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Arizona State Bar
4201 N. 24th Street
Phoenix, AZ 85016

RE: Formal Ethics Complaint Against:
Daniel R. Warner – SBN #026503
8283 N. Hayden Rd., Suite 229
Scottsdale, AZ 85258
(480) 331-9397

The factual basis for this complaint arises from Daniel R. Warner (hereafter, “Warner”) and his law firm Kelly Warner Law (hereafter, “Firm”) misconduct in Case No. CV2013-003800, Charles Rodrick vs. David Michael Ellis, et al. and Case No. 2:13-cv-01300-SRB, John Doe #1, et al. v. Chuck Rodrick, et al. The egregious unethical conduct has involved both cases of previous client Charles Rodrick (hereafter, “Rodrick”) and has extended through a period exceeding 2 and a half years.

Violating his ethical duties and obligations as an attorney as defined by the Arizona Duties and Obligations as defined within Rule 41(a), 41(f) and 41(g), Ariz. R. Sup. Ct.. Also, Arizona Rules of Professional Conduct contained within Rule 42, Ariz. R. Sup. Ct., by engaging in repeated instances of violating ER 1.1, ER 1.2, ER 1.3, ER 1.4, ER 1.5, ER 1.6, ER 1.7, ER 1.8, ER 1.9, ER 1.16, ER 1.18, ER 3.1, ER 3.2, ER 3.4, ER 3.5, ER 3.6, ER 4.1, ER 4.4, ER 7.1, ER 8.3 and ER 8.4. The seriousness and scope of the misconduct perpetrated by Warner over an extended period of time calls for an extensive review of the entire circumstances outlined below. It is requested that the Review Department order that Warner be disbarred from the practice of law in this State and his name be stricken from the roll of attorneys.

The allegations herein regarding Warner and the Firm’s misconduct are summarized as follows:

- 1) Duty of Confidentiality has been violated. An inexcusable offense of the most basic covenants of attorney ethics with Warner posting false and derogatory allegations along with privileged information on the Firm’s website at kellywarnerlaw.com in regards to previous client Rodrick.**

In January of 2013 Rodrick retained the services of Warner and his Firm. Warner and the Firm represented Rodrick in two litigations until November 19, 2013 (**see, Exhibit 1**) when Warner withdrew as counsel in an unethical and inappropriate manner. Although Warner’s conduct throughout his representation was far from competent and he was guilty of violating Rule 41(g) and numerous Rule 42 violations, Rodrick had decided to

move past Warner's misconduct and did not file an appropriate State Bar complaint. However, this high ground perspective took an unexpected divergence with the latest and completely scandalous misconduct with the posting of a scathing tirade against Rodrick on the Kelly Warner Law blog at kellywarnerlaw.com (**see, Exhibit 2**). On June 15, 2015 the blog post first appeared online making completely outrageous and defamatory claims against Rodrick. This posting on the Kelly Warner website was subsequently spread onto additional websites to further damage Rodrick. In particular, the website Offenextortion.com (**see, Exhibit 3**) operated by a litigant with whom Rodrick has a trial date set for September 8, 2015 in the Federal District Court of Arizona (**see, Exhibit 4**). Warner's and the Firm's intolerable posting clearly represents extreme misrepresentations and are prejudicial to the administration of justice in violation of **ER 3.6. Trial Publicity (a)**.

Perhaps the most basic and fundamental covenant of an attorney client relationship is the client's requirement that the disclosure of information to his attorney will be kept private except that which is required to be revealed in handling the case with the client's knowledge and permission. Certainly it is also a reasonable expectation that the attorney and his Firm will not use this private information to publicly attack and disparage the former client and/or take any provocation to an even higher level of aggression by making completely false accusation of a profound nature against the previous client. This is exactly what has occurred with Warner and the Firm initiating an assault upon the Duty of Confidentiality by their disreputable attack upon Rodrick. The Model Rules of Professional Conduct are well established and are to be followed by all attorneys. The scurrilous tirade against Rodrick on the Firm's website exceeds all bounds of decency and demonstrates a complete disregard to the rules of professional ethics. Besides discussing Rodrick and the case in violation of **Rule 41 Duties and Obligations of Members (f) and (g)** and **Rule 42 ER 1.6. Confidentiality of Information (a)**, the outrageous conduct is exacerbated with the inclusion of fabricated lies that clearly are of an extreme defamatory nature in violation of **ER 4.1. Truthfulness in Statements to Others, ER 4.4. Respect for Rights of Others** and **ER 8.4. Misconduct**. Specifically, claiming Rodrick was "arrested" in relation to the cases when there has never been contact initiated and/or any inquiry alleging criminal conduct by any law enforcement, let alone being "arrested" (**see, Exhibit 2**). Posting such a vitriolic collection of fabricated absurdity against one's own client goes against the core principles expounded by the legal profession in general and must be handled with an immediate and proper level of retribution to fit this outrageous misconduct.

