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

RE: Formal Ethics Complaint Against:
Michael P. Harnden – SBN #029474
2954 N. Campbell, #340
Tucson, AZ 85719
mike@brorexlaw.com

August 13, 2018

Dear State Bar of Arizona,

The factual basis for this complaint arises from Michael P. Harnden (*hereafter*, "Harnden") (Bar No. 029474) and the Law Office of Barry W. Rorex, PLC (*hereafter*, "firm") in regard to legal representation of their client Charles Rodrick (*hereafter*, "Rodrick"). The complaint details the abandonment and multiple ethical violations in regard to Case No. 2:13-CV-01300-SRB, John Doe #1, et al. vs. Charles Rodrick, et al. (*hereafter*, "federal case"). The case was adjudicated in the U.S. District Court District of Arizona before the Honorable Susan R. Bolton (*hereafter*, "Judge Bolton"). A plethora of egregious unethical conduct has damaged Rodrick both in regard to his legal interests and financially that extended through a period exceeding two (2) years since the conclusion of the trial of the federal case July 1, 2016.

On August 14, 2014, Rodrick signed a Legal Service Fee Agreement with the Law Office of Barry W. Rorex (*see*, Exhibit A). The identified attorneys to represent Rodrick for the federal case were Harnden and Barry W. Rorex (Bar No. 025910) (*hereafter*, "Rorex"). On September 2, 2014, the Notice of Appearance was filed with the federal case naming both Rorex and Harnden as attorneys of record in the federal case for Rodrick (*see*, Exhibit B).

The **VERY BRIEF** relevant history of the in total five (5) year timeline of the federal case is Rodrick was a Defendant to the allegations of twelve (12) Plaintiffs making five claims in their Third Amended Complaint (*hereafter*, "TAC"). Through the course of adjudicating the lawsuit all claims of nine (9) of the Plaintiffs would be dismissed by the Court. The claims of the three remaining Plaintiffs would be presented before a jury at the trial that commenced on June 28, 2016. On July 1, 2016, the jury would return verdicts in Rodrick's favor for two of the three Plaintiffs. However, the jury did rule in favor of one of the Plaintiffs, David Ellis (*hereafter*, "Ellis"), on two (2) of the five (5) claims asserted in TAC. The complaint submitted to the SBA concerns the legal representation of Rodrick **post-trial** of the federal case commencing on July

1, 2016 by Harnden. Rodrick's complaint **DOES NOT** look to the SBA to re-litigate the outcome of the TAC concerning Ellis, it focuses solely on the ethical violations that specifically involve Harnden's post-trial legal representation. With that acknowledgment, should the SBA's investigation require further detail concerning any aspect of the particulars to the federal case deemed germane, the available information is voluminous but can be promptly provided upon request.

Violating Harnden's ethical duties and obligations as an attorney as defined by the Arizona Duties and Obligations as stated by the Arizona Rules of Professional Conduct contained within Rule 42 (*hereafter*, "Rules"), Arizona Revised Superior Court, by engaging in repeated instances of violating ER 1.1, ER 1.2, ER 1.3, ER 1.4, ER 1.5, ER 1.16, ER 3.2, ER 3.3, ER 5.2, ER 7.1, ER 7.5 and ER 8.4. The seriousness and scope of the misconduct perpetrated by Harnden over an extended period of time calls for an extensive review of the entire circumstances outlined below. The specific violations committed by Harnden are governed by the following Rule 42 dictates:

1. **ER 1.1 – Competence.** A lawyer shall provide competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
2. **ER 1.2 – Scope of Representation and Allocation of Authority Between Client and Lawyer.** (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by ER 1.4, shall consult as to the means by which they are to be pursued.
3. **ER 1.3 – Diligence.** A lawyer shall act with reasonable diligence and promptness in representing a client.
4. **ER 1.4 – Communication. (a)** A lawyer shall: (1) promptly inform the client if any decision or circumstance with respect to which the client's informed consent, as defined in ER 1.0(e), is requires by these Rules; (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably requests for information; and (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law. (b) A lawyer shall explain a matter to the extent reasonable necessary to permit the client to make informed decisions regarding the representation.
5. **ER 1.5 – Fees.** (a) A lawyer shall note make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following: (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances. (e) A division of a fee between lawyers who are not in the same firm may be made only if: (2) the client agrees, in writing by the client, to the participation of all the lawyers involved and the division of the fees and responsibilities between the lawyers.
6. **ER 1.16 – Declining or Termination Representation.** (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced,

shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or other law; (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client.

