

YOU BE THE JUDGE



Case 1

Johnny Junior lived with his mother in their family home. He also operated his law office from the home. Junior's mother passed away. The mother's will bequeathed her entire estate to Junior and his three brothers, divided equally. Junior was named the personal representative. Junior refused to provide his brothers with copies of the will or appraisals of the family home. He continued living in the family home rent-free, and paid taxes and utilities out of the estate. He then deeded the family home to himself, without telling his brothers or recording the deed. The brothers grew increasingly concerned about Junior's actions and hired an attorney. Junior refused to provide the brothers' attorney with any information about the estate or its accounts.

Case 1 (continued)

Three years after their mother's death, the brothers went to court. In the ensuing litigation, which lasted another six years, Junior made numerous false claims and gave incorrect information under oath. Junior also continued to refuse to produce requested estate documents. The trial judge removed Junior as personal representative, set aside his attempt to deed the house to himself, and ordered that Junior reimburse his brothers for rent and other expenses. On appeal, the Washington State Supreme Court affirmed the trial court's order. Junior spent the next few years repeatedly filing various motions and lawsuits collaterally attacking the trial court's order. These motions were found to be frivolous and harmful, and courts eventually resorted to imposing sanctions that totaled \$138,881. He was also held in contempt of court four separate times for failing to provide documents.

Case 1 Answer

Johnny Junior was disbarred. *In re Disciplinary Proceeding Against Jones*, 182 Wn.2d 17, 338 P.3d 842 (2014).



Case 2

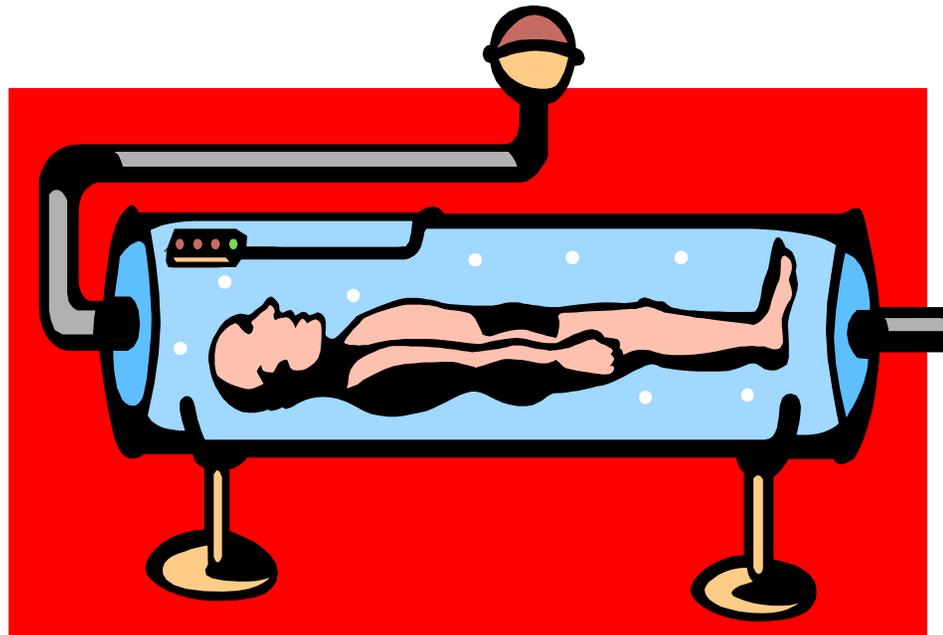
Frank Fiduciary misused his lawyer's trust account.

He failed to keep adequate records on the trust account, failed to put all client funds in the trust account, misled a client about his role in managing the trust account, and used the trust account for personal and business expenses. This came to the attention of the WSBA after Frank repeatedly overdrew his trust account. During a preliminary investigation into these overdrafts, Frank lied to the WSBA about his management of the trust in a letter, later admitting of his letter that: “[the letter is] different than, you know, the facts.”

Case 2 Answer

Frank Fiduciary was suspended for 24 months.

On appeal, the WSBA asked for disbarment, but the Supreme Court affirmed the 24-month suspension. *In re Disciplinary Proceeding against Hicks*, 166 Wn.2d 774, 214 P.3d 897 (2009).



Case 3

Personal injury attorney Neglectful Neal was hired by a family that had been injured in a car accident. Neal delayed filing his client's suit until only a few days before the statute of limitations expired. He did not perform discovery. He did not prepare potential witnesses for testimony. He did not comply with court deadlines. He did not tell his client that her case had been dismissed because of his failure to comply with those court deadlines. He did not tell his client that opposing counsel made a settlement offer. Then, he did not give his client notice of his withdrawal, which he made effective immediately. As a result, a viable settlement offer lapsed and the family's claims were barred by the statute of limitations.

