

FILED

Jul 18, 2022

Disciplinary
Board

Docket # 082

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

AARON LEE LOWE,
Lawyer (Bar No. 15120).

Proceeding No. 19#00051

**AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND HEARING
OFFICER'S RECOMMENDATIONS**

Having considered the Office of Disciplinary Counsel of the Washington Bar Association's (ODC) Motion to Modify, Amend or Correct the Decision and Respondent Lowe's Reply, The Hearing Officer hereby amends the original Findings of Fact, Conclusions of Law and Hearing Officer's Recommendations as follows¹:

The undersigned Hearing Officer held the hearing on April 4-6, 2022, under Rule 10.13 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC). Respondent Aaron Lee Lowe appeared at the hearing. Disciplinary Counsel Sachia Stonefeld Powell and Byron Greene appeared for ODC of the Washington State Bar Association.

AMENDED FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Amended Formal Complaint filed by Disciplinary Counsel charged Aaron Lee Lowe

¹ Paragraph 20 has corrected a typographical error and a new paragraph 104 has been added.

1 with the following counts of misconduct:

2 Count I – By failing to timely respond to Safeco’s requests for information, failing to
3 timely respond to Dairyland’s requests for information, and/or failing to pursue Hendershott’s
4 claim with Dairyland, Respondent violated RPC 1.3.

5 Count II – By failing to promptly comply with Hendershott’s reasonable requests for
6 information, failing to keep Hendershott informed of the status of the matter, and failing to inform
7 Hendershott of Dairyland’s requests for information, Respondent violated RPC 1.4.

8 Count III – By falsely stating to the Hendershotts that Dairyland did not respond to
9 Respondent’s phone calls, Respondent violated RPC 8.4(c).

10 Count IV – By failing to make arrangements to have soil testing conducted, failing to file
11 a claim with the Town of Cusick, and/or otherwise failing to pursue Adam’s case, Respondent
12 violated RPC 1.3.

13 Count V – By failing to communicate with Adams regarding the status of the case,
14 Respondent violated RPC 1.4(a)(3), RPC 1.4(a)(4), and/or RPC 1.4(b).

15 Count VI – By employing a fee agreement that failed to clearly explain the basis or rate
16 of the fee Respondent was charging, and how the \$5,000 Adams paid would be applied,
17 Respondent violated RPC 1.4 and 1.5(b).

18 Count VII – By failing to return unearned fees upon being terminated by Adams, thereby
19 charging an unreasonable fee, Respondent violated RPC 1.5(a) and/or RPC 1.16(d).

20 Based on the pleadings in the case, the testimony and exhibits at the hearing, the Hearing
21 Officer makes the following:

22 **FINDINGS OF FACT**

23 1. Respondent was admitted to the practice of law in the State of Washington in 1985.

1 EX 301; Hearing Transcript (TR) 17.

2
3
4 **Client Ronald Hendershott, Jr.**

5 2. In the fall of 2011, Ronald Hendershott hired Respondent to represent Hendershott
6 in a personal injury matter arising out of a motor vehicle accident that occurred on August 18,
7 2011. EX A101; TR 72, 78, 82, 145-146.

8 3. The at-fault driver was Joshua Amoth who was insured by Safeco with a policy limit
9 of \$50,000. TR 73-74, 187, 270.

10 4. Hendershott did not have Personal Injury Protection (PIP) coverage, but had \$25,000
11 Underinsured Motorist (UIM) coverage with Dairyland Insurance Company (Dairyland). TR 77-
12 78, 244-245.

13 **Failure to Diligently Pursue Hendershott's Matter**

14 5. Between December 19, 2011, and March 7, 2014, representatives from Safeco sent
15 eight letters to Respondent, seeking information about Hendershott's damages and a notice of
16 representation. EX A106-A111, A114-A115, A117, A152; TR 27-33, 189-193, 195-197, 200-
17 203.

18 6. Respondent did not respond to these letters. EX A117, A152; TR 190-193, 195-196,
19 200-203.

20 7. Between October 31, 2011, and April 24, 2014, representatives from Safeco placed
21 13 calls to Respondent, leaving voicemail messages requesting contact. EX A117, A152; TR 33-
22 34, 189-193, 196-197, 200-203, 205-206.

23 8. Respondent did not respond to these calls. EX A117; TR 190-193, 196-197, 200-
24

1 203.

2 9. Between April 24, 2012, and April 30, 2014, representatives from Safeco contacted
3 Hendershott nine times by phone and mail to ascertain whether Respondent still represented
4 Hendershott and/or to obtain Respondent's contact information. EX A112-A113, A116, A117,
5 A152; TR 86-90, 156-157, 193-196.

6 10. Hendershott informed Safeco that Respondent still represented Hendershott. EX
7 A152; TR 194-195, 212-213, 215.

