

25 November 2015

Mr. Hunter F. Perlmeter
Staff Bar Counsel
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Phoenix, AZ 85016

RE: File No.: 15-2075
Charles Rodrick, Complainant
Daniel R. Warner, Respondent

Mr. Hunter F. Perlmeter:

The most important issue Charles Rodrick (hereafter, "Rodrick") is requesting the State Bar of Arizona (hereafter, "SBA") to review in the complaint File No. 15-2075 (hereafter, "complaint") against attorney Daniel R. Warner (hereafter, Warner") is the blog posting found on the website KellyWarnerLaw.com (hereafter, "website") of June 11, 2015 (*see*, Exhibit A). Warner's response to the SBA on November 3, 2013 (hereafter, "response") is unconvincing. Rather than answer honestly, he seems to trivialize the SBA complaint process with non sequiturs. The **FACT** is that the post on the website in regards to the case of a past client contained completely concocted content and involved extremely defamatory allegations. Claiming Rodrick had been "arrested" and would do "prison time" in relation to the cases. The response also provides new evidence (*see*, Exhibit B) (hereafter, "document") intended as some form of explanation for the abhorrent misconduct of Warner. Due to the seriousness in the violation of the Arizona Rules of Professional Conduct (hereafter, "Rules") ER 1.6(d) and the presenting a wholly inadequate response with new evidence for such egregious misconduct, Rodrick has supplied a separate reply for the review and consideration of the SBA in their investigation.

This argument contains several major points, all of which need further exploration and investigation. The facts will show Warner did indeed commit malpractice and defamation in regards to his once client, Rodrick.

Warner is Responsible for Content Appearing on the Website about a Previous Client

Warner presents an excuse in the response that brings forward a scapegoat in Barri Grossman (hereafter, "Grossman"). According to the response Grossman is an "independent contractor who works for the firm" who "authored" the posting and "then published it" on the website. There are many obvious deficiencies in this explanation. The first and foremost issue is that Warner's response does not address the **FACT** that he still bears the full responsibility for the post, a website posting concerning matters under the purview of the privileged attorney/client relationship. Warner attempts to divert the obligation of protecting the sanctity of this fundamental legal authority to a third party employee. It is Warner's obligation to protect against any appearance of impropriety. He must also guard against any possibility an

affront such as the posting of June 11, 2015 from ever being disseminated about a previous client on his firm's website. Presenting a convenient patsy in Grossman is just the continuation of Warner's proclivity to **NOT** accept any personal responsibility for his law practice.

Warner has claimed to be an internet legal specialist in his law practice; he must be familiar with the legal concept *Respondeat superior*, the legal term for vicarious liability of an employer for actions committed by an employee. This is nothing new. It has been written into the law for over 100 years. In today's internet world, *Respondeat superior* does not only apply to verbal actions, it also applies to actions committed that are abuse of the Internet against third parties. In this case the previous client Rodrick. Responsibility for employee Internet usage may result from comments posted on forums and would be especially true for content posted on the firm's website.

Typically, an employer would only be responsible for an act committed by an employee while furthering the purpose of that employer. In this case the employee Grossman of the marketing department was authoring blog postings to the company website. Kelly/Warner Law is responsible for harm caused to a previous client if those postings defamed the character of Rodrick or were deemed to be fraudulently motivated by vindictive intent. In recent years Internet abuse by employees does not necessarily have to have been conducted to further the purposes of an individual employee. Providing an employee with the **opportunity** to cause harm is all that is needed to establish the employer's culpability. It does not matter if the employer is aware of the activity. It does not protect the employer from the responsibility for employee Internet usage and postings. In this case, Grossman (supposedly) was in fact acting expressly to further the purpose of Warner by adding marketing content to the firm's website specifically involving the previous client Rodrick and was clearly motivated by nefarious resolve.

There are very **EASY** and **BASIC** ways that employers can protect themselves from responsibility stemming from employees posting content on the company's website. The first is one of the simplest measures and the most cost effective way to implement is to have clear policies covering acceptable procedures for making Internet postings. If an employer has not written clear and precise policies for allowing content appropriate for the company's website, employees cannot be expected to know whether they are committing acts that the company finds unacceptable. In this incident, the Kelly Warner Law clearly did not have such policies in place as evidenced by the "agreement" supposedly signed June 17, 2015 – six days **AFTER** the posting on the website (see, Exhibit B). Warner falsely claims such policies were in place prior to the posting. This is just another one of Warner's **LIES** as there would **NOT** have been any need to recreate such a document on June 17, 2015 if such a document ever existed and had been signed by Grossman previously.

