found that Marshall acted knowingly on all counts. The presumptive sanctions for these violations were either disbarment or suspension. There were numerous serious aggravating factors, including Marshall's history of prior discipline. There were no mitigating factors. The hearing officer recommended disbarment. The Disciplinary Board affirmed unanimously.

On appeal, Marshall challenged the disbarment recommendation on grounds of due process and hearing officer bias, and argued that several findings and aggravating factors were unsupported by the evidence. The Court ruled that the formal complaint provided adequate notice of the charges, that his allegations of hearing officer bias were unfounded, that the findings were supported by substantial evidence, and that those findings in turn supported the hearing officer's conclusions of law. The Court unanimously affirmed the Board's disbarment recommendation.

In re Disciplinary Proceeding Against Sanai, 167 Wn.2d 740, 225 P.3d 203 (2009)

In a 5-4 decision, the Court reversed a recommendation that Fredric Sanai be disbarred and remanded the matter for a new hearing, holding that the hearing officer abused his discretion by denying Sanai's request for a continuance based on his medical condition.

Fredric Sanai, an Oregon lawyer, sought admission to the Washington Bar in 2002 in order to assist his mother in her acrimonious divorce from his father. In 2004, the Association filed disciplinary proceedings against Sanai based on filings in the dissolution and related proceedings, alleging frivolous litigation, knowing and willful disobedience of court orders, and conduct prejudicial to the administration of justice.

The hearing officer continued a hearing set for March 2005 because of developments in the underlying dissolution litigation that gave rise to the complaints against Sanai. The parties held case status conferences about every six months until a final hearing date of April 16, 2007 was set. On Friday April 13, 2007, Sanai faxed a note to the Association with a signed prescription sheet stating that he was unable to attend the hearing the following Monday because of "serious medical reasons." The hearing office denied the request for a continuance because the note was illegible and the medical reasons were unspecified and undocumented. On Monday, April 16, 2007,

Sanai supplemented the note with a typed signed statement from his physician providing a diagnosis and stating that Sanai should not participate in stressful activity for five weeks. On the morning of April 17, 2007, Sanai testified via telephone regarding his medical condition. The hearing officer denied the request for a continuance, finding that the communications from Sanai did not have the ring of truth to them. The hearing continued in Sanai's absence, and the hearing officer ultimately recommended Sanai's disbarment.

On appeal, Sanai alleged that the hearing officer abused his discretion in denying the motion to continue. The Association argued that the hearing officer had not abused his discretion but had made a factual finding that Sanai's communications regarding his medical condition were not believable. The Court ruled that the hearing officer had abused his discretion because an attorney is entitled to an opportunity to be heard before he is disbarred. The Court did, however, deny Sanai's requests that certain evidentiary rulings be overturned and that a new hearing officer be appointed on remand. The dissent would have affirmed the hearing officer's decision, stating that he was "fully justified in denying another frivolous motion brought only for the purpose of delay."

Discipline Summaries

Below are very brief summaries for each of the 62 disciplinary actions in 2009. For a more detailed summary, see the notices published in the *Washington State Bar News*, which may be viewed at wsba.org by going to the Lawyer Directory, entering the lawyer's name or bar number, and then clicking on the "Discipline/Admonition Notice" button at the bottom of the lawyer's listing. For more complete information, the Notice of Discipline, together with the operative disciplinary documents, are available from the Clerk to the Disciplinary Board [(206) 733-5926] for inspection and copying.

DISBARMENTS

Jeffrey J. Arntzen [WSBA No. 22586], Blaine lawyer, disbarred for failure to act diligently, lack of communication, failure to protect clients' interests, failure to expedite litigation, practicing law while suspended, commission of criminal acts (conversion / theft), dishonest conduct, violation of a court order, and failure to cooperate. RPC 1.3, 1.4, 1.5, 1.16, 3.2, 5.5, 5.8, 8.4(b), 8.4(c), 8.4(d), 8.4(j), and 8.4(l).

