

2010 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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INTRODUCTION

We are pleased to present the 2010 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 hearing officers. 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 2010.

THE DISCIPLINE SYSTEM

In Washington, the discipline system for lawyers is composed of a number of entities within the Washington State Bar Association that operate as part of the judicial branch of government under the jurisdiction of the Washington Supreme Court. These include the Office of Disciplinary Counsel, the Disciplinary Board, hearing officers, the Lawyers' Fund for Client Protection, and the WSBA Audit Program.

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 35% of which are applied to the costs of that system. In FY 2010, the Bar spent \$4,572,179 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 active lawyer. The Fund makes gifts (\$554,270 in FY 2010) 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, reviews, 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 reviewer and investigator. At the same time, it seeks to educate consumers and lawyers on the ethical duties of lawyers and, where possible, to resolve informally disagreements as to those duties. The Consumer Affairs staff of the ODC annually handle between 5,000 and 10,000 telephone calls and numerous in-person meetings, suggesting 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.

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 has 14n members, 10 lawyers appointed by the Board of Governors and four non-lawyers appointed by the Supreme Court. Two of the lawyers serve as chair

and vice-chair 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 disciplinary 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 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. A disbarred lawyer cannot 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 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 law-

The Discipline System

yer 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, that the lawyer 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.

Reviewing and Improving the Discipline System. The WSBA Board of Governors and the Washington Supreme Court have jointly convened a Disciplinary Advisory Round Table that meets periodically. Chaired by Justice Tom Chambers of the Supreme Court, the Round Table reviews various aspects of the discipline system and makes recommendations to the Supreme Court and the WSBA Board of Governors.

Flow Chart of Discipline System

WSBA Office of Disciplinary Counsel (ODC)

- Receives, reviews, and may investigate grievances
- Recommends disciplinary action or dismisses
- Presents cases at hearing and on appeal
- Diverts less serious misconduct matters

Review Committees

- Subcommittees composed of three members 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

- Conducts 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

- Has plenary and exclusive authority over entire lawyer discipline and disability system
- Conducts the final appellate review
- Orders all suspensions and disbarments, interim suspensions, and reciprocal discipline

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 Douglas J. Ende and consists of 19 lawyers and 18 non-lawyers:

Lawyer Staff

Joanne S. Abelson, Sr. Disciplinary Counsel Leslie Ching Allen, Disciplinary Counsel Kevin M. Bank, Sr. Disciplinary Counsel Randy Beitel, Sr. Disciplinary Counsel Craig Bray, Disciplinary Counsel Jonathan H. Burke, Sr. Disciplinary Counsel Scott Busby, Disciplinary Counsel Felice P. Congalton, Sr. Disciplinary Counsel Francesca D'Angelo, Disciplinary Counsel Kathleen A.T. Dassel, Disciplinary Counsel Linda B. Eide, Sr. Disciplinary Counsel Douglas J. Ende, Chief Disciplinary Counsel Christine Gray, Sr. Disciplinary Counsel Marsha Matsumoto, Sr. Disciplinary Counsel Bruce C. 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, Admin. Assistant Colleen Biel, Admin. Assistant Laurie Brown, Admin. Assistant Natalie Cain, Paralegal Josh Calico, Intake Paralegal Brooke Drumm, Consumer Affairs Assistant Celeste M. Fujii, Investigator Natalie Green, Consumer Affairs Assistant Christopher Hitzfeld, Paralegal Alexandra Hutchinson, Admin. Assistant Cynthia A. Jacques, Department Administrator Narette Lim, Paralegal Brian McCarthy, Investigator Vanessa Norman, Investigator Scott O'Neal, Investigator Samea Teller, Admin. Assistant Martina Wong, File Clerk

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

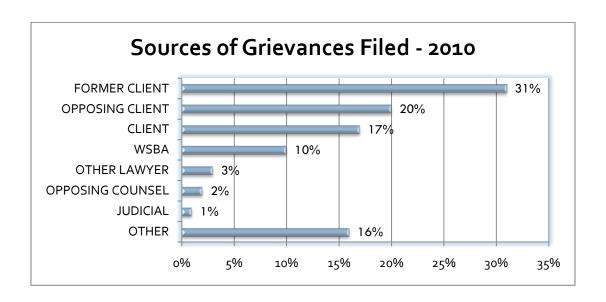
File Clerk Rolando Costilla, Administrative Assistant Robbie Dunn, and Consumer Affairs Assistant Danielle Johnson left our staff in 2010.

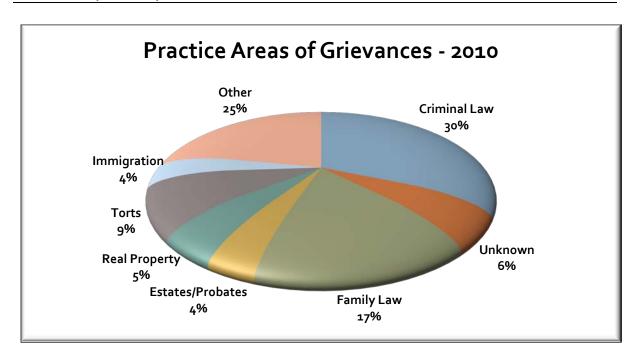
Intake Staff. Managed by Senior Disciplinary Counsel Felice P. Congalton, the six-person intake team is responsible for fielding inquiries from the public and the initial processing of about 2,000 written grievances filed each year. In addition to the heavy load of phone calls and other inquiries (more than 7,000 in 2010), the intake team mediates matters where the lawyer is not communicating (154 in 2010) and where there is a dispute in obtaining the client's file (169 in 2010). The intake team 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 – 2010

Disciplinary Grievances, Mediated Matters, and Consumer Affairs Contacts

	2008	2009	2010
New Disciplinary Grievances Received During Year	1,904	1,769	2,144
Disciplinary Grievances Resolved During Year	1,981	1,916	2,042
Non-Communication Matters Mediated	293	94	154
File Dispute Mediations	130	66	169
Consumer Affairs Phone Calls and Interviews	10,956	10,200	7,492





Investigation / Prosecution Staff. Sixeen disciplinary counsel are divided into four investigation / prosecution teams, managed by four of the senior disciplinary counsel: Joanne Abelson, Kevin Bank, Randy Beitel, and Linda Eide. Each team has a professional investigator, a paralegal, and an administrative assistant. In addition, an office administrator and a file clerk report to the Director. ODC has assembled a dedicated staff. The disciplinary counsel are highly experienced, averaging 24 years in practice, with an average of ten years' experience in lawyer discipline.

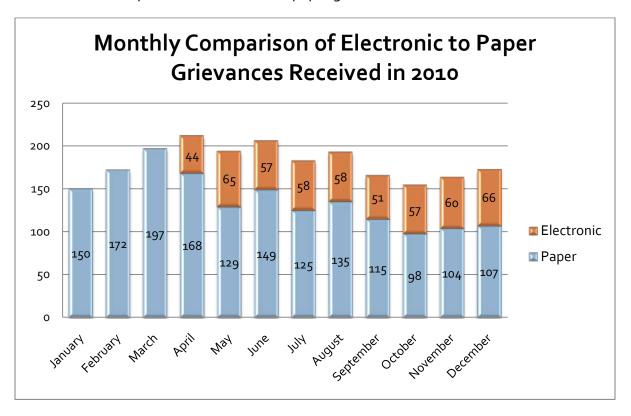
Volunteers. A number of lawyers assisted the WSBA in 2010 in volunteer capacities. These included Thomas R. Andrews, Erika Balazs, Ieva Butkute, Susannah Carr, Kathy Cochran, Noah C. Davis, Stephania Denton, Peter Ehrlichman, Douglas M. Fryer, H. Paul Gill, Robert Gould, Spencer Hall, Thomas W. Hayton, James Horne, Michael D. Hunsinger, Scott A.W. Johnson, Paul Luvera, Marijean E. Moschetto, Stevan Phillips, Michael J. Pontarolo, Rebecca J. Roe, Jeff Tilden, and Raymond Weber, who served as Special Disciplinary Counsel; Paul Bastine and Rocco Treppiedi, who served as Practice Monitors; Don M. Gulliford, who served as a Probation Monitor; Dana Laverty and Bart Stroupe, who served as expert witnesses; David Boerner, Michael Caryl, and non-lawyer Ann Guinn, who served as Ethics School presenters; and Jennifer Barnes, Daniel Clark, Fred Corbit, Diana Dearmin, Paul Fogarty, David Huey, non-lawyer Mike McElroy, and Marijean Moschetto, who served as presenters for ODC trainings.

