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FILED

AUG 22 2013

DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**RALPH ERIC CREAR,**  
Lawyer (Bar No. 33692).

Proceeding No. 12#00066

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND RECOMMENDATION

A hearing was held in accordance with ELC 10.13 on April 22-23, 2013. Respondent Ralph Eric Crear appeared *pro se* at the hearing. Disciplinary Counsel Sachia Stonefeld Powell appeared for the Washington State Bar Association (the Association).

**FORMAL COMPLAINT**

The formal complaint filed by Disciplinary Counsel charged Mr. Crear with the following counts of misconduct:

Count 1 - By failing to provide Mr. Lidge with competent representation in the Amica and/or Valley Medical Center matters, Mr. Crear violated RPC 1.1.

Count 2 - By failing to act with reasonable diligence and promptness in his representation of Mr. Lidge in the Valley Medical Center, Vida Lidge and/or Cleester Thomas

1 matters, Mr. Crear violated RPC 1.3.

2 Count 3 - By charging and/or collecting an unreasonable fee from Mr. Lidge in the  
3 Amica, Valley Medical Center and/or Vida Lidge matters, Mr. Crear violated RPC 1.5(a).

4 Count 4 - By failing to obtain a signed, written fee agreement from Mr. Lidge in the  
5 Cleester Thomas matter, where payment was on a contingency basis, Mr. Crear violated RPC  
6 1.5(c)(1).

7 Count 5 - By failing to deposit advance fees into his trust account, and/or by failing to  
8 deposit other client funds into trust, and/or failing to account for client funds he received, Mr.  
9 Crear violated RPC 1.15A.

10 Count 6 - By refusing to return Mr. Lidge's papers, including original documents, at the  
11 termination of the representation, Mr. Crear violated RPC 1.16(d).

12 Count 7 - By failing to produce documents responsive to a subpoena duces tecum issued  
13 in conjunction with the Association's investigation, thereby failing to promptly respond to an  
14 inquiry or request for information made under the Rules for Enforcement of Lawyer Conduct  
15 (ELC) for information relevant to a grievance and/or matter under investigation, Mr. Crear  
16 violated RPC 8.4(l) and/or ELC 5.3(e).

17 At the hearing witnesses were sworn, testimony presented and exhibits admitted.  
18 Having carefully considered the pleadings, evidence, oral arguments and briefing, the Hearing  
19 Officer makes the following findings of fact, conclusions of law and recommendations. In  
20 assessing the credibility of witnesses, the Hearing Officer has considered the quality of the  
21 witness' memory while testifying, the manner of the witness while testifying, any personal  
22 interest that the witness might have in the outcome or the issues, any bias or prejudice that the  
23 witness may have shown, the reasonableness of the witness' statements in the context of all of  
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1 the other evidence, and any other factors affecting evaluation of testimony.

2 **FINDINGS OF FACT**

3 1. Mr. Crear was admitted to the practice of law in the State of Washington in 2003.  
4 TR 220.

5 **Prior Discipline**

6 2. In July and August 2009, the Association began investigating grievances that  
7 ultimately resulted in Mr. Crear's suspension for one year. EX 2; TR 203.

8 3. In December 2009 the Association issued its "analysis letter" setting forth the facts  
9 determined in the Association's investigation and Disciplinary Counsel's conclusion and  
10 recommendation regarding the outcome of the grievance. TR 203-04.

11 4. Thus, Mr. Crear knew no later than December 2009 that he was under  
12 investigation for ethical misconduct, including one count involving an alleged violation of the  
13 RPC 1.15A trust account requirements similar to Count 5 charged here.

14 5. The earlier matter was ordered to a hearing in March 2010, and went to hearing in  
15 November 2010, Proceeding No. 10#00023. EX 2; TR 204.

16 6. Findings, Conclusions and Recommendation were initially entered in January  
17 2011, and Amended Findings, Conclusions and Recommendation were filed March 3, 2011.  
18 The prior Hearing Officer found that Mr. Crear had violated RPC 1.15A(c)(1), 5.8(a), and 8.4(c)  
19 and/or ELC 5.3(e)(1) and recommended that Mr. Crear be suspended for one year and that he be  
20 required to complete sessions with an ethics consultant covering content to be approved in  
21 advance by the Association. EX 2 at 23-24; TR 205.

22 7. The Disciplinary Board adopted the Hearing Officer's decision, and the Supreme  
23 Court ordered Mr. Crear suspended for one year effective September 15, 2011 and stated Mr.  
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1 Crear must comply with the Hearing Officer's recommendations. EX 3, 4.

2 **Amica Matter**

3 8. In November 2009, Charles Lidge hired Mr. Crear to represent him. EX 26; TR  
4 99. Mr. Lidge had reported his car stolen. TR 36, 98. He filed a claim with his insurance  
5 carrier, Amica Mutual Insurance Company (Amica), and Amica was represented in the matter  
6 by lawyer Rory W. Leid. TR 36-37.

7 9. Representatives of Amica were suspicious of the reported theft. EX 24 at 69-70;  
8 TR 36-37.

9 10. At the time Mr. Lidge hired Mr. Crear, Mr. Leid had scheduled an Examination  
10 Under Oath (EUO) and had requested that Mr. Lidge provide certain documentation. EX 35 at  
11 1-6; EX 36 at 1-6, 8-10, 13-14; TR 266. Since 1995, RCW 48.18.460 has provided, in pertinent  
12 part, "If a person makes a claim under a policy of insurance, the insurer may require that the  
13 person be examined under an oath administered by a person authorized by state or federal law to  
14 administer oaths."

15 11. Before the EUO, Mr. Crear knew that Mr. Lidge's failure to cooperate could result  
16 in the denial of his claim. EX 31 at 10, 44; EX 36 at 2-3, 8; TR 266-67.

17 12. Before the EUO, Mr. Crear advised Mr. Lidge that Amica was not entitled to  
18 inquire into certain information (such as financial records, employment information and phone  
19 records) because he believed that such was not relevant to the investigation. EX 24 at 72-77;  
20 TR 101, 103-04.

21 13. Before the EUO, Mr. Crear advised Mr. Lidge not to bring such requested  
22 documents to the EUO. EX 25 at 49; TR 173-74. During the EUO, Mr. Crear objected to  
23 questions concerning Mr. Lidge's financial, employment and tax matters. TR 269, 272. During  
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1 the EUO, Mr. Crear advised Mr. Lidge not to answer specific questions and not to provide  
2 specific requested documentation. EX 31 at 19-21, 52; TR 179-80, 269, 272.