Policies are only the first step. There must be a method of monitoring postings being disseminated over the Internet on a company's website; otherwise there will be no way of telling if employees are adhering to company policies. This is especially true for a law firm with access to very personal and privileged information that is not meant to be divulged to anyone – certainly not disseminated on the worldwide web. There are many easy to implement

technology solutions and accompanying procedures requiring a simple approval process for content to go live online. As advertised internet legal specialist it is completely unacceptable for the Kelly/Warner Law to not have this technology in place. One simply needs to review the firms claims of their internet expertise advertised online. Please review just a few of the pages found on their websites (*see*, Exhibit C). Warner attempts to distance himself from any responsibility for the posting by claiming it was solely a “**Grossman did it**” as his convenient excuse. That just does not suffice when dealing with the serious nature of the violation of the Rules and the consequences realized by previous client Rodrick. There is no point implementing policies that are not monitored. In the case of Kelly/Warner Law if their improbable tale is factual, it is clear they neither implemented appropriate policies nor had a means to monitor content going up on their website. Warner’s response to the SBA for this outrageous occurrence is completely inadequate.

It is totally deplorable that Warner would employ Grossman to defame Rodrick. In no way is it tolerable under the dictates of the Rules and the SBA for an attorney to hire a “marketer” to create a post claiming Rodrick had been “arrested” and will do “prison time.” It is ridiculous to call this activity “marketing.” It is disgraceful that Warner would defend such indefensible misconduct with such arrogance as he has demonstrated toward the SBA with his response.

The Inclusion of Patsy Barri Grossman is Very Dubious as an Excuse for the Website Posting

Reviewing the inclusion of Barri Grossman in the Warner response as the party responsible for authoring and posting the content associated to Rodrick on the website raises numerous questions of the veracity of this assertion. Warner provides an exhibit in his response that serves as an admission of guilt by Grossman for this incident – the document. However, with a careful examination of this document along with the explanation provided in the response, there are some serious discrepancies that should be closely investigated by the SBA. Here are a few concerns when one scrutinizes available information about the Barri Grossman inclusion:

- In the response it has Grossman “acknowledging **HER** understanding...” (*see*, page 6 – Publication of Blog Post). In the document signed by ... someone (??), it states it was “voluntarily executed this Agreement of **HIS** own free will...” (*see*, Exhibit B, page three). In a profession requiring depicting important details accurately, Warner should have been able to identify the correct gender of the employee managing his website.
- The signature found on page three of the document is not “Barri Grossman.” It is “B” and something that appears to be “Williams” or close. If the name of this scapegoat was different than Grossman, why does the document depict the name incorrectly **30 TIMES** in the three (3) pages? When the document was signed by this **UNKNOWN** individual, once Warner was aware of this discrepancy of the name as presented on the document was erroneous, why would the document not be corrected and executed properly by Warner?

- The initials of Grossman found on page three of the document is **NOT** “BG”, but rather “BW.” Again, repeat same questions as previously provided.
- The response claims the posting occurred June 15, 2015. The posting was submitted June 11, 2015 as evidenced by the website page provided to the SBA (*see*, Exhibit A). Throughout the response Warner cannot get the simplest of **FACTS** correct in his rendition. It would have been reasonable due diligence for Warner to have reviewed the administration log files of the website to confirm exactly when Grossman (??) was inappropriately submitting the posting in question. Unless of course Warner was already well aware that whoever Grossman actually is, he/she had nothing to do with the submission of the post concerning Rodrick.
- It is extremely suspicious that the document presented to the SBA would not have been notarized to confirm the validity of the individual claiming to be Barri Grossman. The document as provided could have been signed by anyone; it certainly was **NOT** signed by a Barri Grossman. It was also important to certify the date this document was executed. Again, not being notarized as was appropriate only calls into question its legitimacy. Any experienced professional attorney would have recognized the significance of having such a document that was created solely to address the egregious circumstances associated with the posting to be properly notarized. As an attorney it was incumbent upon Warner to treat the SBA process with the decorum of professionalism, not his usual arrogance.