Interns and Externs. ODC was also assisted in 2010 by law student intern Matthew Waterman and extern Christopher Conroy 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 2010, we received 152 overdraft notifications, resulting in 124 matters that required investigation by the Bar auditor.
- Lawyers who are applying for admission 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 619 in 2010.
- Disciplinary Counsel make frequent presentations at continuing legal education (CLE) and other programs relating to lawyer ethics, discipline, and professionalism. There were 32 such presentations in 2010.
- Disciplinary Counsel often provide drafting and staffing for committees proposing that the Supreme Court adopt rules relating to discipline and ethics. In 2010, Randy Beitel served on the Rules for 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 Ex-Officio for the Rules of Professional Conduct Committee.
- 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 served as President of NOBC in 2009-2010.
- The ODC is an active participant in the Organization of Bar Investigators (OBI). In 2010, ODC Investigator Scott O'Neal served as President of OBI.
- 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 Department 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 2010, 20 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 dis-

- ciplinary counsel, Bar staff, and lawyers from private practice. In 2010, 33 lawyers attended the Ethics School.
- A paperless process for submitting a grievance against a lawyer became available on the WSBA website in 2010. The project was completed on April 5, 2010, when the new form was posted "live." This means there is now a web-based grievance form on www.wsba.org that can be used to submit grievances to ODC electronically, without the need to print a paper form. In taking this step, the WSBA is at the forefront in implementing electronic grievance filing. The online submission of grievances interfaces directly with ODC's lawyer discipline database and will streamline the opening of new grievance files. It makes it easier for the public to communicate concerns about possible lawyer misconduct and promises to be the first step toward a "paperless" grievance review process. Please see the chart below for a month-tomonth comparison of electronic to paper grievances received in 2010.



Cost of the Discipline System

As one might expect, substantial resources are required to fund the Washington Lawyer Discipline System. In 2010, even after collecting \$49,172 from respondent lawyers who were assessed costs, the Bar spent another \$4,522,987 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 2010 was \$4,572,179, representing 35% of member licensing fees. Below is a breakdown of 2010 costs.

Expenditures

Funding the Discipline System (Fully funded by lawyers' license fees — no public funding)								
Discipline System Expenses: FY 2008 FY 2009 FY 2010								
Investigation/Prosecution (net of costs collected from respondents)	\$3,761,614	\$3,951,236	\$4,002,229					
Trust Account Audits	\$203,922	\$265,666	\$288,680					
Disciplinary Board Expenses	\$156,880	\$184,375	\$255,814					
Hearing Officer Expenses	\$34,650	\$32,043	\$25,456					
Total Discipline System Expenses	\$4,157,066	\$4,433,320	\$4,572,179					
Percentage of Bar License Fees Spent on Discipline	37%	38%	35%					

Costs Assessed and Collected

Costs Collected from Disciplinary Respondents			
FY	Costs Collected	Costs Assessed	
2008	\$124,513	\$185,123	
2009	\$62,303	\$113,671	
2010	\$49,192	\$127,756	

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, Allison 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 12 members break into four groups, with each group comprising a Review Committee, each consisting of two lawyers and one non-lawyer. The four three-person Review Committees meet three times a year and serve as gatekeepers to public disciplinary hearings in the lawyer discipline system. Review Committees consider appeals by grievants of grievances dismissed by disciplinary counsel and consider recommendations by disciplinary counsel that advisory letters or admonitions be issued, or that a public hearing be held to consider imposing more substantial lawyer discipline. One of the Review Committees meets each month. On average, the Review Committee system considers 45 or more matters each month. During 2010, Review Committees considered 602 matters.

Disciplinary Board Members¹

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

Henry (Ted) Stiles – Vice Chair 2009-2010, Chair 2010-2011; Private Practice, Spokane [Lawyer Member, term 2008-2011].

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

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

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

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

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

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

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

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

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

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

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 and correspond with the fiscal year, beginning in October and ending in September. This list includes members who served during FY 2010.

Hearing Officers

Hearings for disciplinary and disability cases are presided over by volunteer hearing officers. The Board of Governors has appointed 44 experienced lawyers to serve as hearing officers. One hearing officer serves as chief hearing officer; David Summers served as Chief Hearing Officer through July 31, 2010, and Spokane attorney Joe Nappi, Jr. assumed the position of Chief Hearing Officer on October 1, 2010. The Chief Hearing Officer appoints a hearing officer to each discipline or disability case and monitors the progress of the hearings.

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 Amini, Bellevue	Bertha B. Fitzer, Tacoma	Richard B. Price, Omak		
William S. Bailey, Seattle	William E. Fitzharris Jr., Seattle	Jane Bremner Risley, Asotin		
Erik S. Bakke Sr., Wenatchee	Kelby D. Fletcher, Seattle	Sidney Stillerman Royer, Seattle		
J.C. Becker, Mill Creek	Deirdre P. Glynn Levin, Seattle	Anthony A. Russo, Seattle		
Craig C. Beles, Seattle	Vernon W. Harkins, Tacoma	Terence M. Ryan, Spokane		
Kimberly A. Boyce, Seattle	Octavia Y. Hathaway, Tacoma	David M. Schoeggl, Seattle		
Carl J. Carlson, Seattle	John H. Loeffler, Spokane	Andrekita Silva, Seattle		
Donald W. Carter, Everett	Peter A. Matty, Silverdale	Dennis Smith, Seattle		
David Bruce Condon, Tacoma	Lawrence R. Mills, Seattle	David A. Summers, Seattle		
Gregory A. Dahl, Mill Creek	William J. Murphy, Federal Way	David A. Thorner, Yakima		
James M. Danielson, Wenatchee	Joseph Nappi Jr., Spokane	John J. Tollefsen, Lynnwood		
Julian C. Dewell, Seattle	Lin D. O'Dell, Spokane	Gregory J. Wall, Port Orchard		
Malcolm L. Edwards, Seattle	Timothy J. Parker, Seattle	Lish Whitson, Seattle		
Scott M. Ellerby, Seattle	Barbara Peterson, Vancouver	Charles K. Wiggins, Bainbridge Island		
Frederic G. Fancher, Spokane	Randolph O. Petgrave III, 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 \$5.3 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 per active lawyer 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 law-

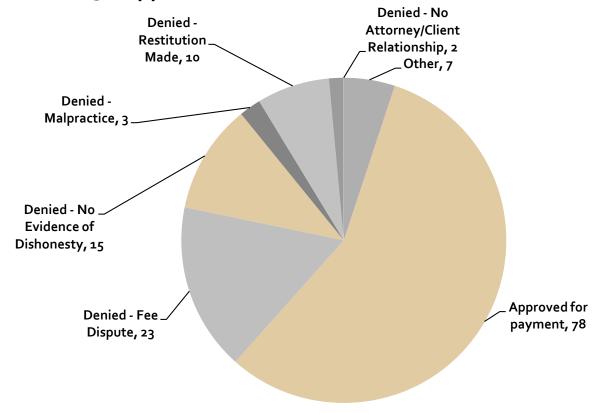
The Discipline System

yers 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 has recovered approximately \$334,000.

Public Information. The Lawyers' Fund for Client Protection maintains information on the WSBA website at www.wsba.org that provides details about the Fund, its procedures, and an application form that can be downloaded. The Fund information and application forms are also available in Spanish.

2010 Applications and Payments. For Fiscal Year 2010, the Board and Trustees acted on 138 applications. The total amount in approved payments was \$554,270. 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.

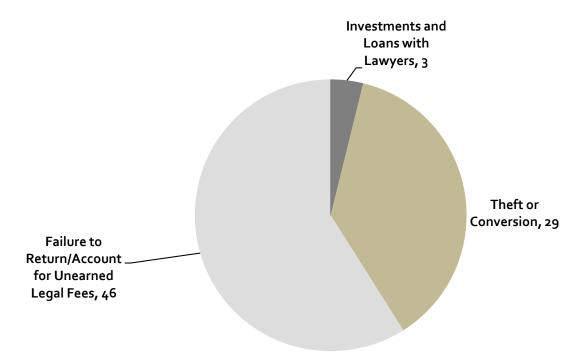




The "other" reasons for denial included: the applicant failed to exhaust available remedies; the application was ineligible for recovery; there was inadequate documentation; and payment would be unjust enrichment.

Approved Applications

The 78 approved applications involved the following:



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

FISCAL YEAR	APPLICATIONS	APPLICATIONS	LAWYERS	AMOUNT PAID
	RECEIVED	APPROVED ¹	APPROVED	
2004	165	84²	17	\$313,721
2005	120	47	19	\$147,247
2006	139	66	26	\$468,696
2007	69	34	16	\$539,789
2008	125	54	18³	\$899,672
2009	80	33	13	\$449,050
2010	161	78	23	\$554,270

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 2009-2010

BOARD OF TRUSTEES			
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Mary Wilson (non-lawyer)	Federal Way		

STAFF			
Paula C. Littlewood	Executive Director		
Robert D. Welden	General Counsel and Staff Liaison		
Elizabeth Turner	Assistant 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 2010, 100 random audits were performed. These 100 audits involved firms with a total of 1,064 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 the report to the Chair of the Disciplinary Board, who can accept the audit, order a reexamination 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 caused by bank error are 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 2010, 84 trust account overdrafts were investigated and dismissed 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 2010, there were 31 audits for cause, 24 of which arose from 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

Audit Staff Activity	2008	2009	2010
Investigatory "For Cause" Audits	13	27	31
Trust Account Overdraft Investigations	65	60	84
Random Audits of Law Firms/ Number of Lawyers	6/45	59/1430	100/1064

Conflicts Review System

Because lawyers are a self-regulating profession, from time to time, grievances will be filed against lawyers who are themselves serving in some capacity in the lawyer disciplinary system. ELC 2.7 provides that when grievances are filed against members of the Disciplinary Board, Board of Governors, and Supreme Court, as well as disciplinary counsel and other lawyers employed by the Association, the grievances are reviewed by Conflicts Review Officers, who are appointed by the Supreme Court and act independently of the ODC. If further investigation or prosecution is required, this is handled by independent Special Disciplinary Counsel. In 2010, 19 matters were referred for review by Conflicts Review Officers. Of the 19, four matters required further investigation by Special Disciplinary Counsel.