Richard M. Chiu [WSBA No. 23462], Houston, Texas lawyer, disbarred by reciprocal discipline for conduct involving conversion of client funds. Texas equivalent of RPC 1.15A.

Ellen J. Hong [WSBA No. 33632], Seattle lawyer, disbarred for conduct involving the unauthorized control over the property of others and engaging in criminal acts (conversion / theft). RPC 8.4(b) and 8.4(c).

Philip M. King [WSBA No. 1470], Mercer Island lawyer, disbarred for conduct involving the commission of a criminal act (conversion / theft) and dishonesty. RPC 8.4(b) and 8.4(c).

Bradley R. Marshall [WSBA No. 15830], Seattle lawyer, disbarred for conduct involving forcing a settlement contrary to

clients' wishes, charging unreasonable fees, conflicts of interest, trust account irregularities, failing to properly account to a client, making misleading statements to clients and disciplinary counsel, and engaging in conduct prejudicial to the administration of justice. Former RPC 1.14, and RPC 1.2, 1.5, 1.7, 8.4(a), 8.4(c), 8.4(d), and 8.4(l). See Opinion at *In re Disciplinary Proceeding Against Marshall*, 167 Wn.2d 51, 217 P.3d 291 (2009).

James K. Naito [WSBA No. 33636], Clallam Bay lawyer, disbarred for conduct involving the commission of a criminal act (first degree assault / domestic violence). RPC 8.4(b) and 8.4(i).

Stephen J. Oelrich [WSBA No. 29263], Tacoma lawyer, disbarred for failure to communicate, non-cooperation in a disciplinary investigation, charging an unreasonable fee and violations of duties imposed under the ELC. RPC 1.3, 1.4, 1.5, 1.16, and 8.4(*l*).

Disbarments (cont.)

Jeffrey G. Poole [WSBA No. 15578], Everett lawyer, disbarred for conduct involving a conflict of interest, misrepresentations to a tribunal, improper ex-parte communication, failure to inform a tribunal of all relevant facts during an ex-parte proceeding, dishonest conduct, and non-cooperation. RPC 1.7, 3.3, 3.5, 8.4(c), 8.4(d), 8.4(l), and 8.4(n).

Christopher P. Raymond [WSBA No. 25131], Everett lawyer, disbarred for failure to act diligently and to reasonably expedite litigation, failure to communicate, trustfund irregularities (conversion), conduct involving dishonesty, conduct prejudicial to the administration of justice, and violations of duties during a disciplinary investigation. Former RPC 1.14, and RPC 1.3, 1.4, 3.2, 8.4(b), 8.4(c), 8.4(d), and 8.4(l).

Jonathan D. Sweigert [WSBA No. 20781], Kirkland lawyer, disbarred for failure to act diligently, failure to keep clients reasonably informed regarding the status of their matters, misrepresentations to clients, Settling a case without clients' knowledge or authority, failure to account for or refund unused funds, practicing law while suspended, trust account violations (conversion), and failure to cooperate. Former 1.15, and RPC 1.2, 1.3, 1.4, 1.5, 1.15A, 1.16, 3.4, 5.5, 5.8, 8.4(b), 8.4(c), 8.4(d), 8.4(j), and 8.4(*l*).

Lindsay T. Thompson [WSBA No. 15432], Port Angeles lawyer, disbarred for lack of diligence, failure to communicate, trustaccount irregularities, failure to protect clients' interests, and failure to cooperate. RPC 1.3, 1.4, 1.15A, 1.16, 3.2, and 8.4(*l*).

A. Mark Vanderveen [WSBA No. 18616], Kenmore lawyer, disbarred for conduct involving the commission of a felony and dishonesty. RPC 8.4(b) and 8.4(c). See Opinion at *In re Disciplinary Proceeding Against Vanderveen*, 166 Wn.2d 594, 211 P.3d 1008 (2009).

Daniel A. Wright [WSBA No. 11560], Tumwater lawyer, disbarred for failure to act with reasonable diligence, failure to communicate, making false statements and fabrication of a document in connection with a disciplinary matter, dishonest conduct, and violating a duty imposed under the Rules for Enforcement of Lawyer Conduct. RPC 1.3, 1.4, 8.1, 8.4(c), and 8.4(l).