8 11. Safeco was unable to assess the viability of Hendershott's claim without obtaining
9 the requested information from Respondent. TR 207.

10 12. On August 14, 2014, three days before the statute of limitations expired, Respondent
11 filed a Summons and Complaint against Amoth on behalf of Hendershott. EX A118-A119; TR
12 34-36, 269.

13 13. Lawyer Raymond Schutts represented Amoth in the matter. EX A118; TR 267.

14 14. On March 9, 2015, Respondent had Hendershott sign medical information releases
15 allowing the release of medical records from "the date of the accident to present." EX A122; TR
16 36-37, 84, 272-273. Respondent provided these releases to Schutts. TR 272.

17 15. On March 11, April 17, May 13, and June 5, 2015, Schutts informed Respondent
18 that Safeco would require access to Hendershott's medical records prior to the accident as well.
19 EX A124, A126, A130, A133; TR 273-275.

20 16. On June 2, 2015, Respondent sent a demand letter demanding policy limits on
21 Hendershott's behalf. EX A131; TR 38-39, 199, 270, 278. However, the letter did not include
22 information to support the request for policy limits. EX A135; TR 199-200, 270, 272.

23 17. Safeco informed Respondent that Safeco was unable to accept or deny Respondent's
24

1 demand because Respondent had not provided any supporting information and Safeco had
2 insufficient information to evaluate the claim. EX A135; TR 199-200, 278.

3 18. On June 18, 2015, Respondent had Hendershott sign medical information releases
4 allowing the release of medical records “from August 15, 2006, to present.” EX A137; TR 40-
5 41, 85-86, 171, 179, 280. Respondent provided these releases to Schutts. TR 280.

6 19. On July 21, 2015, and July 31, 2015, Schutts received information regarding
7 Hendershott’s wage loss from Respondent. EX A141, A143.

8 20. By September 18, 2015, Safeco had received Hendershott’s medical records. TR
9 227.

10 21. On October 7, 2015, Safeco determined that it would tender the policy limits to
11 Hendershott. TR 227.

12 22. On October 15, 2015, Schutts notified Respondent that Safeco accepted
13 Respondent’s demand for policy limits. EX A144; TR 281-282.

14 23. On October 20, 2015, Respondent notified Schutts that Respondent would be
15 making a claim for Hendershott’s Underinsured Motorist (UIM) coverage with Dairyland
16 insurance. EX A145; TR 43, 283.

17 24. On October 21, 2015, Respondent wrote to Dairyland stating that Respondent
18 represented Hendershott, that Hendershott had settled with Safeco, and that Respondent would be
19 seeking policy limits from Dairyland. EX A158; TR 47, 245.

20 25. Respondent did not send any additional correspondence to Dairyland. TR 47-48.

21 26. Hendershott settled with Safeco for the policy limits of \$50,000 and on November
22 24, 2015, Hendershott signed a Release of All Claims and Hold Harmless Agreement. EX A149;
23 TR 97-99, 139, 157, 159.

1 27. Between November 2, 2015, and August 31, 2016, representatives from Dairyland
2 sent three letters to Respondent seeking information about Hendershott's damages. EX A159,
3 A161, A163-A164; TR 246-249.

4 28. Respondent did not respond to these letters. EX A164; TR 246-249.

5 29. On November 5, 2015, and July 20, 2016, representatives from Dairyland sent faxes
6 to Respondent seeking information about Hendershott's damages. EX A160, A162, A164; TR
7 50-52, 246-249.

8 30. Respondent did not respond to these faxes. EX A164; TR 246-249.

9 31. Between November 4, 2015, and August 31, 2016, a representative from Dairyland
10 left seven voicemail messages for Respondent requesting contact. EX A164; TR 246-249.

11 32. Respondent spoke to a representative from Dairyland on only two occasions:
12 November 5, 2015, and November 24, 2015, and did not respond to the other voicemail messages.
13 EX A164; TR 246-249, 253, 258-259.

14 33. Dairyland was unable to assess the viability of Hendershott's claim without
15 obtaining the requested information from Respondent. TR 246, 254.

16 34. On October 4, 2016, Dairyland closed its file because it had not received any
17 information from Respondent. EX A164, TR 249.

18 35. Hendershott subsequently hired another lawyer to assist with the Dairyland claim
19 and obtained policy limits. TR 102, 134-35, 141, 164, 355, 429-430.

20 Failure to Communicate with the Hendershotts

21 36. Hendershott called Respondent's office numerous times during the representation.
22 TR 103, 105-110, 144, 161.

23 37. Respondent did not return Hendershott's calls. TR 105-110, 160.

1 38. Hendershott and Hendershott's wife, D. Hendershott, went to Respondent's office
2 on several occasions because Respondent did not return Hendershott's calls. TR 103-105, 138,
3 142-143, 147-150.

4 39. Respondent did not always meet with them when they went to the office. TR 105-
5 110.