7. **ER 3.2 – Expediting Litigation.** A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.
8. **ER 3.3 – Candor Toward the Tribunal.** (a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.
9. **ER 5.2 – Responsibilities of a Subordinate Lawyer.** (a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.
10. **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 communications about the lawyer or the lawyer's services. A communications is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.
11. **ER 7.5 – Firm Names and Letterheads.** (a) A lawyer shall not use a firm name, letterhead or other professional designation that violates ER 7.1. (d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.
12. **ER 8.4 – Misconduct.** It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

It is requested that the State Bar of Arizona (*hereafter*, "SBA") assign a Bar Counsel to review the misconduct of Harnden and recommend the appropriate disciplinary procedures for the circumstances involved in his abandonment of the federal case and repeated ethical violations of the Rules. Rodrick is requesting Harnden be sanctioned in the form of permanent disbarment. Also, Rodrick seeks financial reimbursement for services not rendered that were paid directly to the personal Wells Fargo bank account (not a required Trust IOLTA account) of Harnden per his direct instruction.

The allegations herein regarding Harnden's misconduct are summarized as follows:

A) Harnden falsely claimed to the Court that he had not been retained to provide Rodrick legal representation for the federal case post-trial.

On January 2, 2018, Harnden filed a Motion to Withdraw as Counsel in the federal case (*see*, Exhibit C). In the Harnden filing he states: "The represented Defendants have not sought to retain the undersigned or his current office to continue to represent him in this matter;" (*see*, Exhibit C, ¶4) and "There exists no representation agreement obligating the undersigned to continue to represent these Defendants in this matter" (*see*, Exhibit C, ¶5). These claims by Harnden to the Court were knowingly disingenuous

and represent a clear incident of making "false statements of facts" in violation of **ER 3.3 – Candor Toward the Tribunal**.

Harnden was "retained" to continue in providing Rodrick legal representation for the federal case beyond the scope of the original fee agreement. This fact is undeniable due to the evidence available in the form of Harnden's email request for payment and later acknowledgement of receipt of said payments along with available bank records of receiving two direct payments to his **PERSONAL** Wells Fargo Bank Account, "Checking Acct 6018268273, Name on account: Mike Harnden" (*see*, Exhibit D). The first payment was requested by Harnden in an email sent June 16, 2017, eleven (11) days before the scheduled four (4) day trial was to commence. On June 17, 2106, Rodrick direct deposited $5,000.00 per Harnden's instructions to his identified **PERSONAL** bank account. A second payment was made per Harnden's instructions to his same **PERSONAL** bank account in the amount of $10,000.00 on July 1, 2016. The July 1, 2016 payment was the day the trial ended and a verdict was returned in favor of the one Plaintiff Ellis on two of his claims of the TAC. The $10,000.00 was for Harnden to provide Rodrick legal representation to address the post-trial motions and/or Notice of Appeal to challenge the verdict returned. Harnden has **NEVER** documented any accounting in the form of invoices detailing the services rendered as required per the Rules to offset the $10,000.00 paid to provide post-trial legal representation for the federal case.