Conflicts Review Officers. Serving as Conflicts Review Officers in 2010 were Bill McGilllin, Zachary Mosner, and Ronald Schaps.

Special Disciplinary Counsel. Serving as Special Disciplinary Counsel in 2010 to investigate matters in the conflicts review system were Shannon Inglis, Deborah Jameson, Alexandra Moore-Wulsin, and Megan Stanley.

DISCIPLINE STATISTICS

Disciplinary action in Washington is public. Here is the statistical data on the disciplinary actions for 2010, followed by discussions of each of the Washington Supreme Court's opinions, and a brief summary of each of the disciplinary actions imposed in 2010.

Statistical Summary

Disciplinary Actions

Disciplinary Actions	2005	2006	2007	2008	2009	2010
Disbarments	12	19	23	15	13	21
Resignation in Lieu of Disbarment	1	4	2	3	3	5
Suspensions	32	26	26	26	20	24
Reprimands	22	17	17	21	16	32
Admonitions	17	3	5	16	10	11
Total Disciplinary Actions	<u>84</u>	<u>69</u>	<u>73</u>	<u>81</u>	<u>62</u>	<u>93</u>
Matters Diverted from Discipline	74	69	63	43	22	38
Transferred to Disability Inactive* *Non-disciplinary action, based on incapacity to practice law	4	2	3	1	0	5

Violation	Disbarments	Resignations in Lieu of Disbarment	Suspensions	Reprimands	Admonitions	TOTAL	% of TOTAL
Client Confidences				1	1	2	2%
Conflicts				3		3	3%
Criminal Conduct	4	2	3	1		10	11%
Diligence / Competence / Communication	3	1	8	11	3	26	28%
Dishonesty	2	2	3	2	1	10	11%
Fees			2	3	1	6	6%
Litigation Misconduct			3	4	1	8	9%
Non-Cooperation	1			1		2	2%
Practice While Suspended	3		1	2		6	6%
Theft / Trust Account	8		4	4	4	20	22%
TOTAL	21	5	24	32	11	93	100%

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Area of Practice	Disbarments	Resignations in Lieu of Disbarment	Suspensions	Reprimands	Admonitions	Diversions	TOTAL	% of TOTAL
Administrative			2				2	1%
Bankruptcy			2	3		1	6	5%
Commercial	1	1	2	3	1	2	10	8%
Corp./Banking		1					1	1%
Criminal Law	1		2	7	3	7	20	15%
Estate/Probate	2		4			1	7	5%
Family Law	1	2	4	3	4	9	23	18%
Immigration	4		1	3	2	3	13	10%
Intellectual Property						1	1	1%
Juvenile							0	0%
Labor Law	2			4		1	7	5%
Real Property	2		1	2		2	7	5%
Taxation							0	0%
Torts	3	1	2	4	1	6	17	13%
Other	5		4	3		5	17	13%
TOTAL	21	5	24	32	11	38	131	100%

Supreme Court Disciplinary Opinions

In re Disciplinary Proceeding Against Cramer, 168 Wn.2d 220, 225 P.3d 881 (2010)

The Court disbarred Federal Way lawyer Stephen D. Cramer (WSBA No. 9058) for criminal and fraudulent conduct that included changing the name of his business in an effort to circumvent state tax law.

Cramer registered his solo law practice with the Department of Revenue (DOR) as Stephen D. Cramer PLLC (PLLC) in 1995. In 2003, he stopped paying business taxes for the PLLC. After a 2006 DOR hearing regarding the proposed revocation of the PLLC's license for failure to pay taxes, Cramer informed DOR that the PLLC would be dissolved. He simultaneously created a new corporation, Stephen D. Cramer, Inc., PS (PS) and transferred all of the PLLC's assets, but none of its liabilities, to the PS. He continued to practice law under the PS in the same office he had used for the PLLC, using the same equipment, and employing the same staff. Cramer did not register the PS with DOR, nor did he inform DOR of its existence. In October 2007, the PLLC's license was revoked and a notice of revocation was posted on the door to the office. Cramer removed the order revoking his business license for the PLLC from the door to his office, in violation of RCW 82.32.290(1). After a DOR investigator established that Cramer continued to practice law from the same office as the PLLC, Cramer submitted the master license application provided by the investigator. DOR processed the application, determined that the PS was a successor to the PLLC, and transferred the PLLC's tax liability to the PS. Cramer did not pay his overdue taxes until DOR began garnishing the PS's bank accounts in 2008.

Cramer claimed that he had no intent to defraud. The hearing officer rejected that claim, finding that Cramer violated RPC 8.4(b) (by violating RCW 82.32.290(1) & (2)), RPC 8.4(c), and RPC 8.4(i) by continuing to do business after his license was revoked, by tearing down the revocation order, and by operating his law business without a valid license. The hearing officer also found that Cramer had violated RPC 8.4(c) by attempting to circumvent state tax law when he changed the name of the business under which he practiced law. Finding no mitigating factors and four aggravating factors—prior disciplinary offenses, bad faith obstruction of the disciplinary process, substantial experience in the practice of law, and indifference to making restitution—the hearing officer recommended disbarment. The Disciplinary Board affirmed the disbarment recommendation, with three dissenting members advocating a three-year suspension rather than disbarment.

In an 8-1 decision, the Supreme Court affirmed. The Court rejected Cramer's argument that he was not dishonest, untrustworthy, or unfit as a lawyer because avoiding his tax liability allowed him to continue to practice and help his clients. The Court also rejected Cramer's assertion that he did not violate RPC 8.4(c) because his actions did not constitute an outright lie. The Court held instead that violations of RPC 8.4(c) are not limited to lying alone. In examining aggravating factors, the Court held that although Cramer's 2008 sus-

Discipline Statistics

pension was not prior discipline, it was relevant for consideration as "concurrent discipline" along with other prior discipline.

In re Disciplinary Proceeding Against King, 168 Wn.2d 888, 232 P.3d 1095 (2010)

The Court disbarred LaUnion, Philippines, lawyer Paul H. King (WSBA No. 7370) for representing a client while King was suspended from the practice of law and for his obstruction of the disciplinary process during the investigation and formal proceedings.

The Court suspended King on March 9, 2005, reciprocating King's three-year suspension in the United States District Court for the Western District of Washington. At the time of the suspension, King represented Kurt Rahrig in litigation against his former employer that was pending in Virginia, for which King had associated local counsel in Virginia, Jay Levit. King's fee agreement with Rahrig provided for certain fees to King if Rahrig abandoned the case or discharged King. King did not inform either Rahrig or Levit of his suspension. Instead, King emailed opposing counsel that he was "taking a leave" and that all pleadings should be sent to the same address but addressed to lawyer John Scannell instead of King. King submitted a letter to the Association stating that he had closed his practice and had no active clients. Levit subsequently discovered that King was suspended and informed Rahrig, who fired King and filed a grievance with the Association.

After the Association requested King's response to Rahrig's grievance, King prepared a summons and complaint under a fake cause number purporting to sue Rahrig for damages arising from Rahrig's firing of King. King sent disciplinary counsel notice of the purported lawsuit and asked that the grievance investigation be deferred until the lawsuit had been completed. This request was the first in a long series of delaying tactics by King designed to frustrate the investigation, including a motion for protective order to avoid a deposition, a motion to terminate his deposition, and motions to vacate the orders denying his motions. When formal proceedings had been instituted, King continued to derail the process. For example, he avoided service by hiding and asserting that he would be in the Philippines, added the name of the hearing officer assigned to his case to a lawsuit he brought against participants in the disciplinary system and then moved to disqualify the hearing officer based on the adversary relationship, and filed a witness list including the hearing officer, disciplinary counsel, and all 13 members of the Disciplinary Board.

The hearing officer declined to recuse himself and removed himself, disciplinary counsel, and the Disciplinary Board members from King's witness list. He found that King had violated RPC 8.4(*l*) by failing to fulfill his duties on suspension under ELC Title 14 and his duties to cooperate with the Association's investigation under ELC Title 5. He also found that King had violated RPC 5.5(e) by continuing to represent Rahrig after his license to practice law had been suspended; RPC 8.4(b) and (c) by making false statements in his declaration that he had complied with his duties on suspension; RPC 8.4(c) by informing opposing counsel that he was taking a leave, when he had in fact been suspended; and RPC 3.1 and 4.4 by delivering a fake summons and complaint with a fictitious cause number, containing fictitious or frivolous claims, to Rahrig. The hearing officer found that King had acted with

a selfish or dishonest motive in continuing his representation of Rahrig and in his efforts to obstruct and delay the disciplinary proceedings. The hearing officer counted "approximately 17 separate efforts (including appeals) to halt or delay the hearing," most of which were frivolous. He recommended that King be disbarred. The Disciplinary Board affirmed.

