

C L I E N T   P R O T E C T I O N   F U N D



## Trustees' Annual Report: Fiscal Year 2017

LAWYERS' INDEMNITY FUND EST. 1960 • CLIENT PROTECTION FUND EST. 1994

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**WASHINGTON STATE BAR ASSOCIATION**

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## **PURPOSE OF THE CLIENT PROTECTION FUND**

*“The purpose of this rule is to create a Client Protection Fund, to be maintained and administered as a trust by the Washington State Bar Association (WSBA), in order to promote public confidence in the administration of justice and the integrity of the legal profession. [...] Funds accruing and appropriated to the Fund may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any person by reason of the dishonesty of, or failure to account for money or property entrusted to, any member of the WSBA as a result of or directly related to the member's practice of law (as defined in GR 24), or while acting as a fiduciary in a matter directly related to the member's practice of law. Such funds may also, through the Fund, be used to relieve or mitigate like losses sustained by persons by reason of similar acts of an individual who was at one time a member of the WSBA but who was at the time of the act complained of under a court ordered suspension.”*

Admission and Practice Rules 15(a) and (b).

**WASHINGTON STATE BAR ASSOCIATION**  
**CLIENT PROTECTION FUND, FISCAL YEAR 2017**

<b>FY 2017 TRUSTEES</b>	
Bradford Furlong, President	Mt. Vernon
William Pickett, President-elect	Yakima
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Keith Black	Gig Harbor
Dan Bridges	Seattle
Mario Cava	Seattle
Daniel Clark	Yakima
Ann Danieli	Seattle
Sean M. Davis	Tacoma
James Doane	Issaquah
Angela Hayes, CPF Board Liaison	Spokane
Andrea Jarmon	Tacoma
Rajeev Majumdar	Blaine
Christina Meserve	Olympia
Athan Papailiou	Seattle
Kim Risenmay	Redmond

<b>FY 2017 CLIENT PROTECTION FUND BOARD</b>	
Chach Duarte White, Chair	Mercer Island
Efrem Krisher	Bellevue
Pamela Anderson	Olympia
Tracy Flood	Port Orchard
Beverly Fogle	Vancouver
Kathryn Herrmann	Tacoma
Matthew Honeywell	Seattle
Carol Hunter	Spokane
Rich Meyer	Bothell
Gloria Ochoa-Bruck	Spokane
Daniel Rogers	Shoreline
Carrie Umland	University Place
Allen Unzelman	Chehalis

<b>WSBA STAFF TO THE CPF BOARD</b>	
Kevin Bank	Assistant General Counsel; CPF Liaison/Secretary
Brenda Jackson	CPF Analyst

**WASHINGTON STATE BAR ASSOCIATION**  
**CLIENT PROTECTION FUND, FISCAL YEAR 2017**

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## I. HISTORY AND ESTABLISHMENT OF THE CLIENT PROTECTION FUND

Washington is fortunate to have a history of maintaining a stable, well-funded Client Protection Fund (CPF) that is strongly supported by the Washington Supreme Court and the Washington State Bar Association. Washington was one of the first states to establish what was then called a Lawyers' Indemnity Fund in 1960. Since that time, the lawyers of this state have compensated victims of the few dishonest lawyers who have misappropriated or failed to account for client funds or property.

The current CPF was established by the Washington Supreme Court in 1994 at the request of the WSBA by the adoption of [Rule 15](#) of the Admission to Practice Rules (APR), now called the Admission and Practice Rules. Prior to the adoption of that rule, the WSBA had voluntarily maintained a clients' security or indemnity fund out of the Bar's general fund. Similar funds are maintained in every jurisdiction in the United States, as well as Canada, Australia, New Zealand, and other countries.

The CPF helps accomplish important concerns shared by our Court and WSBA members – client protection, public confidence in the administration of justice, and maintaining the integrity of the legal profession. Under APR 15, CPF payments are gifts, not entitlements. A \$30 annual assessment from lawyers licensed in Washington finances all CPF gifts; no public funds are involved. Currently, all WSBA members on active status, all lawyers with *pro hac vice* admissions, in-house counsel lawyers, house counsel, and foreign law consultants make these contributions. The following chart shows the experience of the past 10 years as the WSBA membership has increased.

## Client Protection Fund Applications 2007-2017

Fiscal Year	# Of Lawyers	# Of Lawyers With Approved Applications	# Of Applications Received	# Of Applications Approved <sup>1</sup>	Gifts Approved
2007	27,761	16	69	34	\$539,789
2008	27,786	18	125	43 <sup>2</sup>	\$899,672
2009	27,819	13	80	33	\$449,050
2010	28,534	23	161	78	\$554,270
2011	28,676	15	179	72 <sup>3</sup>	\$1,002,683
2012	29,184	17	137	39	\$378,574
2013	29,682	18	130	45	\$423,508
2014	31,495	14	141	44	\$337,160
2015	31,335	20	79	59 <sup>4</sup>	\$495,218
2016	32,969	16	56	44	\$253,228
2017	33,357	19	72	47	\$439,273

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

<sup>2</sup> One lawyer was responsible for 24 approved applications totaling \$695,409 in 2008.

<sup>3</sup> One lawyer was responsible for 25 approved applications totaling \$1,092,222 in 2011; payments were prorated.

<sup>4</sup> One lawyer was responsible for 27 approved applications.

