



## WASHINGTON STATE BAR ASSOCIATION

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# Lawyers Fund for Client Protection

## Trustees' Annual Report: Fiscal Year 2016

Submitted December 2016

## **PURPOSE OF THE LAWYERS' FUND FOR CLIENT PROTECTION**

*"The purpose of this rule is to create a Lawyers' Fund for Client Protection, 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  
LAWYERS' FUND FOR CLIENT PROTECTION  
FISCAL YEAR 2016**

<b>FY 2016 TRUSTEES</b>	
William Hyslop, President	Spokane
Robin Lynn Haynes, President-elect	Spokane
Karen Wilson	Mt. Vernon
Keith Black	Gig Harbor
Philip Brady	Olympia
Mario Cava	Seattle
Ann Danieli	Seattle
Sean Davis	Tacoma
James Doane	Issaquah
Elijah Forde	Olympia
Bradford Furlong	Mt. Vernon
Angela Marnel Haynes, LFCP Board Liaison	Spokane
Andrea Jarmon	Tacoma
Jill Karmy	Ridgefield
William Pickett	Yakima
Kim Risenmay	Redmond

<b>LAWYERS' FUND FOR CLIENT PROTECTION BOARD FY 2016</b>	
Kathryn Herrmann, Chair	Tacoma
Chach Duarte White, Vice Chair	Mercer Island
Pamela Anderson	Olympia
Tracy Flood	Port Orchard
Beverly Fogle	Vancouver
Katrine Frank	Seattle
Matthew Honeywell	Seattle
Efrem Krisher	Seattle
Rich Meyer	Bothell
Gloria Ochoa-Bruck	Spokane
Carrie Umland	University Place
Allen Unzelman	Chehalis
Jamal Whitehead	Seattle

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

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## **APPENDICES**

- A. FY 2016 Final Audited Income and Expense Report and September 30, 2016, Fund Balance Sheet (audited).



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

Washington is fortunate to have a history of maintaining a stable, well-funded Lawyers' Fund for Client Protection (LFCP) that is strongly supported by the Washington State 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 LFCP 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), 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. Every jurisdiction in the United States, as well as Canada, Australia, New Zealand, and other countries, maintains such funds.

The LFCP 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, LFCP payments are gifts, not entitlements. A \$30 annual assessment from lawyers licensed in Washington finances all LFCP gifts; no public funds are involved. Currently, all WSBA members on active status, all lawyers with *pro hac vice* admissions, and in-house counsel lawyers make these contributions. The following chart shows the experience of the past 10 years as the WSBA membership has increased.

FISCAL YEAR	# OF LAWYERS	# OF LAWYERS WITH APPROVED APPLICATIONS <sup>1</sup>	# OF APPLI-CATIONS RECEIVED	# OF APPLI-CATIONS APPROVED	GIFTS PAID
2006	26,084	26	139	66	\$468,696
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 <sup>4</sup>	18	130	45	\$423,508
2014	31,495	14	141	44	\$337,160
2015	31,335	20	79	59 <sup>5</sup>	\$495,218
2016	33,742	16	56	44	\$253,228

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<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> Through December 31, 2013, the assessment was only paid by members on Active status. Effective January 1, 2014, the assessment is also paid by *pro hac vice* and in-house counsel lawyers.

<sup>5</sup> One lawyer was responsible for 27 approved applications.

## II. FUND PROCEDURES

The LFCP 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 LFCP. The Trustees appoint and oversee the LFCP Board, comprised of 11 lawyers and 2 non-lawyers. This Board is authorized to consider all LFCP claims, make LFCP 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 Lawyers' Fund for Client Protection Analyst Brenda Jackson performs a wide variety of tasks to help members of the public and the Board in the processing and analyzing of LFCP 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 LFCP. 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>6</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>6</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 Lawyers' Fund for Client Protection concerning applications pending before it. Such information is to be treated as confidential by the Fund Board and Trustees.



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.

Payments regarding any single application were limited to a maximum of \$75,000 in fiscal year 2016 (this amount has been increased to \$150,000 beginning in fiscal year 2017). 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:** In exchange for 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>7</sup> To date, the Fund (and its predecessors) has recovered approximately \$377,673.

**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

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<sup>7</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.

client, and does not return unearned fees, the Board has concluded that such conduct may be either dishonesty or failure to account within the context of the purposes of the Fund, and will consider such applications. Similarly, if a lawyer withdraws from representing a client or abandons a client's case without refunding any unearned fee, the 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>8</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.

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.

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<sup>8</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.