RESIGNATIONS IN LIEU OF DISBARMENT

Felix Landau [WSBA No. 13151], Bellevue lawyer, resigned in lieu of disbarment for conduct involving the crimes of false statement, obstruction of justice, and evasion of payment of taxes. RPC 8.4(b).

Dennis G. Ott [WSBA No. 12172], Kelso lawyer, resigned in lieu of disbarment for failure to act with reasonable diligence, failure to communicate, charging unreasonable fees, failure to protect clients' interests, making false statements, destroying documents having potential evidentiary value, fabricating documents in the disciplinary investigation, engaging in criminal acts (false swearing), engaging in conduct prejudicial to the administration of justice, and violating duties imposed by the ELC.

RPC 1.3, 1.4, 1.5, 1.16, 3.3, 3.4, 5.3, 8.1, 8.4(a), 8.4(b), 8.4(c), 8.4(d), and 8.4(*l*).

Therese M. Wheaton [WSBA No. 18208], Shelton lawyer, resigned in lieu of disbarment for failing to provide competent representation, failing to act with reasonable diligence, charging unreasonable fees, false statements in disciplinary deposition, trustaccount irregularities, committing criminal acts (possession of controlled substances), inducing a client to engage in criminal acts (receiving controlled substances from client), and conduct prejudicial to the administration of justice. Former RPC 1.14, and RPC 1.1, 1.2, 1.3, 1.5, 1.15A, 8.4(b), and 8.4(c).

SUSPENSIONS

Larry A. Botimer [WSBA No. 23805], Federal Way lawyer, suspended for six months for revealing client confidences and conflicts of interest. RPC 1.6, 1.7, and 1.9. See Opinion at *In re Discipinary Proceeding Against Botimer*, 166 Wn.2d 759, 214 P.3d 133 (2009).

James R. Doran [WSBA No. 15107], Coeur d'Alene, Idaho lawyer, suspended for three months for conduct involving the commission of multiple misdemeanors and violating court orders. RPC 8.4(i) and 8.4(j).

John L. Erickson [WSBA No. 4909], Bellingham lawyer, suspended for three years for failure to diligently represent a client, failure to deposit unearned fees into a trust account, failure to return unearned fees to clients, failure to comply with duties upon

suspension, practicing while suspended, misrepresentations to clients, and non-cooperation. Former RPC 1.14, and RPC 1.3, 1.5, 1.15A, 1.15B, 1.16, 3.2, 5.3, 5.5, 5.8, 8.4(c), 8.4(j), and 8.4(l).

Stephen K. Eugster [WSBA No. 2003], Spokane lawyer, suspended for eighteen months for failure to abide by a client's objectives, disclosing confidential information, using information related to representation to the client's disadvantage, failure to surrender a client's file, failure to protect a client's interests, disobeying an obligation under the rules of a tribunal, and conduct prejudicial to the administration of justice. Former RPC 1.9 and 1.15, and RPC 1.2, 1.6, 1.8(b), 3.4, and 8.4(d). See Opinion at *In re Disciplinary Proceeding Against Eugster*, 166 Wn.2d 293, 209 P.3d 435 (2009).

Suspensions (cont.)

John G. Gissberg [WSBA No. 19677], Seattle lawyer, suspended for nine months for failure to adequately safeguard client property in his possession, trust account irregularities, and non-cooperation. Former RPC 1.14, and RPC 1.15A, 1.15B, and 8.4(*l*).

Yong J. Han [WSBA No. 26825], Snoqual-mie lawyer, suspended for three years for conduct involving lack of communication, trust account irregularities, charging unreasonable fees, failure to protect client funds, failure to properly supervise lawyer and non-lawyer employees working under him, and conduct involving dishonesty, fraud, deceit, or misrepresentation. Former RPC 1.14, and RPC 1.4, 1.5, 5.1, 5.3, and 8.4(c).