3 14. Mr. Lidge testified at the hearing that Mr. Crear did not advise him of the risks of  
4 refusing to provide the requested information. TR 104. Early in the EUO, however, Mr. Crear  
5 stated on the record without contradiction that he had advised Mr. Lidge that refusal to answer  
6 Mr. Leid's questions could result in Amica's denial of the claim. EX 31 at 10. Further, during  
7 the EUO Mr. Leid repeatedly asked Mr. Lidge if he understood the risk of refusing to answer, to  
8 the point that Mr. Crear objected to further warnings: "Rory, we can walk out on this, and that's  
9 fine. But you have to understand that I'm asking you not to ask him that again. He understands  
10 that." EX 31 at 18. Mr. Lidge clearly was aware of the risk of refusing to answer, and in  
11 assuming that risk he relied upon Mr. Crear's advice that Amica was not entitled to inquire into  
12 financial, employment and tax matters.

13 15. During the EUO, Mr. Lidge refused to provide the requested information regarding  
14 his finances, his wife, and potential witnesses, among other things. EX 24 at 69-73; EX 31 at 9-  
15 10, 14, 17, 19-21, 31, 38, 41-42, 51-54, 81, 90-91; EX 36 at 17-18; TR 41-42, 84-85, 104.

16 16. Acting upon Mr. Crear's advice, Mr. Lidge did not produce all the documents  
17 Amica requested. EX 25 at 49 ("I did advise him not to bring certain things about his financial  
18 situation and his employment"), EX 31; TR 101-04.

19 17. During the EUO, Mr. Crear repeatedly objected to Mr. Leid's inquiries into certain  
20 information (including family members, criminal history, potential witnesses, financial  
21 information, employment history and tax documentation), stating that it was not relevant to the  
22 investigation, and instructed Mr. Lidge not to answer. EX 31 at 14-15, 19-21, 38, 41-42, 49-50,  
23 51-55, 60, 81, 90-91; TR 42, 179-80, 272.

1 18. Following the EUO, Mr. Leid sent Mr. Crear several letters in which he repeated  
2 his requests for information, and provided citations to case law that supported the requests. EX  
3 36 at 17-22, 24-28.

4 19. Following the EUO, Mr. Crear reiterated his objections to the requested  
5 information, requested that Mr. Leid provide justification for his requests, and ignored Mr.  
6 Leid's factual and legal justifications. EX 37; TR 43-44. However, Mr. Crear never provided  
7 legal authority to support his position that Mr. Lidge did not have to provide the requested  
8 information. EX 36 at 25; TR 44. The reasons Mr. Crear provided for his client's refusal to  
9 provide the requested information were not valid. TR 45, 68-69, 91.

10 20. Mr. Crear testified as follows at the hearing: "Mr. Leid . . . did not document that  
11 he told me [Mr. Lidge] was a suspect. He never, he never sent me a letter saying that at all.  
12 And if I had known that I would definitely say to Mr. Lidge, You need to produce those." TR  
13 269-270. Five days after the EUO, however, Mr. Leid did write Mr. Crear stating, "Amica's  
14 investigation into this loss is ongoing, as such, it has not determined whether, in fact, a theft  
15 occurred or did not occur." EX 36 at 18. Twenty-two days after that Mr. Leid again wrote Mr.  
16 Crear, stating, "Amica has been unable to determine whether or not your client has committed  
17 insurance fraud until its investigation is complete." EX 36 at 21. Twelve days later Mr. Leid  
18 again wrote Mr. Crear, stating, "[T]he following are some of the facts that raise the possibility  
19 that your client's insurance claim may be false: 1. The insured vehicle contains a transponder  
20 anti-theft system; 2. Your client had possession of the only key to the vehicle; 3. The  
21 transponder anti-theft system was not defeated; 4. Your client gave conflicting information to  
22 Amica regarding his financial situation." EX 36 at 25. Amica denied the claim for lack of  
23 cooperation one week later, even then offering to schedule a supplemental EUO if the requested  
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1 information and documents were forthcoming. EX 36 at 28.

2 21. In his closing argument at the hearing, Mr. Crear acknowledged as follows:  
3 “That’s why I could look back and say that I don’t think I reviewed those letters as thoroughly  
4 as I should have, and I maybe should have seen that he was having some indication about the  
5 fact that he may suspect Mr. Lidge. . . . I think at that point my communication with him was  
6 just so repetitive about him not giving me a reason, I assumed he had not also in those letters.  
7 And I do agree that I was probably negligent in not seeing that, those indications in those letters,  
8 and that’s all I have to say.” TR 418.

9 22. On March 15, 2010, Amica denied Mr. Lidge’s claim because of his failure to  
10 cooperate in the investigation. EX 36 at 26-28; TR 49, 72.

11 23. At the time of the EUO, Mr. Lidge had felony convictions, including convictions  
12 for crimes of dishonesty. TR 107, 174. Mr. Lidge’s convictions also included false reporting  
13 charges. TR 107.

14 24. During the investigation, Amica hired an expert to examine Mr. Lidge’s car. EX  
15 35 at 10-54; TR 47, 110, 276. The expert created the Cunningham report, which concluded the  
16 ignition security had not been bypassed. EX 35 at 10-54; TR 47-48. The expert stated, “Based  
17 on my training and experience, the examination of the vehicle, the ignition lock, and the key and  
18 the results of these examinations, it is my opinion that this vehicle was last operated by use of a  
19 mechanical key with the correct mechanical cuts and a properly programmed electronic chip in  
20 the head of the key.” EX 35 at 16. Mr. Leid testified at the hearing: “According to the  
21 investigation there was only one key, and that was in Mr. Lidge’s possession, which that report  
22 then leads to the conclusion that Mr. Lidge’s key that he had in his possession was the key that  
23 drove the vehicle to its last location where it was found after being reported stolen.” TR 48.

1           25. Mr. Crear and Mr. Lidge discussed the need to hire an expert to rebut the  
2 Cunningham report. EX 25 at 49-51; TR 110-13, 172-73, 276-77. Mr. Lidge testified that he  
3 expected Mr. Crear would follow up on this, TR 112-13, 172-73, 195, 280, but Mr. Crear  
4 testified that Lidge had said he would take care of it himself, and Mr. Lidge did ultimately  
5 produce the Brotherton estimate (EX 44 at 2) which was not designed as a rebuttal to the  
6 Cunningham report. TR 277, 280-281. The Hearing Officer finds Mr. Crear's testimony more  
7 credible than Mr. Lidge's on this point.

8           26. During the examination by Amica's expert, the ignition system in Mr. Lidge's  
9 vehicle was removed. TR 60. Mr. Lidge received an estimate from Brotherton Cadillac in the  
10 amount of \$909.58 for the ignition system to be replaced and Amica agreed to reimburse him in  
11 that amount. EX 24 at 82-83; EX 44; TR 60, 115.