## II. FUND PROCEDURES

The CPF is governed by [Admission and Practice Rule \(APR\) 15](#) and Procedural Rules adopted by the Board of Governors and approved by the Supreme Court. These can be found at:

[http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=ga&set=APR&ruleid=gaapr15](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=APR&ruleid=gaapr15)

[http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=ga&set=APR&ruleid=gaapr15p](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=APR&ruleid=gaapr15p)

**Administration:** The members of the Board of Governors of the WSBA serve during their terms of office as Trustees for the CPF. The Trustees appoint and oversee the CPF Board, comprised of 11 lawyers and 2 community representatives. This Board is authorized to consider all CPF claims, make CPF reports and recommendations to the Trustees, submit an annual report on Board activities to the Trustees, and make such other reports and publicize Board activities as the Court or the Trustees may deem advisable. Two WSBA staff members help Board members ensure the smooth functioning of the Board's work: WSBA Client Protection Fund Analyst Brenda Jackson performs a wide variety of tasks to help members of the public and the Board in the processing and analyzing of CPF claims. WSBA Assistant General Counsel Kevin Bank acts as WSBA staff liaison to the Board, provides legal advice to the Board and also serves as Secretary to the Board.

**Application:** Anyone who files a grievance with the WSBA that alleges a dishonest taking of, or failure to account for, funds or property by a Washington lawyer, in connection with that lawyer's practice of law, can receive an application form for the CPF. An applicant to the Fund must also file a disciplinary grievance against the lawyer with the Office of Disciplinary Counsel, unless the lawyer is disbarred or deceased. Because most applications involve lawyers who are the subject of disciplinary grievances and proceedings, action on Fund applications normally awaits resolution of the disciplinary process.<sup>5</sup> This means that some applicants wait years for the discipline process to be complete before the Fund Board reviews their application.

**Eligibility:** In order to be eligible for payment, an applicant must show by a clear preponderance of the evidence that he or she has suffered a loss of money or property through the dishonest acts of, or failure to account by, a Washington lawyer. Dishonesty includes, in addition to theft, embezzlement, and conversion, the refusal to return unearned fees as required by Rule 1.16 of the Rules of Professional Conduct.

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<sup>5</sup> Fund Rule 6(h). In addition, Rule 3.4(i) of the Rules for Enforcement of Lawyer Conduct provides that otherwise confidential information obtained during the course of a disciplinary investigation may be released to the Client Protection Fund concerning applications pending before it. Such information is to be treated as confidential by the Fund Board and Trustees.

**The Fund is not available to compensate for lawyer malpractice or professional negligence. It also cannot compensate for loan, investment, or other business transactions unrelated to the lawyer's practice of law.**

When an application is received, it is initially reviewed to determine whether it appears eligible for recovery from the Fund. If the application is ineligible on its face, the applicant is advised of the reasons for its ineligibility. If the application passes the initial intake process and appears potentially eligible for payment, Fund staff investigates the application. When the application is ripe for consideration by the Board, a report and recommendation is prepared by Fund staff.

**Board and Trustee Review:** On applications for less than \$25,000, or where the recommendation for payment is less than \$25,000, the Board's decision is final. Board recommendations on applications where the applicant seeks more than \$25,000, or where the Board recommends payment of more than \$25,000, are reviewed by the Trustees.

The maximum gift amount was increased from \$75,000 to \$150,000, as of October 1, 2016. There is no limit on the aggregate amount that may be paid on claims regarding a single lawyer. Any payments from the Fund are gifts and are at the sole discretion of the Fund Board and Trustees.

**Attorney Fees:** Lawyers may not charge a fee for assisting with an application to the Fund, except with the consent and approval of the Trustees.

**Assignment of Rights and Restitution:** As part of accepting a gift from the Fund, applicants are required to sign a subrogation agreement for the amount of the gift. The Fund attempts to recover its payments from the lawyers or former lawyers on whose behalf gifts are made, when possible; however, recovery is generally successful only when it is a condition of a criminal sentencing, or when a lawyer petitions for reinstatement to the Bar after disbarment.<sup>6</sup> To date, the Fund (and its predecessors) has recovered approximately \$381,382.

**Difficult Claims:** One of the more difficult claim areas for the Board and Trustees involves fees paid to a lawyer for which questionable service was performed. Because the Fund Board is not in a position to evaluate the quality of services provided, or to determine whether the fee charged was reasonable, the Board and Trustees have historically applied a "bright line" one paper rule: if the lawyer produced even one document on behalf of the client, or spent any time at all on the client, the application is generally denied as a fee dispute. (The denial may also include other bases, such as malpractice or negligence.) However, where it appears that there is a pattern of conduct which establishes that a lawyer knew or should have known at the time the lawyer accepted fees from a client that the lawyer would be unable to perform the service for which he or she was employed, or the lawyer simply performs no service of value to the client, and does not return unearned fees, the Board has concluded that such conduct may

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<sup>6</sup> Admission to Practice Rule 25.1(d) provides that no disbarred lawyer may petition for reinstatement until amounts paid by the Fund to indemnify against losses caused by the conduct of the disbarred lawyer have been repaid to the Fund, or a payment agreement has been reached.



be either dishonesty or failure to account within the context of the purposes of the Fund, and will consider such applications. Similarly, if a lawyer withdraws from representing a client or abandons a client's case without refunding any unearned fee, the Board may conclude that the lawyer has engaged in dishonest conduct or has failed to account for client funds.

Another difficult claim area is those applications concerning loans or investments made to or through lawyers. In instances where there is an existing client/attorney relationship through which the lawyer learns of his or her client's financial information, persuades the client to loan money or to invest with the lawyer without complying with the disclosure and other requirements of RPC 1.8,<sup>7</sup> and does not return the client's funds as agreed, the Board may consider that to constitute a dishonest act for purposes of the Fund.

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<sup>7</sup> In relevant part, RPC 1.8 provides:

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

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

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

### III. FINANCES

The Fund is financed by an assessment as described above. The Fund is maintained as a trust, separate from other funds of the WSBA. In addition, interest on those funds accrues to the Fund, and any restitution paid by lawyers is added to the Fund balance. The Fund is self-sustaining; administrative costs of the Fund, such as Board expenses and Bar staff support, are paid from the Fund.