A simple review of the June 15, 2013 posting validates all of Rodrick's claims. Rodrick is submitting this compliant citing all of the following violations in relation to the posting of the article found on the Kelly Warner website:

Rule 41. Duties and Obligations of Members. a) Those prescribed by the Arizona Rules of Professional Conduct adopted as Rule 42 of these rules; **f)** To maintain inviolate the confidences and preserve the secrets of a client; **g)** To avoid engaging in unprofessional

conduct and to advance no fact prejudicial to the honor or reputation of a party or a witness unless required by the justice of the cause with which the member is charged.

Rule 42. Arizona Rules of Professional Conduct. ER 1.6. Confidentiality of Information.

A lawyer shall not reveal information relating to the representation of a client...**ER 1.9.**

Duties to Former Clients. c) A lawyer who has formerly represented a client in a matter shall not thereafter: 1) use information relating to the representation to the disadvantage of the former client; 2) reveal information relating to the representation....

ER 1.16 Declining or Terminating Representation. (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests

ER 3.6. Trial Publicity. (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter. **ER 4.1. Truthfulness in Statements to Others.** a) make a false statement of material fact or law to a third person.

ER 4.4. Respect for Rights of Others. a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden any other person.

ER 7.1. Communications Concerning a Lawyer's Services. A lawyer shall not make or knowingly permit to be made on the lawyer's behalf a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law.... **ER 8.3.**

Reporting Professional Misconduct. (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority, except as otherwise provided in these Rules or by law. **ER 8.4. Misconduct.** It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct...; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice....

2) Warner and the Firm's billing practices were blatantly fraudulent and in violation of numerous Rule 42 requirements.

It is important to reiterate Rodrick had decided not to pursue a Bar Complaint against Warner until the recent development of the Kelly Warner Law website posting. However, with Warner's recent actions being so outrageous it is important to establish the history that has led to this point. It is rather cliché to accuse an attorney of billing irregularities, but in this instance the degree of fraud perpetrated by Warner is exposed with indisputable facts and documentation. The bizarre request by Warner that a payment was to be made in cash should have been an obvious warning that Rodrick was dealing with an unprofessional and highly unethical attorney. After the delivery of an inexplicable bill dated June 4, 2013 in excess of \$22,000.00 (**see, Exhibit 5**), Rodrick questioned why such a large bill was issued to which Warner's response was to offer a

“discount”, but required the payment to be made in cash. There is no justifiable reason for a reputable attorney to request and REQUIRE payment in CASH. Common sense dictates such a demand could only have been for nefarious motivations. The manner in which Warner improperly coerced his own client by inflating his bill in order to require cash payments as a means to receive the “discount” was nefarious and in violation of **ER 1.5 Fees (4)**, **ER 1.8 Conflict of Interest: Current Clients (a)** and **ER 8.4 Misconduct (c)**.

The issue of Warner and the Firm’s fraudulent billing practices began to unravel when Rodrick questioned the billing of 7 hours (\$1750.00) for work on a “draft” of a Motion to Dismiss being prepared for filing (**see, Exhibit 6**). It started innocent enough with Rodrick asking for details concerning the draft with email exchanges with Warner October 2, 2013 (**see, Exhibit 7**). When Rodrick was not satisfied with the vague responses or no response at all, he pushed for more details. This proceeded to lead to the direct request by Rodrick for Warner to deliver a copy of the “draft” for his immediate review. Warner refused his client’s request to see the document that Rodrick had been charged \$1750 for claimed and billed work. Interesting that Warner refers to “trust” in the email exchange, instead of just simply forwarding the “draft” as requested, a one minute of effort to comply with a reasonable request by the paying client Rodrick which Warner refused to abide. To this day Warner has NEVER provided a copy of this supposed work. There was not 7 hours of work performed for this project. There was no “draft”; it was fraudulent billing by Warner and the Firm to extract unearned monies from their client Rodrick. That Rodrick caught and called out Warner and the Firm for their fraudulent conduct is the basis for much of what was to transpire over the next month. The email exchanges prove beyond any dispute Warner’s refusal to perform the simplest and reasonable requests of the client Rodrick in clear violation of **ER 1.1 Competence**, **ER 1.2 Scope of Representation and Allocation of Authority Between Client and Attorney (a)**, **ER 1.3 Diligence**, **ER 1.4 Communication (a:1)(a:2)(a:3)(a:4)(a:5)(b)**, **ER 1.5 Fees (4)**, **ER 3.2 Expediting Litigation**, **ER 4.1 Truthfulness in Statements to Others (a)**, **ER 4.4 Respect For the Rights of Others (a)** and **ER 8.4 Misconduct (a)(c)**.