	<b>Fund beginning balance</b>	<b>Fund revenues received</b>	<b>Board expenses and overhead<sup>9</sup></b>	<b>Restitution received</b>	<b>Gifts Paid</b>
<b>FY 2012</b> Pending applications at start of fiscal year: \$2,421,848	\$261,318	\$893,487	\$27,654	\$5,942	\$326,800
<b>FY 2013</b> Pending applications at start of fiscal year: \$1,615,062.10	\$791,399	\$914,547	\$72,430	\$10,674	\$416,870
<b>FY 2014</b> Pending applications at start of fiscal year: \$1,814,266.45	\$1,213,602	\$949,965	\$70,196	\$3,668	\$339,161
<b>FY 2015</b> Pending applications at start of fiscal year: \$1,229,864.06	\$1,746,010	\$990,037	\$90,315	\$3,703	\$490,357
<b>FY 2016</b> Pending applications at start of fiscal year: \$13,203,652.93	\$2,144,289	\$1,001,198	\$129,553	\$2,970	\$371,452 <sup>10</sup>

<sup>9</sup> Board expenses and overhead include WSBA staff time to administer the Fund, including processing of applications, helping members of the public, and making recommendations to the Board regarding whether an applicant's claim meets the APR requirements for making a gift. 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>10</sup> This amount reflects gifts approved for payment by the fund in fiscal year 2016 plus payments approved in previous years and paid in fiscal year 2016 that were not distributed earlier due to inability to locate the applicant, delays in applicants returning subrogation agreements, or other factors.

#### IV. BOARD AND TRUSTEE MEETINGS

**Fund Board:** The Lawyers' Fund for Client Protection Board met four times this past fiscal year: November 2, 2015; February 1, 2016; May 2, 2016; and August 1, 2016. The Board considered 81 applications to the Fund involving 38 lawyers, and approved 44 applications involving 16 lawyers.

**Fund Trustees:** The Trustees reviewed and voted on all the Board's recommendations on applications for more than \$25,000, or for payment of more than \$25,000, and approved the 2015 Annual Report for submission to the Supreme Court pursuant to APR 15(g).

**Other Activities:** In September 2016, the WSBA Trustees approved the Fund Board's recommendation to increase the gift limit to \$150,000.

**Public Information:** The Lawyers' Fund for Client Protection maintains a website at <http://www.wsba.org/Legal-Community/Committees-Boards-and-Other-Groups/Lawyers-Fund-for-Client-Protection-Board> 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 2016, there were 108 pending applications to the Fund. During FY 2016, 56 additional applications were received. The Board and Trustees acted on 81 applications concerning 38 lawyers and approved 44 applications concerning 16 lawyers. The total amount in approved payments is \$253,228. A summary of Board and Trustee actions is shown below:

<b>Applications Pending as of October 1, 2016</b>	<b>108<sup>11</sup></b>
<b>Applications Received During FY 2016</b>	<b>56</b>
<b>Applications Acted Upon by Board and Trustees</b>	<b>81</b>
<b>Applications Carried Over to FY 2017</b>	<b>83</b>

<b>Applications Approved for Payment in FY 2016</b>	<b>44</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 2016</b>	<b>37</b>
Applications were denied for reasons such as fee disputes, no evidence of dishonesty, 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
CALLOW, EDWARD, WSBA #41966	2	\$79,943.00	10
FRANZEN, RODNEY, WSBA #11818	1	\$2,000.00	10
IRVINE HEATH, WSBA #32237	2	\$23,239.00	11
JONES, ERIC, WSBA #31048	3	\$12,466.00	11
KALANTAR, SIAMACK, WSBA #39681	1	\$6,000.00	12
KOK, KENT, WSBA #29650	6	\$12,997.00	12
LABARE, FRANK, WSBA #22873	1	\$3,500.00	13
MAGAN, LAURIE, WSBA #34086	4	\$6,376.00	15
MANNEKEE, NATE, WSBA #5268	1	\$15,128.00	15
MOSLEY, KIRK, WSBA #29683	1	\$3,000.00	15
NAKKOUR, ALI, WSBA #33547	6	\$28,385.00	15
PENFIELD, ROBERT, WSBA #25081	2	\$7,000.00	17
SO, JAE, WSBA #29915	6	\$27,500.00	17
TOUCHI, SHAUNA, WSBA #36609	1	\$1,450.00	19
WHITE, REBECCA, WSBA #26932	1	\$725.00	19
WITCHLEY, STEVEN, WSBA #20106	6	\$23,519.00	19
<b>TOTAL:</b>		\$253,228.00	



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

**CALLOW, EDWARD, # 41966 – DISBARRED**

**Applicant 16-001 – Decision: Pay \$75,000**

In 2010, applicant hired Callow to represent her in a personal injury matter following a car accident. Applicant had a Nationwide Insurance (Nationwide) Policy that covered uninsured and under insured motorists, under which applicant filed an insurance claim for her injuries. Callow conspired with a Nationwide claims' adjuster to steal most of applicant's settlement funds. First, Callow requested and received an advance of \$25,000 from Nationwide, claiming that applicant's husband had been laid off from his job. Applicant was never made aware of the request of payment. Callow later settled applicant's claim with Nationwide and the at-fault driver's insurance, and received a settlement in the amount of \$500,000. Callow told applicant that Nationwide would only agree to settle for \$250,000. Applicant signed a fraudulent settlement document prepared by Callow. Callow stole \$360,000 of the settlement proceeds. In October 2012, applicant discovered the loss after she was contacted by an investigator at WSBA. The investigation concluded that Callow had stolen applicant's settlement funds, and led to his disbarment. The Fund Board approved payment of the maximum gift limit of \$75,000.