Warner has demonstrated a repeated proclivity to misrepresentation and outright lies as Rodrick has thoroughly documented in his complaint and his reply. As is a usual circumstance when dealing with a liar such as Warner, upon careful examination their stories do not hold up. That he would contrive an elaborate scheme to forge a person to act as a scapegoat would not surprise Rodrick. Warner has demonstrated a devious predisposition that is not thwarted by the requirement of abiding by the Rules as required by the SBA.

Due to the conspicuous discrepancies found in both the response and the document, plus taking in account Warner’s inclination to devise fraudulence, Rodrick felt compelled to explore the identity of Barri Grossman. Two separate licensed Private Investigators were commissioned to find the Barri Grossman identified in the Warner response. Their efforts were unsuccessful.

Neither male nor female, a Barri Grossman was not found to reside in Arizona. There were only three (3) found in the entire United States. Two were determined to **NOT** be possible candidates for the work of an “independent marketing consultant” described by Warner. The third, a female residing in New York working in the publishing business was contacted telephonically and it was confirmed she was not the individual employed by Kelly/Warner Law. The most likely candidate was found in Vancouver, British Columbia, Canada. This Barri Grossman advertised online to work as an independent contractor for blog content creation and website system administration. Although her phone number had been disconnected and she had changed her longtime residence, she was confirmed to **NOT** be the individual working

for Kelly/Warner Law. The Kelly/Warner Law firm was contacted both telephonically and onsite to which the receptionist in both incidences claimed to have no knowledge of an individual named Barri Grossman. A gentleman believed to be Warner stated to a PI that the names of people associated with the firm was an issue of confidentiality. No explanation for the need of such a business policy was offered (*see*, Exhibit D). Two licensed Private Investigators searching the entire United States and Canada could not locate a Barri Grossman that could have signed the document presented to the SBA in Warner's response.

A Thorough Review of the Posting Reveals the Degree of Damage Inflicted Upon Rodrick

A comprehensive review of the posting of June 11, 2015 reveals the degree of malicious resolve Warner committed in the orchestrated attack upon his past client Rodrick. There can be no question that the posting concerning Rodrick on the Kelly/Warner Law website was a premeditated assault using the power and expanse of the internet to maximize the damages realized by Rodrick from such an injurious account.

It is clear the posting was retaliation by Warner for postings made by Rodrick online detailing the factual circumstances surrounding the incompetent legal representation provided by Warner. He obviously believed the posting on his website was a justified reaction to the postings of Rodrick. Warner would like the SBA to believe the posting on the Kelly/Warner website was "tit for tat." However they are not comparable. The Kelly/Warner blog post was a very personal attack with untrue and defamatory rhetoric. While Rodrick's postings were a **FACTUAL** account of his experience with Warner.

Warner would have the SBA believe a completely preposterous series of events occurred to corroborate the tale presented in the response. As told, after a full 20 months **AFTER** Warner's withdrawal of legal representation of Rodrick, an "independent contractor" (**NOT**) named Barri Grossman working for Warner would create fabricated content that would be in clear violation of the Rules, specifically ER 1.6(d). This "professional" writer submits content that is clearly unprofessional. Grossman (He/she (?)) was allowed to freely post without **ANY** editorial controls and **NO** monitoring by the Kelly/Warner Law firm. Their official website did not employ any safeguards when broadcasting over the Internet such a vitriolic onslaught against the previous client Rodrick. But... the firm issued a retraction and reprimanded him/her (?) This is an asinine depiction of events that has no factual basis. Just a simple review of the webpage demonstrates the unique nature of this particular posting in comparison to the other content found on the website (*see*, Exhibit E). The post is written with terminology such as: "upon arrest", "the naughties", "double-dog swore", "Court TV **WFTLOL** twist", "being ballsy", and "prison time." All these terms denote a very personal anger and resentment. Warner would have the SBA believe a third party employee had carte blanche to create and post such content without any oversight controls in place to protect the brand of Kelly/Warner Law, a law firm **specializing** in Internet legal representation. That is ridiculous.

