BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re **CRAIG RICHARD ELKINS,** Lawyer (Bar No. 14608).	Proceeding No. 15#00028 ODC File No(s). 14-00492, 14-01530, & 15-00842 STIPULATION TO SUSPENSION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Debra Slater and Respondent lawyer Craig Richard Elkins.

Respondent understands that he is entitled under the ELC to a hearing, to present exhibits and witnesses on his behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that he is entitled under the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the Supreme Court. Respondent further understands that a hearing and appeal could result in an outcome more favorable or less favorable to him. Respondent chooses to resolve this

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proceeding now by entering into the following stipulation to facts, misconduct and sanction to avoid the risk, time, and expense attendant to further proceedings.

I. ADMISSION TO PRACTICE

1. Respondent was admitted to practice law in the State of Washington on November 2, 1984.

II. STIPULATED FACTS

Charles and Doria Klein Matter

2. The Kleins defaulted on a loan from US Bank that was secured by a deed of trust on real property they owned. Fidelity National Title Insurance (Fidelity), the trustee, initiated a non-judicial foreclosure.

3. The Kleins also defaulted on a loan from Craft3 that was secured by a second position deed of trust on the same real property. Craft3 filed a lawsuit to judicially foreclose on its deed of trust and for a judgment against the Kleins.

4. In May 2013, Dave Smith (Smith) purchased the Craft3 note. Smith was substituted as plaintiff in the Craft3 lawsuit against the Kleins.

5. In September 2013, the Kleins executed a Power of Attorney (POA) in favor of Smith.

6. In September 2013, Smith hired Respondent to file a lawsuit to stop Fidelity's foreclosure. Respondent and Smith entered into a written fee agreement in which Smith was the client. Respondent knew that Smith was acting as the attorney-in-fact for the Kleins, pursuant to the POA. Respondent's fee agreement did not mention the Kleins, did not mention that Smith was acting under the POA, or acknowledge the Kleins' interest as the principals under the POA. Smith paid Respondent $7,000 in attorney fees.

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7. Respondent had never spoken to the Kleins or otherwise communicated with them.

8. On October 2, 2013, a lawsuit to stop US Bank's non-judicial foreclosure was filed. The complaint was prepared by Respondent's staff. Even though Respondent had never obtained their consent to file the lawsuit, Charles and Doria Klein were the named plaintiffs. Ocwen, the loan servicer, was one of the defendants. The complaint stated that Respondent was the attorney for the Kleins and did not disclose that Smith was the attorney-in-fact for the Kleins.

9. Even though the complaint need not be verified, Respondent's staff prepared and filed a verified complaint. The verification stated that the Kleins had read the complaint and had firsthand knowledge of the facts and contentions contained therein and that they certified that the facts and contentions were true and accurate. Because Respondent had not adequately supervised his staff, Respondent did not know that his staff had filed a verified complaint and that the verification contained statements that were not true.

10. Respondent knew that Smith was the owner of the second position deed of trust and that Smith was the plaintiff in the judicial foreclosure lawsuit in which the Kleins were the defendants. Respondent knew that the lawsuit sought a money judgment against the Kleins. He also knew that if US Bank's foreclosure proceeded, Smith's second lien position on the property would be foreclosed and it was in Smith's best interest to stop the foreclosure.

11. Although the interests of the Kleins and Smith were initially aligned and Respondent believed he was representing the interests of both parties, their interests subsequently became adverse.

12. Respondent did not obtain informed consent of either the Kleins or Smith to the conflict of interest.

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13. The Kleins' lawsuit to stop the foreclosure was removed to federal court. Respondent filed several pleadings in the case as attorney for the Kleins, including a Joint Status Report. In October 2013, Major Klein was informed by Ocwen's lawyer that the Kleins had filed a lawsuit against Ocwen to stop Fidelity's non-judicial foreclosure and trustee sale. This was the first time the Kleins knew about the lawsuit.

14. The Kleins took no action until January 2014 when Mr. Klein directed Respondent to dismiss the lawsuit. The POA in favor of Smith had been revoked and Mr. Klein informed Respondent that it had been revoked. On January 17, 2014, Respondent voluntarily dismissed the lawsuit.

15. On January 29, 2014, a decree of foreclosure and judgment in the amount of $843,951.56 was entered in favor of Smith and against the Kleins in the Craft3 lawsuit. On May 23, 2014, the trustee's sale took place on Fidelity's first deed of trust and the Klein's interest in the property was foreclosed.