S. Richard Hicks [WSBA No. 6612], Normandy Park lawyer, suspended for two years for conduct involving trust account irregularities, failure to maintain complete records of all client funds coming into his possession, and misrepresentation. Former RPC 1.14, and RPC 8.4(c), and ELC 5.3(e). See Opinion at *In re Disciplinary Proceeding Against Hicks*, 166 Wn.2d 774, 214 P.3d 897 (2009).

James B. Holcomb [WSBA No. 1695], Bainbridge Island lawyer, suspended for three years for conduct prejudicial to the administration of justice, practicing while suspended, and failure to advise clients, the court, and opposing counsel of the suspension. RPC 1.4, 1.16, 3.1, 5.5, 5.8, 8.4(d), 8.4(j), and 8.4(l).

Michael R. Karber [WSBA No. 24044], Phoenix, Arizona lawyer, suspended for twenty-one months by reciprocal discipline for failure to act with diligence, failure to

communicate, failure to protect clients' interests, failure to cooperate with a bar association investigation, commission of a criminal act, and engaging in conduct prejudicial to the administration of justice. Arizona's equivalent of RPC 1.3, 1.4, 1.16, 8.1, 8.4(b), and 8.4(d).

J. Porter Kelley [WSBA No. 1480], Tacoma lawyer, suspended for one year for failure to deposit a client's fee into a trust account, failure to keep a record of all funds paid by a client, failure to provide an accounting of funds paid by a client, and commingling funds. RPC 1.15A and 1.15B.

Shane L. Kenison [WSBA No. 19613], Spokane lawyer, suspended for sixty days for failure to provide competent representation, failure to communicate the status of a matter to the client, making a false statement of material fact to a third person, and dishonesty. RPC 1.1, 1.4, 4.1, and 8.4(c).

Theodore A. Mahr [WSBA No. 19555], Moses Lake lawyer, suspended for three years for failure to diligently represent clients, failure to keep clients informed about the status of their matters, failure to communicate the status of a matter to the client, charging excessive fees, failure to return unearned fees, failure to return client files, and misrepresentations to clients. RPC 1.2, 1.3, 1.4, 1.5, 1.16, 8.4(a), and 8.4(c).

Larry A. Neal [WSBA No. 15644], Vancouver lawyer, suspended for six months for conduct involving the commission of a felony (possession of controlled substance). RPC 8.4(b) and 8.4(i).

Suspensions (cont.)

Stephen J. Oelrich [WSBA No. 29263], Tacoma lawyer, suspended for three years for failure to provide competent representation, failure to abide by clients' objectives, lack of diligence, failure to communicate, failure to return unearned funds, and conduct involving misrepresentation. Former RPC 1.2(a), 1.4, 1.14, and 1.15(d). RPC 1.1, 1.3, and 8.4(c).

Reed C. Pell [WSBA No. 6821], Yakima lawyer, suspended for two years for failure to provide competent representation, failure to act with reasonable diligence and to expedite litigation, failure to communicate status of matter to client, falsifying and offering false evidence, commission of a criminal act, dishonest conduct, and engaging in conduct demonstrating an unfitness to practice law. RPC 1.1, 1.3, 1.4, 3.2, 3.3, 8.4(b), 8.4(c), 8.4(d), and 8.4(n).

Jeffery A. Richard [WSBA No. 28219], Seattle lawyer, suspended for one year for conduct involving practicing law while suspended. RPC 1.4(b), 8.4(b), and 8.4(*l*).

Brian J. Sunderland [WSBA No. 22665], Clackamas, Oregon lawyer, suspended for nine months based on a suspensions by the

state of Oregon for lack of communication and misrepresentation. Also suspended for three years based on a suspension by the state of Oregon for conduct including conflicts of interest, excessive fees, misrepresentation, and conduct prejudicial to the administration of justice. Oregon's equivalent to RPC 1.1, 1.3, 1.4, 1.5, 1.7, 1.15A, 1.16, 8.1, 8.4(a) and 8.4(d).