	Fund beginning balance <sup>8</sup>	Fund revenues received	Board expenses and overhead <sup>9</sup>	Restitution received	Gifts recognized for payment
<b>FY 2012</b> Pending applications at start of fiscal year: <b>\$2,421,848</b>	\$261,318	\$893,487	\$27,654	\$5,942	\$326,800
<b>FY 2013</b> Pending applications at start of fiscal year: <b>\$1,615,062</b>	\$791,399	\$914,547	\$72,430	\$10,674	\$416,870
<b>FY 2014</b> Pending applications at start of fiscal year: <b>\$1,814,266</b>	\$1,213,602	\$949,965	\$70,196	\$3,668	\$339,161
<b>FY 2015</b> Pending applications at start of fiscal year: <b>\$1,229,864</b>	\$1,746,010	\$990,037	\$90,315	\$3,703	\$490,357
<b>FY 2016</b> Pending applications at start of fiscal year: <b>\$13,203,653</b>	\$2,144,289	\$1,001,198	\$129,553	\$2,970	371,452 <sup>10</sup>
<b>FY 2017</b> Pending applications at start of fiscal year: <b>\$1,463,914</b>	\$2,646,222	\$1,024,954	\$113,672	\$3,709	\$318,584

<sup>8</sup> It is important for the Fund to maintain a sufficient balance to meet anticipated future needs. It is impossible to predict from year to year how many meritorious claims will be made by injured applicants.

<sup>9</sup> Board expenses and overhead include WSBA staff time to administer the Fund, including processing of applications, helping members of the public, investigating claims, and making recommendations to the Board. Expenses and overhead have increased since 2012 as more resources have been allocated to eliminate backlogs, update systems, and improve processes, which have resulted in claims being resolved more efficiently and expeditiously.

<sup>10</sup> The amount of gifts recognized in the FY 2016 financial statements are overstated by \$115,000 due to a duplicate recording of approved gifts. This was corrected in 2017 and explains the substantial difference between the amounts listed for FY 2016 and FY 2017 under this column as compared with the "Gifts Approved" column on page 2.

## IV. BOARD AND TRUSTEE MEETINGS AND ACTIVITIES

**Fund Board:** The Client Protection Fund Board met four times this past fiscal year: November 8, 2016; February 13, 2017; May 2, 2017; and August 7, 2017. The Board considered 97 applications to the Fund involving 50 lawyers, and approved 47 applications involving 19 lawyers.

**Fund Trustees:** The Trustees reviewed the Board's recommendations on applications for more than \$25,000, or for payment of more than \$25,000, and approved the 2017 Annual Report for submission to the Supreme Court pursuant to APR 15(g).

**Other Activities:** Effective January 26, 2017, the WSBA Bylaws were amended to define WSBA members as (1) lawyers licensed to practice law, (2) limited license legal technicians (LLLTs) and (3) limited practice officers (LPOs). In accordance with these Bylaw amendments, the Supreme Court adopted amendments to APR 15 that became effective on September 1, 2017. The Fund was renamed the "Client Protection Fund," and APR 15 was amended to provide that the Fund may be used for relieving or mitigating losses caused by lawyers, LLLTs and LPOs. The amendments also clarify that LLLTs and LPOs are eligible to serve on the Client Protection Fund Board. The APR provision regarding assessments to the fund was amended to state that the Trustees may recommend to the Supreme Court that LLLTs and LPOs be ordered to pay an annual assessment to the Fund. In the fall of 2017, the Board of Governors, as Trustees of the Fund, initiated a process for gathering input from the WSBA membership as to the whether it should ask the Washington Supreme Court to assess all active LLLTs and LPOs an amount to assist in funding the Fund, and if so, what the amount of the assessment should be.

**Public Information:** The Client Protection Fund maintains a website at <http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Client-Protection-Fund> that provides information about the Fund, its procedures, and an application form that can be downloaded. The Fund information is also available in Spanish, but applications and materials must be submitted in English.

## V. APPLICATIONS AND PAYMENTS

At the beginning of FY 2017, there were 83 pending applications to the Fund. During FY 2017, 72 additional applications were received. The Board and Trustees acted on 97 applications concerning 50 lawyers and approved 47 applications concerning 19 lawyers. The total amount in approved payments is \$439,273. A summary of Board and Trustee actions is shown below

<b>Applications Pending as of October 1, 2017</b>	<b>83<sup>11</sup></b>
<b>Applications Received During FY 2017</b>	<b>72</b>
<b>Applications Acted Upon by Board and Trustees</b>	<b>97</b>
<b>Applications Carried Over to FY 2018</b>	<b>58</b>

<b>Applications Approved for Payment in FY 2017</b>	<b>47</b>
Applications approved for payment arose from the lawyer's dishonest acts such as theft or conversion, failure to return or account for unearned legal fees, and investments or loans with lawyers.	

<b>Applications Denied in FY 2017</b>	<b>50</b>
Applications were denied for reasons such as fee disputes, no evidence of dishonesty, alleged malpractice, restitution already paid in full, no attorney client relationship, and other reasons.	

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<sup>11</sup> Applications received or pending are still in investigation, not yet ripe, or temporarily stayed. All approved applications receive initial payments of up to \$5,000, with the balance reserved for possible proration against 75% of the Fund balance at fiscal year-end.