Diane Bendickson and Michael Farson Matter

16. In early May 2013, Diane Bendickson and Michael Farson contacted Respondent's office about dealing with a foreclosure that had been initiated by the first position lender. They were also behind on their payments to their second position lender.

17. On May 13, 2013, Bendickson and Farson met with Anthony Tornetta, Respondent's non-lawyer assistant. Tornetta advised them that their best option was to have Respondent assist them in modifying their first and second position loans. Respondent did not confer with them or otherwise advise them about their options and legal rights with respect to the pending foreclosure or their delinquent loans. Because Respondent did not adequately supervise Tornetta, he did not ensure that Tornetta's advice to them was accurate or correct.

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18. Bendickson and Farson subsequently entered into a written fee agreement that provided they pay a "retainer of $6,000 for "first and second mortgages." The scope of services described in the fee agreement included review of their mortgage documents for errors, renegotiation of their mortgages, short sale, or other solution, and representation at the Foreclosure Fairness Act mediation. In addition, they agreed to pay $350 per hour for additional services. The fee agreement Bendickson and Farson signed accurately stated the fee arrangement that had been explained to them by Tornetta. Bendickson and Farson paid Respondent $6,000.

19. Respondent subsequently negotiated a settlement with the second position lender. The settlement provided that Bendickson and Farson pay $10,000 to the lender, which was $86,594.46 less than the $96,594.46 they owed. Bendickson and Farson paid the lender $10,000 and the lender satisfied its obligation and released its lien position on the real property.

20. Deborah Brodie, a non-lawyer assistant, reviewed the file and realized that Bendickson and Farson have been given the wrong fee agreement. On September 19, 2013, Bendickson and Farson received a billing statement from Respondent stating they owed additional attorney fees of $8,659.45, which represented 10% of the reduction in the amount they owed to the second position lender. Bendickson requested an explanation of the additional fee. Brodie told them that they had been given the wrong fee agreement by Tornetta. Because Respondent had not adequately supervised Tornetta, he did not know that Bendickson and Farson had been given the wrong fee agreement.

21. Respondent sent a new fee agreement to Bendickson and Farson that included the additional fee. Respondent did not advise Bendickson and Farson of the desirability of seeking the advice of independent counsel or otherwise advise them concerning the conflict of interest.

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Because they felt pressured by Brodie, Bendickson and Farson signed the new fee agreement. Bendickson and Farson paid Respondent total fees of $9,350, which consisted of the original $6,000 fee, plus $3,350 of the additional $8,659.45 provided for in the new fee agreement.

Michael and Esperanza Hasse (Hasses) Matter

22. On March 24, 2014, Michael and Esperanza Hasse hired Respondent to file a lawsuit against the lender that held a deed of trust on real property they owned. The Hasses entered into a written fee agreement in which they agreed to pay $6,200 plus 10% of any reduction in the loan principal or interest. The Hasses paid Respondent $6,200.

23. Between March 2014 and August 2014, the Hasses communicated primarily with Deborah Brodie, Respondent's non-lawyer assistant.

24. After August 2014, the Hasses continued to send Brodie documents and numerous emails inquiring about their case. They received no response to their requests for information.

25. In October 2014, Respondent sent an email to the Hasses informing them that Brodie was ill. Respondent told the Hasses that he would review their file and get back to them. Respondent did not get back to the Hasses as he had promised.

26. Over the next five months, the Hasses repeatedly telephoned and sent emails to Respondent inquiring about their case. During this time, Respondent attempted to negotiate a modification with the Hasses lender. The lender refused to modify the Hasses' loan.

27. The Hasses requested an accounting or billing statement, which Respondent agreed to provide. Respondent did not provide the accounting or billing statement as requested.

28. On March 26, 2015, Mr. Hasse terminated Respondent and requested a refund of unearned fees, a billing statement, and a copy of their file. Respondent has not refunded any money to the Hasses, has not provided them with a billing statement or accounting nor has he

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provided their file to the Hasses.

III. STIPULATION TO MISCONDUCT

Klein Matter

29. By filing documents in both state and federal courts stating he was the attorney for the Kleins when he was actually representing Smith, Respondent violated RPC 1.2(f).

30. By representing both the Kleins and Smith without obtaining their informed consent to the conflict of interest, Respondent violated RPC 1.7.

31. By failing to supervise his non-lawyer assistant who filed the verified complaint stating the Kleins had read the complaint and certified that the facts and contentions in the complaint were true and accurate, Respondent violated RPC 5.3 and RPC 8.4(d).

Bendickson & Farson Matter

32. By failing to advise Bendickson and Farson about their options in resolving the issues with their lenders, Respondent violated RPC 1.4.