6 40. Twice during the representation of Hendershott, Respondent moved Respondent's
7 office without telling Hendershott, and Hendershott had to find Respondent. TR 78-82, 147-148.

8 41. On April 14, 2017, D. Hendershott sent Respondent an email stating that
9 Hendershott was trying to reach Respondent. EX A165; TR 159-160.

10 42. Respondent did not respond. TR 165.

11 43. On June 2, 2017, D. Hendershott sent another email to Respondent informing
12 Respondent that they had been trying to reach Respondent for six months. EX A166; TR 53, 160.

13 44. Respondent did not respond. TR 160, 165.

14 45. On September 2, 2018, D. Hendershott sent Respondent a letter asking for an update
15 on the status of Hendershott's claim with Dairyland. EX 167; TR 102-03, 160, 172.

16 46. Respondent did not respond. TR 165.

17 Falsely Informing the Hendershotts that Dairyland Failed to Respond to Respondent

18 47. During the representation, Respondent informed the Hendershotts that Respondent
19 left phone messages for Dairyland, but Dairyland did not respond to Respondent. TR 48-49, 97,
20 101, 147-148, 163, 166-167.

21 48. Respondent did not place any calls to Dairyland that Dairyland did not return. EX
22 A164.

23 49. Respondent's statement to the Hendershotts about Dairyland's failure to return calls
24

1 was false.

2 **Client: Jon Adams**

3 50. In late December or early January 2019, Jon Adams experienced flooding of raw
4 sewage on Adams' property located in Cusick, Washington. TR 299-301.

5 51. Adams reported the problem to City officials. TR 304.

6 52. Adams was anxious to have the soil tested to determine whether the spill negatively
7 impacted the property. TR 303-306, 308-309, 312.

8 53. In mid-April 2019, Adams consulted with Respondent about the spill. TR 306-307.

9 54. On April 24, 2019, Adams hired Respondent to help resolve the issues surrounding
10 the flooding of raw sewage on the land. EX A202; TR 55, 306-307.

11 55. Adams told Respondent that Adams wanted to have the spill cleaned up and to have
12 the soil tested to determine the extent of the damage. TR 309-312.

13 56. Adams testified that Adams and Respondent discussed the plan for how the matter
14 would move forward. Adams understood that Respondent would take action on Adams's behalf
15 and take care of what needed to be done. TR 312-313. Respondent presented no evidence to the
16 contrary. TR 17-72, 361-363, 391-398, 416-440.

17 57. According to documents Respondent provided to ODC, Respondent told Adams that
18 Respondent "would have someone give us an estimate what it would cost to clean up his
19 property." EX A201; TR 54-55.

20 58. In June or July 2019, Adams experienced another, smaller sewage spill on his
21 property. TR 302. Adams notified Respondent on the same day that Adams discovered the
22 second spill. TR 323.

23 **Failure to Pursue Adams' Matter**

1 59. Karen Paugh, Environmental Health Specialist with the North East Tri County
2 Health District, responded to Adams's report of the sewage spill. TR 364-365.

3 60. Paugh tried to facilitate a resolution between Adams and the City to minimize any
4 public health hazard due to the spill, including communicating with representatives of the City to
5 determine how the City was going to address the spill. TR 343, 367-369.

6 61. Specifically, Paugh wanted to explore soil testing of the affected areas. TR 369-
7 371.

8 62. Paugh and Adams discussed soil testing, but Adams was reluctant to proceed without
9 Respondent's involvement. EX A204; TR 371-374.

10 63. When they spoke, Respondent told Adams not to allow Paugh to test the soil without
11 Respondent being present or Respondent obtaining an independent test. TR 313, 338.

12 64. Respondent told Adams that Respondent would arrange for the independent testing.
13 TR 313-314.

14 65. On May 8, May 9, and May 14, 2019, Paugh tried to reach Respondent via telephone
15 to schedule the soil sampling. EX A204; TR 373-375.

16 66. On May 14, 2019, Paugh had a brief conversation with Respondent about soil
17 testing. EX A204; TR 375. During that conversation, Respondent told Paugh that Respondent
18 needed to get up to speed and would get back to Paugh. EX A204; TR 375-376.

19 67. Paugh never heard back from Respondent, so Paugh could not pursue testing. EX
20 A205; TR 332-333, 376, 390.

21 68. Respondent never expressed to Paugh the intent to have soil testing done
22 independently from the City's testing. TR 376.

23 69. Respondent did not attend any meetings the City scheduled with Respondent. TR
24

1 333.

2 70. Respondent never arranged for independent soil testing. TR 314, 324.

3 71. Respondent did not do any work that benefited Adams. TR 326.

4 72. Adams eventually settled with the City without Respondent's assistance. TR 325-
5 326, 421-422.