The July 1, 2016 payment is most relevant in significance to this complaint as it was pre-payment for the post-trial motions and potential Notice of Appeal that Harnden had advised would be necessary to challenge the jury verdict. The pre-paid post-trial work would **NOT** be provided by Harnden to Rodrick in any manner evidenced by **NOT** a single submission to the Court occurred for a Motion, Notice of Appeal or even Responses to the filings of other litigants would **NOT** be addressed to Rodrick's legal detriment. Throughout this **ENTIRE** timeline of **19 MONTHS** Harnden would maintain that any such filings were not required or appropriate because he repeatedly asserted the "Court had **NOT** issued the final judgment" in the federal case.

The relevant back story: the last payment to the Law Office of Barry W. Rorex for the federal case was in the amount of $10,000.00 that occurred on February 1, 2016. The payment was for the **pre-trial preparation** for the scheduled February 16, 2016 commencement. However, due to conflicts with the Court's calendar the trial would be postponed three (3) times that would push back the commencement of the trial to June 28, 2016 (*see*, Exhibit E). It was during this time period that Rodrick would be advised that due to a serious medical condition contracted by Rorex, he would not be able to assist Harnden with the federal case, specifically with the scheduled trial. It was due to Rorex's medical condition that Harnden would request Rodrick to pay him directly to cover the representation for the four (4) day trial. Frankly, at this time Rodrick had no idea that Harnden's request was not in compliance with law practice procedures as defined by the Rules when having payment being deposited into a **PERSONAL** bank account versus **NOT** being deposited with an IOLTA trust account as required. The insult

over injury aspect of this complaint is Harnden's claim he was **NOT** "retained" despite being paid $10,000.00 for the federal case post-trial legal representation. Rodrick would **NOT** receive one invoice detailing any accounting for these monies paid directly to Harnden, which is actually apropos as **NOT** one filing post-trial would be submitted by Harnden on behalf of Rodrick's legal interests. The only filing by Harnden with the Court that occurred post-trial was the Motion to Withdraw as Counsel that was finally submitted **NINETEEN (19) MONTHS** after the conclusion of the trial and the final judgment had been rendered.

There was no reason for Rodrick to believe Harnden had "no obligation" to be providing legal representation for the federal case prior to December of 2017 when he disclosed he would be filing the Motion to Withdraw as Counsel which occurred January 2, 2018. The facts are the following:

1) Contrary to Harnden's claim that "there exists no representation agreement," the original fee agreement between Rodrick and the Law Office of Barry W. Rorex addressed the manner in which representation would be extended beyond the original scope agreed upon. The terms are clearly articulated to be the following**:** ***"Attorney and Client agree that additional representation setting forth the scope and cost of the additional representation can be mutually agreed to and memorialized via email or other written correspondence and WILL NOT require a separate fee agreement"*** (*see*, Exhibit A, highlighted). The extensive evidence available via emails and other communications establish beyond any dispute that "additional representation" for the federal case was agreed upon by Harnden – **REPEATEDLY**. The "additional representation" of Rodrick provided by Harnden would also indisputably involve completely different cases other than the federal case in which a "new" agreement was not prepared by Harnden and signed by Rodrick. These are undeniable facts.

2) It is the responsibility of the attorney and/or law firm to secure the necessary "representation agreement" that adequately sets forth the scope and terms of legal representation to be provided to the client. Not the other way around. Rodrick's actions clearly demonstrate his belief that the matter was covered pursuant the original fee agreement. He was **NOT** told by Harnden otherwise, and the matter of a "new" agreement was not seriously broached by Harnden until eight (8) months **AFTER** the conclusion of the trial. It is at best disingenuous that Harnden shifts the responsibility of having a "representation agreement" definitively detailing the terms and scope of legal representation post-trial was somehow the obligation of the client to prepare and secure is absurd. Again, to assert such ludicrousness demonstrates what can only be defined as knowingly lying as a means to obscure the truth.

3) It is irrefutable that Harnden and the Law Office of Barry W. Rorex were listed with the Court as the Attorneys of Record with a simple review of the court's

docket. Harnden would not file a Motion to Withdraw until January of 2018, **19 MONTHS** after the completion of the trial. Yet, **NOT** one filing was submitted for post-trial Motions or required Responses to Motions filed by other litigants.