## APPROVED APPLICATIONS

ATTORNEY	Number of Applications Approved	Dollar Amount of Applications Approved	Page Number
<b>Callow, Edward, WSBA #41966</b>	1	\$7,867	10
<b>Einhorn, Eric, WSBA #18890</b>	1	\$3,000	10
<b>Elkin, Craig, WSBA #14608</b>	1	\$6,200	10
<b>Gainer, Michael, WSBA #20219</b>	3	\$157,000	10
<b>Harms, Todd, WSBA #31104</b>	1	\$1,400	11
<b>Harrison, Max, WSBA #12243</b>	1	\$10,000	11
<b>Harrison, Mitch, WSBA #43040</b>	15	\$39,080	12
<b>Jacob, Jany, WSBA #30722</b>	1	\$6,978	15
<b>Little, Brenda, WSBA #17688</b>	15	\$17,700	15
<b>Morriss, Roy Earl, WSBA # 34969</b>	2	\$6,000	17
<b>Mosley, Kirk, WSBA #29683</b>	1	\$2,515	17
<b>Neal, Christopher, WSBA #33339</b>	1	\$6,000	17
<b>Nwizubo, Martin, WSBA #27883</b>	1	\$1,000	18
<b>Reed, David, WSBA #24663</b>	2	\$47,923	18
<b>Schneider, Mark, WSBA #20106</b>	1	\$58,700	19
<b>Terry, Leslie Clay, WSBA #8593</b>	4	\$52,542	19
<b>Tran, Khanh, WSBA #30538</b>	1	\$5,368	20
<b>Whitney, Sarah, WSBA #35479</b>	1	\$2,500	20
<b>Witchley, Steven, WSBA #20106</b>	1	\$7,500	21
<b>TOTAL:</b>		<b>\$439,273</b>	

The following summarizes the gifts and recommendations made by the Fund Board:

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**Callow, Edward, #41966 – DISBARRED**

**Applicant 17-042 – Decision: \$7,867.06 Approved**

In August 2010, Applicant hired Callow to represent her in a personal injury matter on a one-third contingent fee basis. Applicant filed an insurance claim with her insurance company for her injuries. Callow obtained a settlement in the amount of \$11,800 and, and earned his \$3,932.94 his contingent fee. However, Callow did not pay the Applicant the settlement balance of \$7,867.06. The Fund approved payment of \$7,867.06.

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**Einhorn, Eric, #18890 - DISBARRED**

**Applicant 15-031 – Decision: \$3,000 Approved**

In May 2014, Applicant hired Einhorn to represent her in a matter concerning an unresolved issue from a dissolution. Applicant's father paid Einhorn an advance payment of \$3,000. Einhorn told Applicant that he would refund any unearned fees. After accepting the payment, Einhorn failed to perform any work or to respond to Applicant's requests for status updates. Applicant never received a refund. Einhorn was found to have converted the advance payment for his own personal use. The Fund approved payment of \$3,000.

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**Elkins, Craig, #14608 - ACTIVE**

**Applicant 17-039 – Decision: \$6,200 Approved**

In March 2014, Applicants hired Elkins to represent them in a lawsuit against their mortgage lender. Applicants paid Elkins \$6,200 and agreed to pay an additional 10% contingent fee based on any reduction in their loan payments. As the months progressed, Applicants sent documents and requests for status updates with no response. On several occasions, Elkins told Applicants that he would review their file and get back to them on the status, which he did not. The lawsuit was never filed. Applicants terminated Elkins' representation, requested a refund of the unearned fee, and a bill statement. Elkins continued to ignore their requests. The Fund approved payment of \$6,200.

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**Gainer, Michael, #20219 – RESIGNED IN LIEU OF DISCIPLINE**

**Applicant 16-025 – Decision: \$150,000 Approved**

In January 2011, Applicant hired Gainer to assist her with the probate of her father's estate. Applicant paid Gainer \$2,000 in advance fees. Gainer performed work to commence the deceased's probate, but did not file further pleadings. In February 2012, Gainer received \$81,747 in settlement proceeds from a lawsuit filed by other lawyers on behalf of Applicant's deceased

father. Gainer disbursed \$40,000 to Applicant, which left a balance of \$41,747 in his trust account. Gainer converted the balance for his own personal use, without Applicant's knowledge. While the probate was pending, Gainer received an additional \$203,903.19 in proceeds from the sale of the family home, which he also converted. Gainer did not perform any other work to complete the probate. In April 2015, Gainer confessed to have stolen the funds from the estate. In total, Gainer converted \$245,150. The Fund Board recommended, and the Board of Governors approved, payment of the maximum gift limit of \$150,000.

**Applicant 17-019 – Decision: \$5,000 Approved**

In September 2014, Applicant hired Gainer to represent her in a dissolution matter, paying him \$5,000. In the dissolution proceeding, Applicant's husband was ordered to pay attorney's fees to Gainer. Gainer told Applicant she would receive a refund of the \$5,000 in fees she had paid him earlier when he received the funds from her husband's attorney. When Gainer received the funds, he cashed the check and failed to disburse the refund to Applicant. The Fund approved payment of \$5,000.

**Applicant 17-025 – Decision: \$2,000 Approved**

In September 2014, Applicants hired Gainer to assist them in a dissolution matter, paying him \$2,000. Gainer did not perform any work on the matter and did not communicate with the Applicants. The Fund approved payment of \$2,000.

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**HARMS, TODD, #31104 – SUSPENDED**

**Applicant #16-036 – Decision: \$1,400 Approved**

In March 2014, Applicant hired Harms to represent him in a criminal matter paying Harms a flat fee of \$1,400. Harms did not perform any work and Applicant was unable to contact him. Applicant never received a refund of the unearned fee. The Fund Board approved payment of \$1,400.

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**HARRISON, MAX, #12243 – VOLUNTARILY RESIGNED/DECEASED**

**Applicant 16-043 – Decision: \$10,000 Approved**

In October 2014, Applicant hired Harrison to represent him in a criminal matter, paying Harrison \$10,000. Thereafter, and until Harrison's death a few months later, Applicant's court hearings were continued. Applicant hired new counsel who found that Harrison did not perform any substantive work in the case prior to his death. The Fund Board approved payment of \$10,000.

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## **Harrison, Mitch, #43040 – RESIGNED IN LIEU OF DISCIPLINE**

### **Applicant 16-047 – Decision: \$8,000 Approved**

In April 2015, Applicant hired Harrison to represent her in a criminal matter, paying a flat fee of \$8,000. Applicant received a letter from Harrison informing her that the case was progressing as expected. Applicant learned later that this was false and that Harrison had not performed any work. Applicant terminated Harrison's representation. Harrison agreed to withdraw from the case and to issue a full refund. Applicant never received the refund and Harrison did not withdraw from her case. The Fund Board approved payment of \$8,000.