**Applicant 16-016 – Decision: Pay \$4,943.09**

Applicant hired Callow to represent her in a personal injury matter. Callow began pursuing a settlement with Farmers Insurance, the at-fault parties' insurance company. During this time, applicant was accepted into a college in Massachusetts. Applicant made several attempts to contact Callow to check the status of her case while in Massachusetts, with no response. She knew her medical bills needed to be paid, but her only income was financial aid. Applicant was contacted by a medical provider informing her that she had an outstanding bill and threatened to sue for non-payment. Applicant made more attempts to contact Callow with no response. The medical provider sued applicant and obtained a judgement of \$5,000. Applicant later discovered that Callow had been disbarred and that he had fled the country. She received documentation from Farmers showing a settlement for her of \$8,611.21, with a copy of a check issued to Callow in the amount of \$7,813.21 (the difference in the amount of the settlement and the check reflected a medical bill Farmers had paid directly to a medical provider). Callow had forged applicant's signature on the settlement documents. Because Callow performed the work to obtain a settlement, he was entitled to a contingent fee of 33.33%. The Fund Board approved payment of \$4,943.09.

**FRANZEN, RODNEY, #11818 – DECEASED**

**Applicant 16-03 - Decision: Pay \$2,000**

Applicant hired Franzen to represent her husband on driving without interlock and probation violation charges. Franzen passed away before any work could be completed on the case. On July 3, 2014, Applicant filed a creditor's claim against Franzen's estate in the amount of \$2,000. The claim was accepted on September 6, 2014 by Lydia Franzen, wife and personal representative of Franzen's estate. On August 14, 2014, Franzen's estate was



declare insolvent due to the numerous creditor claims filed and accepted, which exceeded the value of the estate's assets. The Fund Board approved payment of \$2,000.

#### **IRVINE, HEATH, #32237 – RESIGNED IN LIEU OF DISCIPLINE**

##### **Applicant 15-065 – Decision: Pay \$18,000**

In 2012, applicant hired Irvine to represent her in personal injury matter on a contingent fee basis. In June 2014, applicant signed a settlement release for the amount of \$45,000. Irvine deposited the \$45,000 into his trust account. The parties agreed to a 40 percent contingent fee; therefore, applicant was owed \$27,000. Irvine paid himself \$18,000 for his legal fees. Over the next six months, he paid the applicant a total of \$9,000. Irvine converted the remainder of the settlement proceeds. The Fund Board approved payment of \$18,000.

##### **Applicant 16-011 – Decision: Pay \$5,238.97**

In 2008, applicant hired Irvine to represent her in a personal injury matter on a contingent fee basis, with a thirty-three percent contingent fee. In November 2013, applicant signed a settlement release for the amount of \$15,000. Irvine deposited the \$15,000 into his trust account. Irvine paid himself \$5,000 for legal fees and paid applicant \$4,761.03. He converted the remainder of the applicant's settlement. The Fund Board approved payment of \$5,238.97.

#### **JONES, ERIC, # 31048 - DISBARRED**

##### **Applicants 15-007 – Decision: Pay \$4,000**

Applicants hired Eric Jones to represent the husband in completing the process of obtaining his permanent residency. Applicants paid an advance fee of \$4,000 to Jones, which should have been deposited into his trust account until the fees were earned. Jones converted the advance fees for his own use, but failed to file any of the required documents to obtain permanent residency. The applicants later discovered that Jones was on interim suspension from practicing immigration law. He never returned their file or any fees. Applicants' file was discovered among other client files that had been abandoned by Jones after he was disbarred. The Fund Board approved payment of \$4,000.

##### **Applicant 15-077 – Decision: Pay \$1,600**

Applicant hired Jones to represent him in filing documents relating to his application to become a permanent resident. The applicant paid an advance fee of \$1,600, which Jones deposited in his trust account. Jones withdrew all of the funds without applicant's knowledge or authorization, but did no work on the case. Three years later, applicant terminated Jones' representation, and requested a refund and the return of his client file. Although he eventually received the file, he never received a refund. The Fund Board approved payment of \$1,600.

**Applicants 16-008 – Decision: Pay \$6,866**

Applicants hired Jones to represent the husband in seeking his permanent residency. Jones charged the applicants a fee of \$7,000. Between March and December 2012, the applicants paid \$6,900 in advance fees, which Jones deposited in his trust account. Jones converted these fees for his own use. The applicants later paid Jones \$100 as additional fees, which Jones also used for himself. Jones never filed any documents and never completed the matter. After learning that Jones had been suspended from the practice of immigration law, applicants sent Jones an email demanding a refund and return of their client file. Jones responded and acknowledged applicants' frustration but did not return the fee. The Fund Board approved payment of \$7,000.

