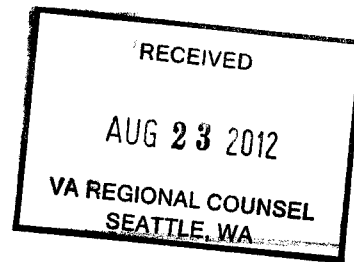


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**FILED**

AUG 28 2012

**DISCIPLINARY BOARD**



BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**CLAYTON LONGACRE,**  
Lawyer (Bar No. 21821).

Proceeding No. 12#00033

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND HEARING OFFICER'S  
RECOMMENDATION

In accordance with Rule 10.6 of the Rules for Enforcement of Lawyer Conduct (ELC), the undersigned Hearing Officer held a default hearing on August 28, 2012.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW  
REGARDING CHARGED VIOLATIONS**

1. The Formal Complaint (Bar File No. 6), charged Respondent Clayton Longacre with misconduct as set forth therein.
2. Under ELC 10.6(a)(4), the Hearing Officer finds that each of the facts set forth in the Formal Complaint is admitted and established.
3. Under ELC 10.6(a)(4), the Hearing Officer concludes that violations charged in the Formal Complaint are admitted and established as follows:

W

1 **Reiter Grievance**

2 Count 1. By failing to communicate about the Reiter matter and by failing to pursue the  
3 matter after receiving a fee, Longacre violated RPC 1.3, RPC 3.2, RPC 1.4, and RPC 1.5.

4 Count 2. By failing to perform agreed services for Reiter for the accepted fee, Longacre  
5 engaged in dishonest conduct (conversion) and violated RPC 8.4(c).

6 Count 3. By failing to file a Notice of Withdrawal, return the client file, and refund  
7 unearned fees, Longacre violated RPC 1.16(d).

8 **Justin Williams Grievance**

9 Count 4. By failing to communicate about Williams's matters and by failing to pursue  
10 the matters after receiving a fee, Longacre violated RPC 1.3, RPC 3.2, 1.4, and RPC 1.5.

11 Count 5. By taking \$6,000 without performing work as agreed and failing to refund  
12 unearned fees, Longacre violated RPC 1.16(d), and RPC 8.4(c)(conversion).

13 Count 6. By failing to comply with all the requirements of RPC 1.5(f) and by failing to  
14 deposit fees to a trust account, Longacre violated that provision and RPC 1.15A and RPC  
15 1.15B.

16 **Aaron Pope Grievance**

17 Count 7. By failing to file the promised civil suit for Pope and by failing to keep in  
18 communication with his client about the civil and criminal matters, Longacre violated RPC 1.3,  
19 RPC 3.2, and RPC 1.4.

20 Count 8. By admittedly doing less than \$7,500 worth of work for Pope on the criminal  
21 case, by not providing a written fee agreement for the contingent fee in the civil case, and by  
22 failing to refund unearned fees, Longacre violated RPC 1.5(a), RPC 1.5(b), RPC 1.5(c), and  
23 RPC 1.16(d).

24 Count 9. By allowing his assistant, [Elizabeth] Kelsey, to misrepresent the status of a

1 civil suit against the County and to suggest that Longacre would drop Pope as a client so that  
2 Kelsey could handle Keri's dissolution from Pope, and by allowing Kelsey to collect additional  
3 fees such as the jet ski or attempt to collect additional funds such as trying to get the cashier's  
4 checks, Longacre violated RPC 1.7(a) and RPC 1.8(a) (conflicts of interest), RPC 8.4(c)  
5 (misrepresentation by lying about the civil case against the County and dishonesty by  
6 converting the jet ski and by attempting to convert the cashier's checks), RPC 8.4(a) (violate or  
7 attempt to violate the RPCs through acts of another), and RPC 5.3 (responsibilities regarding  
8 nonlawyer assistants).