### **Applicant 16-048 – Decision: \$1,000 Approved**

In November 2014, Applicant hired Harrison to represent her in a criminal matter, paying a flat fee of \$1,000 to file a motion with the Court of Appeals. Applicant's mother sent letters to Harrison on several occasions to request status updates, with no response. Harrison never performed any work. Harrison's representation was terminated and a full refund was requested, but none was received. The Fund Board approved payment of \$1,000.

### **Applicant 16-052 – Decision: \$3,280 Approved**

In April 2013, Applicant hired Harrison to represent him in what he thought were two separate matters, paying \$8,000 with the first "agreement for legal services." In April 2014, Applicant then entered into a second "agreement for legal services," which required a flat fee of \$10,000. Applicant paid a \$3,000 down-payment toward the \$10,000 fee, with the remaining \$7,000 contingent upon the outcome of a lawsuit against Applicant's former lawyer. Applicant did not realize that the first contract covered the same services identified in the second contract, and that Harrison was not entitled to additional fees. In June 2014, Applicant entered into a third "agreement for legal service" paying a flat fee of \$280. Harrison did not perform any work on the third contract. The Fund Board approved payment of \$3,280.

### **Applicant 16-056 – Decision: \$4,000 Approved**

In April 2014, Applicant hired Harrison to represent her in a criminal matter paying him a flat fee of \$4,000. Harrison did not perform any work on Applicant's behalf. The Fund Board approved payment of \$4,000.

### **Applicant 17-002 – Decision: \$4,150 Approved**

In October 2014, Applicant hired Harrison to represent her in a criminal matter paying him a flat fee of \$4,150. Applicant regularly communicated with Harrison for several years. During this time Harrison repeatedly gave Applicant assurances that the case was progressing as expected. Applicant discovered later that Harrison had not prepared or filed any documents on her behalf. Harrison did not perform any substantive work on behalf of Applicant. The Fund Board approved payment of \$4,150.



**Applicant 17-003 – Decision: \$750 Approved**

In February 2016, Applicant hired Harrison to represent him in a criminal matter, paying a flat fee of \$750. Harrison assured Applicant that he would be able to complete the work and that the process would take “about a month” to get the necessary documentation in order to present to the prosecutor. Applicant later contacted Harrison to get an update on his case and was told the case was being worked on. After this conversation, Applicant made numerous unsuccessful attempts to communicate with Harrison via email and telephone. Harrison did not perform any work on behalf of Applicant. The Fund Board approved payment of \$750.

**Applicant 17-008 – Decision: \$1,250 Approved**

In April 2016, Applicant hired Harrison to perform legal work on two criminal matters, paying \$1,250 for Harrison to begin the work. Harrison failed to perform any work. The Fund Board approved payment of \$1,250.

**Applicant 17-011 – Decision: \$500 Approved**

In March 2016, Applicant hired Harrison to represent him in a criminal matter, paying a flat fee of \$500. A few weeks later, Applicant called Harrison to make sure he was on track to meet a deadline. Harrison assured Applicant that he was progressing well and would be able to meet the deadline. Subsequently, Applicant made repeated unsuccessful attempts to get a copy of the record in his case from Harrison. Harrison later admitted that he failed to meet the deadline as promised because “he had lost his license, and that he was broke.” Weeks later it was discovered that Harrison had closed his law office. Harrison did not perform any work and did not refund the unearned fee. The Fund Board approved payment of \$500.

**Applicant 17-012 – Decision: \$7,400 Approved**

In February 2015, Applicant hired Harrison to help him in a criminal matter, paying a flat fee of \$7,000. Harrison filed a notice of appearance, but later failed to communicate effectively with Applicant. Applicant made repeated unsuccessful attempts to get into contact with Harrison. Harrison eventually contacted Applicant to reassure him that his case would be handled as agreed. Harrison later told Applicant that his law practice was experiencing financial difficulties but still continued to provide Applicant with assurances. A few months later, Harrison solicited an additional \$400 payment. Applicant discovered later that Harrison had abandoned his law practice and had never performed any of the work he claimed he was doing on Applicant’s behalf. The Fund Board approved payment of \$7,400.

**Applicant 17-013 – Decision: \$750 Approved**

In March 2016, Applicant hired Harrison to represent her in a criminal matter, paying a flat fee of \$750. Harrison told Applicant that it would only take a few months to handle the matter. Harrison ceased communicating with Applicant after he received the fee. Applicant made repeated unsuccessful attempts to communicate with Harrison. Applicant later discovered that Harrison did not perform any work and his law license had been suspended. The Fund Board approved payment of \$750.

**Applicant 17-029 – Decision: \$1,500 Approved**

In March 2016, Applicant hired Harrison to represent her in a criminal matter, paying a flat fee of \$1,500. After Harrison received the payment, he told Applicant that he was going to begin working on the case. Applicant never heard from Harrison again. Applicant attempted to contact Harrison on numerous occasions with no response. Later, Applicant learned that Harrison's law license had been suspended. Harrison never performed any work and did not return the unearned fee. The Fund Board approved payment of \$1,500.

**Applicant 17-034 – Decision: \$500 Approved**

In February 2016, Applicant hired Harrison to represent him in a criminal matter, paying \$500 to conduct an initial review of the case to determine what further action was appropriate for the case. Applicant contacted Harrison several weeks later for an update on the case. Harrison assured Applicant that a review would be completed within a week. Applicant met with Harrison to follow-up and was again promised that the review would be completed by the following week. As months passed without any updates from Harrison, Applicant made a trip to Harrison's law office, which Applicant found to be closed. Harrison did not perform the review and did not refund the unearned fee. The Fund Board approved payment of \$500.