4) In the Harnden filing he states: "Due to the illness and continuing recovery of Mr. Rorex, the undersigned believes that law office is dissolved or otherwise inoperative pending the recovery of Mr. Rorex" (*see*, Exhibit C, ¶3). Rodrick was never notified that the firm had been "dissolved." At no time would Rorex file a Motion to Withdraw as Counsel in the federal case prior to January of 2108.

5) As late as August 17, 2017, Harnden was still listing in the captions of court filings to be associated with the Law Office of Barry W. Rorex in legal representation of Rodrick (*see*, Exhibit F). If Harnden believed the law firm had been "dissolved" and he no longer had any association at all with the firm, he did not reveal such information in his filings in Nevada which conveyed the opposite. This **NON-DISCLOSURE** would appear to have been an intentional deception to misinform Rodrick and was an ethical violation of ER 7.1 and 7.5.

Despite Harnden's brazen lies to the Court, Rodrick easily disproves the claim he had "not sought to retain" post-trial legal representation for the federal case. This fact documented with a wide variety of verifiable evidence including and bank record payment transactions. The absurdity of Harnden's fallacy of facts is deplorable for the damaged rendered upon Rodrick's legal interest, but also the complete disregard to honesty and integrity demonstrated to the Court with such self-serving and overt lies.

Harnden was in clear violation of **ER 1.1 – Competence, ER 1.3 – Diligence, ER 1.4 – Communication, ER 1.5 – Fees, ER 1.16 – Declining or Termination Representation, ER 3.2 – Expediting Litigation, ER 3.3 – Candor Toward the Tribunal, ER 5.2 – Responsibilities of a Subordinate Lawyer, ER 7.1 – Communications Concerning a Lawyer's Services, ER 7.5 – Firm Names and Letterheads and ER 8.4 – Misconduct.**

B) Harnden "effectively" abandoned the federal case in July of 2016 by his conduct that amounts to meeting the legal definition of "extraordinary circumstances."

The foundation of the complaint submitted by Rodrick detailing the ethical violations of numerous Rules is Harnden's abandonment of the federal case all the while claiming legal representation was occurring. The repeated assertion by Harnden was the federal case was effectively "on hold" awaiting the conclusion of a legal technicality. The legal technicality in question was the Court to issue the "Final Judgment," which according to Harnden's claimed "legal research" had **NOT** been issued. An assertion proclaimed by Harnden for the **NINETEEN (19) MONTHS** post-trial. The legal analysis steadfastly asserted, based on Harnden's alleged "legal research," was that the Court had **NOT** issued the final judgment and as such pursuing the filing of post-trial motions was actually prohibited. This same legal premise was the justification proclaimed by Harnden

to justify **NOT** filing a Response to a Motion for Permanent Injunction. It was also the reason, or more accurately the **EXCUSE**, it was not allowed to file a Notice of Appeal.

Unfortunately, this Harnden false legal stratagem finally completely unraveled and could no longer be ignored on January 29, 2018, when the Court issued an Order granting Harnden's Motion to Withdraw as Counsel (*see*, Exhibit G). What was most relevant to the Order issued by Judge Bolton was the Court's legal analysis specifically stating: "The Orders disposing of the last claims and parties were entered on July 1 (Doc. 411, July 22 (Doc. 439) and November 9, 2016 (Doc. 452). **The time to file post-trial motions has long past**." The Court's ruling was a shocking revelation as Rodrick had been advised by attorney-of-record Harnden the repeated and emphatic counsel for **nineteen (19) months** that a final judgment had not been rendered by the Court. The relevance of this misnomer was the reliance of Harnden's legal analysis that the Court had not issued its final judgment, which was claimed precluded Rodrick from pursuing several post-trial motions, challenging a Motion for Permanent Injunction and the certainly filing a justified Notice of Appeal if unsuccessful in obtaining the sought after post-trial legal remedies with the Court.