Jo Nell Walker [WSBA No. 24526], Vancouver lawyer, suspended for six months for failure to communicate status of matter to client, failure to perform work, and failure to return the client's fees promptly upon termination. RPC 1.3, 1.4, 1.5, 1.15, and 1.16.

Dean E. White [WSBA No. 27282], Spokane lawyer, suspended for six months for conduct involving the commission of a felony crime (unlawful imprisonment involving domestic violence). RPC 8.4(b) and 8.4(i).

Jerry J. Yu [WSBA No. 29164], San Jose, California lawyer, suspended for ninety days for conduct involving the commission of a criminal act (attempted distribution via electronic mail of harmful material to a minor). RPC 8.4(b).

REPRIMANDS

Vincent J. Bernabei [WSBA No. 14649], Portland, Oregon lawyer, reprimanded by reciprocal discipline based on a reprimand imposed by the state of Oregon for conduct involving public indecency. Oregon equivalent of RPC 8.4(i).

Randal B. Brown [WSBA No. 24181], Covington lawyer, received two reprimands

from one disciplinary proceeding for failure to properly withdraw and failure to keep clients reasonably informed. RPC 1.4.

Bakary F. Conteh [WSBA No. 35098], Seattle lawyer, reprimanded for misrepresentations before an immigration tribunal. RPC 8.4(c).

Reprimands (cont.)

Michael J. Davis [WSBA No. 25846], Tacoma lawyer, received two reprimands from one disciplinary proceeding for commingling personal funds with client funds, failure to maintain accurate trust account records, and failure to promptly produce requested trust account records. RPC 1.5, 1.14, 1.15A, 1.15B, 5.3, and 8.4(*l*).

Sean W. Drew [WSBA No. 14324], Niles, Michigan lawyer, reprimanded by reciprocal discipline based on a reprimand imposed by the state of Michigan for failure to communicate with a client regarding the basis or rate of his fee and failure to respond to a request for information from a disciplinary authority. Michigan's equivalent of RPC 1.5 and 8.1.

Sans M. Gilmore [WSBA No. 21855], Tumwater lawyer, reprimanded for failure to reconcile trust account funds and commingling personal, business, and client funds. RPC 1.15A and 1.15B.

Gary C. Hugill [WSBA No. 4713], Kennewick lawyer, reprimanded for failure to maintain complete records of client funds, failing to deposit client funds in a trust account, and commingling personal and client funds. Former RPC 1.14.

Gary D. Luke [WSBA No. 26954], Boise, Idaho lawyer, reprimanded by reciprocal discipline based on a reprimand imposed by the state of Idaho for failure to comply with

mandatory continuing legal education requirements and conduct involving dishonesty, fraud, deceit, and misrepresentation. Idaho equivalent of RPC 8.1 and 8.4(c).

Mary R. Mann [WSBA No. 9343], Seattle lawyer, reprimanded for failure to act with reasonable diligence, failure to expedite litigation, and violation of court orders. RPC 1.3, 3.2, 3.4, and 8.4(j).

Jonathan Morrison [WSBA No. 31153], Port Orchard lawyer, received two reprimands for failure to diligently represent clients, failure to file a notice of withdrawal upon termination of representation, and failure to communicate with successor counsel. RPC 1.1, 1.3, 1.16, and 8.4(d).

Kyle W. Nolte [WSBA No. 27073], Spokane lawyer, reprimanded for failure to disclose a prior disciplinary sanction on his applications to serve as a Rule 9 supervising lawyer. RPC 8.1.

James V. O'Conner [WSBA No. 2826], Seattle lawyer, reprimanded for conduct involving dishonesty, fraud, deceit, or misrepresentation. RPC 8.4(c).

John M. Petshow [WSBA No. 18144], Clackamas, Oregon lawyer, reprimanded by reciprocal discipline based on a reprimand imposed by the State of Oregon for conduct involving lack of diligence, failure to communicate status of matter to client, and a conflict of interest. Oregon equivalent of RPC 1.3, 1.4, and 1.7.