It is worth noting how such content was intentionally structured to be "spidered" by internet search engines in order to provide the most number of viewable results to disseminate

the content to the largest number of people possible. In other words, measures were taken by Kelly/Warner Law to maximize the damages realized by Rodrick with this content. The criteria that the search engines like Google use to rate and establish pertinent search results on a subject were deliberately manipulated to associate the content about Rodrick to very derogatory depictions. Please view the exhibit of the search results on Google associated with the posting clearly directing traffic to kellywarnerlaw.com (see, Exhibit F). Upon inspection it is clear the Google search results are presented to the viewer associating Rodrick to "Revenge Porn", "Alaskan Ponzi Scheme", "Frequent Flyer schemes", "extortion racket", and "fraud." The posting of the content was also premeditatedly structured by the "internet geeks" (see, Exhibit G) at Kelly/Warner Law to manipulate the Google search engine to vindictively maximize the exposure of the defamatory depiction of previous client Rodrick.

Although a "retraction" (see, Exhibit H) was posted on the website, it is disingenuous and does not acknowledge that the content published on the website had been factually inaccurate. They merely claim the posting was "unauthorized." It is insincere as it does **NOT** offer an appropriate apology to previous client Rodrick. It does not admit the **FACT** that the content contained extremely defamatory false accusations of being "arrested" and "prison time." This was not demonstrative of contrition. Rather yet another illustration of Warner's lack of ethics and his insincerity. As Internet legal specialist, Kelly/Warner Law would be aware of recent rulings in the Arizona courts that have established that a retraction within two weeks involving internet posting does **NOT** alleviate the liability as is the case with content published in print. The Arizona courts have recognized the distinctly different medium that digital content propagated over the internet represents compared to "old school" print content that only has a "shelf life" of two weeks. Digital content on the internet lives forever and can be picked up by other internet publishers (websites) even though the original posting has been removed. This is exactly what has occurred with the Rodrick posting created by the Kelly/Warner Law website.

Rodrick would like the SBA to recognize the irrevocable nature of the disparaging article Warner had posted on the Kelly/Warner Law website. Although he would like to minimize his misconduct when stating "At Warner's direction, the blog post was also removed from the website, and a retraction was issued" it is completely ineffective in addressing the proverbial "putting the Jennie back in the bottle." The nature of the internet allows for digital content to be circulated "forevermore." In this case the Warner post was gathered by other parties to only be republished on their websites. Such a site was Offenedextortion.com on September 18, 2015 (see, Exhibit I). This website is owned and operated by two of the plaintiffs currently involved with Rodrick in his Federal Court case. They were all too happy to repost the false and extremely defamatory content authored by Kelly/Warner Law on their website two months **AFTER** Kelly/Warner Law had removed the posting from their website. As an internet legal specialist, Warner is certainly familiar with the significance of Section 230 of the Communications Decency Act. This legislation legally establishes that there is **NOTHING** that can be done to have the false and defamatory posting now available on other websites removed. As the content is being "republished", the new websites displaying the article have **ZERO** responsibility or liability for its veracity. They are completely unrestricted in the further dissemination of Warner's posting against previous client Rodrick. The content created by

Warner and originally posted will remain on the internet for as long as a Rodrick's detractor chooses to post it. Rodrick would also like to draw the attention of the SBA to the comments found on the Offendextortion.com website below the posting where the operator claims he was contacted by Warner's partner Aaron Kelly. In an "Update" he claims: "I was contacted by Aaron Kelly later in the day. During our first conversation Kelly admitted that he was aware of the story and that **he actually "Liked" it**" He goes on to state: "Kelly would later deny that neither he nor Warner were responsible for the writing of the post. In my opinion he is being untruthful. Kelly is advertised for knowing or having knowledge of internet crime and that he is a tech. I find it surprising and unbelievable that somebody with so much knowledge of computers would find themselves in this situation." The malicious and vindictive retribution planned and implemented by Warner against his previous client with the creation of the defamatory post has **NOT** gone away. He is responsible for the creation and the continuation of this vile falsehood and it represents a serious violation of the Rules by disobeying a fundamental convenient of the attorney client privilege.

Conclusion

As a rather thorough search had been conducted without success, Rodrick would like to request a more in depth investigation by the SBA into Barri Grossman to validate his/her existence as claimed by Dan Warner.

Thank you in advance for your consideration and anticipated cooperation. Please do not hesitate to contact me if I may be of further assistance.

Respectfully submitted,

Charles Rodrick