**KALANTAR, SIAMACK #39681 – RESIGNED IN LIEU OF DISBARMENT**

**Applicant 15-073 – Decision: Pay \$6,000**

Applicant hired Kalantar to represent her and her husband in obtaining an investor visa. Kalantar assured them that he was working on the application. During the representation, Kalantar resigned in lieu of disbarment due to misconduct in another immigration matter. Applicant discovered that Kalantar had never filed the applications or performed any useful work for her prior to his disbarment. The Fund Board approved payment of \$6,000.

**KOK, KENT, #29650 – DISBARRED**

**Applicant 14-094 – Decision: Pay \$500**

Applicant hired Kok to represent him in a litigation matter that needed to be filed by February 12, 2014. He paid Kok \$500. Approximately one month before the filing deadline, applicant met with Kok and discovered that Kok had done no work. On January 24, 2014, applicant received an email from Kok informing him that he was closing his office and that his file had been transferred to another lawyer. The other lawyer never received the file. On February 6, 2014, applicant settled his case on his own without any information from his file. The Fund Board approved payment of \$500.

**Applicant 14-102 – Decision: Pay \$2,800**

Applicant hired Kok to represent him in a dissolution matter, paying a fee of \$3,500. During the course of the representation, applicant received one invoice for \$575, covering work performed in April and May 2015. This left a balance of \$2,925 in the trust account. On October 25, 2013, applicant met with Kok for 30 minutes, which at Kok's hourly fee of \$250 would have been billed at \$125. This would have left a balance of \$2,800 in the trust account. In January 2014, applicant received a letter from Kok's office notifying him that Kok was closing his law practice due to illness. Applicant hired a new lawyer who wrote a letter to Kok requesting a refund of the \$2,800, with no response. The Fund Board approved payment of \$2,800.

**Applicant 15-015 – Decision: Pay \$3,447**

Applicant hired Kok to represent him in a parenting plan modification. Applicant paid Kok



\$2,000. In addition, applicant's previous attorney wrote Kok a \$1,447 check for the balance of unearned fees from her IOLTA account. Kok thus received a total of \$3,447 in fees for applicant's case. Kok did not perform any work and did not appear at a motion hearing as promised. Applicant did not find out that Kok failed to appear until months later. Applicant never received a billing statement and was not refunded the unearned fees; he eventually hired new counsel to complete his case. The Fund Board approved payment of \$3,447.

**Applicants 15-035 – Decision: Pay \$250**

Applicants hired Kok to resolve a minor construction matter. They paid him \$250. Kok never performed any work on the matter. Applicants never received any billing statements, accountings or refunds. The Fund Board approved payment of \$250.

**Applicant 16-010 – Decision: Pay \$1,100**

Applicant hired Kok to represent her in a dissolution matter, paying him \$1,500. Shortly after, applicant decided not to file the dissolution and requested a refund of unearned fees. No work had been performed. Kok agreed to refund the fees in payments. Applicant received two payments totaling \$400, but no further refunds. The Fund Board approved payment of \$1,100.

**Applicants 16-026 – Decision: Pay \$4,900**

Applicants hired Kok to represent their son in a family law matter to obtain visitation for his son, paying Kok \$5,000. Soon after, Kok informed applicants that he was sick and could not continue. After a period of time, Kok reopened his office and informed them that he needed an additional \$4,000. The applicants paid the \$4,000. He also informed the applicants of a \$900 credit from the first \$5,000. Kok performed no more work after receiving the \$4,000, and then closed his office. Kok admitted he earned only \$4,100 of the first \$5,000 payment. In his stipulation to disbarment, Kok agreed to pay restitution to the applicants in the amount of \$4,900 but never did so. The Fund Board approved payment of \$4,900.

**LABARE, FRANK, #22873 – DECEASED**

**Applicant 16-030 – Decision: Pay \$3,500**

Applicant hired LaBare to represent her in a dissolution matter. She met with LaBare one time for a free consultation and on another occasion to discuss preparing some divorce documents. LaBare passed away before he could perform any substantive work for the applicant. The Fund Board approved payment of \$3,500.

## **MAGAN, LAURIE # 34086 – DISBARRED**

### **Applicant 15-011 – Decision: Pay \$1,420**

Applicant hired Magan to represent him in seeking a child support modification in a dissolution matter. Magan charged the applicant advance fees and costs of \$1,420. Magan prepared the initial draft pleadings, sent them to applicant, who returned them signed. Magan never filed the pleadings or did any other work on the case. Applicant hired new counsel, who sent Magan a letter requesting an accounting of funds and a refund of unearned fees. Magan never responded and never returned the client file. Magan did not perform any useful work for applicant. In her Stipulation to Disbarment, Magan agreed to refund the unearned fees directly to applicant, which never occurred. The Fund Board approved payment of \$1,420.