**Applicant 17-037 – Decision: \$3,000 Approved**

In July 2015, Applicant hired Harrison to conduct a case review in a criminal matter, paying a total of \$3,000. Harrison became difficult to contact. Harrison made contact with Applicant's mother and assured her that he was working on the case. Applicant asked Harrison to produce documentation relating to the case and to provide proof of how the case was progressing, Harrison did not respond. Applicant lost faith in Harrison and terminated his representation. Harrison did not perform any work and did not return the unearned fee. The Fund Board approved payment of \$3,000.

**Applicant 17-051 – Decision: \$3,000 Approved**

In April 2016, Applicants' parents hired Harrison to represent their two sons in a criminal matter, paying \$3,000. Thereafter, Harrison failed to communicate with the Applicants and their parents. Harrison kept the unearned fee without performing any work. The Fund Board approved payment of \$3,000.

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**Jacob, Jany, #30722 – DISBARRED****Applicant 15-055 – Decision: \$6,978 Approved**

In 2008, Applicant hired Jacob to represent her in an immigration matter, paying her \$6,978. Jacob never performed any work. Applicant terminated Jacob's representation and hired new counsel who confirmed that Jacob had performed no substantive work on the matter. The Fund Board approved payment of \$6,978.

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**Little, Brenda, #17688 – DISABILITY INACTIVE****Applicant 09-068 – Decision: \$3,000 Approved**

In July 2007, Applicant hired Little to represent him on a contingent fee basis in a litigation matter. Applicant gave Little \$3,000 to deposit into her trust account for potential costs. Applicant became unhappy with Little's approach to the representation, terminated her representation, and hired another attorney. Applicant obtained his file from Little. There was no evidence that Little had incurred any costs. Little never returned any unused funds. The Fund Board approved payment of \$3,000.

**Applicant 10-049 – Decision: \$1,500 Approved**

In May 2007, Applicant hired Little to represent her in an employment dispute. Little required an "advance fee" of \$2,000, which Little did not deposit into her trust account. Little's hourly rate was \$250. Little faxed a representation letter to Applicant's employer and spoke to Applicant briefly over the phone. A few weeks later Applicant was cleared to return to work and told Little not to perform any further work. Applicant requested a refund of unearned fees. Little performed no more than two hours of work. The Fund Board approved payment of \$1,500.

**Applicant 10-091 – Decision: \$2,770 Approved**

In July 2007, Applicant hired Little to represent him on a contingent fee basis in a litigation matter. Applicant paid Little an "advance investigation fee" of \$3,000 for the investigation of whether filing a lawsuit would be warranted. According to an audit of Little's trust account, Little converted most of Applicant's funds by using them for work on another case and converting funds for her own personal use. She did pay the \$230 fee to file the lawsuit in the Applicant's matter, but did not use the remaining funds to investigate his case. Applicant ultimately terminated Little's representation. Applicant made several attempts to contact Little with no return response. The Fund Board approved payment of \$2,770.

**Applicant 10-188 – Decision: \$2,000 Approved**

In May 2010, Applicants hired Little to help them settle an issue involving their minor son. The Applicants paid a flat fee of \$2,000. Little promised that she would contact the opposing party and request a hearing. Little did not perform the work as she promised. Applicants terminated her representation and hired a new attorney. Little did not return the unearned fee. Applicants later discovered that Little was suspended from practicing law when they hired her. The Fund Board approved payment of \$2,000.

**Applicant 11-009 – Decision: \$1,200 Approved**

In June 2010, Applicants had a consultation appointment with Little to discuss a dispute with a school, in a matter concerning their daughter. Applicants paid Little a flat fee of \$1,200. Little failed to keep appointments and did not perform any work. The Fund Board approved payment of \$1,200.

**Applicant 11-010 – Decision: \$3,000 Approved**

In June 2009, Applicant hired Little to represent him in a lawsuit against his employer, paying her \$3,000. Thereafter, it became difficult for Applicant to contact Little. Applicant later discovered that Little was suspended from the practice of law when he hired her. In July 2009, Little was reinstated to practice law. Little filed a notice of appearance and asked for a filing fee of \$350, when it actually cost \$240. Other than filing a notice of appearance and writing a letter to Applicant's employer, Little did not perform any work. The Fund Board approved payment of \$3,000.

**Applicant 11-029 – Decision: \$1,000 Approved**

In April 2010, Applicant hired Little to represent him in a lawsuit on a contingent fee basis. Little also required a "retainer" payment of \$2,000 even though the matter was contingent. At Applicant's second meeting with Little, he paid her \$1,000 of the "retainer" payment and never received a receipt. He met with Little two times for 15-25 minutes. Applicant prepared a demand letter to submit to the opposing party, and Little made edits and sent the letter back to Applicant for approval. Thereafter, Applicant was not able to make contact with Little. Little never sent the letter to the opposing party and never filed the lawsuit. The Fund Board approved payment of \$1,000.

**Applicant 11-209 – Decision: \$3,000 Approved**

In June 2008, Applicant hired Little to represent her in a lawsuit against her employer. Applicant met with Little once at her office, paying her \$3,000. Little communicated with Applicant a few times over the phone and in email, but became difficult to contact thereafter. Little did not file anything on Applicants case, provide any services, and did not refund the unearned fee. The Fund Board approved payment of \$3,000.

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**Morriss, Roy Earl, #34969 – RESIGNED IN LIEU OF DISCIPLINE****Applicant 16-022 – Decision: \$1,000 Approved**

In December 2014, Applicant hired Morriss to handle a property dispute and paid him \$1,000. Once the payment was made, Morriss failed to communicate with Applicant. Applicant tried for months to contact Morriss but was unsuccessful. There was no evidence that Morriss performed any work for the Applicant. The Fund Board approved payment of \$1,000.