6 Failure to Communicate with Adams

7 73. Adams met with Respondent twice in person – on April 24, 2019, to sign the fee
8 agreement, and on April 26, 2019, to pay for the representation. TR 307-308, 311.

9 74. Adams spoke to Respondent by phone three to four times to discuss the need to set
10 up independent soil testing. TR 315-316.

11 75. During the conversations, Adams expressed urgency in resolving the matter. TR
12 315-316.

13 76. Adams's last communication with Respondent was in late September or early
14 October 2019. TR 324. During that conversation, Respondent informed Adams that someone
15 would test the soil the following week. TR 324.

16 77. Adams had no other communication with Respondent. TR 316, 323-324.

17 78. Adams tried to reach Respondent numerous additional times but was unable to speak
18 with Respondent. TR 322. Instead, Adams left messages but Respondent did not return the calls.
19 TR 323.

20 79. Adams was unaware of any work Respondent did on Adams's behalf. TR 322, 324,
21 332, 336-337.

22 80. At hearing, Respondent testified that Respondent would record communications
23 with the client in the client file when the client made a decision or when Respondent informed
24

1 the client of things going on with their matter. TR 24.

2 81. The documents in Adams's client file establish Respondent communicated with
3 Adams only two times – at the first meeting and on May 14, 2019. EX A206, A210; TR 392.

4 Failure to Utilize an Agreement that Clearly Explained the Basis or Rate of the Fee and How the
5 \$5,000 Would be Applied

6 82. On April 24, 2019, Adams and Respondent entered into a written fee agreement.
7 EX A202; TR 55, 431-432.

8 83. Adams paid Respondent \$5,000. EX A203; TR 58-59.

9 84. The fee agreement was confusing and did not clearly explain the basis for the fee.
10 EX A202.

11 85. The fee agreement identified the \$5,000 fee inconsistently, at times making it appear
12 as an availability retainer, other times as an hourly advanced fee deposit, and other times as a
13 fixed or flat fee. EX A202.

14 86. The fee agreement identified the \$5,000 as an availability retainer: "Retainer is to
15 reserve the attorney's time and to allow the attorney to turn away other work not associated." EX
16 A202; TR 57.

17 87. The fee was not an availability retainer because Respondent used the fee to pay for
18 the services Respondent rendered. RPC 1.5(f)(1); EX A202; TR 55-62.

19 88. The fee agreement identified the \$5,000 as an hourly advanced fee deposit: "The
20 client agrees to pay for the above legal services at an hourly rate, and that the hourly rate for
21 handling the matter in Paragraph 1 is as follows: \$200.00 per hour." "If the retainer funds fall
22 below \$1000.00, Client agrees to place another \$5000.00 in attorney trust account." EX A202;
23 TR 56-58.

24 89. Respondent did not treat the \$5,000 as an hourly advanced fee deposit because

1 Respondent did not provide an accounting or billing statement to Adams. EX A202; TR 60-61,
2 321.

3 90. The fee agreement identified the \$5,000 as a fixed or flat fee: “\$5000.00 Top
4 Amount to resolve the matter.” EX A202; TR 55-58.

5 91. The agreement indicated that the \$5,000 was non-refundable in three places. EX
6 A202. This statement is misleading because all fees must be refunded if not earned. RPC 1.5(a)
7 and RPC 1.16(d).

8 92. Adams was confused by the terms of the agreement. TR 319-321.

9 Failure to Return Unearned Fees, Thereby Charging an Unreasonable Fee

10 93. Approximately three weeks after the last conversation with Respondent, when no
11 soil testing was done as Respondent promised, Adams decided that Adams needed to take care of
12 the matter without Respondent. TR 325, 336-337.

13 94. At some time after early October 2019, Adams requested that Respondent return
14 Adams’s money. TR 325-326.

15 95. Respondent did not refund any money to Adams. TR 326.

16 96. According to the billing statements Respondent provided to ODC, Respondent had
17 spent a total of 18.7 hours on Adams’s case. EX A206.

18 97. At the rate of \$200 per hour provided in the fee agreement, Respondent would have
19 earned at most \$3,740 in fees. EX A202.

20 98. Respondent did not do any work that benefited Adams. TR 326.

21 Facts Regarding Respondent’s Mental State

22 99. Respondent acted knowingly when Respondent failed to respond to Safeco’s
23 requests for information, failed to respond to Dairyland’s requests for information, and otherwise

1 failed to diligently pursue Hendershott's matter.

2 100. Respondent knowingly failed to respond to Hendershott's multiple requests for
3 information and knowingly failed to keep Hendershott informed about the status of Hendershott's
4 claims with Safeco and Dairyland.

5 101. Respondent acted knowingly when Respondent falsely stated to the Hendershotts
6 that Dairyland did not respond to Respondent's phone calls.