On appeal to the Supreme Court, King did not challenge the hearing officer's findings of fact, but, instead, raised a number of procedural issues. In response to these, the Court ruled that (1) the absence of one member of a Review Committee—even the non-lawyer member—did not invalidate the Review Committee's ordering a matter to hearing; (2) substituted service under ELC 4.1(b)(3)(B)(i) and (ii) qualified as personal service for the purposes of serving the formal complaint under ELC 10.3(a)(2); (3) the ELC trump the Civil Rules (CR) in disciplinary proceedings, therefore the CR did not grant King more than 20 days to respond because he was out of the jurisdiction; (4) conducting an investigatory (pre-formal complaint) deposition of a third-party witness without notice to King did not violate King's due process rights where the deposition was not used and the witness did not testify at the hearing; and (5) ELC 11.2(b) applies to a hearing officer's findings of fact, conclusions of law, and recommendation, so a Review Committee's decision to order a matter to hearing does not require the full Board's attention and the Disciplinary Board Chair's denial of King's motion to vacate the Review Committee's order did not violate due process.

As to his appearance of fairness challenges, the Court held that (1) King's adding the hearing officer to his existing lawsuit against actors in the disciplinary process after the hearing officer was appointed did not require the hearing officer to recuse himself ("One cannot manufacture an appearance of unfairness by merely filing a lawsuit against the presiding official"); (2) the hearing officer acted within his authority in removing himself, disciplinary counsel, and Disciplinary Board members from King's witness list as King failed to show that these witnesses had any relevant factual knowledge about which they could testify; and (3) merely filing a notice of unavailability did not give Mr. King the power to "unilaterally bind disciplinary counsel or a hearing officer or to suspend a disciplinary hearing."

The Court affirmed the hearing officer and the Disciplinary Board and disbarred King. One member of the Court would have held that the investigatory deposition required notice to King, but concurred in the result because the deposition was not used at hearing.

In re Disciplinary Proceeding Against Preszler, 169 Wn.2d 1, 232 P.3d 1118 (2010)

The Court suspended Kennewick lawyer Terry J. Preszler (WSBA No. 13836) for three years for charging an unreasonable fee, giving erroneous legal advice, filing false documents with a tribunal, failing to supervise his paralegal, and failing to obtain the approval of the bankruptcy court before distributing proceeds from his client's personal injury claim to himself. Preszler charged a one-third contingency fee even though the client settled the claim herself. Preszler also advised the client incorrectly concerning the extent to which settlement funds would be exempt from inclusion in the bankruptcy estate, causing the client to receive \$10,000 less that she was entitled to. Preszler's taking a one-third contingent fee

Discipline Statistics

from the settlement also reduced the amount that was available to satisfy the client's creditors in the bankruptcy. A disciplinary hearing was held in May 2005, but the Disciplinary Board remanded the matter for a new hearing because the original hearing officer had taken into consideration his personal knowledge of Preszler and evidence outside the record. A second hearing was held in April 2007.

The hearing officer found that Preszler knowingly charged an unreasonable fee for a negligible amount of work done on the client's personal injury claim and that he acted with the intent to benefit himself at the expense of the client's bankruptcy creditors. The hearing officer also found that Preszler knowingly disobeyed an obligation under the bankruptcy court rules by disbursing the client's funds to himself without the approval of the bankruptcy trustee and that the potential injury to the client and to the legal system was serious. Although the hearing officer found that the presumptive sanction was disbarment under ABA <u>Standards</u> 7.1 and 6.21, he applied several mitigating factors—absence of a prior disciplinary record; timely good faith effort to make restitution or to rectify consequences of misconduct; full and free disclosure to the Disciplinary Board and cooperative attitude toward proceedings; character and reputation; and delay in disciplinary proceedings—and recommended a 30-day suspension.

By a vote of 9-2, the Disciplinary Board increased the length of suspension to three years. The Board held that delay was not a mitigating factor because any delay did not prejudice Preszler. The Board agreed that Preszler's effort to make restitution was a mitigating factor, but gave it little weight because Preszler required the client to sign a release before refunding her money. The Board also held that the record supported a finding of injury rather than serious injury for the unreasonable fee, resulting in a presumptive sanction of suspension under <u>Standard</u> 7.2 for that count. The Board agreed that the presumptive sanction for Preszler's knowing violation of bankruptcy court rules was disbarment under <u>Standard</u> 6.21, but recommended a three-year suspension. Two members of the Board would have disbarred Preszler.

The Court affirmed. As to the unreasonable fee violation, the Court held that Preszler's alleged belief that his fee was reasonable was irrelevant: Preszler need only be shown to have been aware that he charged a large fee for little work. In response to the Association's argument that the client suffered "serious" injury, the Court noted that substantial evidence supported either a finding of serious injury or a finding of ordinary injury but, absent a clear statement by the hearing officer, would not overrule the Board and find serious injury. The Court agreed that Preszler knew that he was required to obtain the bankruptcy trustee's approval to collect his fee, that the trustee would not have approved the fee had the trustee known the full circumstances, and that Preszler's actions caused serious potential injury. Therefore the presumptive sanction for that count was disbarment.

The Court rejected the mitigator of timely, good-faith restitution. Although acknowledging that Preszler had made a refund to the client, the Court held that the refund did not constitute timely restitution because Preszler had not done so until restitution was de-

manded by the client's subsequent counsel. Further, Preszler's acceptance of a release negated the good faith component of the mitigator because it showed that he was "not yet prepared to assume responsibility for the consequences of his actions," even though he knew his actions had been wrong. The Court rejected the mitigator of cooperation because that mitigator is reserved for cooperation that goes "above and beyond his duties under the ELC and RPC 8.4(*l*) to cooperate fully with the disciplinary proceeding." The Court also rejected Preszler's argument that the period of four years between the initial complaint—filed in 2004—and the second hearing in 2007 constituted the mitigating factor of delay. The Court agreed with the Board that there was no evidence of prosecutorial delay. The Court reiterated the requirement that a respondent lawyer show both undue prosecutorial delay and that the delay prejudiced the lawyer in order to qualify for a delay mitigator. Although the presumptive sanction was disbarment, the six-justice majority accepted the Board's balancing of the aggravating and mitigating factors and the Board's recommended three-year suspension. Three justices would have suspended Preszler for only 12 months.

In re Disciplinary Proceeding Against Scannell, 169 Wn.2d 723, 239 P.3d 332 (2010)

The Court disbarred Seattle lawyer John R. Scannell (WSBA No. 31035) because his obstruction of the disciplinary process "poses a serious threat to lawyer self-regulation." 169 Wn.2d at 728.

In 2005, disciplinary counsel investigated two separate grievances against Scannell. The first grievance involved Scannell's representation of a married couple on related criminal charges. Scannell represented both the husband and wife without getting their informed consent, confirmed in writing, to the conflicts attendant on representing two defendants in a criminal case. Scannell did inform the couple, in general terms, that a conflict might exist, but did not get their written waiver. The second grievance related to Scannell's involvement in Paul King's practice of law while suspended. King, upon his suspension, directed opposing counsel to serve Scannell instead of King with pleadings and correspondence (see above, summary of In re Disciplinary Proceeding Against King, 168 Wn.2d 888, 232 P.3d 1095 (2010)). Scannell received pleadings and correspondence in the matter and delivered them to King, with whom he shared office space, even though he knew that King was suspended.

During the investigation of both grievances, Scannell refused to make any meaningful response. He requested deferrals based on litigation that had no relation to the grievance. He resisted depositions and filed frivolous motions. In one instance, Scannell filed a motion with the Disciplinary Board seeking to terminate his deposition. When the vice chair of the Board ruled against him, Scannell moved to set aside the ruling as ultra vires because, he said, the chief hearing officer should have ruled on the motion—despite the fact that Scannell had filed his original motion with the Board and the chief hearing officer has no authority to act where a matter has not yet been ordered to hearing. Scannell went on to file an action in Superior Court against the State, the WSBA, the Board, the former chair of the Board, and disciplinary counsel, which was dismissed for lack of subject matter jurisdiction. The Supreme Court ultimately denied Scannell's petition for review of the matter.

Discipline Statistics

After disciplinary counsel filed the formal complaint, Scannell made a series of duplicative motions to recuse or disqualify disciplinary counsel, all proposed hearing officers, and the entire Disciplinary Board based on the adversarial relationship created by Scannell when he filed the <u>Scannell v. State</u> lawsuit. Scannell asked that the WSBA have a special tribunal hear his case, preferably out of state. Ultimately, disciplinary counsel was not able to take Scannell's deposition. Scannell did not submit documents responsive to disciplinary counsel's subpoena duces tecum until the penultimate day of the hearing.