Another example of what was clearly and provable fraudulent billing perpetrated by Warner was in the preparation of a deposition of a plaintiff in the Arizona Superior Court case. In preparation for the deposition of defendant Adam Galvez scheduled for August 27, 2013, Rodrick created an account using the online application Basecamp to organize and store all relevant information and documentation for this designated project. Rodrick worked the week before diligently to provide all relevant information by uploading to the Basecamp Application with all documents, notes, emails, areas of questioning and even listing the pertinent questions that needed to be addressed. The whole basis for committing the amount of work involved in such an extensive project was to minimize the required efforts necessary and streamline the available information to Warner in order to avoid his spending an exorbitant amount of billing hours in preparing the list of questions. On Sunday evening August 26, 2013 Warner was first provided the access code and password to connect into the Basecamp information.

Monday morning August 27, 2013 was the first day Warner actually accessed the database of information provided in Basecamp and was documented by the application admin. Imagine the surprise for Rodrick to receive his next bill listing 8 HOURS costing \$2000.00 (**see, Exhibit 8**) of preparation by Warner on Sunday August 26, 2013, PRIOR to having actually accessed the documentation and information provided in the Basecamp application. Of course, Rodrick was also billed for the hours of preparation by Warner on Monday morning August 27, 2013 (**see, Exhibit 8**) when he actually did work on the list of questions for the deposition that day using the Basecamp application. Comparing the list of questions compiled and used by Warner for the deposition of Adam Galvez to the list of question provided by Rodrick in the Basecamp application, it was clear they were virtually the exact same. Warner had simply copied and pasted the list of questions from the Basecamp application into a word .doc. Such obvious deceitful and fraudulent conduct was a clear violation of **ER 1.5 Fees (4)**, **ER 4.1 Truthfulness in Statements to Others (a)** and **ER 8.4 Misconduct (c)**.

An example of inappropriate billing that Warner could not deny involved the inexcusable decision to provide an official transcript to the opposition's attorney. The transcript was paid for by Rodrick and such official documents are expensive. Not surprisingly Rodrick was dissatisfied with such a decision being made without being consulted by Warner and especially when finding the very same transcript – he paid for – being used by the opposition in a filing against Rodrick (**see, Exhibit 9**). To which Rodrick had to pay Warner in the preparation of the Response to the Motion using the transcript. Warner would have been aware (but did not admit to Rodrick) that his actions were a violation **ER 1.8 Conflict of Interest: Current Clients (b)**. After vetting the dissatisfaction with Warner's handling of this matter it was acknowledged that the misconduct was inappropriate and Warner begrudgingly agreed to an adjustment to the bill deducting \$1500.00 (**see, Exhibit 10**). This scenario of inappropriate conduct was in violation of **ER 1.1 Competence**, **ER 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer (a)**, **ER 1.4 Communication (a:1)(a:2)(a:3)(a:4)(a:5)(b)**, **ER 1.5 Fees (4)**, **ER 1.6 Confidentiality of Information (a)** and **ER 1.8 Conflict of Interest: Current Clients (b)**.

An example of the Firm's duplicity in the fraudulent billing practice involved an associate attorney Garrick McFadden (hereafter, "McFadden"). As McFadden was the only attorney at Kelly/ Warner Law with a license to practice in the State of California he was the attorney of record for the Federal case when it was being handled in the United States District Court Central District of California. Apparently it was the practice of the Firm to use this associate with no legal experience associated with the issues of the Rodrick case solely as a figure head. Rodrick never had a direct discussion or the exchange of information concerning his case with McFadden. However, when a hearing was scheduled by the Court for July 1, 2013, it was McFadden who would have to make the appearance for Rodrick. In preparation for the hearing there was never any contact in any form made by attorney McFadden with Rodrick. On June 27, 2013, the Friday before the scheduled hearing Wednesday July 1, 2013, a ruling was made to move the

venue by the Court and also vacated the scheduled hearing (**see, Exhibit 11**). However, when Rodrick received his billing from the Firm, he was billed for “preparation” by McFadden (**see, Exhibit 5**), the day of the cancellation with zero effort to have any contact with Rodrick. There was no reason for McFadden to be “preparing” and he demonstrated no effort to familiarize himself with the case by having a discussion with Rodrick. The Firm clearly created fictitious billing hours at the proverbial “last minute” as a means to obtain unearned revenue. The Firm was actively involved in the fraudulent billing practices perpetrated against Roderick in violation of **ER 1.5 Fees (4)**, **ER 4.1 Truthfulness in Statements to Others (a)** and **ER 8.4 Misconduct (c)**.

It was the many issues concerning the inappropriate and fraudulent billing practices of Warner and the Firm that led to the severing of the working relationship. The questioning and documentation of these events by Rodrick caused Warner and the Firm to create an immediate unethical exit strategy based on fictitious allegations against Rodrick so as to avoid further exposure of their ongoing and repeated misconduct. Rodrick was never “late” in his payments per the fee agreement (prepared by the Firm) which stated a period of 30 days before being “late” (**see, Exhibit 12**). Having provided all the billing invoices (**see, Exhibit 13**) from Kelly Warner Law for their representation and the fraudulent billing practices experienced by Rodrick, it would be appropriate for the Arizona State Bar to conduct a full financial records investigation into this matter and the billing practices of the Firm.