7 102. Respondent knowingly failed to make arrangements to have soil sampling conducted
8 for Adams, knowingly failed to file a claim with the town of Cusick, and knowingly failed to
9 otherwise pursue Adams's case.

10 103. Respondent knowingly failed to communicate with Adams about the status of
11 Adams's matter.

12 104. Respondent acted knowingly by employing a fee agreement that failed to clearly
13 explain the basis or rate of the fee Respondent was charging, and how the \$5000 Adams paid
14 would be applied.

15 105. Respondent intentionally kept Adams's property after Adams terminated the
16 representation.

17 106. Respondent intentionally engaged in a pattern of misconduct.

18 107. Respondent intentionally committed multiple violations.

19 **Facts Regarding Injury**

20 108. Respondent's failure to timely respond to Safeco's requests for information, failure
21 to timely respond to Dairyland's requests for information, and failure to diligently pursue
22 Hendershott's matter, caused injury to Hendershott. The recovery from Safeco and Dairyland
23 was delayed by several years at a time when Hendershott needed the money. The delay also

1 caused Hendershott anxiety and increased concern when Hendershott learned that Safeco was
2 trying unsuccessfully to reach Respondent. TR 89-90, 92-93, 110-112, 129-130, 162, 167.

3 109. Respondent's failure to promptly comply with Hendershott's reasonable requests for
4 information, failure to keep Hendershott informed of the status of the matter, and failure to inform
5 Hendershott of Dairyland's requests for information caused Hendershott anxiety and stress as a
6 result of being left in the dark about the status of the matter. TR 89-90, 92-95, 129-130.

7 110. Respondent's false statement to the Hendershotts that Dairyland did not respond to
8 Respondent's phone calls caused Hendershott actual injury. Hendershott was misled into
9 believing the delay in settling the claim was due to Dairyland when in fact the delay was due to
10 Respondent's failure to communicate with Dairyland. Had Respondent been honest with
11 Hendershott, Hendershott could have taken action earlier to seek a lawyer who would work with
12 Dairyland to expeditiously settle Hendershott's claim. TR 97, 101-102, 107, 110-112, 163-167,
13 254. In addition, there is harm to the profession when a lawyer lies to the client.

14 111. Respondent's failure to make arrangements to have soil testing conducted, failure to
15 file a claim with the town of Cusick, and general failure to pursue Adams' case caused Adams
16 injury because the possibility of remedying Adams's property was delayed by several months.
17 TR 308-309, 312-316, 322, 324-326, 331.

18 112. Respondent's failure to communicate with Adams regarding the status of the case
19 caused Adams actual injury because Adams relied on Respondent's false assertions that
20 Respondent would arrange for soil testing, again delaying any remedying of Adams's property.
21 TR 312-315, 322, 324-326.

22 113. Respondent's failure to return unearned fees upon being terminated by Adams,
23 thereby charging an unreasonable fee, caused Adams injury because Adams was denied the funds
24

1 that were rightfully Adams' and that Adams needed to remediate the property. TR 331, 338.

2 **Facts Supporting Aggravating Factors**

3 114. In 2015, Respondent was reprimanded for violations of RPC 1.2(a), RPC 1.3, RPC
4 1.4, and RPC 3.2. EX A301; TR 18.

5 115. Respondent, without good cause, intentionally failed to bring client files to the
6 disciplinary hearing, despite being served with a valid demand to do so under ELC 10.13(c). EX
7 A302; TR 19-23, 439-40. Respondent's contention that he was not required to because he had
8 already produced everything is without merit. ELC 10.13(c) does not give a respondent the
9 discretion to decide what requested materials to bring to a hearing: "The respondent must comply
10 with this request and failure to bring requested materials, without good cause, may be grounds for
11 discipline."

12 116. At hearing, Respondent testified that Respondent provided the complete Adams file
13 to ODC. TR 22-23.

14 117. During the investigation of the Adams grievance, on January 23, 2020, Respondent
15 sent a letter to ODC in which he stated that a former Cusick City Council member went to
16 Adams's property at Respondent's request, and sent pictures of the spill to Respondent. EX A209;
17 TR 27, 63, 418.

18 118. The only photos in Adams's client file are those originally provided to Respondent
19 by Adams. EX A210, TR 309-311.

20 119. In the same letter, Respondent stated: "[T]here was no reason for me to travel to
21 Cusick." EX A209; TR 435-436.

22 120. During the investigation of the Adams grievance, on July 13, 2020, Respondent
23 submitted a document to ODC entitled Billings, Time and Expenses for John Adams. EX A206,
24

1 A210; TR 62.

2 121. This document purported to list some of Respondent's actions taken on behalf of
3 Adams. EX A206; TR 25.

4 122. In the document, Respondent asserted that on August 25, 2019, Respondent traveled
5 to Adams's home in Cusick to look at the property. EX A206. However, by March 2019, much
6 of the spill had receded and by August 2019, the spill was no longer visible. TR 302-303, 387.