### **Applicants 15-013 – Decision: Pay \$1,800**

Applicants hired Magan to represent them in a lawsuit against the previous owners of their home. At the time Magan was employed with Bollinger Group. When Magan left Bollinger Group to start her own firm, the applicants' matter, as well as the advance fees they had paid, was transferred to her. During the course of representation Magan provided the applicants with two billing statements reflecting services in the amount of \$412.50. The applicants discovered that this amount was less than the advance fees they had paid and requested an accounting from Magan. Magan did not provide the accounting. Several months later, Magan sent applicants an email informing them they would be receiving a settlement check directly from the opposing party's lawyer, which they did; however, Magan still did not provide the accounting. In her Stipulation to Disbarment, Magan admitted that she had taken advance fees from the applicants' without earning them. She agreed to pay applicants \$1,800 but never did. The Fund Board approved payment of \$1,800.

### **Applicant 15-016 – Decision: Pay \$656**

Applicant hired Magan to represent him in a collection matter, while she was employed with Bollinger Group. Applicant later terminated Bollinger Group and decided to hire Magan, who had by this time started her own firm. Bollinger Group transferred \$656 of unearned advance fees to Magan's trust account. Magan did not pursue the collection matter and did not keep applicant informed of the status. Applicant terminated Magan. Magan did not return the client file or provide an accounting. In her Stipulation to Disbarment, Magan agreed to refund the \$656 to applicant, but never did. The Fund Board approved payment of \$652.

### **Applicant 15-021 – Decision: Pay \$2,500**

Applicant hired Magan to represent him in seeking a child support modification. Magan charged Warren advance fees of \$2,500. She provided no services, despite repeated promises to do so. In her Stipulation to Disbarment, Magan agreed to pay applicant \$2,500, but never did. The Fund Board approved payment of \$2,500.



## **MANNEKEE, NATE, # 5268 – RESIGNED IN LIEU OF DISCIPLINE**

### **Applicant 15-054 – Decision: Pay \$15,127.66**

Applicant hired Mannakee to represent him in a Worker's Compensation matter on a contingency fee basis. Mannakee obtained an award for applicant but misrepresented the amount that was due to applicant. Mannakee had applicant sign a "Client Settlement Approval" accepting \$35,200. Applicant was actually due \$50,327.66. Mannakee took \$15,127.66 for his own use, which he later admitted. The Fund Board approved payment of \$15,127.66

## **MOSLEY, KIRK, #29683 - DISBARRED**

### **Applicant 15-001 – Decision: Pay \$3,000**

Applicant hired Kirk Mosley to represent her in a Driving Under the Influence matter. Applicant paid Mosley \$3,000. Thereafter, Mosely asked for a continuance of several court dates, and then did not appear for two court dates. At one of applicant's court dates she sat in court until her name was called and was informed by a public defender that Mosley was in another trial; at another court date she was informed that he was disbarred. Mosley never communicated with applicant on either occasion. To proceed with her case, applicant obtained a public defender. Mosley never provided the public defender with the case file. The Fund Board approved payment of \$3,000.

## **NAKKOUR, ALI, #33547 – DISBARRED**

### **Applicant 15-034 – Decision: Pay \$2,500**

In December 2013, applicant hired Nakkour to represent her regarding a driving under the influence charge. Applicant paid Nakkour a flat fee of \$2,500. Nakkour did not perform the work he was hired to do. He repeatedly continued court dates for his own benefit, and in one instance neglected to tell applicant that a court date had been continued, leaving applicant to appear by herself. Thereafter, applicant made attempts to contact Nakkour, by phone, text, and in person. She finally went to his office in Edmonds, only to discover that Nakkour was no longer at that address. The Fund Board approved payment of \$2,500.

### **Applicant 15-045 – Decision: Pay \$9,000**

Applicant hired Nakkour to represent him in a criminal matter. Applicant's mother paid Nakkour \$9,000 to represent her son, as Nakkour had represented the family on another matter the prior year. The following week Nakkour moved to Loomis, WA, without informing applicant, but later promised that he would continue to represent him. Nakkour did not keep this promise. He made no court appearances, and ceased communicating with applicant or his mother. Nakkour did call them before the final court date, stating that he would not be appearing, and promising to refund unearned fees. By that time, applicant had a public defender. Applicant never received any refund. The Fund Board approved payment of \$9,000.



**Applicant 15-053 – Decision: Pay \$4,500**

On August 7, 2013, applicant hired Nakkour to represent him in an RALJ appeal scheduled to be heard in December 2014. He paid him \$4,500. In August 2014, Nakkour told applicant that his brief had been filed. When applicant tried to contact Nakkour to prepare for the appeal, the office and cell phone number were no longer in service. Applicant went to Nakkour's office and was informed by a tenant that Nakkour had moved on November 1, 2014. Later, applicant learned from another attorney that no brief was ever filed and that his case was scheduled to be dismissed on December 8, 2014. Applicant hired new counsel to complete his case. The Fund Board approved payment of \$4,500.