12           27. In October 2010, Mr. Crear wrote to Mr. Leid and asked that Amica send the check  
13 in the amount of \$909.58 directly to Mr. Crear. EX 36 at 39; EX 37 at 61; TR 60. Amica did  
14 so. EX 36 at 39; TR 61, 348.

15           28. Mr. Crear did not deposit the \$909.58 into a trust account. EX 25 at 32-33; TR  
16 348.

17           29. Mr. Crear kept the \$909.58 for his own use and eventually credited it toward what  
18 he claimed Mr. Lidge owed him. EX 24 at 82-83; TR 348.

19           30. Mr. Crear testified that Mr. Lidge had expressly agreed that the \$909.58 should  
20 be applied to his outstanding balance owed (TR 348, 367-368) but the Hearing Officer finds Mr.  
21 Lidge's testimony more credible than Mr. Crear's on this point. Mr. Crear did not have Mr.  
22 Lidge's permission to retain the \$909.58 from Amica. EX 24 at 86-87; EX 25 at 32-33; TR  
23 116, 149, 178-79, 185.



1 31. Prior to representing Mr. Lidge, Mr. Crear had not handled an insurance coverage  
2 issue. EX 25 at 44-45; TR 295-96.

3 32. Prior to representing Mr. Lidge, Mr. Crear had not represented a client in an  
4 examination under oath. EX 25 at 44-45. EUOs are different from depositions. TR 93-94.

5 33. During his representation of Mr. Lidge in the Amica matter, Mr. Crear reviewed  
6 (TR 272) the cases which Mr. Leid had repeatedly cited (EX 36 at 2-3, 5, 8, 14, 18, 21, 24) as  
7 authority for Amica's pursuit of Mr. Lidge's employment, financial and tax information, but  
8 Mr. Crear concluded that his client's obligation to respond turned on whether the "line of  
9 questions were . . . relevant or germane to the issue, and specifically that, you know, something  
10 like whether [Lidge] was a suspect or not." TR 272. While it is true that "Financial records of  
11 the insured are 'relevant and material' once the insurance company has reason to broaden its  
12 investigation into the insured's possible financial motive for overvaluing or misrepresenting his  
13 claim," *Keith v. Allstate Indemnity Company*, 105 Wn.App. 251, 255 (2001)(emphasis added),  
14 the cases do not require the insurer to disclose its reasons for its inquiry to the insured. In  
15 advising Mr. Lidge to refuse to produce the requested documents and information, Mr. Crear  
16 caused his client to assume the risk that Amica did in fact have adequate reason for its inquiry,  
17 which it did in light of the Cunningham report and Mr. Lidge's criminal record.

18 34. During his representation of Mr. Lidge in the Amica matter, Mr. Crear did no other  
19 research into issues that may arise when representing a client in an insurance coverage matter.  
20 EX 25 at 57-58; TR 239-43, 265-71. In January 2013, Mr. Crear provided the Association with  
21 the summary of some case law and some WACs, but the printout predated the representation.  
22 EX 67 at 96-109; TR 268-72.

23 35. During his representation of Mr. Lidge in the Amica matter, Mr. Crear did not take  
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1 any Continuing Legal Education (CLE) courses or do anything else to educate himself on  
2 representing a client in an insurance coverage matter. EX 25 at 57-58; TR 306.

3 36. Mr. Crear testified during his deposition that he did not recall consulting with  
4 colleagues about how to handle Mr. Lidge's insurance coverage matter. EX 25 at 57-58. Mr.  
5 Crear's contradictory testimony at the hearing (TR 302-306) that he randomly selected "maybe  
6 two or three" unidentified lawyers from the WSBA online lawyer directory who listed insurance  
7 as a practice area and telephoned them to obtain information was not credible and is not  
8 accepted by the Hearing Officer.

9 37. Mr. Crear lacked the legal knowledge and skill to handle the Amica matter.

10 38. Mr. Crear's work on the Amica matter did not benefit Mr. Lidge and materially  
11 impaired any chance Mr. Lidge had of recovering on his claim.

12 39. Mr. Crear acted negligently by taking on the insurance claim matter when he  
13 lacked the competence to do so and by failing to engage in necessary study or  
14 consultation/association with knowledgeable colleagues once he had done so. Mr. Crear acted  
15 negligently in advising Mr. Lidge not to cooperate with Amica's document and information  
16 requests before and during the EOU.

17 40. Because of Mr. Crear's lack of competence, Mr. Lidge suffered actual injury  
18 because his stolen auto claim was not determined on the merits. TR 49, 72, 122-23.  
19 Additionally, Mr. Lidge has not been compensated for the removal of the ignition system. TR  
20 115-16.

21 **Valley Medical Center Matter**

22 41. In June 2010, Mr. Lidge asked Mr. Crear to represent him in a matter involving  
23 Valley Medical Center. EX 57; TR 123, 126-27, 307. Mr. Lidge had been a patient in the  
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1 Valley Medical Center Emergency Room and claimed he was dropped to the floor by the staff.

2 TR 123-24. As a result, Mr. Lidge alleged an injury. TR 123-24.

3 42. According to Mr. Lidge, Valley Medical Center initially agreed to compensate Mr.  
4 Lidge for treatment of his injury as well as for pain and suffering, but ultimately only covered  
5 his \$13,000 emergency room bill. EX 25 at 87-88; EX 58; EX 59; TR 124-25, 307-08.

6 43. Mr. Lidge wanted Mr. Crear to obtain additional compensation for him. EX 25 at  
7 82; TR 125-26.

8 44. On June 17, 2010, Mr. Crear wrote a demand letter to Valley Medical Center. EX  
9 59; TR 128. In his letter, Mr. Crear made only a vague request for “a reasonable compensatory  
10 amount for the pain and suffering Mr. Lidge incurred” without stating a dollar demand and  
11 without specific facts to support the request. EX 59; TR 308-09.

12 45. In his letter, Mr. Crear requested that Valley Medical Center respond to his request  
13 by June 25, 2010. EX 59; TR 308-09. Valley Medical Center never responded to Mr. Crear’s  
14 request. EX 25 at 83; TR 309.

15 46. Mr. Crear took no further action regarding this matter. EX 25 at 83-84; TR 130.

16 47. Mr. Crear never requested or obtained Mr. Lidge’s medical records. EX 25 at 87;  
17 TR 129, 309.

18 48. Mr. Crear did not know the value of Mr. Lidge’s claim, nor how much Mr. Lidge  
19 would have accepted as compensation. EX 24 at 106-07, 115; EX 25 at 82-83; TR 311-12.