7 123. In a January 23, 2020 letter to ODC, Respondent asserted that "there was no reason
8 for me to travel to Cusick to view this situation." EX 209. At hearing, Respondent testified that
9 Respondent went to Adams's property "on a somewhat regular basis" and also testified that
10 Respondent went to Adams's property only once. TR 422, 435.

11 124. Respondent's submissions during the investigation and testimony at the hearing
12 regarding whether and how many times Respondent travelled to Cusick, were intentionally false
13 and deceptive.

14 125. Respondent refuses to acknowledge the wrongful nature of the conduct. TR 423,
15 429.

16 126. Respondent denies that Respondent owes Adams a refund because Respondent and
17 Adams agreed that the fee was nonrefundable. TR 61-62, 423.

18 CONCLUSIONS OF LAW

19 Violations Analysis

20 The Hearing Officer finds that ODC proved the following by a clear preponderance of the
21 evidence:

22 127. Respondent failed to timely respond to Safeco's requests for information, failed to
23 timely respond to Dairyland's requests for information, and failed to pursue Hendershott's claim
24

1 with Dairyland, in violation of RPC 1.3 as charged in Count 1.

2 128. Respondent failed to promptly comply with Hendershott's reasonable requests for
3 information, failed to keep Hendershott informed of the status of the matter, and failed to inform
4 Hendershott of Dairyland's requests for information, in violation of RPC 1.4 as charged in Count
5 2.

6 129. Respondent falsely stated to the Hendershotts that Dairyland did not respond to
7 Respondent's phone calls, in violation of RPC 8.4(c) as charged in Count 3.

8 130. Respondent failed to make arrangements to have soil testing conducted, failed to file
9 a claim with the Town of Cusick, and otherwise failed to pursue Adam's case, in violation of RPC
10 1.3 as charged in Count 4.

11 131. Respondent failed to communicate with Adams regarding the status of the case, in
12 violation of RPC 1.4(a)(3), RPC 1.4(a)(4), and RPC 1.4(b) as charged in Count 5.

13 132. Respondent employed a fee agreement that failed to clearly explain the basis or rate
14 of the fee Respondent was charging, and how the \$5,000 Adams paid would be applied, in
15 violation of RPC 1.4 and 1.5(b) as charged in Count 6.

16 133. Respondent failed to return unearned fees upon being terminated by Adams, thereby
17 charging an unreasonable fee, in violation of RPC 1.5(a) and RPC 1.16(d) as charged in Count 7.

18 Sanction Analysis

19 134. A presumptive sanction must be determined for each ethical violation. In re
20 Anschell, 149 Wn.2d 484, 69 P.3d 844, 852 (2003). The following standards of the American
21 Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. &
22 Feb. 1992 Supp.) are presumptively applicable in this case:

23 135. For Count 1, Respondent knowingly failed to perform services for Hendershott,
24

1 engaged in a pattern of neglect with respect to Hendershott's matter, and caused injury to
2 Hendershott. The applicable ABA Standard is Standard 4.42, and the presumptive sanction is
3 suspension.

4 136. For Count 2, Respondent knowingly failed to perform services for Hendershott,
5 engaged in a pattern of neglect with respect to Hendershott's matter, and caused injury to
6 Hendershott. The applicable ABA Standard is Standard 4.42, and the presumptive sanction is
7 suspension.

8 137. For Count 3, Respondent knowingly deceived Hendershott, and caused at least
9 potential injury to Hendershott. The applicable ABA Standard is Standard 4.62, and the
10 presumptive sanction is suspension.

11 138. For Count 4, Respondent knowingly failed to perform services for Adams, engaged
12 in a pattern of neglect with respect to Adams's matter, and caused injury and potential additional
13 injury to Adams. The applicable ABA Standard is Standard 4.42, and the presumptive sanction
14 is suspension.

15 139. For Count 5, Respondent knowingly failed to perform services for Adams, engaged
16 in a pattern of neglect with respect to Adams's matter, and caused injury to Adams. The
17 applicable ABA Standard is Standard 4.42, and the presumptive sanction is suspension.

18 140. For Count 6, Respondent knowingly engaged in conduct that is a violation of a duty
19 owed as a professional and caused at least potential injury to Adams. The applicable ABA
20 Standard is Standard 7.2, and the presumptive sanction is suspension.

21 141. For Count 7, Respondent knowingly engaged in conduct that is a violation of a duty
22 owed as a professional and caused injury to Adams. The applicable ABA Standard is Standard
23 7.2, and the presumptive sanction is suspension.

1 142. In addition, ABA Standard 8.2 applies to Counts 1, 2, and 4-7 because of
2 Respondent's prior reprimand for similar conduct. The presumptive sanction is suspension.