The Supreme Court made clear in *Maples v. Thomas* that "when an attorney abandons his client without notice," the attorney has "severed the principle-agent relationship [and] no longer acts, or fails to act, as the client's representative." –U.S.--, 132 S.Ct. 912, 922-23, 181 L.Ed.2d 807 (2012). Furthermore, in *Gibbs v. Legrand*, the 9th Circuit Court held that "[f]ailure to inform a client his case has been decided, particularly where that decision implicates the client's ability to bring further proceedings *and* the attorney has committed himself to informing his client of such a development **constitutes attorney abandonment**." 767 F.3d 879,886 (9th Cir. 2014) (emphasis). Also, an attorney's failure to communicate about a key development in his client's case can, therefore, amount to **attorney abandonment** and thereby constitute an extraordinary circumstance. *Maples*, 132 S.Ct. at 923-24; *see also Towery v. Ryan*, 673 F.3d 933, 942-43 (9th Cir. 2012).

1) The actions of Harnden demonstrate conduct that proves the old adage, he operated on a personal benefit strategy to "take the money and run."

It is irrefutable that the trial for the federal case ended with one of the twelve plaintiffs obtaining a verdict on two claims against Rodrick on July 1, 2016. Also on July 1, 2016, Harnden instructed and received the $10,000.00 direct deposited to his personal Wells Fargo Bank account by Rodrick to provide additional legal representation to address post-trial legal matters. The issues being presented to the SBA in this compliant is Harnden, an Arizona licensed to practice law attorney, effectively perpetrated a "take the money and run" scam upon Rodrick.

It is indisputable that Harnden would **NOT FILE ONE** Motion, Response, Notice, Request or Reply with the Court after the "Jury Verdicts" were recorded on the Court's Docket on July 1, 2016 (Docket #435). It was not until he submitted a Motion to Withdraw as Counsel on January 2, 2018 (Docket #469) that **ANYTING** was filed by Harnden post-trial. This is easily evidenced with a simply review of the Court's Docket for the federal case (*see*, Exhibit H). On January 29, 2018, the Court's Order granted Harnden's Motion to Withdraw as counsel. Rodrick would **NOT** receive an accounting from Harnden detailing **ANY** work performed associated with preparing and/or even researching post-trial motions for the federal case. Rodrick did **NOT** receive a refund of the $10,000.00 for the services not performed by Harnden as required pursuant the Rules. Rodrick is entitled to a full refund of monies paid for legal services **NOT** provided by an Arizona licensed attorney.

2) Rodrick had specific claims to pursue with post-trial motions that would not be filed by Harnden as required.

There were several post-trial motions discussed to protect Rodrick's legal interest that were specifically assured by Harnden would be appropriately filed with Court. **NOT ONE** of these available legal remedies post-trial would be submitted to the Court to protect Rodrick's legal positions. Due to the gross incompetence and negligence of Harden, the following options for post-trial motions and/or an appeal were lost to Rodrick in protecting his legal interests:

a) <u>Rodrick approved a post-trial motion advised by Harnden to file a motion to pursue attorney fees pursuant Rule 54(d).</u>

Harnden advised Rodrick there existed a very strong case to pursue attorney fees pursuant Rule 54(d) as the prevailing party against eleven (11) of the twelve (12) Plaintiffs in a civil litigation adjudicated over forty (40) months with all claims of the TAC being dismissed. There were different circumstances associated to the dismissal of the alleged claims for the eleven (11) Plaintiffs, but **ALL** were proven to have had no legal or factual basis to have pursued expensive litigation.