20 49. Mr. Crear had not handled a personal injury matter prior to representing Mr. Lidge.  
21 EX 25 at 86; TR 314.

22 50. During his representation of Mr. Lidge in the Valley Medical Center matter, Mr.  
23 Crear did no research on issues related to personal injury matters. EX 25 at 86; TR 315.  
24

1 51. During his representation of Mr. Lidge in the Valley Medical Center matter, Mr.  
2 Crear did not take any Continuing Legal Education (CLE) courses or do anything else to  
3 educate himself on representing a client in a personal injury matter. EX 25 at 86; TR 314-15.

4 52. During his representation of Mr. Lidge in the Valley Medical Center matter, Mr.  
5 Crear did not talk to colleagues about how to handle a personal injury matter. EX 25 at 86; TR  
6 315.

7 53. Mr. Crear's work on the Valley Medical Center matter did not benefit Mr. Lidge.  
8 TR 130.

9 54. Mr. Crear lacked the legal knowledge and skill to handle Mr. Lidge's legal matter.

10 55. Mr. Crear acted negligently by taking on the personal injury matter when he lacked  
11 the competence to do so and by failing to engage in necessary study or consultation/association  
12 with knowledgeable colleagues once he had done so.

13 56. Mr. Crear's lack of competence caused actual injury to Mr. Lidge because his  
14 personal injury claim was not determined on its merits. The statute of limitations has passed  
15 and Mr. Lidge can no longer pursue his claim against Valley Medical Center. TR 130-31.

16 **Vida Lidge Matter**

17 57. In June 2010, Mr. Lidge asked Mr. Crear to represent him in a matter relating to  
18 the probate of his mother's estate. EX 47; TR 131, 135-36, 323.

19 58. Mr. Lidge held the power of attorney for his mother before her death, but  
20 suspected that some of his relatives may have taken money from his mother's accounts without  
21 his or his mother's permission. EX 25 at 70-73; TR 132.

22 59. Additionally, Mr. Lidge was named personal representative by the will, and was  
23 appointed as the personal representative by the court, but his aunt was subsequently named as  
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1 the personal representative. Mr. Lidge was uncertain why this happened. EX 25 at 71-72.

2 60. Mr. Crear agreed to investigate the circumstances surrounding the probate of Mrs.  
3 Lidge's estate and the possible unauthorized withdrawal of funds from her bank accounts.  
4 EX 25 at 72-73; TR 131-32.

5 61. Prior to asking Mr. Crear to assist him, Mr. Lidge obtained records from his  
6 mother's account at Qualstar Credit Union. TR 133. Mr. Lidge provided these documents to  
7 Mr. Crear. TR 136.

8 62. Mr. Lidge had difficulty obtaining documents from other financial institutions,  
9 such as Bank of America and Key Bank, and wanted Mr. Crear's assistance with that. TR 132-  
10 34. Mr. Crear, however, never attempted to obtain documents from financial institutions other  
11 than Qualstar. EX 25 at 74-75; TR 137-38, 326.

12 63. In June 2010, Mr. Crear subpoenaed records from Qualstar on Mr. Lidge's  
13 mother's account. EX 53, 54; TR 136, 325. Mr. Crear had Mr. Lidge pay Qualstar directly for  
14 the copying charges. TR 330.

15 64. Mr. Crear reviewed the Qualstar records, which were mostly bank statements, to  
16 try to determine who withdrew money from Vida Lidge's accounts and whether they were  
17 authorized to do so, but did not "get through reviewing all of them." TR 327-28. Mr. Crear was  
18 unable to make any determinations based on the records he reviewed. EX 25 at 74-75; TR 328-  
19 31. In fact, it would ordinarily be difficult to tell who withdrew money, and whether they were  
20 authorized to do so, based on the bank statements alone. EX 25 at 74-75.

21 65. Mr. Crear reviewed some of the probate documents provided to him by Mr. Lidge,  
22 but did not do anything else to determine whether Mr. Lidge's relatives may have taken money  
23 from his mother's accounts or why Mr. Lidge was removed as the personal representative. EX  
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1 25 at 71-72; TR 332-44.

2 66. Mr. Crear did no additional work for Mr. Lidge on the Vida Lidge matter. EX 5;  
3 EX 25 at 69-82.

4 67. Mr. Crear's work on the Vida Lidge matter did not benefit Mr. Lidge. TR 138.

5 68. Mr. Crear's lack of diligence caused actual injury to Mr. Lidge, whose  
6 interests involving the Vida Lidge matter were not pursued with reasonable diligence and  
7 promptness, and Mr. Crear was therefore unable to obtain favorable results or information  
8 bearing upon Mr. Lidge's legal issues. Mr. Lidge has not obtained resolution of the Vida Lidge  
9 Matter, and does not know the status of the probate. TR 139-40.

10 69. Mr. Crear acted negligently in failing to act diligently in the Vida Lidge matter.

11 70. Mr. Crear's lack of diligence also caused Mr. Lidge stress and aggravation. "An  
12 attorney should endeavor to spare the client that frustration and anxiety which must be felt when  
13 the client's cause is not pursued with reasonable diligence and promptness." *In re Disciplinary*  
14 *Proceeding Against Lopez*, 153 Wn.2d 570, 591 (2005) (citation omitted; emphasis in original).

15 **Cleester Thomas Matter**

16 71. In June 2010, Mr. Lidge asked Mr. Crear to help him collect money that was owed  
17 to him by Cleester Thomas. EX 25 at 63; TR 140, 142-43, 315.

18 72. Mr. Lidge had painted rooms at Ms. Thomas' home, for which he charged her  
19 \$600. EX 62, 63; TR 140-41. However, Ms. Thomas did not pay him. EX 25 at 63; TR 140.

20 73. Mr. Crear and Mr. Lidge entered into a verbal fee agreement in this matter. EX 25  
21 at 65; TR 317-18. They never reduced the agreement to writing. EX 25 at 65; TR 318.

22 74. On February 8, 2010, Mr. Crear wrote a demand letter to Ms. Thomas. EX 25 at  
23 63; EX 65; TR 143, 315.

1 75. Prior to sending the letter, Mr. Crear called Ms. Thomas to speak with her about  
2 the matter, but she hung up on him. EX 25 at 63; TR 146, 319.

3 76. After Ms. Thomas failed to respond to Mr. Crear's demand letter, Mr. Lidge asked  
4 Mr. Crear to stop working on the Cleester Thomas matter. EX 25 at 63; TR 146-47. Ms.  
5 Thomas was a medical receptionist with whom Mr. Lidge interacted regularly in the course of  
6 his wife's treatment (TR 142), and Mr. Lidge decided that rather than risk having Ms. Thomas  
7 avoiding him in that context, "I would just go ahead and just count it as a loss." TR 147. Mr.  
8 Lidge specifically testified at the hearing that he did not suffer any harm as a result of Mr.  
9 Crear's handling of the Cleester Thomas matter, and that he was satisfied with Mr. Crear's work  
10 on that matter. TR 147.