3 143. When multiple ethical violations are found, the "ultimate sanction imposed should
4 at least be consistent with the sanction for the most serious instance of misconduct among a
5 number of violations." In re Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993).

6 144. Based on the Findings of Fact and Conclusions of Law and application of the ABA
7 Standards, the appropriate presumptive sanction is suspension.

8 145. "A period of six months is generally the accepted minimum term of suspension." In
9 re Cohen, 149 Wn.2d 323, 67 P.3d 1086, 1094 (2003). This minimum term suspension is
10 warranted when "there are either no aggravating factors and at least some mitigating factors, or
11 where the mitigating factors clearly outweigh any aggravating factors." In re Disciplinary
12 Proceeding Against Halverson, 140 Wn.2d 475, 496-97, 998 P.2d 833 (2000).

13 146. The following aggravating factors set forth in Section 9.22 of the ABA Standards
14 are applicable in this case:

- 15 (a) prior disciplinary offenses [2015 reprimand for violations of RPC 1.2(a),
16 RPC 1.3, RPC 1.4, and RPC 3.2];
17 (c) a pattern of misconduct;
18 (d) multiple offenses;
19 (e) bad faith obstruction of the disciplinary proceeding by intentionally failing
20 to comply with rules or orders of the disciplinary agency [failure to comply
21 with ELC 10.13(c) demand];
22 (f) submission of false evidence, false statements, or other deceptive practices
23 during the disciplinary process;
24 (g) refusal to acknowledge wrongful nature of conduct;
(i) substantial experience in the practice of law [admitted 1985]; and
(j) indifference to making restitution.

147. There are no mitigating factors set forth in Section 9.32 of the ABA Standards
applicable to this case.

Recommendation

1 148. Based on the ABA Standards and the applicable aggravating and mitigating factors,
2 the Hearing Officer recommends that Respondent Aaron Lee Lowe be suspended for a period of
3 three years.

4 149. Respondent owes restitution to Jon Adams in the amount of \$5,000. Payment of
5 \$5,000 is due within 30 days of the disciplinary decision becoming final, and interest will accrue
6 on any amount not paid within 30 days at the maximum rate permitted under RCW 19.52.020.
7 Reinstatement from suspension is conditioned on payment of restitution to Adams.

8 150. Respondent will be subject to probation for a period of two years commencing upon
9 Respondent's reinstatement to the practice of law, and must comply with the specific probation
10 terms set forth below. Respondent's compliance with these conditions will be monitored by the
11 Probation Administrator of the Office of Disciplinary Counsel ("Probation Administrator").
12 Failure to comply with a condition of probation listed herein may be grounds for further
13 disciplinary action under ELC 13.8(b).

14 Fee Agreements

- 15 a) For all client matters, Respondent shall have a written fee agreement signed by the
16 client, which agreements are to be maintained for at least seven years.
- 17 b) On a quarterly basis, Respondent shall provide the ODC probation administrator
18 with any and all fee agreements entered into during the time period at issue:
- 19 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
20 commencement of probation, Respondent shall provide the fee agreements
21 records from the date of commencement of probation to the end of the third
22 full month.
- 23 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
24 commencement of probation, Respondent shall provide the fee agreements
from the end of the previously provided quarter through the end of month
six.
- iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
commencement of probation, Respondent shall provide the fee agreements

1 from the end of the previously provided quarter through the end of month
2 nine.

3 iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
4 the commencement of probation, Respondent shall provide the fee
5 agreements from the end of the previously provided quarter through the end
6 of month twelve.

7 v) Months 13 – 15. By no later than the 30th day of the sixteenth month after
8 the commencement of probation, Respondent shall provide the fee
9 agreements from the end of the previously provided quarter through the end
10 of month fifteen.

11 vi) Months 16 – 18. By no later than the 30th day of the nineteenth month after
12 the commencement of probation, Respondent shall provide the fee
13 agreements from the end of the previously provided quarter through the end
14 of month eighteen.

15 vii) Months 19 – 21. By no later than the 30th day of the twenty-second month
16 after the commencement of probation, Respondent shall provide the fee
17 agreements from the end of the previously provided quarter through the end
18 of month twenty-one.

19 Practice Monitor

20 c) During the period of probation, Respondent's practice will be supervised by a practice
21 monitor. The practice monitor must be a WSBA member with no record of public
22 discipline and who is not the subject of a pending public disciplinary proceeding.