3) Warner improperly withdrew as counsel and did so in a manner to create the most damage to Rodrick and his cases. The true motivation for the withdrawal was a means to divert attention from the incompetence of counsel and the fraudulent billing practices of Warner and the Firm.

On October 25, 2013 Warner filed a Motion to withdraw from the Federal Court case pursuant to ER 1.16(a) (**see, Exhibit 14**), claiming unspecified “professional considerations require termination of representation.” Also on October 25, 2013 Warner filed a Motion to Withdraw from the Arizona Superior Court case (**see, Exhibit 15**). In the effort to withdraw from the Arizona Superior Court case Warner engaged in *ex parte* communication with Judge Cooper in violation of **ER 3.5 Impartiality and Decorum of the Tribunal (a)** (**see, Exhibit 16**). Further, in a telephonic conference with Judge Cooper many unjustified and vitriolic disparaging comments involving character assassination were directed at clients Rodrick and Traci Heisig (hereafter, “Heisig”) by Warner to the Judge in a clear violation of **ER 1.8 Conflict of Interest: Current Clients (b)**. Knowingly and intentionally creating an obvious and damaging prejudice to Rodrick for all future litigation before this Judge in the case moving forward in violation of **ER 1.8 Conflict of Interest: Current Clients (b)**, **ER 4.1 Truthfulness in Statements to Others (a)**, **ER 4.4 Respect for Rights of Others (a)** and **ER 8.4 Misconduct (c)(d)**.

The Arizona Rules of Professional Conduct (Rule 42) are very clear in describing the necessary requirements for an attorney to withdraw from a case. The main

consideration that must be examined is set forth by **ER 1.16 Declining or Terminating Representation** (b)(1) “withdrawal can be accomplished without material adverse effect on the interest of the client....” Warner was all too aware he would never be able to clear this requirement legitimately thus requiring the creation of an elaborate yarn to justify his inappropriate withdrawal after months of litigation and collecting in excess of \$75,000 in unjustified legal fees for himself (cash) and the Firm.

In order to withdraw as counsel for the Rodrick cases, and to do so within the Arizona Rules of Professional Conduct, Warner needed to create a diversion. He accomplished this by claiming Rodrick was attempting “extortion” to receive “free legal services”. This ludicrous accusation was nothing more than “smoke and mirrors”, the means for Warner to draw attention away from his misconduct and fraudulent billing practices. The situation came to a head in the month of October 2013 after Rodrick had begun to question the fraudulent billings and also Warner’s handling of the cases. Warner had made it a consistent practice to ignore many of Rodrick’s email communications and the few he responded to were unresponsive to the case inquiries being made. Warner refused repeated request for a face-to-face meeting for months so that Rodrick could receive the necessary updates and discuss the cases and consult on strategies. Telephone calls went unreturned. No dialog was occurring from Warner updating Rodrick what the legal strategies were in handling the ongoing litigations. All the while Rodrick was paying (on time) tens of thousands of dollars in legal billings (**see, Exhibit 13**). After some email exchanges concerning a “draft” Rodrick wished to review and had been billed 7 hours by Warner, the situation became contentious with Warner’s repeated refusal to provide the (paid for) “draft” (**see, Exhibit 7**). After putting up with ALL of Warner’s unprofessional misconduct – arrogance, rudeness, unresponsive, unjustified ego and just bad legal work – Rodrick addressed his concerns by sending Warner a letter detailing the issues (**see, Exhibit 18**). Reviewing the letter sent by Rodrick, no rational person can question a client paying his attorney tens of thousands of dollars has the right to document and communicate the events outlined and to require an immediate resolution when serious concerns with the handling of one’s case exist. With the multiple issues occurring with the cases due to Warner’s misconduct and a scheduled calendared conference in a few days, Rodrick was left with no option but to seek some form of direction to handle the situation – even if it required intervention from the Judge. Perhaps to be expected, instead of handling himself professionally Warner stayed consistent and responded with an unjustified, irrational, illogical and just plain ludicrous accusation that Rodrick was attempting “extortion” (**see, Exhibit 19**).

What is ironic to this situation is that after reviewing the entirety of the email exchanges between Rodrick and Warner during this time period of October 2013, it becomes indisputable that repeated requests for case updates and to set up a meeting to discuss all the issues go unresolved by Warner. In fact, what occurs is Warner in an email dated October 22, 2013 (**see, Exhibit 20**) is the one engaging in “extortion” when requiring payment for the October billing that was NOT late per the terms of the Fee Agreement (**see, Exhibit 12**) in order for Rodrick to be granted the simple request for a meeting

with his attorney. These events occurred after MONTHS without a meeting or status updates and having paid tens of thousands of dollars in billing to Warner. Conducting his legal practice in such a manner as “extorting” with threats upon his client as a response to reasonable request to addressing concerns and receiving status updates in regards to the client’s cases are indisputable violations by Warner of **ER 1.1 Competence**, **ER 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer (a)**, **ER 1.4 Communication (2)**, **ER 1.16 Declining or Terminating Representation (b:1)(d)**, **ER 3.3 Candor Toward the Tribunal (1)(3)**, **ER 4.1 Truthfulness in Statements to Others (a)** and **ER 8.4 Misconduct (a)(c)**.