11 77. Mr. Crear did no further work on the Cleester Thomas matter. EX 25 at 63; TR  
12 319.

13 78. Although Mr. Crear's work on the Cleester Thomas matter did not ultimately  
14 benefit Mr. Lidge, Mr. Crear's representation on that matter was performed diligently and  
15 promptly within the parameters set by the client.

16 79. Mr. Crear had no written fee agreement with Mr. Lidge concerning the  
17 Cleester Thomas matter. Mr. Lidge testified at the hearing that his understanding was that  
18 Mr. Crear would be paid a portion of any proceeds received from Ms. Thomas, and that if  
19 for example \$600 was recovered Mr. Crear would receive one-third, or \$200. TR 144-  
20 145. Mr. Crear, on the other hand, testified that the agreement was that 100% of any  
21 amount recovered from Ms. Thomas would be applied against Mr. Lidge's outstanding bill  
22 for the legal services being provided by Mr. Crear on the Amica and the other matters. Tr  
23 317-318. The Hearing Officer finds Mr. Crear's testimony more credible than Mr. Lidge's  
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1 on this point.

2 80. The fee arrangement in the Cleester Thomas matter was not an agreement to  
3 pay Mr. Crear's fee as a percentage of the recovery in that matter, but was an agreement that  
4 anything recovered from Ms. Thomas would be applied to fees accruing in the Amica, Valley  
5 Medical Center and Vida Lidge matters. The fee agreement in the Cleester Thomas matter  
6 was not a contingent fee agreement in the sense that phrase is used in RPC 1.5(c)(1).

7 **Fees/Billing**

8 81. On November 13, 2009, Mr. Crear entered into a fee agreement with Mr. Lidge  
9 regarding the Amica matter. EX 26; TR 99-100, 265. This agreement provided that Mr.  
10 Crear's hourly rate was \$185, that the rate "may be revised from time to time," and that Mr.  
11 Crear would bill Mr. Lidge monthly, with payment due upon receipt. EX 26.

12 82. Mr. Crear testified during his 5/10/11 deposition that he and Mr. Lidge verbally  
13 agreed at the outset of representation to a rate of \$200 per hour, but allowed as how "I'm not  
14 positive, to be honest." EX 24 at 41-42. See also TR 358-59. The Hearing Officer finds that  
15 the Amica fee agreement set the hourly rate at \$185 and that Mr. Crear negligently billed at  
16 \$200 instead.

17 83. Mr. Crear never notified Mr. Lidge that his hourly rate increased to \$200/hour. TR  
18 157.

19 84. Mr. Lidge paid Mr. Crear \$1440 in cash and money orders between November  
20 2009 and May 2010 as follows:

- 21
- \$200 on November 13, 2009
  - \$200 on January 29, 2010
  - \$140 on April 30, 2010
  - \$500 on May 6, 2010
  - \$400 on May 14, 2010
- 22  
23  
24



1 EX 24 at 52-55; EX 26; EX 66; TR 153-55, 265-66.

2 85. These fees were not earned at the time Mr. Crear received them because he had not  
3 sent Mr. Lidge a billing statement, or other writing, at the time he received the funds. RPC  
4 1.15A(h)(3).

5 86. Mr. Crear did not deposit any of these payments into a trust account. EX 24 at 47-  
6 48; TR 348.

7 87. During the period November 2009 through May 2010, Mr. Crear had outstanding  
8 past-due debts, at least some of which had been reduced to judgment and had not been satisfied  
9 or released. TR 355-356, 371-373.

10 88. Mr. Crear's failure to deposit these unearned fees in trust caused potential injury  
11 to Mr. Lidge, whose money was at risk had Mr. Crear's creditors attempted to take action  
12 against Mr. Crear.

13 89. Additionally, Mr. Lidge did some yard work for Mr. Crear, for which Mr. Crear  
14 credited him \$500 toward his bill. EX 24 at 52-55; EX 66; TR 153, 177-78.

15 90. On June 1, 2010, Mr. Crear emailed Mr. Lidge the billing statements he had  
16 generated for January, February and March-May, 2010 on the Amica matter. EX 66; TR 150-  
17 52. Mr. Crear had not previously sent Mr. Lidge any billing statements or other document. TR  
18 152.

19 91. Mr. Crear's testimony (TR 348-352) that he sent Mr. Lidge billing statements  
20 before June 2010 was not credible.

21 92. In June 2010, Mr. Crear entered into contingency fee agreements with Mr. Lidge in  
22 the Valley Medical Center and Vida Lidge Matters. The agreements each provided that if the  
23 representation terminated, Mr. Crear could bill Mr. Lidge for time expended at a rate of \$200  
24

1 per hour. EX 47, 57; TR 176-77.

2 93. Mr. Crear did not generate any billing statements on the Valley Medical Center,  
3 Vida Lidge and Cleester Thomas matters. EX 25 at 68, 80, 86; TR 366-67.

4 94. Mr. Lidge terminated the representation in November 2010. EX 25 at 55, 81; EX  
5 33; TR 147, 149-50, 361.

6 95. After Mr. Lidge terminated Mr. Crear's representation, on November 21, 2010,  
7 Mr. Crear sent Mr. Lidge an email in which he claimed that Mr. Lidge owed him an additional  
8 \$4316.42. EX 5; TR 352-53. Mr. Crear calculated the total as follows:

- 9 • \$2616.42 for the Amica matter, based on a rate of \$200 per hour, not the agreed  
10 rate of \$185 per hour;
- 11 • \$400 for the Valley Medical Center matter (thirty minutes of work erroneously  
12 charged as two hours at \$200 per hour);
- 13 • \$100 for the Cleester Thomas matter (thirty minutes of work charged at \$200 per  
14 hour); and
- 15 • \$1,200 for the Vida Lidge matter (eight hours of work charged as six hours at  
16 \$200 per hour).

17 96. Mr. Crear had not kept time records for the Vida Lidge, Cleester Thomas or Valley  
18 Medical matters, and he used a "guesstimation" (EX 24 at 44) of the time he put into each  
19 matter, calculating the hours based on the work he recalled doing. EX 24, at 38-39, 43-46; TR  
20 365-66.