Pursuant to Rule 54(d)(2)(B)(i), timing and content of the Motion to be **<u>filed no later than 14 days</u>** after the entry of judgment. The Motion to pursue attorney fees was never filed by Harnden on behalf of Rodrick. When Rodrick enquired as to the status of the Rule 54 matter, which literally occurred innumerable times over nineteen (19) months, Harnden always professed that if could not be filed until the Court issued a final judgment. Harnden was either grossly negligent or was intentionally misinforming Rodrick for nineteen (19) months to hide his incompetence in

order to garner other legal work from Rodrick not associated with this case – or BOTH.

b) <u>Rodrick approved a post-trial motion advised by Harnden to pursue a new trial pursuant Rule 59(a)(1)(A).</u>

Harnden advised Rodrick that there existed a case to pursue a new trial; altering or amending a judgment, pursuant Rule 59(a)(1)(A). Pursuant Rule 59(b) the time to file a Motion for a new trial must be **<u>no later than 28</u>** days after the entry of judgment. The Motion for a new trial was never filed by Harnden on Rodrick's behalf. The same situation prevailed as the circumstances associated with post-judgment motions for attorney fees, relief from a judgment and potentially a Notice of Appeal, Harnden insisted for nineteen (19) months Rodrick was precluded from acting upon these option until the Court issued the final judgment.

On September 19, 2016, although already on day eighty-nine (89) days since the Clerk filed the Judgment and sixty-one (61) days past the deadline, Harnden states in an email to Rodrick his contention as a status update when proclaiming: "That rule is one of the reasons why there is no final judgment yet and our **<u>new trial motion is still timely</u>**" (*see*, Exhibit I).

Rodrick was naïve in periodically attempting to get an update from Harnden on when the Motion for New Trial would be filed. There were countless email communications that would go unanswered or responded with the usual reassurance the federal case was waiting for the final judgment. One of many emails was sent on April 10, 2017, nine and half (9.5) months after the trials conclusion, and Rodrick provides a "quick list of what I think are priorities." Listing: "New trial in Fed case. It is a ghost for us that keep haunting us. I think we should be asking for final judgment (if that is possible) and get some leverage for attorney's fees award under our belt. The final judgment will look like a win for us instead of a loss" (see, Exhibit J). Harnden **NEVER** advised Rodrick the time to file **ANY** post-trial motions were "had long past."

c) <u>Rodrick approved a post-trial motion Harnden advised to pursue relief from judgment pursuant Rule 60(b)(3).</u>

Harnden advised Rodrick that there was a very strong case to pursue relief from the judgment pursuant Rule 60(b)(3). Pursuant Rule 60(c)(1) the timing of the motion must be made within a reasonable time – and for reason of fraud, misrepresentation and misconduct by the parties **<u>no more than a year after the entry of the judgment</u>**. The Motion for relief from a judgment was never filed by Harnden on Rodrick's behalf despite an

overwhelming amount of evidence obtained to pursue this particular legal remedy. Furthermore, there was an abundant amount time, a full year, to fully research and acquire the necessary evidence (which was obtained) to pursue this legal remedy, which once again Harnden did nothing. It becomes apparent Harnden's pretense of awaiting a final judgment was nothing more than an elaborate rouse to distract Rodrick's concerns about the "AZ Fed case" while at the same time being paid for legal representation in other cases in Nevada, Michigan and Washington.

d) Even Rodrick's most basic legal protections went ignored by Harnden with NOT filing a Notice of Appeal pursuant Rule 4(a).

Any competent attorney understands the post-judgment appellant process. The most basic and first order of diligence is to be acutely aware of being timely in making post-trial filings. An Appeal in a civil case is very straight forward governed pursuant Rule 4(a)(1)(A) wherein a civil case, the notice of appeal required by Rule 3 must be filed with the district clerk within **30 days of the judgment**.

To exacerbate the frustration for Rodrick is the repeated insistence by Harnden that there were very good grounds for an appeal that would overturn the judgment awarded by the jury at trial if unsuccessful in the discussed post-trial motions planned (previously identified in this complaint). The appellant process is a fundamental aspect of all litigation, whether civil or criminal. Due to Harnden's gross negligence and incompetence that amounted effectively to the abandonment of the federal case, Rodrick was deprived of making "free, calculated and deliberate choices" in utilizing legal remedies afforded to him to ensure justice. *See Ackermann v. United States*, 340 U.S. 193, 198 (1950).