The hearing officer found that Scannell had negligently failed to obtain informed consent to the joint representation, confirmed in writing, from the married couple. Although the hearing officer dismissed the count of the formal complaint that charged Scannell with aiding King in the unauthorized practice of law, he found that Scannell had knowingly violated RPC 3.1 and 8.4(*l*) by failing to cooperate with both investigations with the intent to frustrate the proceedings. The hearing officer recommended a two-year suspension, with reinstatement conditioned on full compliance with all subpoenae in the case. The Disciplinary Board disagreed, finding that Scannell had acted intentionally in failing to cooperate in the two disciplinary investigations with the intent to frustrate and delay the disciplinary proceedings and recommending that Scannell be disbarred.

The Court agreed with the Board. It held that Scannell's attempts to avoid subpoenae revealed his intent to frustrate the proceedings: "Scannell managed to avoid producing documents for more than three years by repeatedly delaying, rescheduling, or refusing to attend depositions on one ground after another," raising his concerns at the last minute so that depositions had to be rescheduled. <u>Id.</u> at 739. Further, many of the objections Scannell raised were frivolous. Scannell's subjective belief that he had not violated the RPC did not relieve him of his duty to cooperate. The Court rejected Scannell's arguments that disciplinary counsel, the Board, and the chair and vice-chair had had illicit ex parte contact and conspired against him in retaliation for a grievance that he had filed against then-Attorney General Christine Gregoire.

The Court held that Scannell's five-year course of non-cooperation caused serious injury to the profession. Aside from the demand on the Bar's limited resources, the Court noted that "Scannell never fully complied with disciplinary counsel's discovery requests, and one of Scannell's alleged violations was dismissed." <u>Id.</u> at 744. The possibility that "through stonewalling, Scannell was able to prevent disciplinary counsel from obtaining enough evidence to prove he had violated the RPCs" was a serious potential injury. <u>Id.</u> at 745. The Court rejected Scannell's contention that disciplinary counsel's inability to prove that Scannell had aided King in the unauthorized practice of law, even after Scannell had produced all the requested documents on the second day of the three-day hearing, proved that the original charge was unfounded. "In fact, all it suggests is that disciplinary counsel was unable to marshal this evidence, which took three years to arrive, in a single day." <u>Id.</u> n.10.

The Court accepted the Board's four aggravating factors: prior disciplinary offense, selfish motive, multiple offenses, and refusal to acknowledge the wrongful nature of the conduct.

Scannell's intent to frustrate and delay the disciplinary proceedings demonstrated a selfish motive because Scannell would thereby escape sanction. Finally, Scannell's continued iteration of his unsubstantiated claims of malicious prosecution and retaliation demonstrated Scannell's refusal to acknowledge the wrongful nature of his conduct. <u>Id.</u> at 746. The sixjustice majority followed the Board's recommendation and disbarred Scannell. Three justices would have held that disbarment was too harsh for conduct that the dissent characterized as "tilting at windmills." <u>Id.</u> at 750.

In re Disciplinary Proceeding Against Shepard, 169 Wn.2d 697, 239 P.3d 1066 (2010)

The Court suspended Tacoma lawyer Richard D. Shepard (WSBA No. 16194) for two years for participating in a living trust scam that targeted seniors.

Shepard agreed to affiliate with Stephen Cuccia, a non-lawyer, to provide legal services related to Cuccia's sale of living trust packages to seniors. Shepard's fee agreements, which were included in the living trust package, promised that Shepard would independently review the customers' estate planning needs and make recommendations for estate planning tools and documents. In fact, Shepard's "review" consisted of short phone calls with clients to confirm asset and beneficiary information that the clients had provided on a questionnaire. He did not prepare the trust documents or meet personally with his clients. The trust packages that Cuccia marketed were often more complicated than required; many of the seniors would have been better served by simple wills. Some of the clients already had valid estate plans in place, but Shepard did not inquire about previous estate plans. Cuccia referred over 70 clients to Shepard in this manner, for which Shepard received \$200 per client. After Shepard discovered that Cuccia was being investigated by the Office of Financial Institutions, he sent letters to all of his Cuccia-referred clients offering to review their documents again and/or refund his fee.

The hearing officer found that Shepard violated (1) RPC 1.3 and/or 1.4 by failing to adequately explain the risks and benefits of living trusts versus other estate planning options to his clients; (2) RPC 1.7 by entering into a continuing business relationship with Cuccia without first obtaining informed consent from his clients regarding his personal interest in maintaining a continuing business arrangement with Cuccia; and (3) RPC 5.3(a) by failing to make reasonable efforts to ensure that Cuccia's conduct was compatible with the professional obligation of a lawyer. But the hearing officer found that Shepard had not aided Cuccia in the unauthorized practice of law. The hearing officer found three aggravating factors (a pattern of misconduct, multiple offenses, and substantial experience in the practice of law) and six mitigating factors (absence of prior disciplinary record, absence of dishonest or selfish motive, timely good faith effort to make restitution or rectify the consequences of misconduct, full and free disclosure to the Disciplinary Board or cooperative attitude toward the proceeding, character and reputation, and remorse). The hearing officer found that the presumptive sanction was suspension and recommended that Shepard be suspended for six months.

Discipline Statistics

The Disciplinary Board adopted all of the hearing officer's findings, except his conclusion that Shepard had not assisted Cuccia in the unauthorized practice of law. The Board struck two of the mitigating factors—absence of a selfish motive and cooperative attitude toward the proceeding—and added the aggravating factor of vulnerable victims. The Board held that disbarment was the presumptive sanction but recommended that Shepard be suspended for two years because his remorse and efforts to rectify the consequences of his actions demonstrated that disbarment was not necessary.

The Court affirmed. It agreed with the Board that Cuccia's sale of living trust packages constituted the unauthorized practice of law, rejecting Shepard's argument that Cuccia was merely selling legal forms. The Court held that Cuccia practiced law when he presented his clients with information about the benefits of living trusts, and by selecting the forms that the clients should use when they ultimately agreed to purchase a living trust package. The Court noted that Cuccia's actions went well beyond selling legal forms: he marketed an estate planning package by providing false and misleading information about the dangers of probate in Washington and the inability of other testamentary documents to avoid those dangers. Cuccia visited the homes of his prospective clients and advised them that his trust package was appropriate for their needs, essentially taking on the role of an estate planning attorney. Shepard assisted Cuccia's unauthorized practice of law by allowing Cuccia to use his name and title to lend legitimacy to the operation. Clients believed that the trust documents would be effective because they had been reviewed by Shepard, a lawyer.

The Court also agreed with the Board that Shepard's lack of diligence caused serious injury to the clients and to the profession. The Court noted that Shepard's negligence affected over 70 individuals and couples referred to him by Cuccia, and that Shepard did not provide the services promised in his fee agreement to any of these clients. Shepard's negligence "enabled his business associate to exploit elderly and vulnerable clients, causing them serious injury." 169 Wn.2d at 714. The presumptive sanction, therefore, was disbarment.

The Court further agreed that absence of a selfish motive was not a mitigating factor in this case. While acknowledging that merely charging a fee for services is neither dishonest or selfish, the Court voiced its belief that "charging a fee for performing little to no service is." Id. at 715. The Court also rejected Shepard's argument that the letter Shepard had written to the Bar's Rules of Professional Conduct Committee, requesting an opinion on the legitimacy of an arrangement like the one he had with Cuccia, constituted full and free disclosure to the Board. The Court held, like the hearing officer and the Board, that the facts presented in Shepard's hypothetical situation were inaccurate and misleading.

Ultimately, the Court imposed the Board's recommend sanction of a two-year suspension, holding that the suspension would be sufficient given Shepard's remorse and his attempts to rectify the consequences of his misconduct, while still providing a warning to other law-yers that such conduct must be avoided.

Discipline Summaries

Below are very brief summaries for each of the 93 disciplinary actions in 2010. For a more detailed summary, see the notices published in the *Washington State Bar News*, which may be viewed at www.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

James J. Conlin [WSBA No. 20931], Tacoma lawyer, disbarred for misappropriating escrow funds and making misrepresentations to the escrow client and to disciplinary counsel to conceal the misappropriation. RPC 1.15A, 5.3, 5.5, 8.4(b), 8.4(c), 8.4(d), and 8.4(*l*).

Stephen D. Cramer [WSBA No. 9085], Federal Way lawyer, disbarred for fraudulent and criminal conduct to avoid his excise tax liability. RPC 8.4(b), 8.4(c), and 8.4(i). See Opinion at *In re Disciplinary Proceeding Against Cramer*, 168 Wn.2d 220, 225 P.3d 881 (2010).

Christina S. Denison [WSBA No. 25096], Bellevue lawyer, disbarred for a pattern of lack of diligence, failure to communicate, and failure to cooperate with disciplinary proceedings. RPC 1.3, 1.5, and 8.4(*l*).

Jodi L. Frost [WSBA No. 27121], Seattle lawyer, disbarred for criminal conduct involving false swearing by backdating a legal document and making misrepresentations under oath to conceal the backdating of the document. RPC 3.3, 3.4, 4.1, 8.4(a), 8.4(b), 8.4(c), and 8.4(i).

Michael A. Hecht [WSBA No. 19165], Tacoma lawyer, disbarred for criminal con-

duct of threatening to cause bodily injury and patronizing a prostitute. RPC 8.4(b) and 8.4(i).