The factual narrative provided above outlines a premeditated scheme perpetrated by Warner to hide and obfuscate fraudulent billing practices and multiple violations of the Arizona Rules of Professional Conduct. This was done by attempting to turn the attention away from himself and onto his client Rodrick with a preposterous fairy tale of “extortion” that lacks logic, requires ignoring facts set forth in email communication exchanges and relies on a complete lack of common sense. The egregious nature of the described events are verified by the provided documentation and outline a clear pattern of offenses perpetrated by an Arizona licensed attorney with a Machiavellian mindset of self preservation with no ethics or moral compass. Perhaps a guilty conscience is an explanation for Warner to choose to revisit his despicable deeds after 20 months, yet the result was the need to rationalize his previous misconduct by attacking Rodrick personally. The attacks this time on the Firm’s website with a blog post and in a manner and with content that defies all rationale. The violations are many but can certainly be listed to include **ER 1.1 Competence**, **ER 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer (a)**, **ER 1.4 Communication (2)**, **ER 1.16 Declining or Terminating Representation (b:1)(d)**, **ER 3.3 Candor Toward the Tribunal (1)(3)**, **ER 4.1 Truthfulness in Statements to Others (a)** and **ER 8.4 Misconduct (a)(c)**.

- 4) Warner filed documents in the Federal Court case even after his Motion to Withdraw. The filings were done without Rodrick’s consent, included false information and were done as an intentionally plan by Warner to damage Rodrick and his case.**

The Motion to Withdraw was filed by Warner in the Federal Court case on October 25, 2013 (**see, Exhibit 21**). On October 31, 2013 Warner filed a Counsel’s Response Plaintiff’s Motion for Sanctions (**see, Exhibit 14**). Included in this Response was **Exhibit 3** consisting of articles appearing in the Arizona Republic and posted on the CNN.com website. At the insistence of Warner, no contact had been made by Rodrick with the authors of the articles prior to them being published in order to dispute the false allegations being made by the opposition parties. Not surprising the articles portrayed a very negative viewpoint toward Rodrick. Warner was well aware of the negative depiction of events as characterized by these articles, however, for no discernible reason other than to damage Rodrick further, Warner included the articles as an exhibit to his filing. This addition of damaging information interjected into the official record of

the case was an inexcusable breach of Warner's attorney client duties. If the opposition had tried to enter this same information into the Court's Record, a Motion to Strike would have been filed and such prejudicial material would never have been allowed into the case. This act was a clear attempt by Warner to sabotage his own client and in violation of **Rule 41. Duties and Obligations of Members (g)** and **ER 1.1 Competence, ER 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer (a)**, **ER 1.4 Communication (a:1)(a:2)(a:3)(b)**, **ER 1.9 Duties to Former Clients (c:1)(c:2)**, **ER 1.16 Declining or Terminating Representation (b:1)(d)**, **ER 3.1 Meritorious Claims and Contentions**, **ER 3.6. Trial Publicity (a)**, **ER 4.4 Respect for Rights of Others (a)** and **ER 8.4 Misconduct (a)(d)**.

On November 7, 2013 Warner filed the Response to Plaintiffs' Motion for Sanctions (**see, Exhibit 23**). Prior to filing the Response, Warner and the Firm refused to respond to multiple emails and telephone contacts made by Rodrick in regards to this filing (**see, Exhibit 24**). According to Warner, the client was not allowed a say in how his case was handled. Directly quoting Warner from his email of October 28, 2013, he asserted "I do not need your input on the response to the motion" (**see, Exhibit 24**). Further the Response was submitted with an Exhibit A, a declaration by Rodrick. The declaration was not factually correct and this had been communicated to Warner and the Firm repeatedly (**see, Exhibit 24**) prior to the filing of the Response. The email of October 28, 2013 also has Warner acknowledging he had been made aware by Rodrick of this fact when he writes "However, I encourage you to change your declaration so that it is factually correct. If appropriate I will revise the response accordingly" (**see, Exhibit 24**). Apparently submitting a "factually correct" declaration was not an "appropriate" prerequisite for a filing in Federal Court by Warner as he submitted the Response anyway with the inaccurate declaration. Warner's disgraceful misconduct in Filing a Response in U.S. Federal Court without the clients input or permission and containing false information was in clear violation of **ER 3.3 Candor to the Tribunal (a:1)(a:3)**, but also **Rule 41. Duties and Obligations of Members (g)** and **ER 1.1 Competence, ER 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer (a)**, **ER 1.4 Communication (a:1)(a:2)(a:3)(b)**, **ER 1.9 Duties to Former Clients (c:1)(c:2)**, **ER 1.16 Declining or Terminating Representation (b:1)(d)**, **ER 3.1 Meritorious Claims and Contentions**, **ER 3.6. Trial Publicity (a)**, **ER 4.4 Respect for Rights of Others (a)** and **ER 8.4 Misconduct (a)(d)**.