23 d) The role of the practice monitor is to consult with and provide guidance to Respondent
24 regarding case management, office management, and avoiding violations of the Rules
of Professional Conduct, and to provide reports and information to the Probation
Administrator regarding Respondent's compliance with the terms of probation and
the RPC. The practice monitor does not represent the Respondent.

e) At the beginning of the probation period, the Probation Administrator will select a
lawyer to serve as practice monitor for the period of Respondent's probation.

i) Initial Challenge: If, within 15 days of the written notice of the selection of
a practice monitor, Respondent sends a written request to the Probation
Administrator that another practice monitor be selected, the Probation
Administrator will select another practice monitor. Respondent need not
identify any basis for this initial request.

ii) Subsequent Challenges: If, after selection of a second (or subsequent)
practice monitor, Respondent believes there is good cause why that individual
should not serve as practice monitor, Respondent may, within 15 days of
notice of the selected practice monitor, send a written request to the Probation

1 Administrator asking that another practice monitor be selected. That request
2 must articulate good cause to support the request. If the Probation
3 Administrator agrees, another practice monitor will be selected. If the
4 Probation Administrator disagrees, the Office of Disciplinary Counsel will
5 submit its proposed selection for practice monitor to the Chair of the
6 Disciplinary Board for appointment pursuant to ELC 13.8(a)(2), and will also
7 provide the Chair with the Respondent's written request that another practice
8 monitor be selected.

- 9
- 10 f) In the event the practice monitor is no longer able to perform his or her duties, the
11 Probation Administrator will select a new practice monitor at his or her discretion.
- 12 g) During the period of probation, Respondent must cooperate with the named practice
13 monitor. Respondent must meet with the practice monitor at least once per month.
14 Respondent must communicate with the practice monitor to schedule all required
15 meetings.
- 16 h) The Respondent must bring to each meeting a current, complete written list of all
17 pending client legal matters being handled by the Respondent. The list must identify
18 the current status of each client matter and any problematic issues regarding each
19 client matter. The list may identify clients by using the client's initials rather than the
20 client's name.
- 21 i) At each meeting, the practice monitor will discuss with Respondent practice issues
22 that have arisen or are anticipated. In light of the conduct giving rise to the imposition
23 of probation, the practice monitor and Respondent should discuss: whether
24 Respondent is diligently making progress on each client matter, whether Respondent
is in communication with each client, whether Respondent has promptly billed each
client, whether Respondent's fee agreements are consistent with the RPC and are
understandable to the client. Meetings may be in person or by telephone at the practice
monitor's discretion. The practice monitor uses discretion in determining the length
of each meeting.
- j) The practice monitor will provide the Probation Administrator with quarterly written
reports regarding Respondent's compliance with probation terms and the RPC. Each
report must include the date of each meeting with Respondent, a brief synopsis of the
discussion topics, and a brief description of any concerns the practice monitor has
regarding the Respondent's compliance with the RPC. The report must be signed by
the practice monitor. Each report is due within 30 days of the completion of the
quarter.
- k) If the practice monitor believes that Respondent is not complying with any of their
ethical duties under the RPC or if Respondent fails to schedule or attend a monthly
meeting, the practice monitor will promptly communicate that to the Probation
Administrator.

1 l) Respondent must make payments totaling \$1,000 to the Washington State Bar
2 Association to defray the costs and expenses of administering the probation, as
3 follows:

- 3 i) \$250 due within 30 days of the start of the probation;
- 4 ii) \$250 due within 6 months of the start of the probation period;
- 5 iii) \$250 due within 12 months of the start of the probation period; and
- 6 iv) \$250 due within 18 months of the start of the probation period.

7 All payments should be provided to the Probation Administrator for processing.

8 Ethics School

- 9 m) Respondent shall attend Ethics School by webinar (approximately 7.5 hours), or by
10 obtaining the recorded product, and to pay registration costs of \$150 plus applicable
11 sales tax. Respondent will receive all applicable approved CLE credits for time in
12 attendance at the Ethics School.
- 13 n) Respondent shall contact the Ethics School Administrator, currently Chris Chang, at
14 (206) 727-8328 or chrisc@wsba.org, within 60 days of reinstatement to the practice
15 of law to confirm enrollment in Ethics School and related logistics.
- 16 o) Respondent shall complete the ethics school requirement by within the first 6 months
17 of probation.
- 18 p) Respondent shall provide evidence of completion of ethics school to the Probation
19 Administrator no later than 30 days after the conclusion of the course. Proof of
20 attendance shall include the program brochure, evidence of payment, and a written
21 statement that includes the date and time of attendance.
- 22 q) The Ethics School administrator may respond to inquiries from the Probation
23 Administrator regarding Respondent's compliance with these conditions.

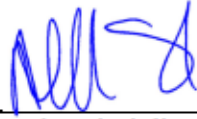
24 Dated this 18th day of July, 2022.



Judge Bruce Heller (ret.), Bar No. 12558
Hearing Officer

CERTIFICATE OF SERVICE

By order of Washington Supreme Court Order No. 25700-B-609, I certify that I caused a copy of the Amended FOF, COL and HO's Recommendations to be emailed to the Office of Disciplinary Counsel and to Respondent Aaron Lee Lowe, at aaronllowe@yahoo.com, on the 18th day of July, 2022.



Clerk to the Disciplinary Board