David R. Hellenthal [WSBA No. 18311], Spokane lawyer, disbarred for taking funds from trust to which he was not entitled, failing to deposit advance fees into trust, failing to represent clients' interests and making misrepresentations to clients. RPC 1.3, 1.4, 1.5, 1.15A, 1.16, 8.4(b), 8.4(c), 8.4(i), 8.4(j), and 8.4(l).

Paul H. King [WSBA No. 7370], La Union, Philippines, lawyer, formerly of Seattle, disbarred for representation of a client while suspended from the practice of law and misrepresentations to disciplinary counsel in the course of the disciplinary proceedings. RPC 3.1, 5.8, 8.4(b), 8.4(j), and 8.4(*l*). See Opinion at *In re Disciplinary Proceeding Against King*, 168 Wn.2d 888, 232 P.3d 1095 (2010).

Paul R. Lehto [WSBA No. 25103], Ish-peming, Michigan, lawyer, disbarred for misappropriation of client funds and concealing information from clients about their representation to avoid detection of the misappropriations, displaying unfitness to practice law. RPC 1.2, 1.3, 1.4,

1.14, 1.15A, 1.16, 4.4, 8.4(b), 8.4(c), 8.4(i), 8.4(k), 8.4(*l*), and 8.4(n).

Noel Lerner [WSBA No. 29978], Buckley lawyer, disbarred for a pattern of misconduct, including failing to diligently represent clients, failing to communicate with clients, making false statements to clients and to courts, trust account violations, charging unreasonable fees and failure to cooperate in discipline investigations. RPC 1.1, 1.3, 1.4, 1.5, 1.6, 1.14, 1.15A, 1.16, 3.2, 3.3, 3.4, 5.1, 5.3, 7.1, 7.3, 8.4(c), 8.4(d), and 8.4(*l*).

Theodore A. Mahr [WSBA No. 19555], Moses Lake lawyer, disbarred for a pattern of misconduct, including failing to diligently represent clients, making misrepresentations to clients to avoid detection of his failure to represent, removing unearned fees from trust and converting them to his own use, and forging a client's signature on legal documents. RPC 1.3, 1.4, 1.5, 1.16, 3.3, 8.4(b), 8.4(c), and 8.4(l).

Shane O. Nees [WSBA No. 29944], Fairfield lawyer, disbarred for criminal conduct of misappropriating client funds and a pattern of failing to act diligently, failing to communicate with clients, and making false representations to tribunals. RPC 1.3, 1.4, 1.16, 3.2, 3.3, 8.4(b), 8.4(c), 8.4(i), and 8.4(*l*).

Hyon C. Pak [WSBA No. 24238], Tukwila lawyer, disbarred for lack of competence, failure to act diligently and promptly, failure to return client property, failure to cooperate in discipline investigation, failure to notify parties of suspension, and practicing law while suspended. RPC 1.1, 1.3, 1.16, 5.8, 8.4(d), and 8.4(*l*).

Shange H. Petrini [WSBA No. 40210], Canyon, California, lawyer, disbarred for pattern of lack of diligence, failure to communicate with clients, failure to return unearned fees, abandoning his practice, and failure to cooperate with disciplinary proceedings. RPC 1.3, 1.4, 1.5, 1.16, and 8.4(*l*).

Antonio Salazar [WSBA No. 6273], Seattle lawyer, disbarred for pattern of lack of competence, lack of diligence, failure to communicate with clients, failure to disclose conflicts of interest and obtain consent waivers, failure to properly supervise a subordinate lawyer, charging unreasonable fees, failure to provide accounting of fees, failure to refund unearned fees, and unfitness to practice law. RPC 1.1, 1.3, 1.4, 1.5, 1.7, 1.8, 1.9, 1.16, 3.3, 5.1, and 8.4(n).

John R. Scannell [WSBA No. 31035], Seattle lawyer, disbarred for conduct involving conflicts of interest and a pattern of non-cooperation with disciplinary counsel and obstructing the disciplinary system. RPC 1.7 and 3.1. See Opinion *In re Disciplinary Proceeding Against Scannell*, 169 Wn.2d 723, 239 P.3d 332 (2010).

Mark A. Schneider [WSBA No. 18398], Tacoma lawyer, disbarred for settling the personal injury claim of a deceased client without the approval of the personal representative and for the criminal conduct of misappropriating the settlement funds. RPC 1.2, 1.15A, 8.4(b), and 8.4(c).

Daniel J. Shea [WSBA No. 4565], Helena, Montana, lawyer, disbarred by reciprocal discipline for conduct involving the unauthorized practice of law. Montana's RPC 5.5.

Charles L. Smith [WSBA No. 5357], Bellevue lawyer, disbarred for criminal conduct of aiding and abetting the unauthorized practice of law by operating a sham law-office, entailing a pattern of failure to supervise non-lawyer employees, failure to communicate with clients, and lack of diligence. RPC 1.3, 1.4, 1.5, 1.15A, 5.3, 5.4, 5.5, 7.1, 7.4, 8.4(a), 8.4(b), 8.4(c), and 8.4(i).

Greg R. Tichy [WSBA No. 14686], Liberty Lake lawyer, disbarred for criminal conduct of misappropriating client funds from his trust account and converting them to his own use, lack of diligence, practicing law while suspended, disregard

for a court order, and failure to cooperate in a disciplinary investigation. RPC 1.3, 1.15A, 5.8, 8.4(b), 8.4(c), 8.4(d), 8.4(i), 8.4(j), and 8.4(l).

Ann Whitlow-Clark [WSBA No. 14579], Dallas, Texas, lawyer, disbarred for conviction of first degree murder by a Texas court. RPC 8.4(b) and 8.4(i).

Michael J. Wynne [WSBA No. 6534], Vancouver lawyer, disbarred for conviction of four counts of first-degree theft involving misappropriation of client funds. RPC 8.4(b), 8.4(c), and 8.4(i).

Resignations in Lieu of Disbarment

William F. Dippolito [WSBA No. 12533], Tacoma lawyer, resigned in lieu of disbarment, stipulating that the Association could establish criminal conduct related to securities law violations involving misappropriation of investment funds. RPC 8.4(b) and 8.4(c).

Leylan Greb [WSBA No. 36433], Vancouver lawyer, resigned in lieu of disbarment, stipulating that the Association could establish that he failed to provide competent representation, failed to pursue a client's objectives, failed to adequately communicate with his client, acted in a conflict of interest, and engaged in conduct prejudicial to the administration of justice. RPC 1.1, 1.2, 1.4, 1.7, 8.4(d).

Michelle L. Malkin [WSBA No. 28633], Arlington Heights, Illinois, lawyer, resigned in lieu of disbarment, stipulating that the Association could establish that she converted to her own use the funds of a nonprofit corporation of which she was the executive director. RPC 8.4(c).

Peter Moote [WSBA No. 6098], Freeland lawyer, resigned in lieu of disbarment, stipulating that the Association could establish that he converted client funds to his own use, and submitted falsified arbitration awards to the court. RPC 1.3, 1.4, 1.15A, 3.1, 3.3, 8.4(b), and 8.4(c).

Patrick J. Mullen [WSBA No. 6479], Lynnwood lawyer, resigned in lieu of disbarment, stipulating that the Association could establish that he converted client funds to his own use, failed to diligently represent a client, and failed to adequately communicate with the client. RPC 1.3, 1.4, 1.14, and 8.4(c).

Suspensions

Christopher P. Bartow [WSBA No. 29559], Ellensburg lawyer, suspended for one year for rude and offensive conduct that violated the attorney's oath provision to avoid offensive personalities, served no substantial purpose other than to embarrass, delay, or burden the court, and was prejudicial to the administration of justice. RPC 4.4, 8.4(d) and 8.4(k).

Robert E. Beach III [WSBA No. 6710], Spokane lawyer, suspended for two years for trust account irregularities, failure to review and maintain trust account records, failure to properly supervise a non-lawyer, and failure to cooperate with disciplinary investigations. RPC 1.14, 1.15A, 1.15B, and 5.3.

Andrew M. Brackbill [WSBA No. 17090], Seattle lawyer, suspended for six months for failure to act diligently in responding to discovery, resulting in dismissal of his client's matter, and misrepresenting to the client the status of the matter. RPC 1.3, 1.4, 3.2, and 8.4(c).

Jody P. Brion [WSBA No. 25761], Anchorage, Alaska, lawyer, suspended for three years with two years stayed, by reciprocal discipline for failure to act with reasonable diligence, failure to communicate the basis of his fees and to provide accounts of hours billed, and failure to properly care for client property. Alaska's RPC 1.4, 1.5, and 1.15.

Drago Campa [WSBA No. 23947], Los Angeles, California, lawyer, suspended for 18 months by reciprocal discipline for conduct in two matters involving failure

to competently perform legal services, failure to obey a court order, violating a duty to report a sanction, failure to communicate, non-cooperation in disciplinary investigations, and failure to comply with conditions attached to a reproval. California's RPC 1-100 and 3-100.