33. By charging and retaining $9,350 for completing part of the work he agreed to do, Respondent charged an unreasonable fee in violation of RPC 1.5(a).

34. By charging a contingent fee when he did not have a written contingent fee agreement with them, Respondent violated RPC 1.5(c)(4).

35. By entering into a new fee agreement with Bendickson and Farson that increased the fees he would receive, Respondent violated RPC 1.7 and RPC 1.8(a).

36. By failing to properly supervise his non-lawyer staff, Respondent violated RPC 5.3.

Hasse Matter

37. By failing to diligently represent the Hasses, Respondent violated RPC 1.3.

38. By failing to communicate with the Hasses about their case, Respondent violated

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RPC 1.4.

39. By charging and retaining $6,200 for work he agreed to do but did not complete, Respondent charged an unreasonable fee in violation of RPC 1.5(a).

40. By failing to provide a written accounting to the Hasses when they requested one, Respondent violated RPC 1.15A(e).

41. By failing to provide to the Hasses, upon the termination of the representation, their file and a refund of unearned fees, Respondent violated RPC 1.16(d).

IV. PRIOR DISCIPLINE

42. Respondent has no prior discipline.

V. APPLICATION OF ABA STANDARDS

43. The American Bar Association Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.), attached as Exhibit A, apply to this case.

44. ABA Standard 4.1 is most applicable to violations of RPC 1.15A.

45. Respondent acted knowingly in failing to provide an accounting to the Hasses and failing to deliver to them the funds they were entitled to receive. There was injury to the Hasses in that they have been deprived of their funds. The presumptive sanction is suspension.

46. ABA Standard 4.3 is most applicable to violations of RPC 1.7 and RPC 1.8.

47. Respondent was negligent in representing both Smith and the Kleins. There was potential injury to the Kleins in that they could have been subjected to a judgment as a result of the lawsuit Respondent filed. The presumptive sanction is reprimand.

48. Respondent acted knowingly in failing to avoid a conflict of interest with Bendickson and Farson. He entered into a new fee agreement with Bendickson and Farson that increased the fees he would receive and did not advise his clients to consult independent

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counsel. There was actual injury to Bendickson and Farson as they paid more than they originally agreed. The presumptive sanction is suspension.

49. ABA Standard 4.4 is most applicable to violations of RPC 1.2, RPC 1.3, and RPC 1.4.

50. Respondent acted knowingly in failing to communicate with Bendickson and Farson and advise them of their legal options. He acted knowingly in failing to diligently represent the Hasses and in failing to communicate with them. There was actual injury to Bendickson/Farson and the Hasses as they did not know the status of their cases, which caused them unnecessary stress. The presumptive sanction is reprimand.

51. ABA Standard 6.1 is most applicable to violations of RPC 8.4(d).

52. Respondent acted knowingly when he allowed his non-lawyer assistant to file the verified complaint with the court stating that the Kleins had read the complaint and certified that the facts and contentions in the complaint were true and accurate. There was injury to the legal system as a result of these actions. Opposing counsel removed the case to federal court, which burdened the legal system. There was potential injury to the Kleins in that these actions might have caused the expenditure of legal fees to defend in a lawsuit that might have been without merit. The presumptive sanction is suspension.

53. ABA Standard 7.0 is most applicable to violations of RPC 1.5, RPC 5.3, and RPC 1.16.

54. Respondent acted negligently in charging the Hasses an unreasonable fee and failing to provide them with an accounting and their file upon termination of the representation. He also acted knowingly in failing to supervise his non-lawyer assistants. There was injury to the Hasses as they were deprived of their funds. There was injury to the Kleins and Farson and

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Bendickson as a result of Respondent's failure to supervise his non-lawyer assistants. The presumptive sanction is reprimand.

55. The following aggravating factors apply under ABA Standard 9.22:

(c) a pattern of misconduct;
(d) multiple offenses;
(i) substantial experience in the practice of law [Respondent was admitted to practice in Washington State in 1984].

56. The following mitigating factors apply under ABA Standard 9.32:

(a) absence of a prior disciplinary record;
(l) remorse.

57. It is an additional mitigating factor that Respondent has agreed to resolve this matter at an early stage of the proceedings.

58. On balance, the aggravating and mitigating factors do not require a departure from the presumptive sanction.

VI. STIPULATED DISCIPLINE

59. The parties stipulate that Respondent shall have a one year suspension for his conduct. Reinstatement from suspension is conditioned on payment of costs and restitution.

60. Respondent requests that the one year suspension shall commence no earlier than April 12, 2016. ODC does not oppose this request.