**Applicant 15-58 – Decision: Pay \$12,885.23**

In mid-2013, applicant hired Nakkour to represent him on a felony robbery matter in Snohomish County. While that case was still pending, applicant hired Nakkour to represent him in a DUI matter in Whatcom County on September 22, 2014. Nakkour charged \$11,800 for the felony matter (\$10,000 flat fee plus \$1,800 in costs to hire an investigator) and \$4,000 for the DUI matter. Applicant paid a total of \$12,885.23. Applicant was arraigned in the felony matter in February 2014. On February 20, 2014, Nakkour filed a Notice of Appearance. According to applicant's subsequent counsel, Nakkour performed no other services for applicant. Similarly, Nakkour performed no work for applicant on his Whatcom County DUI case other than filing a notice of appearance. Shortly after applicant made the \$4,000 payment for the DUI case on September 22, 2014, Nakkour disappeared. Applicant subsequently hired the new counsel to represent him on that matter as well. The Fund Board approved payment of \$12,885.23.

**Applicant 15-074 – Decision: Pay \$2,500**

In May 2014, applicant hired Nakkour to represent him in a driving under the influence charge, paying Nakkour a flat fee of \$2,500 in cash. In June 2014, Nakkour appeared at the first hearing in the matter, at which he requested a continuance. Thereafter, applicant appeared for the rest of his hearings without counsel because Nakkour failed to appear. Eventually, a public defender was appointed to represent applicant. Nakkour did not perform any substantive work for applicant. The Fund Board approved payment of \$2,500.

**Applicant 15-076 – Decision: Pay \$1,000**

In September 2014, applicant hired Nakkour to represent him in a driving with a suspended license charge. Applicant paid Nakkour \$1,000. On November 4, 2014, when Nakkour told applicant he could not appear in court, he assured him that a "public defender" would be present to substitute for him. When applicant approached the attorney supposedly substituting for Nakkour, the attorney stated that he was unaware of applicant's case and therefore could not substitute for Nakkour. On December 8, 2014, Nakkour again failed to appear in court on applicant's behalf. When applicant attempted to contact Nakkour, both his personal and office phones numbers had been disconnected. On December 31, 2014, applicant sent Nakkour an email requesting a refund of unearned fees. On January 8, 2015, Nakkour sent a response to applicant's email, stating that he would be in contact with applicant to discuss the refund. No money was refunded. The Fund Board approved payment of \$1,000.

## **PENFIELD, ROBERT, WSBA # 25081 – RESIGNED IN LIEU OF DISCIPLINE**

### **Applicant 14-129 – Decision: Pay \$4,000**

Applicant hired Penfield to file a lawsuit to set aside a foreclosure obtained by her bank, which Penfield said he would use as leverage in applicant's negotiations with the bank. Penfield filed a Notice of Appearance in the foreclosure case but did nothing further. He also failed to appear as promised at applicant's eviction hearing in Pierce County Superior Court or at any subsequent hearings on that matter. Applicant eventually hired another lawyer to represent her in the foreclosure matter. The Fund Board approved payment of \$4,000.

### **Applicants 15-029 – Decision: Pay \$3,000**

Applicants hired Penfield to represent them in suing their mortgage company for mortgage fraud. They paid Penfield \$3,000 and provided him with the documents he requested. Penfield told the applicants that he would have a "forensic audit" of their documentation done, which applicants later discovered was untrue. After a few months it became difficult for applicants to communicate with Penfield, who stopped returning phone calls or emails. When applicants learned that Penfield had been disbarred, they made several attempts to contact him to get their documents and to demand a refund. Penfield did not perform any work on the case, and never returned applicants' documents or unearned fees. The Fund Board approved payment of \$3,000.

## **SO, JAE, #29915 - DISBARRED**

### **Applicants 14-126 – Decision: Pay \$3,500**

In September 2012, applicants hired Jae So, of Seattle Law Group, to represent them in an immigration matter. The applicants signed a "Contract for Legal Services" and paid So \$5,500 for the case. So performed services under this contract. At the end of the initial case, So asked for another \$3,500 specifically for representing one of the applicants in an interview with Citizen and Immigration Services and to continue representing the applicant in master calendar hearings. The applicants signed a second "Contract for Legal Services" and paid an additional \$3,500. The interview and hearings never occurred but So refused to refund the unearned fees. The Fund Board approved payment of \$3,500.

### **Applicant 14-130 – Decision: Pay \$3,500**

Applicant hired So to represent him in a Driving Under the Influence case. So's disbarment was pending but was not final at the time applicant hired him. So did not perform any work on the case. When applicant learned of So's disbarment, he sent So a letter requesting a refund of the unearned fees. Applicant received no response. The Fund Board approved payment of \$3,500.