9 **Linda Delatorre Grievance**

10 Count 10. By failing to act for his client, by failing to communicate with his client, by  
11 revealing client confidences or secrets or doing so through acts of another, Longacre violated  
12 RPC 1.3, and RPC 3.2, RPC 1.4, and RPC 1.6, and RPC 8.4(a).

13 Count 11. By taking almost \$20,000 while performing little, if any, documented work  
14 after the initial response to the motion in September 2010, and then failing to refund unearned  
15 fees, Longacre violated RPC 1.5(a)(b), and/or RPC 1.15A(f), and/or RPC 1.16(d), and/or RPC  
16 8.4(c)(conversion).

17 Count 12. By failing to place the initial payment of \$4,750 in a trust account without  
18 complying with all the requirements of RPC 1.5(f), Longacre violated that provision and RPC  
19 1.15A and RPC 1.15B.

20 Count 13. By failing to place the remainder of funds received in a trust account,  
21 Longacre violated RPC 1.15A(b) and RPC 1.15A(c)(1).

22 Count 14. By failing to account for the funds received, Longacre violated RPC  
23 1.15A(d)(e).

1 Count 15. By failing to appear for the September 10, 2010 hearing, Longacre violated  
2 RPC 8.4(d)(conduct prejudicial to the administration of justice through violation of practice  
3 norms by failing to arrange for someone to cover for him at the hearing impacting custody of his  
4 client's young child).

5 Count 16. By failing to supervise his legal assistant, Elizabeth Kelsey, who apparently  
6 asked for client funds without Longacre's knowledge such as payment for "an investigator,"  
7 Longacre violated RPC 5.3 and RPC 8.4(a)(c)(by converting funds through the acts of another).

8 **WSBA Grievance**

9 Count 17. By placing the liens listed [in ¶ 86 of the Formal Complaint] without a legal  
10 basis to do so, Longacre violated RPC 8.4(d) (conduct prejudicial to the administration of  
11 justice).

12 **Noncooperation**

13 Count 18. By failing to provide timely responses to the Association's requests for  
14 information in one or more of the instances described in paragraphs 90 through 112, Longacre  
15 violated RPC 8.4(l), by failing to comply with his duties to cooperate under ELC 5.3(e).

16 **Unfitness to Practice**

17 Count 19. By repeatedly failing to act diligently and by repeatedly failing to  
18 communicate with clients; by repeatedly accepting client funds without performing agreed  
19 services, without providing an accounting or billing statement and without depositing advance  
20 fee deposits to a trust account; by converting client funds; by abandoning his practice and  
21 allowing Elizabeth Kelsey to manage client communications and finances; by repeatedly failing  
22 to cooperate with the Association's investigation; and by committing misconduct similar to that  
23 for which he has received prior discipline, Longacre violated RPC 8.4(n) (unfitness to practice).  
24

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW  
REGARDING RECOMMENDED SANCTION**

4. Longacre acted negligently in failing to supervise Elizabeth Kelsey. He acted at least knowingly as to each other charged violation.

5. Longacre's misconduct caused actual injury to the individual named grievants, who paid Longacre thousands of dollars without getting the services for which they had paid. Longacre's clients and their families suffered stress when they could not reach Longacre, especially as court dates loomed or after he closed his office. Longacre's misconduct hampered court administration when he failed to appear and failed to withdraw. His repeated misconduct harmed the reputation of the profession.

6. Restitution. Given the misconduct as found above, Respondent should disgorge fees under Eriks v. Denver, 118 Wn.2d 451, 462-63, 824 P.2d 1207 (1992) and ELC 13.7(a) and make restitution as shown below with interest at 12% per annum as follows:

Client or Person to be Paid	Amount	Interest Runs From this Date
Shawn Reiter	\$1,300	March 31, 2011
Justin Williams	\$6,000	March 31, 2011
Aaron Pope	\$7,500	November 29, 2010
Linda Delatorre	\$19,800	April 8, 2011

7. The following standards of the American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) presumptively apply in this case:

***4.0 Violations of Duties Owed to Clients***

***4.1 Failure to Preserve the Client's Property***

4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

- 1 4.12 Suspension is generally appropriate when a lawyer knows or should know that he  
2 is dealing improperly with client property and causes injury or potential injury to  
3 a client.  
4 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with  
5 client property and causes injury or potential injury to a client.  
6 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with  
7 client property and causes little or no actual or potential injury to a client.