Harnden demonstrated repeated conduct that was particularly egregious in light of the degree of damage to Rodrick's legal interests. There were clear violations of **ER 1.1 – Competence, ER 1.2 – Scope of Representation and Allocation of Authority Between Client and Lawyer, ER 1.3 – Diligence, ER 1.4 – Communication, ER 1.5 – Fees, ER 1.16 – Declining or Termination Representation, ER 3.2 – Expediting Litigation, ER 3.3 – Candor Toward the Tribunal, ER 5.2 – Responsibilities of a Subordinate Lawyer and ER 8.4 – Misconduct.**

C) Harnden's gross negligence post-trial extended beyond not filing motions, it also included completely ignoring the required Responses to the Motions filed by other litigants' post-trial in the federal case.

As the attorney-of-record Harnden was responsible to handle **ALL** matters associated with the federal case in protecting the legal interest of Rodrick. Harnden's dereliction of professional duties would included the unfathomable position to **NOT** file Responses to submission to the Court by other litigants still involved with the federal case post-trial. Again, these required filings are a fundamental aspect to any legal representation of a client and **ALL** competent attorneys are aware of the potential ramifications default judgments being ordered by the Court.

1) The Court partially granted the Plaintiff's Motion for Permanent Injunction due to Harnden not submitting a Response.

On July 19, 2016, the Court received Ellis's Motion for Permanent Injunction. Any competent attorney would be well versed in the timelines associated with a Responsive Memorandum. In the U.S. District of Arizona the requirements are dictated by LRCiv. 7.2(c) wherein a Response is to be filed within **fourteen (14) days** after service in a civil case. Harnden did **NOT** file a Response to the Motion for Permanent Injunction.

Inexplicitly at the time, and to this day Rodrick has no idea what occurred, Harnden effectively went completely "off the grid" in that he could not be contacted telephonically, text messaging and/or via email for weeks (*see*, Exhibit K). No matter how many communications were attempted by Rodrick to discuss the Motion for Permanent Injunction and the required Response, they all went unanswered. As one example, an August 5, 2016 email Rodrick states: "Not responding to the injunction in hopes to win a new trial is betting on the come and a bad bet and could leave the door open for her to simply rule on it." Another, on August 28, 2016, still with no update or explanation why a Response was not filed, Rodrick writes: "I have been trying to reach you to find out what is going on with the fed case filings, especially the one many weeks overdue. I cannot see any strategy in not responding to the pending motions" (*see*, Exhibit K, Email #2). Rodrick was forced to contact others in an attempt locate Harnden, such as a family member and Rorex by texting and email in both July and August of 2016 as all the deadlines had expired (*see*, Exhibit K). Simply stated, Harnden was paid $10,000.00 on July 1, 2016 (*see*, Exhibit D) for post-judgment work and he disappeared several weeks without any explanation.

When Harnden finally reappeared in late August, 2016, the only explanation for his absence was claiming he was indisposed due to "personal matters." It was at this time that Harnden conveyed to Rodrick that there was **NOT** an issue of being "untimely" with any of the post-trial motions, a Notice of Appeal or the Response to the Motion for Permanent Injunction as the Court had yet to issue the Order of Final Judgment. Additionally, Harnden would convey his legal opinion to Rodrick speculating that the Court would not rule on the Motion due to the final judgment issue.

Despite the assurances of Harnden that the Motion for Permanent Injunction would not be ruled upon, on November 9, 2016 the Court issued an Order granting the motion (*see*, Exhibit L). To add insult to injury the Court would specifically note for the record that the "Defendants failed to file a response to Plaintiff's request." Furthermore, the Court noted the significance of this breach being "Defendants' failure to file a respond allows the Court to summarily grant the Plaintiff's Motion," citing LRCiv 7.2. Once again, Harnden would convey to Rodrick that this issue would be resolved once the "final judgment" was finally issued by the Court and all post-trial motions could be filed. He further asserted the Injunction issue could be addressed upon appeal if necessary. It would be determined in 2018 that this repeated legal analysis was a complete fabrication by Harnden representing no known legal principles to support his fallacy.