**Applicant 15-004 – Decision: Pay \$3,000**

Applicant hired So to represent him in an immigration matter. Applicant signed a contract for legal services and paid So \$3,000. The only work So performed for applicant prior to his disbarment was the filing of a standard Freedom of Information Act request. The Fund Board approved payment of \$3,000.

**Applicant 15-022 – Decision: Pay \$6,000**

Applicant hired So in late 2013 after being arrested following a Driving Under the Influence stop. Applicant did not have legal status in the U.S. and was transferred to Immigration and Customs Enforcement, who detained him. Applicant made three separate payments to So of \$2,500 each by online transfers to So's IOLTA account. There was no fee agreement. At the time So took on Applicant as a client, he knew that his disbarment was imminent as he had signed a Stipulation to Disbarment on October 10, 2013, which was in the process of being approved by the Disciplinary Board and Supreme Court.

So represented applicant at an immigration bond hearing in mid-December 2013 and was successful in having applicant released on an immigration bond. So's standard charge for a bond hearing was \$1,500. So did no further work in applicant's removal proceeding after the bond hearing and did not earn the remaining fee of \$6,000. So never told applicant that he was in the process of being disbarred when applicant hired him. Applicant did not hear about So's disbarment until months later. The Fund Board approved payment of \$6,000.

**Applicants 15-025 – Decision: Pay \$2,500**

Applicant and her husband hired So to represent them in an immigration application. They paid So a \$2,500 fee to handle the matter. The applicants provided So with all the documents he requested for the immigration application and paid him an additional \$1,000 for application fees. So told them he would send out the application and fee to the U.S. Consulate in Mexico. Several weeks later, applicants learned that neither the documents nor the application fee were sent to the U.S. consulate. They also learned that So was in the process of being disbarred. So later refunded the applicants \$965 of the application fee. He never returned the unearned fee of \$2,500. The Fund Board approved payment of \$2,500.

**Applicant 15-050 – Decision: Pay \$9,000**

Applicant hired Jae So to represent her in petitioning for permanent residency. She signed a "Contract for Legal Services" and paid So \$7,500, as well as \$1,500 in application fees. Applicant later learned that So never filed her petition. He never notified applicant that he had not moved forward with her petition. Applicant made several attempts to contact So, with no response. The Fund Board approved payment of \$9,000.

## **TOUCHI, SHAUNA, # 36609 – RESIGNED IN LIEU OF DISBARMENT**

### **Applicants 15-006 – Decision: Pay \$1,450**

Touchi operated Evergreen Law Offices (ELO) with a lawyer licensed in California. ELO purported to represent homeowners in mortgage loan modifications. Other companies handled the marketing of the mortgage modification services to clients. All clients signed an ELO fee agreement that included Touchi's name and signature, but paid the other companies by pre-authorized bank or credit card drafts. The marketing companies paid Touchi a bi-monthly salary. Between January and July of 2013, Touchi received \$28,000 in salary for the use of her name as the lawyer associated with the companies. Touchi did not perform any legal work for her "clients," was unaware of clients' names, and did not know how much they paid for her purported services. In July 2013, the Federal Trade Commission filed a complaint against ELO and the marketing companies and appointed a receiver. The FTC seized clients' files and funds; however, the financial harm to the clients far exceeded the seized assets.

Applicants hired one of the companies, United Home Advocates (UHA), for their mortgage loan modification. Applicants completed documents authorizing UHA to withdraw payments directly from their bank accounts and to obtain their mortgage loan information. They authorized a funds transfer to pay UHA a first installment of \$1,450 for its services. Applicants did not receive any services from UHA or Touchi. Although Touchi never received fee payments directly from applicants, they signed a fee agreement with ELO and believed they were purchasing legal services. The Fund Board approved a gift of \$1,450.

## **WHITE, REBECCA, #26932 – DISABILITY INACTIVE**

### **Applicant 13-128 – Decision: Pay \$725**

On February 13, 2013, applicant hired White for a fee of \$750 to represent her in completing I-130 petitions for her family members. She paid White \$725 in advance fees. Applicant later discovered that White had not filed anything, and began to experience difficulties in communicating with White. She made several attempts to contact her by phone and email with no response. The Fund Board approved payment of \$750.

## **WITCHLEY, STEVEN, #20106 – RESIGNED IN LIEU OF DISCIPLINE**

### **Applicants 15-046 – Decision: Pay \$11,000**

Applicants, husband and wife, hired Witchley to represent the husband in a Court of Appeals case and Personal Restraint Petition (PRP), paying Witchley \$7,500 and \$2,500. Applicants also paid Witchley an additional \$1000 to hire a private investigator for the case. They later discovered that Witchley took \$500 of the funds for himself and paid the investigator the remainder. Witchley did not maintain regular communication, failed to appear at planned visits to Stafford Creek Correctional Center, where the husband was incarcerated, and did not return emails and voicemails. Witchley missed court deadlines for filing the appellant's brief, resulting in the court reminding him to file a request for an extension. After receiving several extensions but still failing to file the brief, the Court of Appeals removed Witchley from the case. Witchley failed to notify applicants of his



removal. Witchley did not perform any substantive work on behalf of applicants. The Fund Board approved payment of \$11,000.