Case 3 Answer

Neglectful Neal was suspended for six months and ordered to pay his former client restitution of \$5,834.15 (the amount of the settlement offer he failed to convey to his client). *In re Disciplinary Proceeding Against Pfefer*, 182 Wn.2d 716, 344 P.3d 1200 (2015).



Case 4

Willy Withdraw represented a difficult client in a personal injury case. Due to personality conflicts, Willy withdrew from the case. The client settled on her own, but the check bore the names of both the client and Willy. Willy did not charge a fee, but did wish to recover \$1,500 in expenses advanced on the client's behalf. The client sought an agreement that \$1,500 was the sole amount owed to Willy. Willy agreed to sign the agreement only if the client agreed to release all claims she might have against Willy. Willy did not advise her to, and she did not, seek independent counsel regarding the agreements.

Case 4 Answer

In settlement with former client of potential malpractice claims where no actual malpractice claim was ever raised or established, RPC 1.8(h) requires notice in writing that the client should seek advice of independent counsel. Willy Withdraw was suspended for six months.

In re Disciplinary Proceeding Against Greenlee, 158 Wn.2d 259, 143 P.3d 807 (2006).



Case 5

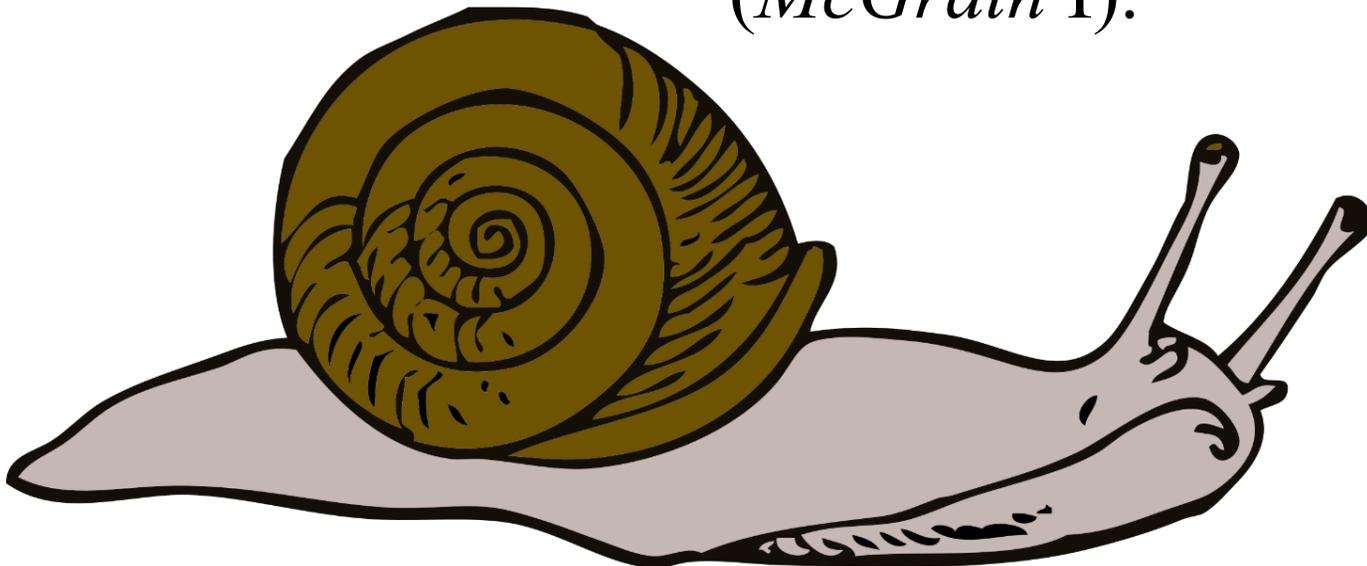
Peter Protector (a.k.a. Ned Nocanuck) had been disciplined less than a year ago and was suspended for 18 months (he also had been disbarred nearly 30 years ago, but had been readmitted 11 years later). Peter's actions in litigation concerning his wife's chiropractic practice were the subject of his recent discipline. The hearing officer found that Peter "intentionally and repeatedly obstructed and delayed litigation by failing to respond to discovery requests" and falsely certified that he had made a reasonable inquiry into the accuracy of responses he did give. These obstruction and delay tactics continued when the former employee of his wife's practice took action to collect the judgment of \$500,000.

Case 5 (continued)

Peter set up a scheme that nearly all of his wife's assets were owed in legal fees to his law firm and he shielded the personal and community funds from creditors by placing them in his clients' trust account. As a result, Peter's trust account became their personal account. Peter's wife filed for bankruptcy and Peter provided bankruptcy filings that contained numerous omissions and misstatements. During bankruptcy proceedings Peter was also sanctioned for bad faith and disqualified from representing his wife.