- 5) **Warner intentionally sabotaged Rodrick's cases with obvious misconduct ignoring clear and direct instructions and doing the complete opposite of the clients' request. This Included knowingly filing false information with the Court against Rodrick's direct instructions.**

As a form of retaliation for Rodrick questioning the billing practices and several incompetent decisions in the handling of the cases, Warner set out to implement a concerted plan to undermine and damage Rodrick in his cases. Having now been afforded the time to reflect upon the events associated with the legal representation by

Warner in the Rodrick cases it becomes abundantly clear the pattern of misconduct spanning the entire 10 month engagement. After reviewing documentation, billing invoices, email exchanges, filings with the Court and contemplating the direct meetings (the very few that occurred) it becomes obvious the only objective for Warner was to maximize billing hours, even to the degree of fraudulent billing practices , with no consideration given to the best interest and proper ethical legal representation of his clients.

As is usually the case with a perpetrator such as Warner, they are always eventually going to reveal their true character (or lack thereof). In an email sent by Warner to Rodrick on October 25, 2013 he discloses his lack of integrity and professional decorum on even the most basic level when he writes “I’ve been weary of you since day one and certainly would not do anything to put myself in jeopardy for someone like you” (**see, Exhibit 19**). Warner did not have a problem with “someone like” Rodrick when he was collecting the fraudulent billing in excess of \$75,000. Certainly not when Warner took \$12,000 in cash that he had required Rodrick to pay him. For whatever reason Warner held Rodrick in such disregard, this perspective clearly affected his representation and was the catalyst for the consistent misconduct in handling the cases. A review of the pattern of nonresponsive and/or no response email exchanges further confirms a pattern of unprofessional disrespect that Rodrick endured for months in trying to deal with Warner. The simplest request would go ignored, such as the example of the 7 hour “draft” that Warner refused to (ever) produce for Rodrick’s review (**see, Exhibit 7**). The email sent October 28, 2013 by Warner to Rodrick refusing to allow him ANY say in his own case is reprehensible, and Warner’s attitude is clearly expressed when he wrote “I do not need your input on the response to the motion” (**see, Exhibit 24**). When viewing the representation performed by Warner for Rodrick in its entirety (email exchanges, notes, letters and all filings), it becomes clear Warner’s deep rooted ill-will toward his client (“since day one”) manifested itself in the manner in which he performed his duties – misconduct and an unprofessional demeanor. It is clear Warner justified his misconduct based on his perception of Rodrick and he felt he had no obligation to be held to the professional conduct dictated and required by Rule 41 and Rule 42. It was for these reasons that Warner intentionally went out of his way to sabotage Rodrick and his cases in the most detrimental manner possible and at every opportunity. That wasn’t enough for Warner; he felt the need to attack Rodrick one more time – 21 months later with his brazen blog post on the Kelly Warner Law website (**see, Exhibit 2**).

The violations are many but can certainly be listed to include **Rule 41 Duties and Obligation of Members (f)(g)** and **ER 1.1 Competence, ER 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer (a), ER 1.3 Diligence, ER 1.4 Communication (2), ER 1.6 Confidentiality of Information (a), ER 1.8 Conflict of Interest: Current Clients (b), ER 1.9 Duties to Former Clients (c:1)(c:2), ER 1.16 Declining or Terminating Representation (b-1)(d), ER 3.1 Meritorious Claims and Contentions, ER 3.3 Candor Toward the Tribunal (1)(3), ER 3.6. Trial Publicity (a), ER 4.1**

Truthfulness in Statements to Others (a), ER 4.4 Respect for Rights of Others (a), ER 7.1. Communications Concerning a Lawyer's Services and ER 8.4 Misconduct (a)(c).

6) Rodrick was sanctioned in the Arizona Superior Court case due to Warner's Incompetence in handling his duties.

Warner's incompetence as an attorney was well demonstrated with Rodrick being sanctioned in the Arizona Superior Court case in the amount of \$1046.40 (**see, Exhibit 27**). The cause for the sanction was due to Warner not obeying the Court's direct instruction to provide at least 24 hours notice to the opposing counsel in the event of cancelling a scheduled deposition (**see, Exhibit 28**). Warner made the inexcusable decision to cancel a scheduled deposition without receiving consent from his client Rodrick and did so without providing the Court Ordered 24 hour notice to the opposing parties' attorney. This incident is a clear indication of the gross incompetence of Warner as a simple email or phone conversation with the required 24 hour notice would have sufficed to satisfy the proper compliance. Instead Warner chose to ignore the Court to the obvious and expensive detriment of his client Rodrick. This conduct was in clear violation of **Rule 41 Duties and Obligation of Members (g)** and **ER 1.1 Competence, ER 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer (a), ER 1.3 Diligence, ER 1.4 Communication (a:1)(b), ER 3.4 Fairness to Opposing Party and Counsel (c), ER 4.4 Respect for Rights of Others (a) and ER 8.4 Misconduct (a)(d).**

7) Warner's incompetence in the representation of Rodrick began at the offset of the relationship. It was wholly unprofessional for Warner to represent both Rodrick and Heisig jointly. Throughout the representation multiple examples exist where Warner ignored the best interest of the clients in favor of maximizing his billing hours.