61. Respondent shall be subject to probation for a period of twelve months beginning on the date Respondent is reinstated to the practice of law.

62. The conditions of probation are set forth below. Respondent's compliance with these conditions shall be monitored by the Probation Administrator of the Office of Disciplinary Counsel ("Probation Administrator"). Failure to comply with a condition of probation listed herein may be grounds for further disciplinary action under ELC 13.8(b).

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Practice Monitor

a) During the period of probation, Respondent shall confer with a practice monitor. The practice monitor must be a WSBA member with no record of public discipline and who is not the subject of a pending public disciplinary proceeding.

b) No later than 30 days after probation begins, Respondent shall provide to the Probation Administrator, in writing, the name and contact information of a proposed practice monitor, who must be approved by the Probation Administrator. If Respondent fails to propose a practice monitor, or if the Probation Administrator does not approve the proposed practice monitor, the Probation Administrator will request that a practice monitor be appointed by the Chair of the Disciplinary Board. *See* ELC 13.8(a)(2). Respondent shall cooperate with the appointed practice monitor.

c) During the period of probation, Respondent shall meet with the practice monitor at least once every four months. At each meeting, the practice monitor will discuss with Respondent the duties assigned to his employees and how he is supervising those employees. Meetings may be in person or by telephone at the practice monitor's discretion.

d) The practice monitor will provide the Probation Administrator with quarterly reports regarding Respondent's performance on probation.

e) If the practice monitor believes that Respondent is not complying with any of his ethical duties under the RPC or if Respondent fails to attend a meeting, the practice monitor shall promptly report that to the Probation Administrator.

f) Respondent shall be responsible for paying any and all fees, costs and/or expenses charged by the practice monitor for supervision.

VII. RESTITUTION

63. Respondent shall pay restitution to Bendickson and Farson in the amount of $3,350 and to the Hasses in the amount of $6,200. Reinstatement from suspension is conditioned on payment of restitution.

VIII. COSTS AND EXPENSES

64. In light of Respondent's willingness to resolve this matter by stipulation at an early stage of the proceedings, Respondent shall pay attorney fees and administrative costs of $1,000 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC

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13.9(l) if these costs are not paid within 30 days of approval of this stipulation. Reinstatement from suspension is conditioned on payment of costs.

IX. VOLUNTARY AGREEMENT

65. Respondent states that prior to entering into this Stipulation he had an opportunity to consult independent legal counsel regarding this Stipulation, that Respondent is entering into this Stipulation voluntarily, and that no promises or threats have been made by ODC, the Association, nor by any representative thereof, to induce the Respondent to enter into this Stipulation except as provided herein.

66. Once fully executed, this stipulation is a contract governed by the legal principles applicable to contracts, and may not be unilaterally revoked or modified by either party.

X. LIMITATIONS

67. This Stipulation is a compromise agreement intended to resolve this matter in accordance with the purposes of lawyer discipline while avoiding further proceedings and the expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer and ODC acknowledge that the result after further proceedings in this matter might differ from the result agreed to herein.

68. This Stipulation is not binding upon ODC or the respondent as a statement of all existing facts relating to the professional conduct of the respondent lawyer, and any additional existing facts may be proven in any subsequent disciplinary proceedings.

69. This Stipulation results from the consideration of various factors by both parties, including the benefits to both by promptly resolving this matter without the time and expense of hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As such, approval of this Stipulation will not constitute precedent in determining the appropriate

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sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in subsequent proceedings against Respondent to the same extent as any other approved Stipulation.

70. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary Board shall have available to it for consideration all documents that the parties agree to submit to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that form the record before the Board for its review become public information on approval of the Stipulation by the Board, unless disclosure is restricted by order or rule of law. Under ELC 3.1(b), all documents that form the record before the Hearing Officer for his or her review become public information on approval of the Stipulation by the Hearing Officer, unless disclosure is restricted by order or rule of law.

71. If this Stipulation is approved by the Hearing Officer, Disciplinary Board, and Supreme Court, it will be followed by the disciplinary action agreed to in this Stipulation. All notices required in the Rules for Enforcement of Lawyer Conduct will be made.

72. If this Stipulation is not approved by the Hearing Officer, Disciplinary Board, and Supreme Court, this Stipulation will have no force or effect, and neither it nor the fact of its execution will be admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil or criminal action.

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WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation to Discipline as set forth above.

Craig Richard Respondent, Bar No. 14608
Respondent

Dated: 1/27/2016

Debra Slater, Bar No. 18346
Disciplinary Counsel

Dated: 1/27/2016

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