**Applicant 16-029 – Decision: \$5,000 Approved**

In August, 2013, Applicant hired Morriss to resolve a property dispute with his neighbors paying an advance fee deposit of \$750, with an hourly rate of \$200. Morriss filed a complaint in Snohomish County Superior Court on behalf of Applicant. Morriss continued to perform work on the case and Applicant continued to pay for the services rendered. A few months prior to the trial date, Morriss asked Applicant to pay him an additional \$5,000 for the trial. Thereafter, Morriss disappeared. Applicant called the Snohomish County clerk before trial to report that he had been unable to contact Morriss. The clerk told Applicant that Morriss had been suspended from the practice of law for failure to pay his license fees. Applicant did not hear from Morriss again and never received a refund of the unearned \$5,000 payment. The Fund Board approved payment of \$5,000.

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**Mosley, Kirk, #29683 – DISBARRED****Applicant 16-033 – Decision: \$2,515.26 Approved**

In 2008, Applicant hired Mosley to represent him in a personal injury matter on a one-third contingent fee basis. Mosley obtained a settlement in the amount of \$8,500. Mosley was entitled to \$2,833.33 for his contingent fee, which left a balance of \$5,666.67 to pay Applicant's medical bills and to disburse to Applicant. Mosley paid a \$428 medical bill, disbursed \$2,723.41 to Applicant, but failed to pay other medical bills. An audit of Mosley's trust account found that Mosely had converted \$2,515.26 of the settlement proceeds. The Fund Board approved payment of \$2,515.26.

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**Neal, Christopher, #33339 – SUSPENDED****Applicant 15-033 – Decision: \$6,000 Approved**

In 2009, Applicant hired Neal to represent him to resolve a debt with the Internal Revenue Service (IRS). Applicant wanted to set money aside for an IRS settlement payment and wanted Neal to handle the negotiations. Neal told Applicant to deposit the funds into his trust account. Applicant deposited \$36,000 with Neal. Later, Neal told Applicant that he had paid the IRS from the trust account to satisfy a demand payment of \$30,000. In fact, Neal did not pay the IRS and used some of the funds for other client matters. Neal returned \$30,000 to Applicant, but never returned the remaining balance of \$6,000. The Fund approved payment of \$6,000.

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**Nwizubo, Martin, #27883 – DISABILITY INACTIVE****Applicant 15-071 – Decision: \$1,000 Approved**

In February 2015, Applicant hired Nwizubo to represent him in an immigration matter, paying \$1,000. When Applicant went to deliver documents to Nwizubo's office, the office was closed. Nwizubo's wife informed Applicant that Nwizubo was no longer able to practice law. Applicant later learned that Nwizubo had been transferred to disability inactive status. Nwizubo was not able to perform any work on Applicant's matter before his change in status. The Fund Board approved payment of \$1,000.

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**Reed, David, #24663 – DISABILITY INACTIVE****Applicant 16-034 – Decision: \$25,150 Approved**

In April 2011, Applicants hired Reed to represent them on an insurance claim for a lost or stolen diamond engagement ring. Applicants paid Reed a flat fee of \$1,000. Reed obtained a settlement from the Applicants' insurance company in amount of \$25,150. The insurance company issued the check payable to Reed's law firm and the Applicants. Reed fraudulently endorsed the check, signing the Applicants' names with a "POA" (power of attorney) notation. Reed did not have a POA authorizing him to endorse on the Applicants' behalf. Reed deposited the funds into his trust account and later converted all of the funds for his own use. Reed never disbursed any of the settlement to the Applicants. The Fund Board approved a payment of \$25,150.

**Applicant 17-049 – Decision: \$22,773 Approved**

In 2010, Reed assumed representation of Applicant in personal injury matters on a contingent fee basis. The contingent fee was for 33.33% if the case settled; 40% if settled or negotiated within 45 days of a trial date or if trial was held, and 50% of any amount recovered in the event of an appeal following trial or arbitration. Reed settled one of Applicant's matters within 45 days of the trial date for \$25,000. Reed earned the 40% contingent fee and a reimbursement of expenses of \$1,026.56. Reed told Applicant he would retain \$12,000 to pursue the outstanding claims and that she would receive the remaining \$13,000. Reed deposited the \$25,000 into his trust account and later made nine transfers totaling \$20,983.33 to his operating account. Reed disbursed \$1,200 to Applicant, which was the only disbursement she received from the settlement. Reed then informed Applicant that he had received an additional settlement for \$10,000 in Applicant's other matter. Applicant never received any of the proceeds of the \$10,000 settlement. In Reed's discipline matter, prior to stipulating to disability inactive, he stipulated to a disciplinary suspension and agreed to pay restitution to Applicant in the amount of \$22,773. Reed did not pay the restitution. The Fund Board approved payment of \$22,773.

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**Schneider, Mark, # 20106 – DISBARRED****Applicant 15-014 – Decision: \$58,700 Approved**

In 2007, Applicant hired Schneider to represent him in an Under Insured Motorist (UIM) claim on a contingent fee basis. Schneider settled the claim for \$100,000 and requested that the funds be mailed to his office. Schneider received the check and told Applicant that he had deposited the funds in trust. Schneider also told Applicant it would be best to keep the funds in trust while other obligations, including medical liens on the settlement, were resolved. Schneider failed to make the payments to the medical providers, and did not provide Applicant with his portion of the settlement proceeds. Starting in 2012, Applicant made several attempts to contact Schneider to inquire about the funds, but received evasive answers back via email. Later, Applicant discovered that Schneider had been disbarred in 2010 and not told Applicant. Because Schneider earned his 1/3 contingent fee and the lien holders wrote off losses for Applicant's medical treatment, the Fund Board recommended a gift of \$58,700. The BOG approved the recommendation.