The representation by Warner crossed many lines of questionable competence. One such issue involved Warner's decision to represent both Rodrick and Heisig jointly. Although Warner did have both Rodrick and Heisig sign a waiver acknowledging consent of the joint representation per ER 1.7(b) (**see, Exhibit 13**), there was no required consultation given by Warner on what the possible legal ramifications and potential concerns may be – and could possibly develop at a later time. The requirement of ER 1.7(b) and ER 1.18(d) requires the "client give informed consent" and that such consent is confirmed in writing. This did not occur and a simple review of the Fee Agreement there is no mention of this very important issue. In the Arizona Superior Court litigation Warner filed a complaint on behalf of both Rodrick and Heisig. When the defendants filed their Answer to the complaint they all also submitted counter-claims. It was clear the lawsuit needed to be filed separately by Rodrick and Heisig and is reflected in the 8.2 hours billed (January 21, 2013 - \$2050) by Warner for the separate drafts. Inexplicably Warner decided to file a joint lawsuit instead – and billed an additional 6.3 hours (January 25, 2013 - \$1575) to prepare the joint lawsuit. Both paid via invoice #00376 (**see, Exhibit 29**). To Rodrick's detriment, this was indicative of Warner doubling up his billing hours for the exact same objective and work.

It was obvious the distinct differences in the circumstances of the Rodrick and Heisig claims required separate lawsuits; it certainly became an absolute necessity to correct this error in representation by Warner after viewing the counter-claims filed by the defendants. It was an obvious conflict for a competent and ethical attorney to represent both Rodrick and Heisig with the allegations contained in the counter-claims that alleged conduct so completely and diversely different between the two clients. A professional attorney intent on serving the best interest of his clients would have immediately advised that one of the clients would need to obtain separate counsel going forward with the litigation. This should have been the obvious course of action in following the dictates of **ER 1.7 Conflict of Interest: Current Clients (a:1)(a:2)** and **ER 1.18 Duties to Prospective Clients (d)**. However, this did not occur and Warner never broached the subject with Rodrick or Heisig in violation of **ER 1.1 Competence, ER 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer (a)** and **ER 1.4 Communication (a:1)(a:2)(a:5)(b)**. The obvious motivation that governed Warner's misconduct to not even discuss the option of obtaining separate counsel was dictated by simple greed achieved by the additional billing hours in representing both clients to the detriment of Rodrick and Heisig.

Another example of incompetence by Warner in properly representing and protecting his client Rodrick occurred March 29, 2013. The Federal Court case complaint was filed in California on March 20, 2013. The next week Warner requested a meeting in his office to discuss this new development. Present for the meeting were Rodrick, Heisig and a third-party not represented Brent Oesterblad (Hereafter, "Oesterblad"). Warner was not representing Oesterblad and it was never a discussion or option that that would have been the case (**see, Exhibit 30**). Prior to, nor any time during this meeting did Warner consider the ramifications to the best interest of his client Rodrick in discussing the intricate details and their legal strategies in the presence of a third party. At no time did Warner take into consideration the dictates of **ER 4.3 Dealing with Unrepresented Person**. When Oesterblad was called upon to testify in the Arizona Superior Court case he was questioned in detail to divulge the circumstances and intricate details of all discussions that had occurred during this meeting. Rodrick had been under the reasonable assumption that a meeting scheduled by his attorney in the law offices would be protected by the basic covenant of client attorney privilege. This was not the case and was something that any professional and competent attorney would be well aware. The testimony given by Oesterblad in regards to this meeting was detrimental to the efforts of Rodrick's litigation strategies. Warner was directly involved in undermining Rodrick's case in the Arizona Superior Court case by his sheer unprofessional and incompetent representation in violation of his duties under **Rule 41 Duties and Obligation of Members (f)(g)** and **ER 1.1 Competence, ER 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer (a), ER 1.3 Diligence, ER 1.4 Communication (a:1)(a:2)(a:3)(b), ER 1.6 Confidentiality of Information (a), ER 1.7 Conflict of Interest: Current Clients (a:2), ER 4.3 Dealing with Unrepresented Person and ER 8.4 Misconduct (d)**.