8 **4.2 Failure to Preserve the Client's Confidences**

- 9 4.21 Disbarment is generally appropriate when a lawyer, with the intent to benefit the  
10 lawyer or another, knowingly reveals information relating to representation of a  
11 client not otherwise lawfully permitted to be disclosed, and this disclosure causes  
12 injury or potential injury to a client.  
13 4.22 Suspension is generally appropriate when a lawyer knowingly reveals  
14 information relating to the representation of a client not otherwise lawfully  
15 permitted to be disclosed, and this disclosure causes injury or potential injury to  
16 a client.  
17 4.23 Reprimand is generally appropriate when a lawyer negligently reveals  
18 information relating to representation of a client not otherwise lawfully permitted  
19 to be disclosed and this disclosure causes injury or potential injury to a client.  
20 4.24 Admonition is generally appropriate when a lawyer negligently reveals  
21 information relating to representation of a client not otherwise lawfully permitted  
22 to be disclosed and this disclosure causes little or no actual or potential injury to  
23 a client.

24 **4.3 Failure to Avoid Conflicts of Interest**

- 14 4.31 Disbarment is generally appropriate when a lawyer, without the informed  
15 consent of client(s):  
16 (a) engages in representation of a client knowing that the lawyer's interests  
17 are adverse to the client's with the intent to benefit the lawyer or another,  
18 and causes serious or potentially serious injury to the client; or  
19 (b) simultaneously represents clients that the lawyer knows have adverse  
20 interests with the intent to benefit the lawyer or another, and causes  
21 serious or potentially serious injury to a client; or  
22 (c) represents a client in a matter substantially related to a matter in which  
23 the interests of a present or former client are materially adverse, and  
24 knowingly uses information relating to the representation of a client with  
the intent to benefit the lawyer or another and causes serious or  
potentially serious injury to a client.  
4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest  
and does not fully disclose to a client the possible effect of that conflict, and  
causes injury or potential injury to a client.  
4.33 Reprimand is generally appropriate when a lawyer is negligent in determining  
whether the representation of a client may be materially affected by the lawyer's  
own interests, or whether the representation will adversely affect another client,  
and causes injury or potential injury to a client.

1 4.34 Admonition is generally appropriate when a lawyer engages in an isolated  
2 instance of negligence in determining whether the representation of a client may  
3 be materially affected by the lawyer's own interests, or whether the  
4 representation will adversely affect another client, and causes little or no actual  
5 or potential injury to a client.

6 **4.4 Lack of Diligence**

7 4.41 Disbarment is generally appropriate when:

- 8 (a) a lawyer abandons the practice and causes serious or potentially serious  
9 injury to a client; or  
10 (b) a lawyer knowingly fails to perform services for a client and causes  
11 serious or potentially serious injury to a client; or  
12 (c) a lawyer engages in a pattern of neglect with respect to client matters and  
13 causes serious or potentially serious injury to a client.

14 4.42 Suspension is generally appropriate when:

- 15 (a) a lawyer knowingly fails to perform services for a client and causes  
16 injury or potential injury to a client, or  
17 (b) a lawyer engages in a pattern of neglect and causes injury or potential  
18 injury to a client.

19 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act  
20 with reasonable diligence in representing a client, and causes injury or potential  
21 injury to a client.

22 4.44 Admonition is generally appropriate when a lawyer is negligent and does not act  
23 with reasonable diligence in representing a client, and causes little or no actual or  
24 potential injury to a client.