Richard Collins [WSBA No. 27007], Big Bear Lake, California, lawyer, suspended for two years by reciprocal discipline for trust account irregularities and misappropriation of client funds. California's RPC 3-700(D)(2).

Christina S. Denison [WSBA No. 25096], Bellevue lawyer, suspended for one year for failure to act diligently, failure to communicate promptly, failure to provide reasonable consultation and explanation, failure to comply with requests for information, and failure to return client property and unearned fees. RPC 1.3, 1.4, 1.5, and 1.16.

Ryan M. Edgley [WSBA No. 16171], Yakima lawyer, reprimanded and suspended for six months for practice of law while suspended, failure to notify clients of suspension, and failure to file an affidavit of compliance. RPC 5.5, 5.8, and 8.4(*l*).

Sharon L. Gain [WSBA No. 27972], San Antonio, Texas, lawyer, suspended for two years for filing frivolous motions, failure to respect the rights of third persons, conduct prejudicial to the administration of justice, and violations of court orders. RPC 3.1, 4.4, 8.4(d), and 8.4(j).

Alfoster Garrett Jr. [WSBA No. 31044], Seattle lawyer, suspended for 30 months

for failure to obtain a written contingency fee agreement, failure to communicate the basis of his fee, failure to communicate to clients, failure to deposit client funds into a trust account, failure to maintain complete records of client funds, commingling his own funds with client funds, using client funds for his own benefit, failure to pay clients funds which they were entitled to receive, and dishonest conduct in making misrepresentations to a client and to disciplinary counsel. RPC 1.4, 1.5, 1.14, and 8.4(c).

Andrew F. Hiblar Jr. [WSBA No. 7648], University Place lawyer, suspended for nine months for failing to maintain adequate trust account records, commingling his own funds with client funds, removing funds from trust without first establishing entitlement, and failing to produce records in response to a subpoena. RPC 1.15A, 1.15B, and 8.4(*l*).

Rosemary Kamb [WSBA No. 16532], Mount Vernon lawyer, suspended for one year for trust account irregularities, charging unreasonable fees, representing a person without the authority of that person, making false statements to a tribunal, engaging in conduct prejudicial to the administration of justice, and failing to communicate and explain billing procedures. RPC 1.2, 1.4, 1.5, 1.14, 3.3, and 8.4(d).

Rick W. Klessig [WSBA No. 22272], Olympia lawyer, suspended for two years for failure to communicate, failure to provide a written accounting of client funds, withholding client property, trust account irregularities, and conduct prejudicial to the administration of justice. RPC 1.4, 1.14, 1.15A, 1.15B, 8.4(d), and 8.4(l).

David B. Knodel [WSBA No.13147], Tacoma lawyer, suspended for 18 months for failure to act diligently, failure to communicate, and misrepresentations. RPC 1.3, 1.4, and 8.4(c).

Jonathan W. Milstein [WSBA No. 27564], Bellevue lawyer, suspended for 18 months for conviction of the crime of telephone harassment by placing fictitious ads inviting sexual activities with a neighbor of his. RPC 8.4(b) and 8.4(i).

Thomas O. Mix Jr. [WSBA No. 24112], Flint, Michigan, lawyer, suspended for two years for conviction of 12 counts of possession of controlled substances via forged prescriptions. RPC 8.4(b) and 8.4(i).

Terry J. Preszler [WSBA No. 13836], Kennewick lawyer, suspended for three years for charging an unreasonable fee, giving mistaken legal advice, filing false documents with a tribunal, failing to supervise his paralegal, and failing to obtain the approval of the bankruptcy court before distributing proceeds from his client's personal injury claim to himself. RPC 1.4, 1.5, 3.4, 5.3, and 8.4(d). See Opinion at *In re Disciplinary Proceeding Against Preszler*, 169 Wn.2d 1, 232 P.3d 1118 (2010).

Gary E. Randall [WSBA No. 15020], Woodinville lawyer, suspended for six months for lack of diligence, failure to communicate with client, failure to cooperate with disciplinary counsel, and unauthorized practice of law. RPC 1.3, 1.4, 1.16, 3.2, 5.5, 5.8, and 8.4(*l*).

Antonio Salazar [WSBA No. 6273], Seattle lawyer, suspended for one year for failure to act diligently, an unreasonable

fee, dishonest conduct, and a pattern of neglect demonstrating unfitness to practice law. RPC 1.3, 1.5, 8.4(c), and 8.4(n).

Richard D. Shepard [WSBA No. 16194], Tacoma lawyer, suspended for two years for participating in a living trust scam that targeted seniors. The conduct involved failure to act diligently in representing clients, failure to communicate with clients, conflicts of interest, and assisting in the unauthorized practice of law. RPC 1.3, 1.4, 1.7, 5.3, and 5.5. See Opinion at In re Disciplinary Proceeding Against Shepard, 169 Wn.2d 697, 239 P.3d 1066 (2010).

Tracy D. Trunnell [WSBA No. 34707], Cottage Grove, Oregon, lawyer, suspended for four months by reciprocal discipline for lack of diligence, lack of competence, and failure to keep clients adequately informed. Oregon's RPC 1.3, 1.4, and 8.4(a).

Jo Nell Walker [WSBA No. 24526], Vancouver lawyer, suspended for three years

for failure to provide competent services, failure to communicate to clients, charging unreasonable fees, failure to properly withdraw from representation, and non-cooperation in a disciplinary investigation. RPC 1.1, 1.3, 1.4, 1.5, 1.15, and 8.4(*l*).

Marlene K. Wenger [WSBA No. 35478], Centralia lawyer, suspended for six months and placed on probation for one year for failure to provide competent representation, conversion of client funds, misrepresentation to a tribunal, concealing evidence, dishonest conduct, and engaging in conduct prejudicial to the administration of justice. RPC 1.1, 1.15B, 1.3, 3.4, 8.4(c), and 8.4(d).

Jesse E. Yarbrough [WSBA No. 16921], Tacoma lawyer, suspended for six months for conviction of one felony count of manufacture of controlled substances (growing marijuana). RPC 8.4(b).

Reprimands

Ronald P. Abernethy [WSBA No. 14239], Seattle lawyer, reprimanded for conviction in the Seattle Municipal Court of failure to pay taxes and engaging in business without a license. RPC 8.4(b).

Rami Amaro [WSBA No. 29389], Hayden, Idaho, lawyer, reprimanded by reciprocal discipline based on a reprimand imposed by Idaho for the unauthorized disclosure of client information. Idaho's RPC 1.6 and 1.9.

Stephen T. Araki [WSBA No. 6428], Bellevue lawyer, reprimanded for trust account irregularities and failure to supervise non-lawyer employees. RPC 1.14 and 5.3.

Matthew R. Aylworth [WSBA No. 37892], Eugene, Oregon, lawyer, reprimanded by reciprocal discipline based on a reprimand imposed by Oregon for failure to review a proposed judgment of dismissal and to serve it on the defendant

before filing. Oregon's RPC 3.5(b) and 8.4(a)(4).

Geoffrey C. Cross [WSBA No. 3089], Tacoma lawyer, reprimanded for conflicts of interest. RPC 1.10.

Vicky J. Currie [WSBA No. 24192], Tacoma lawyer, reprimanded for failure to diligently represent a client, failure to communicate to clients, and unreasonable fees. RPC 1.3, 1.4, and 1.5.

Bernice C. Delorme [WSBA No. 31148], Belcourt, North Dakota, lawyer, reprimanded by reciprocal discipline based on a reprimand imposed by the state of North Dakota for failure to consult with two clients to obtain their informed consent as to the limitation of the scope of representation. North Dakota's RPC 1.2(c).

Ryan M. Edgley [WSBA No. 16171], Yakima lawyer, reprimanded and suspended for six months for practice of law while suspended, failure to notify clients of suspension, and failure to file an affidavit of compliance. RPC 5.5, 5.8, and 8.4(*l*).

Ronald A. Gomes [WSBA No. 31074], Lacey lawyer, received two reprimands from one disciplinary proceeding for conduct in two matters involving the failure to act diligently and failure to communicate with clients. RPC 1.3 and 1.4.

Daniel N. Gordon [WSBA No. 32186], Eugene, Oregon, lawyer, reprimanded by reciprocal discipline based on a reprimand imposed by Oregon for failure to review records before preparing, signing, and filing an affidavit with the Court, resulting in a judgment based on false information. Oregon's RPC 8.4(a).

Todd S. Hammond [WSBA No. 32401], Salem, Oregon, lawyer, reprimanded by reciprocal discipline based on a reprimand imposed by Oregon for charging and collecting a fee without approval. Oregon's RPC 1.5.

Colleen A. Hartl [WSBA No. 18051], Federal Way lawyer, reprimanded for making misrepresentations in a Commission on Judicial Conduct (CJC) investigation of her sexual contact with a public defender who appeared before her as a judge, and for suggesting that witnesses withhold information in the CJC investigation. RPC 8.4(c) and 8.4(d).

Tom S. Hyde [WSBA No. 20509], Everett lawyer, reprimanded for trust account irregularities. RPC 1.15A and 1.15B.