ADMONITIONS

John A. Bardelli [WSBA No. 5498], Spokane lawyer, admonished for failure to timely surrender clients' papers upon termination of representation and failure to promptly provide clients with a written accounting of their settlement funds upon request. RPC 1.15A and 1.16.

Robert E. Beach III [WSBA No. 6710], Spokane lawyer, admonished for failure to act with reasonable diligence and failure to deliver to a client funds which the client was entitled to receive. RPC 1.3, 1.4, and 1.14.

E. John Compatore [WSBA No. 19376], Seattle lawyer, admonished for failure to preserve client confidences. RPC 1.6.

Michael J. Cranston [WSBA No. 16122], Seattle lawyer, received two admonitions from one disciplinary proceeding for trust account irregularities and the unauthorized practice of law. RPC 1.15A, 5.5, 5.8, and 8.4(*l*).

Robert W. Denomy [WSBA No. 9050], Seattle lawyer, admonished for conduct involving the commission of a criminal act (misdemeanor reckless endangerment). RPC 8.4(i).

Gary C. Hugill [WSBA No. 4713], Kennewick lawyer, admonished for the unauthorized disclosure of private communications with a client. RPC 1.6.

Amos R. Hunter [WSBA No. 20846], Spokane lawyer, admonished for frivolous litigation conduct. RPC 3.1.

Jeniece Lacross [WSBA No. 28859], Seattle lawyer, admonished for conduct involving the commission of a criminal act (driving under the influence and reckless endangerment). RPC 8.4(i).

Terry R. Marston II [WSBA No. 14440], Redmond lawyer, admonished for conduct involving trust account irregularities and failure to supervise a non-lawyer employee. RPC 1.15A and 5.3.

Accessing the Discipline System

The Rules. Two sets of rules govern lawyer discipline. The Rules of Professional Conduct (RPC) set forth the ethical duties with which all Washington lawyers must comply. The Rules for Enforcement of Lawyer Conduct (ELC) 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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- 1.1 Competence
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- 1.9 Duties to Former Clients
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- 1.13 Organization as Client
- 1.14 Client with Diminished Capacity
- 1.15A Safeguarding Property
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TITLE 2 - COUNSELOR

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- 3.2 Expediting Litigation
- 3.3 Candor Toward the Tribunal
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- 3.6 Trial Publicity
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TITLE 4 - TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

- 4.1 Truthfulness in Statements to Others
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TITLE 5 - LAW FIRMS AND ASSOCIATIONS

- 5.1 Responsibilities of a Partner or Supervisory Lawyer
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- 5.3 Responsibilities Regarding Nonlawyer Assistants

- 5.4 Professional Independence of a Lawyer
- 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law
- 5.6 Restrictions on Right To Practice
- 5.7 Responsibilities Regarding Law-Related Services
- 5.8 Misconduct Involving Disbarred, Suspended,Resigned, and Inactive Lawyers

TITLE 6 - PUBLIC SERVICE

- 6.1 Pro Bono Publico Service
- 6.2 Accepting Appointments
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TITLE 7 - INFORMATION ABOUT LEGAL SERVICES

- 7.1 Communications Concerning a Lawyer's Services
- 7.2 Advertising
- 7.3 Direct Contact With Prospective Clients
- 7.4 Communication of Fields of Practice and Specialization
- 7.5 Firm Names and Letterheads
- 7.6 Political Contributions to Obtain Government Legal Engagements or Appointments by Judges

TITLE 8 - MAINTAINING THE INTEGRITY OF THE PROFESSION

- 8.1 Bar Admission and Disciplinary Matters
- 8.2 Judicial and Legal Officials
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RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)

TITLE 1 – SCOPE, JURISDICTION, AND DEFINITIONS

- 1.1 Scope of Rules
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- 1.3 Definitions
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- 1.5 Violation of Duties Imposed by These Rules

TITLE 2 – ORGANIZATION AND STRUCTURE

- 2.1 Supreme Court
- 2.2 Board of Governors
- 2.3 Disciplinary Board
- 2.4 Review Committees
- 2.5 Hearing Officer or Panel
- 2.6 Hearing Officer Conduct
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- 2.8 Disciplinary Counsel; Special Disciplinary Counsel
- 2.9 Adjunct Investigative Counsel
- 2.10 Removal of Appointees
- 2.11 Compensation and Expenses
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TITLE 3 - ACCESS AND NOTICE