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**Terry, Leslie Clay, #8593 – DECEASED****Applicant 14-135 – Decision: \$7,999.20 Approved**

Applicant hired Terry to represent her in a personal injury matter arising from an automobile accident. In August 2013, Terry told Applicant that her case had "closed" and that the insurance company had agreed to a payment of \$12,000. Terry never paid Applicant her portion of the settlement. An audit of Terry's trust account showed that Terry had deposited a check for \$12,000 in his trust account from the insurance company on behalf of Applicant in August 2013, but made no disbursements to Applicant or others from the settlement. Although Terry earned his 1/3 contingency fee, Terry converted the Applicant's portion of the settlement funds for his own use prior to his death in 2016. The Fund Board approved a gift of \$7,999.20.

**Applicant 14-140 – Decision: \$10,000 Approved**

In July 2013, Applicant hired Terry to represent him on an appeal of a summary judgment ruling in an estate matter. Applicant paid Terry \$10,000 to handle the appeal. Terry did not comply with court deadlines, made false representations to Applicant as to the status, and never completed the appeal, resulting in its dismissal by the Court. The Fund Board approved a gift of \$10,000.

**Applicant 15-009 – Decision: \$6,000 Approved**

In May 2013, Terry consulted with Applicant regarding a contractual dispute with an energy company she had invested in. Terry conveyed confidence that Applicant had a strong case and encouraged her to file suit. Based on this information, Applicant hired Terry, paying him \$6,700 to handle the lawsuit. Terry failed to perform any substantive

work on the matter. No documents were prepared or filed. Terry promised to issue Applicant a refund of \$4,000 prior to his death but never did so. The Fund Board approved a gift of \$6,000.

**Applicant 15-010 – Decision: \$28,542.67 Approved**

Applicant hired Terry to represent her against a pharmaceutical company alleging that a drug she had taken had caused her injuries. They mutually agreed on a contingent fee, but it was never reduced to writing. Terry obtained a \$49,000 settlement from the defendant, paid in two installments in November and December 2012. By January 13, 2013, Terry had withdrawn almost all of the settlement funds for his own use; Applicant had received no funds. During this period, there were discussions between Applicant and Terry regarding disbursement of her funds but Terry never paid Applicant anything, claiming Applicant's share of the settlement had been used for costs and expenses. In the discipline investigation, the Office of Disciplinary Counsel (ODC) reviewed Terry's claimed costs and expenses, and found many of them to be greatly exaggerated. ODC determined that the true expenses were \$6,686 that Terry's contingent fee should be calculated on the net recovery (1/3 of \$42,814) and that Applicant should have received \$28,542.67 from the settlement. Terry converted Applicant's share of the settlement funds for his own use prior to his death. The Fund Board recommended, and the BOG approved, a gift of \$28,542.67.

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**Tran, Khanh Cong, #30538 - DISBARRED**

**Applicant 16-013 – Decision: \$5,368.28 Approved**

Applicant hired Tran to represent him in a personal injury matter on a one-third contingent fee basis of the net recovery after all medical expenses were deducted, or 40% of the net recovery after the case entered into litigation. Tran obtained a settlement in the amount of \$15,000, after the case had entered into litigation. Tran deposited the settlement into his trust account and deducted a total of \$6,746.10 for medical bills and costs and \$3,301.56 for attorney's fees, and then disbursed \$4,952.34 to Applicant. Tran did not pay the medical bills. Tran agreed to pay a restitution amount of \$5,368.28 in his Stipulation to Disbarment but did not do so. The Fund Board approved payment of \$5,368.28.

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**Whitney, Sarah, #35479 - DISBARRED**

**Applicant 16-040 – Decision: \$2,500 Approved**

In March 2015, Applicant hired Whitney to represent her on two separate matters. Applicant paid \$625 for the first matter and \$1,875 for the second matter. Whitney did not perform any work in the first matter. Whitney went to a court hearing with the Applicant on the second matter, but did not formally appear or intervene on Applicant's behalf and performed no other work. Thereafter, Applicant was unable to contact Whitney. Whitney did not earn the \$2,500 fee. The Fund Board approved payment of \$2,500.



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**Witchley, Steven, #20106 – RESIGNED IN LIEU OF DISCIPLINE****Applicant 16-007 – Decision: \$7,500 Approved**

In February 2012, Applicant hired Witchley to represent him in a criminal matter for a fee of \$7,500. Applicant gave Witchley a petition he had already drafted. Witchley agreed to rewrite the petition in the proper format and to file it with the court. Thereafter, Applicant was unable to communicate with Witchley. Witchley failed to return phone calls, to keep scheduled telephone meetings, and to respond to Applicant's letters. Witchley did not file the petition and did not refund the unearned fee. The Fund Board approved payment of \$7,500.

## APPENDIX – Fund Balance Sheet

### Statement of Financial Position

<b>ASSETS</b>	Audited As of September 30, 2017
Wells Fargo Checking Account	\$1,420,319
Accrued Interest Receivable	2,156
Wells Fargo Money Market	2,240,414
Wells Fargo Investments	-
Morgan Stanley Money Market	102,824
<b>TOTAL ASSETS</b>	<b>\$3,765,713</b>
<b>LIABILITIES AND NET ASSETS</b>	
Approved gifts to injured clients payable	409,411
Liability to WSBA general fund	114,003
Net Assets	3,242,300
<b>TOTAL LIABILITIES AND NET ASSETS</b>	<b>\$3,765,713</b>

### Statement of Activities

<b>REVENUE</b>	Audited As of September 30, 2017
Restitution	\$3,709
Member Assessment	1,005,233
Interest	19,722
<b>TOTAL REVENUE</b>	<b>\$1,028,663</b>
<b>EXPENSES</b>	
Gifts to Injured Clients	\$318,584
CPF Board	1,510
Misc.	331
Indirect (overhead)	112,162
<b>TOTAL EXPENSE</b>	<b>\$432,586</b>
Net Income (Expense)	\$596,077

### Statement of Changes in Net Assets

Balance at September 30, 2016	\$2,646,222
Net Income for the 12 months end September 30, 2017	596,077
<b>Balance at September 30, 2017</b>	<b>\$3,242,299</b>