21 97. The Hearing Officer has not accepted (¶30) Mr. Crear's claim that he had client  
22 permission to apply Amica's \$909.58 payment to Mr. Lidge's outstanding bill, but even if he  
23 did have such permission the payment was required to be placed in a trust account because Mr.  
24 Crear had sent Mr. Lidge no billing statement or other writing at the time Mr. Crear received the  
payment. RPC 1.15A(h)(3).

1 98. As of December 2009, Mr. Crear knew he was under investigation for ethical  
2 misconduct concerning the matters which led to the earlier disciplinary proceeding (10#00023)  
3 which ultimately resulted in findings that included a trust account violation under RPC  
4 1.15A(c)(1). (“He therefore accepted the \$830.00 knowingly and knowingly failed to deposit  
5 the unearned portion in his trust account.” EX 2 at 11.) Thus, Mr. Crear knew or certainly  
6 should have known that he was dealing improperly with Mr. Lidge’s funds when he failed to  
7 deposit unearned fees in trust.

8 99. Mr. Crear’s conduct caused actual injury to Mr. Lidge, who never received the  
9 \$909.58 from Amica to which he was entitled and whose funds were not protected from Mr.  
10 Crear’s creditors.

11 100. Mr. Lidge also suffered potential injury because he was charged based on Mr.  
12 Crear’s “guesstimation” of the time he worked, and at an hourly rate higher than he had agreed.

13 **Termination of Representation**

14 101. During the representation, Mr. Lidge provided Mr. Crear with various documents  
15 related to his matters, including some original documents. TR 121-22, 129-30, 136, 138-39,  
16 146, 176.

17 102. On or about November 21, 2010, Mr. Lidge terminated Mr. Crear’s representation  
18 and requested copies of his client files, including original documents. EX 25 at 55, 81; EX 33;  
19 TR 147, 149-50, 361.

20 103. On November 21, 2010, Mr. Crear sent an email to Mr. Lidge, which he copied to  
21 the Association. In it, Mr. Crear advised Mr. Lidge that Mr. Lidge owed him an additional  
22 \$4,316.42, and that Mr. Crear would not provide Mr. Lidge with his file materials until he paid  
23 the costs to copy them as well as the balance due. EX 5; TR 361-62. Mr. Crear never told Mr.  
24

1 Lidge how much the copying would cost. TR 188-89.

2 104. On November 22, 2010, the Association responded to Mr. Crear's email by  
3 advising him to review Formal Opinion 181. EX 5; TR 363.

4 105. Mr. Crear nevertheless refused to provide Mr. Lidge with his client files because  
5 he believed that Mr. Lidge had an outstanding balance due, and Mr. Crear intended to exert a  
6 lien over the files until Mr. Lidge paid him in full. EX 25 at 56.

7 106. Additionally, Mr. Crear testified that his fee agreements required Mr. Lidge to bear  
8 the cost of copying the file materials. TR 364-65. However, none of Mr. Crear's fee  
9 agreements contain a provision requiring Mr. Lidge to pay for a copy of his file upon  
10 termination or representation. EX 26, 47, 57.

11 107. As of the time of the hearing, Mr. Crear had not returned any file materials to Mr.  
12 Lidge. TR 122, 130, 139, 146, 150, 361.

13 108. Although a lawyer and a client can agree that the client will bear the costs of  
14 copying, the client's papers must be provided to the client:

15 Client's papers—the actual documents the client caused to be delivered to the  
16 lawyer or papers, such as medical records that the lawyer has acquired at the  
17 client's expense—must be returned to the client on the termination of the  
18 representation at the client's request unless a lien is asserted. If the lawyer wants  
19 to retain copies, the lawyer must bear the copying expense.

18 Advisory Opinion 181 (emphasis added.)

19 109. The opinion further states that, at the conclusion of the representation, "[a] lawyer  
20 cannot exercise the right to assert a lien against files and papers when withholding these  
21 documents would materially interfere with the client's subsequent legal representation." The  
22 opinion further states, "A client's need for the files will almost always be presumed from  
23 the request for the files." Finally, the opinion states, "When, however, there is a dispute  
24

1 about the amount owed, or the client does not have the ability to pay, the lawyer cannot assert  
2 lien rights if there is any possibility of interference with the former client's effective self-  
3 representation or representation by a new lawyer." (Emphasis added.) Mr. Crear knew Mr.  
4 Lidge had "money woes" (TR 275, 316) and was likely unable to pay the balance claimed by  
5 Mr. Crear. The opinion concludes that lawyer and client may lawfully alter the results set out in  
6 the opinion, and Mr. Crear asserts that the fee agreements did so, but those agreements  
7 addressed photocopying charges and other "out-of-pocket expenses we incur in handling your  
8 case" (EX 26) and "costs and expenses associated with handling your case" (EX 47, 57)  
9 (emphasis added), not expenses incurred after termination of representation.

10 110. Mr. Crear acted knowingly when he refused to surrender papers and property to  
11 which Mr. Lidge was entitled at the termination of the representation.

12 111. Mr. Lidge suffered actual injury because he was denied the opportunity to review  
13 Mr. Crear's files concerning his matters and the opportunity to submit those files to substitute  
14 counsel. In addition, Mr. Lidge was unable to go forward with the Vida Lidge Matter because  
15 Mr. Crear retained his file materials. TR 150.

#### 16 **The Association's Investigation**

17 112. On April 1, 2011, the Association issued a subpoena duces tecum, requiring Mr.  
18 Crear to appear at a deposition and produce his "complete file and whatever documents may be  
19 in [his] possession or control relating to [his] representation of Charles Lidge, and all financial  
20 records, including trust account and client ledgers, canceled checks, and bank statements  
21 relating to funds received in connection with [his] representation of Charles Lidge." EX 17; TR  
22 206-07.

23 113. On May 10 and 12, 2011, Mr. Crear appeared for the deposition. However, prior  
24

1 to the deposition, Mr. Crear failed to search his current computer for documents responsive to  
2 the Association's subpoena. EX 25 at 10-11; TR 208-09.

3 114. Additionally, at the deposition Mr. Crear did not provide the Association with  
4 copies of money orders received from Mr. Lidge (EX 24 at 50), a copy of a \$278 Amica  
5 payment that bears Mr. Lidge's signature (EX 24 at 89; EX 25 at 4), or copies of research Mr.  
6 Crear conducted related to his representation of Mr. Lidge (EX 25 at 90).

7 115. At the conclusion of the deposition, Mr. Crear agreed to provide copies of money  
8 orders received from Mr. Lidge, a copy of a \$278 Amica payment that bears Mr. Lidge's  
9 signature, 's any computer records related to his representation of Mr. Lidge, and any copies of  
10 research Mr. Crear conducted related to his representation of Mr. Lidge. EX 25 at 89-90; TR  
11 209-10, 234-35.