**7.0 Violations of Duties Owed as a Professional**

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in  
conduct that is a violation of a duty owed as a professional with the intent to  
obtain a benefit for the lawyer or another, and causes serious or potentially  
serious injury to a client, the public, or the legal system.

7.2 Suspension is generally appropriate when a lawyer knowingly engages in  
conduct that is a violation of a duty owed as a professional and causes injury or  
potential injury to a client, the public, or the legal system.

7.3 Reprimand is generally appropriate when a lawyer negligently engages in  
conduct that is a violation of a duty owed as a professional and causes injury or  
potential injury to a client, the public, or the legal system.

7.4 Admonition is generally appropriate when a lawyer engages in an isolated  
instance of negligence that is a violation of a duty owed as a professional, and  
causes little or no actual or potential injury to a client, the public, or the legal  
system.

**8.0 Prior Discipline Orders**

8.1 Disbarment is generally appropriate when a lawyer:

- (a) intentionally or knowingly violates the terms of a prior disciplinary order  
and such violation causes injury or potential injury to a client, the public,  
the legal system, or the profession; or

1 (b) has been suspended for the same or similar misconduct, and intentionally  
2 or knowingly engages in further similar acts of misconduct that cause  
injury or potential injury to a client, the public, the legal system, or the  
profession.

3 8.2 Suspension is generally appropriate when a lawyer has been reprimanded for the  
4 same or similar misconduct and engages in further similar acts of misconduct  
that cause injury or potential injury to a client, the public, the legal system, or the  
profession.

5 8.3 Reprimand is generally appropriate when a lawyer:

6 (a) negligently violates the terms of a prior disciplinary order and such  
violation causes injury or potential injury to a client, the public, the legal  
system, or the profession; or

7 (b) has received an admonition for the same or similar misconduct and  
engages in further similar acts of misconduct that cause injury or  
8 potential injury to a client, the public, the legal system, or the profession.

9 8.4 An admonition is generally not an appropriate sanction when a lawyer violates  
the terms of a prior disciplinary order or when a lawyer has engaged in the same  
10 or similar misconduct in the past.

11 8. ABA Standards section 4.11 (disbarment) is most applicable to Longacre's  
12 violations of RPC 8.4(c) (conversion) as charged in Counts 2, 5, 9, and 11 of the Association's  
Complaint.

13 9. ABA Standards section 4.12 (suspension) is most applicable to Longacre's  
14 violations of RPC 1.15A and 1.15B (trust account rules) charged in Counts 6, 11, 12, 13, and  
15 14 of the Association's Complaint.

16 10. ABA Standards section 4.22 (suspension) is most applicable to Longacre's  
17 violations of RPC 1.6 (confidentiality) charged in Count 10.

18 11. ABA Standards section 4.32 (suspension) is most applicable to Longacre's  
19 violation of RPC 1.7 and 1.8 (conflicts of interest) through RPC 8.4(a) (violate or attempt to  
20 violate RPC through acts of another) charged in Count 9 of the Association's Complaint.

21 12. ABA Standards section 4.41(a) (abandon practice), (b) (knowingly fail to perform  
22 services), and (c) (pattern of neglect) (disbarment) is most applicable to Longacre's violation  
23 of RPC 1.3, 1.4, and 3.2(lack of diligence and communication) charged in Counts 1, 4, 7, and  
24



1 10 of the Complaint.

2 13. For failing to adequately supervise his assistant, Elizabeth Kelsey, who lied to  
3 clients, (RPC 5.3, 8.4(a), 8.4(c) violations) as alleged in Counts 9 and 16 (Pope and Delatorre  
4 grievances), the presumptive sanction is disbarment under ABA Standards section 7.1.