Case 5 Answer

Peter Protector was disbarred. *In re Disciplinary Proceeding Against McGrath*, 178 Wn.2d 280, 308 P.3d 615 (2013) (*McGrath III*). See also *In re Disciplinary Proceeding Against McGrath*, 174 Wn.2d 813, 280 P.3d 1091 (2012) (*McGrath II*); *In re Disciplinary Proceeding Against McGrath*, 98 Wn.2d 337, 655 P.2d 232 (1982) (*McGrath I*).



Case 6

Frankie Fixit was a criminal defense attorney focusing primarily on DUI cases. He coordinated a plea agreement for a client to the reduced charge of first degree negligent driving. However, he did not request suppression of the breath tests. Later that day, Frankie represented his client in a telephone hearing with the Department of Licensing (DOL). A suppression order would have prevented his client from having her license suspended for 90 days. He told the DOL hearing officer he had an order suppressing the breath tests. The hearing officer requested he fax it over and said he would hold the case open until Frankie did so. Realizing his failure, Frankie decided to fix it. He went to the Clerk's Office and asked for a copy of the order.

Case 6 (continued)

He stepped away from the counter and wrote, “BAC suppressed not a knowing & voluntary decision to take test” on the already approved order. He took it back to the counter and asked for a copy. The clerk, however, had seen the alteration and refused. She contacted her supervisor who contacted the prosecuting attorney in the case. Frankie convinced his colleague to agree to the further stipulation and returned to the Clerk’s Office for a copy. Unfortunately, for Frankie, the judge got wind of the situation. Despite Frankie’s apologies, the judge filed a grievance with the WSBA.

Case 6 Answer

Frankie Fixit was disbarred. *In re Disciplinary Proceeding Against Kamb*, 177 Wn.2d 851, 305 P.3d 1091 (2013).



Case 7

Norma Nofight represented a client detained on an immigration hold. The judge denied the application for asylum. Norma failed to file an appeal with the Board of Immigration Appeals (BIA), which subjected her client to immediate deportation. Her client was arrested by Immigration & Customs Enforcement and Norma knew she had to do something. She contacted another firm to handle the appeal on behalf of her client. Felicity Forger, an associate in the firm, was tasked with the assignment because the partner was going out of town. Felicity drafted the appropriate motion for the late appeal due to Norma's ineffective assistance of counsel and submitted it along with client declarations and a notice of appearance to the BIA.

Case 7 (continued)

Felicity had never met with the client who was in custody.

The appeal was denied and the firm sent a copy of the decision with a letter stating that the firm did not represent the client, but only was assisting Norma with the appeal, therefore the client would have to retain a lawyer to appeal the BIA decision to the Ninth Circuit. The client retained Darla Dogood who performed her due diligence and found further discrepancies. Her investigation showed that the client had never met with Felicity Forger, despite submissions of signed client declarations to the BIA. Darla reported a grievance to the WSBA concerning Felicity's representation. Upon questioning, Felicity made claims that she had visited the client and he had signed the declarations in her presence. The visitor logs did not support her claims.

Case 7 Answer

The hearing officer noted Felicity Forger's inexperience and other mitigating factors and although the presumptive sanction was disbarment, recommended a two-year suspension. The disciplinary board disagreed and voted 8-1 for disbarment. The Supreme Court affirmed. *In re Disciplinary Proceeding Against Rodriguez*, 177 Wn.2d 872, 306 P.3d 893 (2013).



Case 8

Steven Stickyfingers required advance fee payments from a number of his clients. He thought of these payments as retainers, but provided no explanation to his clients of what that meant. These payments were sometimes deposited into his general account rather than the client trust account, despite written agreements requiring billing before withdrawal of funds from the trust account. When funds were needed from the trust account, Stickyfingers would cover any deficit with money out of the general fund. Stickyfingers kept his own handwritten registers, which were often incomplete, and his accounting practices occasionally resulted in overdrafts from the trust account.

Case 8 (continued)

Following an overdraft notice, the WSBA began an audit of Stickyfingers's accounts. In the course of this audit, the WSBA requested explanations and documents from Stickyfingers to resolve discrepancies. In response, Stickyfingers explained that he had simply committed "math error[s]" and provided the WSBA with client ledgers and trust account balances. However, the balances he presented to the WSBA were false, and the WSBA's subsequent requests were answered incompletely.

Case 8 Answer

The injury caused by his mismanagement of client funds was characterized as “serious” and Stickyfingers was disbarred. *In re Disciplinary Proceedings Against Simmerly*, 2012 WL 3129140.