A particularly shocking example of Warner not being a responsible attorney licensed to practice in Arizona in general involved his handling (lack thereof) of a very real “murder” threat made against Rodrick. On May 22, 2013 the Firm received two very disturbing phone calls from an individual who would later be identified as Nick Maietta. The two calls were recorded by the phone system of the Firm. Mr. Maietta is a person who has been convicted of a sex offense in California and has a lifetime requirement to register as a Sex Offender per California Statutes. He also worked as the system administrator for the website Offendextortion.com owned by the Galvez’s, litigants in both of the Rodrick cases. After the Galvez’s received an official DMCA notification for inappropriate content found on their website, Mr. Maietta felt compelled to call the Firm and express his planned attacks upon the Firm and Rodrick. Warner contacted the Galvez’s attorney Randal Hudson on May 23, 2013 in regard to the threatening phone calls via email as the catalyst for the phone calls had been clearly stated as involving the website owned by the Galvez’s. Mr. Hutson responded by stating he also had been contacted by “Nick” claiming he “was going to murder” Rodrick (**see, Exhibit 31**). Any reasonable person hearing the two recordings and learning additional threats had occurred conveying intent to “murder” someone would take such threats as serious and requiring immediate attention. As Rodrick’s legal representative and that his Firm received the phone calls, it was Warner’s professional and ethical duty to properly protect his client both from a legal ramification in regards to the cases but also to report the incidents to the proper law enforcement agency. Devoid of any ethical or moral compass, Warner did absolutely nothing. He didn’t even follow up with his email communication with Mr. Hutson who said he had a copy of the voicemail left by “Nick”. Warner’s actions consistently demonstrate absolutely no concern for the best interest or even safety of his client Rodrick, only maximizing the billing hours associated with the cases.

- 8) Warner has refused to provide a complete copy of all the files associated with the two cases which he represented Rodrick for over 10 months in 2013 per ER 1.16(d). This refusal has been a detriment to Rodrick and his ability to properly litigate his cases.**

Even after instigating the inappropriate withdrawal and engaging in additional misconduct to sabotage Rodrick’s cases, Warner was still not finished with his malpractice. He repeatedly ignored the basic requirement of supplying a previous client with all documents pertaining to the cases required under **ER 1.16 Declining or Terminating Representation** (d). Numerous communications from Rodrick requesting the immediate release and return of all materials and documents involving his case have been repeatedly ignored. This include retrieval of all the information and documentation that had been stored using the online Basecamp application (**see, Exhibit 32**). To this day Warner and the Firm have still not returned the requested and required documents to Rodrick and Heisg.

An example of the important documentation that has not been released by Warner and the Firm are the official transcripts taken of 3 opposing parties in the cases. This

evidence is significant to the legal strategies in presenting Rodrick and Heisig cases. Even after Heisig retained a competent replacement Attorney Eric Mark to handle the Superior Court case, Warner and the Firm continued their refusal to release this evidence upon the request from Attorney Eric Mark. A clear violation of **ER 1.3 Diligence, ER 1.4 Communication (a:4), ER 1.16 Declining or Terminating Representation (d), ER 3.2 Expediting Litigation, ER 3.4 Fairness to Opposing Party and Counsel (a)(c), ER 4.4 Respect for Others (a) and ER 8.4 Misconduct (d).**

It is clear Warner's intentional misconduct was directed at Rodrick to adversely affect the litigation process in the cases to the detriment of his previous client. The Arizona Superior Court case was significantly influenced with severe negative repercussions for Rodrick due to these violations perpetrated by Warner. Such misconduct was an inexcusable abuse of the legal process and extreme examples of violations per **ER 1.3 Diligence, ER 1.4 Communication (4), ER 1.16 Declining or Terminating Representation (d), ER 3.2 Expediting Litigation, ER 4.4 Respect for Rights of Others and ER 8.4 Misconduct (d).**

There is no justification for Warner and the Firm to completely neglect the required release and/or return of ALL documentation in their possession involving the Rodrick cases. The State Bar should require that Rodrick is allowed immediate access to the Basecamp Application where all of his documentation and information has been stored by Warner and the Firm such as the transcripts of the 3 deposition detailed as this information is **crucial to ongoing litigation.**

CONCLUSION

The State Bar is charged with the responsibility for protecting the public from problematic attorneys. As part of this duty, the State Bar should ensure that the public has ready access to information about attorney misconduct, so it can make informed decisions about who to retain when seeking counsel.

For these reasons, the State Bar should conduct an In-depth investigation into the allegations outlined in detail in this complaint in regards to attorney Warner and the Firm. The damages realized by Rodrick due to the extensive misconduct of Warner and the Firm are significant and must be thoroughly reviewed to determine the amount of culpability that can be associated with their malpractice. I submit this complaint and ask that the State Bar take action against Warner in the form of disbarment, and also make public the various acts of misconduct described herein.

I respectfully request the opportunity to reply to any response given in this matter.

Thank you in advance for your consideration and anticipated cooperation.

Charles D Rodrick