12 116. Mr. Crear did not provide these materials to the Association following the  
13 deposition. TR 210-11.

14 117. On October 22, 2012, the Association filed a formal complaint charging Mr. Crear  
15 with, among other things, failure to cooperate with the Association's investigation by failing to  
16 produce documents responsive to a subpoena duces tecum issued in conjunction with the  
17 Association's investigation.

18 118. After the May 2011 deposition, Mr. Crear did not provide the Association with any  
19 computer records related to his representation of Mr. Lidge until January 8, 2013. EX 67, 68;  
20 TR 240-41, 246-53.

21 119. After the May 2011 deposition, Mr. Crear did not provide the Association with  
22 copies of research he conducted related to his representation of Mr. Lidge until January 8, 2013.  
23 EX 67, 68; TR 240-45, 246-53.

1 120. On January 8, 2013, Mr. Crear emailed some additional material to the  
2 Association. EX 67; TR 240-41, 253.

3 121. On February 4, 2013, Mr. Crear provided what he considered to be a complete  
4 copy of his client file to the Association. EX 68; TR 258.

5 122. On February 4, 2013, Mr. Crear provided the Association with a copy of a \$278  
6 Amica payment that bears Mr. Lidge's signature. EX 68.

7 123. Despite providing copies of electronic/computer documents to the Association in  
8 January and February 2013, Mr. Crear still did not provide the Association with, for example,  
9 any drafts of a letter to the Office of the Insurance Commissioner, although he acknowledged  
10 that such exist. EX 67, 68; TR 261-65.

11 124. Mr. Crear provided the Association with no other material responsive to the  
12 Association's April 2011 subpoena duces tecum. TR 210-11.

13 125. Mr. Crear was served with a demand under ELC 10.13(c), which required him to  
14 bring his "complete file and whatever documents may be in [his] possession relating to [his]  
15 representation of Charles R. Lidge, and all financial records, including trust account and client  
16 ledgers, cancelled checks, and bank statements relating to funds received in connection with  
17 [his] representation Charles R. Lidge" to the hearing. EX 1; TR 221-23.

18 126. At the hearing, Mr. Crear claimed that he brought the same materials to the hearing  
19 that he had provided to the Association on February 4, 2013, but left them in his car. Mr. Crear  
20 did not go to his car to retrieve them. Instead, Mr. Crear agreed that the contents of Exhibit 68  
21 were the same as the materials in his car. EX 68; TR 221-23.

22 127. However, Mr. Crear did not recall searching his computer for email or other  
23 electronic documents after receiving the ELC 10.13(c) Demand for responsive documents. TR  
24

1 232-33.

2 128. Mr. Crear never provided the Association with the requested money orders, despite  
3 the fact that, according to his testimony, they were in a file folder at his home. EX 24 at 59; TR  
4 235-39.

5 129. Mr. Crear never advised the Association that any of the requested materials were  
6 unavailable or did not exist. TR 211, 239, 245.

7 130. Mr. Crear negligently failed to cooperate with the Association's investigation.

8 131. When a lawyer does not respond to the Association's requests for information, the  
9 Association sustains actual injury because it must expend additional time and resources to  
10 obtain the requested information from another source and/or to conclude the investigation  
11 without the information. TR 206, 211-12.

12 **CONCLUSIONS OF LAW**

13 **Count 1**

14 132. By failing to provide Mr. Lidge with competent representation in both the Amica  
15 and the Valley Medical Center matters, Mr. Crear violated RPC 1.1 as charged in Count 1. This  
16 count is proven by a clear preponderance of the evidence.

17 **Count 2**

18 133. By failing to act with reasonable diligence and promptness in his representation of  
19 Mr. Lidge in the Vida Lidge matter, Mr. Crear violated RPC 1.3 as charged in Count 2. This  
20 count is proven by a clear preponderance of the evidence as to the Vida Lidge matter, but not as  
21 to the Amica and Valley Medical Center matters which the Hearing Officer concludes involved  
22 at their core the competency issues addressed in connection with Count 1.

23 **Count 3**



1 134. The Hearing Officer can find no authority for the proposition that violations of the  
2 competency and diligence requirements of RPC 1.1 and 1.3 automatically mean that a lawyer's  
3 billings in those matters are unreasonable under RPC 1.5(a), but that appears to be the  
4 Disciplinary Counsel's position: "[A]fter collecting payments from Mr. Lidge and from Amica  
5 in the Amica matter, Respondent sought to collect an additional \$4,200 from Mr. Lidge for  
6 handling matters in which he was not competent or diligent. Respondent's conduct violated  
7 RPC 1.5(a)." Association's Hearing Brief at 12-13. Instead, the Hearing Officer concludes that  
8 violations which at core relate to the competency and diligence requirements should be  
9 addressed under RPC 1.1 and 1.3, not under other rules which may be collaterally impacted by  
10 the underlying violations. Where a lawyer's separate acts are part of the same misconduct, the  
11 doctrine of merger applies. *In re Disciplinary Proceeding Against McGrath*, 174 Wn.2d 813,  
12 833 n.11 (2012). This count is not proven by a clear preponderance of the evidence.

13 **Count 4**

14 135. The agreement that anything recovered in the Cleester Thomas matter would be  
15 applied against billings in Mr. Lidge's other three matters was not a contingent fee agreement  
16 within the meaning of RPC 1.5(c)(1). This count is not proven by a clear preponderance of the  
17 evidence.

18 **Count 5**

19 136. By repeatedly failing to deposit advance fees into his trust account, and by cashing  
20 the \$909.58 check Amica issued for ignition replacement without client permission, Mr. Crear  
21 violated RPC 1.15A as charged in Count 5. This count is proven by a clear preponderance of  
22 the evidence.

23 **Count 6**

1 137. By refusing to return Mr. Lidge's papers, including original documents, at the  
2 termination of the representation, Mr. Crear violated RPC 1.16(d) as charged in Count 6. This  
3 count is proven by a clear preponderance of the evidence.

4 **Count 7**

5 138. The lawyer discipline system provides "protection of the public and preservation  
6 of confidence in the legal system." *In re Disciplinary Proceeding Against McMurray*, 99  
7 Wn.2d 920, 930 (1983). Given the limited resources available to investigate allegations of  
8 lawyer misconduct, "such investigations depend upon the cooperation of attorneys." *Id.* at 931.  
9 "Compliance with these rules is vital." *In re Disciplinary Proceeding Against Clark*, 99 Wn.2d  
10 702, 707 (1983).