5 14. ABA Standards section 7.1 (disbarment) also applies to Longacre's failure to  
6 appear in court for his client's September 10, 2010 custody hearing (RPC 8.4(d) conduct  
7 prejudicial to the administration of justice violation) as alleged in Count 15 (Delatorre  
8 grievance) and to the RPC 1.5(a)(b)(c) (fee violations) and RPC 1.16(d) (failure to refund  
9 unearned fees and other duties on termination violations) as alleged in Counts 1, 3, 4, 5, 8, and  
10 11 (Reiter, Williams, Pope and Delatorre grievances).

11 15. For asserting attorney's liens against the property of his clients or their families  
12 without first having obtained a judgment (RPC 8.4(d) violation) as alleged in Count 17  
13 (WSBA grievance), the presumptive sanction is disbarment under ABA Standards section 7.1.

14 16. ABA Standards section 7.1 (disbarment) applies to Longacre's failure to cooperate  
15 as alleged in Count 18 (RPC 8.4(l) and ELC 5.3(e) violations).

16 17. No ABA standard directly applies to the RPC 8.4(n) (unfitness to practice)  
17 violation charged in Count 19. But by analogy, ABA Standards section 7.1 (disbarment) is  
18 most applicable.

19 18. For knowingly engaging in acts that are the same or similar to prior acts of  
20 misconduct for which he was suspended, the presumptive sanction is disbarment under ABA  
21 Standards section 8.1(b). In 2005, Longacre received a 60-day suspension for failing to  
22 diligently represent and adequately communicate with his client about plea offers and  
23 sentencing implications in violation of RPC 1.3 and RPC 1.4. In re Disciplinary Proceeding

1 Against Longacre, 155 Wn.2d 723, 740, 122 P.3d 710 (2005). In the instant proceeding  
2 Longacre's repeated failure to act diligently and communicate adequately resulted in actual  
3 injury to his clients and others, including grievants Reiter, Williams, Pope and Delatorre, as  
4 alleged in Counts 1., 4, 7, and 10.

5 19. The following aggravating factors set forth in Section 9.22 of the ABA Standards  
6 apply in this case:

- 7 (a) prior disciplinary offenses [In November 2005, Longacre received a 60-day  
8 suspension for failure to communicate, failure to act with reasonable  
9 diligence, failure to provide competent representation and conduct  
10 prejudicial to the administration of justice. In January 2010 Longacre  
11 received a reprimand for conduct prejudicial to the administration of  
12 justice];
- 13 (b) dishonest or selfish motive;
- 14 (c) a pattern of misconduct;
- 15 (d) multiple offenses;
- 16 (g) refusal to acknowledge wrongful nature of conduct;
- 17 (i) substantial experience in the practice of law [Longacre was admitted to  
18 practice October 27, 1992]; and
- 19 (j) indifference to making restitution.

20 20. None of the mitigating factors set forth in Section 9.32 of the ABA Standards  
21 apply to this case.

22 21. Given the number of aggravating factors, with no mitigating factors, and given that  
23 disbarment is the presumptive sanction for several different ethical violation, there is no  
24 reason to depart from the presumptive sanction for the most severe misconduct: disbarment.

### RECOMMENDATION

25 22. Based on the ABA Standards and the applicable aggravating and mitigating  
26 factors, the Hearing Officer recommends that Respondent Clayton Longacre be disbarred.

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28 ///

1 Reinstatement should be conditioned on payment of costs of the proceeding and restitution as  
2 set out above.

3 DATED this 28<sup>th</sup> day of August, 2012.

4  
5 Nadine D. Scott  
6 Nadine D. Scott, Bar No. 6773  
7 Hearing Officer

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11  
12 **CERTIFICATE OF SERVICE**

13 I certify that I caused a copy of the FOF, COL & HO's Recommendation  
14 to be delivered to the Office of Disciplinary Counsel and to be mailed  
to Christon Lomax Respondent/Respondent's Counsel  
at 1814 SE. SLOAN ST. #104 Portland, OR 97214 by Certified first class mail,  
15 postage prepaid on the 28th day of August, 2012

16 [Signature]  
17 Clerk/Counsel to the Disciplinary Board