- 3.1 Open Meetings and Public Disciplinary Information
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 Disability Proceedings, and
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TITLE 4 – GENERAL PROCEDURAL RULES

- 4.1 Service of Papers
- 4.2 Filing; Orders
- 4.3 Papers
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TITLE 5 – GRIEVANCE INVESTGATIONS AND DISPOSITION		8.9	Petition For Limited Guardianship
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5.2	Confidential Sources		HEARING
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5.4	Privileges	9.1	Stipulations
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TITLE	E 6 – DIVERSION	TITLE	10 – HEARING PROCEDURES
6.1	Referral to Diversion	10.1	General Procedure
6.2	Less Serious Misconduct	10.2	Hearing Officer or Panel
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6.4	Notice to Grievant	10.4	Notice to Answer
6.5	Diversion Contract	10.5	Answer
6.6	Affidavit Supporting Diversion	10.6	Default Proceedings
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7.3	Automatic Suspension When	10.15	Bifurcated Hearings
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7.5	Interim Suspensions Expedited	TITLE	11 – REVIEW BY BOARD
7.6	Effective Date of Interim		
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7.7	Appointment of Custodian to	11.2	Decisions Subject to Board
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• • •	Incompetency		Documents and Exhibits
8.2	Determination of Incapacity to	11.7	Preparation of Bar File Documents
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	During the Course of Disciplinary		Suspension or Disbarment
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0.4	Disability Inactive Status	11.5	Suspension or Disbarment Rec-
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06	Disability Inactive Status	11.10	Supplementing Record on Review
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11.12	Decision of Board		
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13.3	Suspension	15.5	
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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

<u>Reimbursement</u>: 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.

<u>Legal Advice</u>: 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.

<u>Non-Members</u>: 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.

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

<u>Rude Behavior</u>: 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.

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

<u>Opposing Lawyer</u>: 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.

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

<u>Judges</u>: 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

<u>Errors in judgment</u>: 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.

<u>File disputes</u>: 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 <u>first</u> call our office. Additional information is available in our brochure <u>Communicating with Your Lawyer</u>.

<u>Communication problems</u>: 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 <u>first</u> call our office. Additional information is available in our brochure <u>Communicating with Your Lawyer</u>.

<u>Mishandling of money or property</u>: 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 disho-

nestly, 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 <u>before</u> 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



Office of Disciplinary Counsel Washington State Bar Association 1325 Fourth Avenue, Suite 600 Seattle, WA 98101-2539

GENERAL INSTRUCTIONS

- Read our information sheet <u>Lawyer Discipline in Washington</u> before you complete this form, particularly the section about consenting to disclosure of your grievance to the lawyer.
- 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.
- If you prefer to file online, visit http://www.wsba.org/public/complaints/.

INFORMATION ABOUT YOU	INFORMATION ABOUT THE LAWYER		
Last Name, First Name, Middle Initial	Last Name, First Name		
Address	Address		
City, State, and Zip Code	City, State, and Zip Code		
Phone Number	Phone Number		
Alternate Address, City, State, and Zip Code	Bar Number (if known)		
Alternate Phone Number			
Email Address			
INFORMATION A	ABOUT YOUR GRIEVANCE		
Describe your relationship to the lawyer who is the	subject of your grievance:		
☐ I am a client☐ I am a former client☐ I am an opposing party	☐ I am an opposing lawyer ☐ Other:		
Is there a court case related to your grievance?	YES NO		
If yes, what is the case name and file number?			

	vn words . Give all important dates, times, places, and court file numbers ary. Attach copies (not your originals) of any relevant documents.
	<u>AFFIRMATION</u>
	providing is true and accurate to the best of my knowledge. I have rea and I understand that the content of my grievance can be disclosed to the
Signature:	Date:

Grievance Form