11 139. By failing to produce documents responsive to a subpoena duces tecum issued in  
12 conjunction with the Association's investigation, thereby failing to promptly respond to an  
13 inquiry or request for information made under the Rules for Enforcement of Lawyer Conduct  
14 (ELC) for information relevant to a grievance and/or matter under investigation, Mr. Crear  
15 violated RPC 8.4(l) and ELC 5.3(e) as charged in Count 7. This count is proven by a clear  
16 preponderance of the evidence.

17 **Sanction Analysis**

18 140. A presumptive sanction must be determined for each ethical violation. *In re*  
19 *Disciplinary Proceeding Against Anshell*, 149 Wn.2d 484, 502 (2003). The following  
20 standards of the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("ABA  
21 *Standards*") (1991 ed. & Feb. 1992 supp.) are presumptively applicable in this case:

22 141. For Count 1 - ABA Standard: 4.5 Lack of Competence. This standard provides:

23 4.53 Reprimand is generally appropriate when a lawyer:

24 (a) demonstrates failure to understand relevant legal doctrines or procedures and

1 causes injury or potential injury to a client; or

2 (b) is negligent in determining whether he or she is competent to handle a legal  
3 matter and causes injury or potential injury to a client.

4 142. For Count 2 - ABA Standard: 4.4 Lack of Diligence. This standard provides:

5 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not  
6 act with reasonable diligence in representing a client, and causes injury or a potential  
7 injury to a client.

8 143. For Count 5 - ABA Standard 4.1: Failure to Preserve the Client's Property. This  
9 standard provides:

10 4.12 Suspension is generally appropriate when a lawyer knows or should know  
11 that he is dealing improperly with client property and causes injury or potential  
12 injury to a client.

13 144. For Count 6 - ABA Standard 4.1: Failure to Preserve the Client's Property. This  
14 standard provides:

15 4.12 Suspension is generally appropriate when a lawyer knows or should know that he  
16 is dealing improperly with client property and causes injury or potential injury to a  
17 client.

18 145. For Count 7 - ABA Standard 7.0: Violations of Other Duties Owed as a Profession.  
19 This standard provides:

20 7.3 Reprimand is generally appropriate when a lawyer negligently engages in  
21 conduct that is a violation of a duty owed as a professional and causes injury or  
22 potential injury to a client, the public, or the legal system.

23 146. When multiple ethical violations are found, the "ultimate sanction imposed should  
24 at least be consistent with the sanction for the most serious instance of misconduct among a  
number of violations." *In re Disciplinary Proceeding Against Petersen*, 120 Wn.2d 833, 854,  
(1993) (quoting *ABA Standards*).

147. Based on the Findings of Fact and Conclusions of Law and application of the *ABA  
Standards*, the appropriate presumptive sanction is a suspension.

1 148. The following aggravating factors set forth in Section 9.22 of the *ABA Standards*  
2 are applicable in this case:

- 3 (a) prior disciplinary offenses;
- 4 (b) dishonest or selfish motive (as to fees); and
- 5 (d) multiple offenses.

6 149. No mitigating factors set forth in Section 9.32 of the *ABA Standards* are applicable  
7 to this case.

8 150. “When the presumptive sanction is suspension, the appropriate range is generally  
9 six months to three years, but the generally accepted minimum term of six months is only  
10 appropriate in cases where the mitigating factors clearly outweigh the aggravating factors. *In re*  
11 *Disciplinary Proceeding Against Hicks*, 166 Wn.2d 774, 786 (2009). Here, the mitigating  
12 factors do not outweigh the aggravating factors.

13 151. Mr. Crear’s prior disciplinary investigation and ultimate one-year suspension  
14 (which, as here, resulted in part from a violations of RPC 1.15A) did not deter him from  
15 committing similar and additional violations close in time to the prior violations.

### 16 Recommendation

17 152. Disciplinary Counsel proposes a 3-year suspension and \$2,349.58 in restitution, an  
18 which amount appears to omit the \$500 paid through yard work, see ¶¶ 29, 40, 84, 39 above.

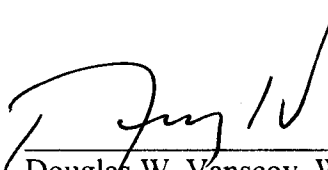
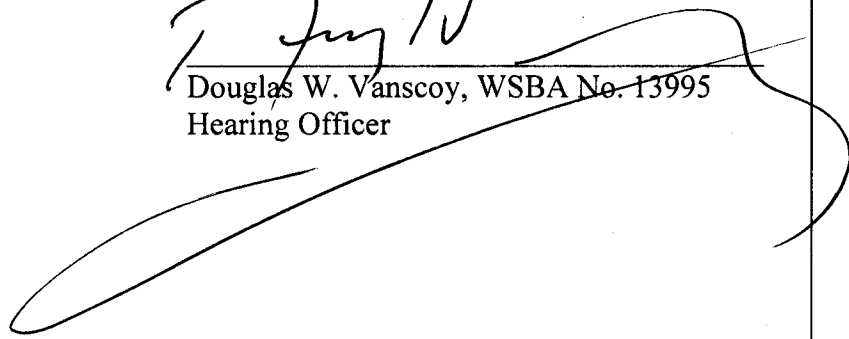
19 153. Mr. Crear does not offer a sanctions analysis.

20 154. A 2-year suspension would be double the sanction ordered in Mr. Crear’s first  
21 proceeding and would arguably be a logical step in a system of progressive discipline. Mr.  
22 Crear has demonstrated, however, a disturbing inability or unwillingness to conform his conduct  
23 and advice to the parameters of established legal doctrine, even when such doctrine is bluntly  
24 presented to him as was the EUO protocol and the client’s entitlement to his file upon

1 termination by Mr. Leid and Disciplinary Counsel, respectively. A longer suspension appears  
2 clearly in the best interest of protecting prospective clients and the public.

3 155. Based on the *ABA Standards* and the applicable aggravating and mitigating factors,  
4 the Hearing Officer recommends that Respondent Ralph Eric Crear be suspended for a period of  
5 three years and pay restitution in the amount of \$2,849.58.

6 Dated this 19<sup>th</sup> day of August, 2013.

7   
8 \_\_\_\_\_  
9 Douglas W. Vanscoy, WSBA No. 13995  
10 Hearing Officer  
11 

12  
13  
14 CERTIFICATE OF SERVICE

15 I certify that I caused a copy of the PDF of Col. Ho's Recommendation  
16 to be delivered to the Office of Disciplinary Counsel and to be mailed  
17 to Ralph Crear Respondent/Respondent's Counsel  
18 at 17724 IMPERIAL NE SHOREWAY, WA 98155, by Certified first class mail  
19 postage prepaid on the 22<sup>nd</sup> day of AUGUST, 2013

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\_\_\_\_\_  
Clerk/Counsel to the Disciplinary Board