**Applicant 15-048 – Decision: Pay \$1,150**

Applicant hired Witchley to conduct a post-conviction review of his case. Applicant paid Witchley \$2,500 for the post-conviction review. Witchley performed work by conducting a review of applicant's case and determined that there might be a basis for filing a PRP based on newly discovered evidence. Applicant agreed to pay Witchley \$5,000 to prepare and file the PRP, but ultimately paid only \$1,150 of that amount. Witchley did not prepare the PRP, and no PRP was filed. The Fund Board approved payment of \$1,150.

**Applicant 15-051 – Decision: Pay \$2,100**

In April 2014, applicant hired Witchley to represent him in a clemency hearing before the clemency board. Applicant and Witchley agreed on a flat fee of \$5,000. In June 2014, Witchley told applicant that the clemency hearing would take place by September 2014, but it never occurred. In March 2015, applicant terminated representation. At that time, applicant had paid Witchley \$3,600 of the \$5,000 flat fee. Applicant states that he stopped making payments after he realized that nothing was happening in his case. Applicant sent Witchley an email regarding a refund and Witchley responded, agreeing that a refund of \$2,100 was due. Witchley never followed through and applicant never received the refund. The Fund Board approved payment of \$2,100.

**Applicant 15-067 – Decision: Pay \$2,000**

Applicant hired Witchley to represent him in filing a motion and brief relating to a community custody issue, paying him \$2,000. Witchley never performed any work. Applicant made several attempts to continue to work with Witchley by giving Witchley the opportunity to perform work or refund the unearned fees. Witchley agreed to refund the fees, but never did so. The Fund Board approved payment of \$2,000.

**Applicant 15-078 – Decision: Pay \$4,268.52**

Applicant hired Witchley to represent him in reviewing his case in preparation for the possible filing of a Personal Restraint Petition. Applicant's mother paid Witchley \$4,500 for the representation. Applicant's mother and sister handled communications with Witchley as applicant was incarcerated. In August 2014, applicant's sister sent Witchley emails to inquire about the status of her brother's case, but received no response. Several months later, Witchley sent the sister a statement of services provided in the case. The statement listed only two services, totaling \$231.48. Witchley performed no further work on applicant's case. The Fund Board approved payment of \$4,268.52.

**Applicant 16-031 – Decision: Pay \$3,500**

On October 2011, applicant, who was incarcerated, hired Witchley to file a Personal Restraint Petition. Applicant's mother paid Witchley \$1,500 to review documents and consult with applicant regarding possible issues to include in the PRP. Both applicant and his mother signed the fee agreement. Witchley reviewed the case and determined there



was a basis for filing a PRP. In December 2012, Witchley asked for \$3,500 in additional fees. Applicant and his mother executed a second fee agreement in December 2012. They agreed to pay an additional \$3,500 in installments for services to include preparation and filing of the PRP and associated pleadings. Thereafter, Witchley strung applicant and his family along for almost two years but never produced a PRP. The Fund Board approved payment of \$3,500.

# **APPENDIX A**

## **Fund Balance Sheet**

# Washington State Bar Association Lawyers Fund for Client Protection

## Statement of Financial Position

	Audited As of September 30, 2016
<u>Assets</u>	
Wells Fargo Checking Account	\$ 773,978
Accrued Interest Receivable	-
Wells Fargo Money Market	2,223,116
Wells Fargo Investments	-
Morgan Stanley Money Market	102,557
<b>Total Assets</b>	<b>\$ 3,099,651</b>
<u>Liabilities and Net Assets</u>	
Approved gifts to injured clients payable	\$ 344,425
Liability to WSBA general fund	109,002
Net Assets	2,646,224
<b>Total liabilities and net assets</b>	<b>\$ 3,099,651</b>

## Statement of Activities

	Audited As of September 30, 2016
<u>Revenue</u>	
Restitution	\$ 2,970
Member Assessment	994,738
Interest	6,460
<b>Total Revenue</b>	<b>\$ 1,004,168</b>
<u>Expenses</u>	
Gifts to Injured Clients	\$ 371,452
LFCP Board	1,366
Misc.	1,229
Indirect (overhead)	128,187
<b>Total Expense</b>	<b>\$ 502,235</b>
Net Income (Expense)	\$ 501,933

## Statement of Changes in Net Assets

Balance at September 30, 2015	\$ 2,144,291
Net Income for the twelve months end September 30, 2016	501,933
Balance at September 30, 2016	<b>\$ 2,646,224</b>