Paul D. Jacobson [WSBA No. 26939], Redmond lawyer, reprimanded for inadequate trust account records and failure to properly supervise a non-lawyer assistant. RPC 1.15A and 5.3.

Jerry L. Kagele [WSBA No. 4851], Spokane lawyer, received two reprimands from two disciplinary proceedings for conduct involving failure to act diligently and engaging in conduct prejudicial to the administration of justice. RPC 1.3 and 8.4(d).

Jingzhou Kang [WSBA No. 26670], Bellevue lawyer, reprimanded for lack of diligence and failure to cooperate with a disciplinary investigation. RPC 1.3 and 8.4(*l*).

Fiona A. C. Kennedy [WSBA No. 32385], Kirkland lawyer, reprimanded by reciprocal discipline based on a censure imposed by Idaho for lack of diligence, failure to communicate, failure to return un-

earned fees, and conduct prejudicial to the administration of justice. Idaho's RPC 1.2, 1.3, 1.4, 1.16, 3.2, 3.4, 8.1, and 8.4(d).

Roger J. Leo [WSBA No. 20654], Portland, Oregon, lawyer, reprimanded by reciprocal discipline based on a reprimand imposed by Oregon for concurrent representation of clients in matters adverse to one another, representing a current client against a former client, and failure to obtain client consent after disclosure of conflict of interest. Oregon's DR 5-105(c) and 5-105(e).

Clayton E. Longacre [WSBA No. 21821], Port Orchard lawyer, reprimanded for conduct prejudicial to the administration of justice. RPC 8.4(d).

J. J. Sandlin [WSBA No. 7392], Prosser lawyer, reprimanded for conduct involving a conflict of interest. RPC 1.8(a).

John R. Scannell [WSBA No. 31035], Seattle lawyer, reprimanded for lack of diligence, lack of competence, and failure to communicate. RPC 1.3, 1.4, 3.2, and 8.4(d).

Georgina D. Sierra [WSBA No. 16854], Redmond lawyer, received two reprimands from one disciplinary proceeding for trust account irregularities, failure to properly supervise a non-lawyer assistant, and failure to cooperate during a disciplinary investigation. RPC 1.14, 1.15A, 5.3, and 8.4(*l*).

Robert S. Simon [WSBA No. 20382], Portland, Oregon, lawyer, reprimanded by reciprocal discipline based on a reprimand imposed by Oregon for occasional use of an email address that gave the impression that he was authorized to prac-

tice law in Oregon while he was not an active member of the Oregon Bar Association. Oregon's DR 2-106(A) and OSR 9.160.

Alan M. Singer [WSBA No. 11970], Tukwila lawyer, reprimanded for failure to adequately supervise non-lawyer staff and practicing law while suspended. RPC 5.3 and 5.8.

Marja M. Starczewski [WSBA No. 26111], Wenatchee lawyer, reprimanded for filing frivolous allegations without a good-faith basis. RPC 3.1 and 8.4(d).

Lawrence L. Taylor [WSBA No. 20595], Portland, Oregon, lawyer, reprimanded by reciprocal discipline based on a reprimand imposed by Oregon for conduct in which a non-lawyer investigator under his supervision improperly obtained an opposing party's school records to which his client had previously been denied access. Oregon's RPC 5.3, and 8.4(a).

James N. Turner [WSBA No. 16199], Bellingham lawyer, reprimanded for failure to act diligently and failure to communicate to a client. RPC 1.3 and 1.4.

John M. Unfred [WSBA No. 20729], Salem, Oregon, lawyer, reprimanded by reciprocal discipline based on a reprimand imposed Oregon for conduct involving the neglect of a legal matter, failure to keep clients reasonably informed and promptly comply with reasonable requests for information, and charging a clearly excessive fee. Oregon's RPC 1.3, 1.4(a), and 1.5(a).

Ann B. Witte [WSBA No. 6323], Portland, Oregon, lawyer, reprimanded by reciprocal discipline based on a reprimand

imposed by Oregon for failure to diligently represent a client. Oregon's DR 6-101.

Admonitions

Laura A. Banks [WSBA No. 8377], Edmonds lawyer, admonished for altering legal documents without permission. RPC 8.4(c).

Christopher P. Bartow [WSBA No. 29559], Ellensburg lawyer, admonished for revealing information related to the representation of a former client. RPC 1.9.

Julie K. Fowler [WSBA No. 30108], Bellevue lawyer, admonished for failure to communicate and failure to protect a client's interests upon termination of representation. RPC 1.5 and 1.16.

Richard B. Geissler [WSBA No. 12027], Spokane lawyer, admonished for failure to return property to a third person. RPC 1.15A.

Kenneth L. Grover [WSBA No. 21581], Burien lawyer, admonished for assisting in the unauthorized practice of law. RPC 5.5.

Heidi L. Hunt [WSBA No. 33499], Everett lawyer, admonished for guaranteeing financial assistance to clients. RPC 1.8(e).

Michael L. Jacob [WSBA No. 11622], Bainbridge Island lawyer, admonished for lack of diligence and failure to communicate with client. RPC 1.3 and 1.4.

Marianne Meeker [WSBA No. 29674], Federal Way lawyer, admonished for lack of diligence, failure to safeguard client property, and trust account violations. RPC 1.3 and 1.15A.

David Sherman [WSBA No. 16118], Yakima lawyer, admonished for failing to timely file trust account declarations. RPC 8.4(*l*).

Cesar O. Velasquez [WSBA No. 22760], Bellevue lawyer, admonished for disbursal of disputed funds. RPC 1.15A.

Catherine S. Willmore [WSBA No. 33459], Seattle lawyer, admonished for lack of diligence. RPC 1.3.

Transfers to Disability Inactive Status

These are non-disciplinary actions based on incapacity to practice law. Under our rules, there is no other public information on these matters.

Charles S. Ferguson [WSBA No. 18024], Seattle lawyer, transferred to disability inactive status.

Randy W. Loun [WSBA No. 14669], Poulsbo lawyer, transferred to disability inactive status.

Terrance W. Oostenbrug [WSBA No. 11143], Silverdale lawyer, transferred to disability inactive status.

Sandra Rasmussen [WSBA No. 29830], Seattle lawyer, transferred to disability inactive status.

Scott A. Sayre [WSBA No. 29533], Seattle lawyer, transferred to disability inactive status.

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 Washington 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:

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Lawyer Discipline in Washington

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 law-yer discipline process and related topics. The Washington State Bar Association is an extension of the Washington State Supreme Court, which regulates lawyer conduct. The Washington State Bar Association is not funded by taxpayer money. It is funded by fees paid by lawyers licensed to practice law in Washington state.

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

What We Can Do

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

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

What We Can't Do

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

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

Non-Members: If your grievance involves a non-lawyer who is not affiliated with a licensed lawyer, or a lawyer who is not licensed to practice in the State of Washington, we recommend that you contact the Practice of Law Board by calling (206) 727-8252 or online through www.wsba.org. We maintain records of all lawyers licensed with us. You may call (206) 727-8207 to inquire about a lawyer's membership status.

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

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

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

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

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

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

Common Complaints

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

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

Communication problems: If your lawyer is not returning your telephone calls, write to your lawyer and ask him or her to call you. If you do not receive a response, and you are

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considering filing a grievance against your lawyer about a communication problem, please first call our office. Additional information is available in our brochure "Communicating with Your Lawyer."

Mishandling of money or property: The Rules of Professional Conduct contain strict rules regarding the handling of client funds and property. If, after making reasonable inquiry of your lawyer, you think that your lawyer has not followed these rules, you need to act immediately: file a grievance with our office, contact your local police department or prosecuting attorney, and seek independent legal advice regarding your legal rights. If you believe that a lawyer has taken funds or property from you dishonestly, you may be eligible for some compensation from the Lawyers' Fund for Client Protection Board. Application forms are available by calling (206) 443-9722 or online through www.wsba.org. Since time limits may apply, you should act promptly.

Your Rights and Duties on Filing a Grievance

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

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

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

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

When you file a grievance with us, you also have some duties. You have a duty to furnish us with relevant documents and a duty to provide us with the names and addresses of rele-

vant 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.

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INFORMATION ABOUT THE LAWYER

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 *Lawyer Discipline in Washington* 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.

INFORMATION ABOUT YOU

A.11	All
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	
	BOUT YOUR GRIEVANCE
Email Address INFORMATION A Describe your relationship to the lawyer who is the	
INFORMATION A Describe your relationship to the lawyer who is the	e subject of your grievance:
INFORMATION A Describe your relationship to the lawyer who is the	e subject of your grievance:
INFORMATION A Describe your relationship to the lawyer who is the ☐ I am a client ☐ I am a former client	e subject of your grievance: I am an opposing lawyer Other:

Explain your grievance in your own words . Give all important dates, times, places, and court file numbers Attach additional pages, if necessary. Attach copies (not your originals) of any relevant documents.				
	<u>AFFIRMATION</u>			
I affirm that the information I am pyer Discipline in Washington and I	providing is true and accurate to the best of my knowledge. I have read <i>Law</i> -I understand that the content of my grievance can be disclosed to the lawyer.			
Signature:	Date:			
				