2) Harnden assured Rodrick he would file a Notice of Compliance to notify the Court the compliance of the terms of the Permanent Injunction. He lied.

Rodrick worked diligently to be in compliance of the Court's Order, both timely and in full scope of the actions required. It was a concern of Rodrick's to abide to the full extent of the removal of all identified statements to avoid any chance of an accusation of not being in compliance.

Rodrick had discussed with Harnden the importance of filing a Notice of Compliance upon completion of the project in order to make the Court aware that he was in compliance. Once again, after difficulty with communications, there was finally contact made with Harnden via email addressing the issue of the Notice of Compliance (*see*, Exhibit M). On November 21, 2016 at 11:00PM, Rodrick sent an email to Harnden that clearly memorializes the frustration and/or degree of desperation in alerting the Court that he was in compliance of the Permanent Injunction by communicating "Mike I did not hear back from my previous emails about this notice of compliance request so unless you have something else to file this will be filed tomorrow" (*see*, Exhibit M, #2). Harnden finally responded to Rodrick the next morning, November 22, 2016 at 11:38AM, via email claiming that

"I'll take care of these today" (*see*, Exhibit M, #3). **ONCE AGAIN**, the filing Harnden claimed would be filed would **NOT** occur.

The issue of the Notice of Compliance is **NOT** that significant in light of **ALL** the ethical violations being documented. Rodrick does acknowledge this obvious fact. However, it is still relevant in memorializing how reprehensible such clearly incompetent the legal representation provided by Harnden that was magnified with an e-mail falsely claiming the issue was being handled that very day. The issues surrounding the filing of Notice of Compliance is brought before the SBA as a clear example that documents a wide range and plethora of ethical violations that were repeatedly committed by Harnden to even the simplest of tasks.

3) Harnden did NOT file a Response to a Request for Entry of Final Judgment to present his "research" on behalf of Rodrick's legal interest.

A Rodrick co-defendant Brent Oesterblad (*hereafter*, "Oesterblad") attempted to bring the final judgment issue before the Court as a *pro per* litigant by filing a Request for Entry Final Judgment Pursuant Fed. R. Civ. P. 54(b) on May 25, 2017 (Docket #461). If Harnden's "research" concerning the final judgment issue was correct, Oesterblad's filing provided a perfect opportunity to submit a **RESPONSE** in which to lay out the legal and factual basis for his contention that the Court had not issued a final judgment in the case. **ONCE AGAIN**, Harnden did **NOT** file a Response in support of Oesterblad's Request. When Rodrick inquired as to Harnden's strategy in **NOT** filing a Response, it was claimed there was no need to do so as the issue was now before the Court and would finally be resolved. This is **NOT** what occurred.

After waiting impatiently for **eight (8) months**, on January 26, 2018, the Court's Order denied Oesterblad's request (*see*, Exhibit N). To the dismay of Rodrick, the Court was very specific in its analysis when stating: **"final judgment has already been properly entered in this case; there is no need for the Court to direct the Clerk to issue a final judgment…."** Judge Bolton would also write: "Final Judgment has been issued in this case in accordance with Rule 58(a) on **July 1, 2016**. **(Clerk's Judgment); Fed. R. Civ. P. 58(a). That judgment resolved all remaining claims between all remaining parties in this case.**"

Rodrick attempted to ascertain what Harnden's explanation would be for the Court's Order by sending an email on January 28, 2018, which stated in part (*see*, Exhibit O): "I am requesting some clarification concerning Judge Bolton's ruling today. In the ruling she denies Brent's Request for Final Judgment." Also: "This is of great concern to me. I have waited impatiently for 19 months to decide which of your advised legal strategies to pursue based solely on the position that a final judgment had **NOT** been issued. Please provide an update on how my legal position is affected by the Court's by Judge Bolton today." Not surprisingly Harnden did **NOT** respond as he clearly knew his façade of a legal theory had been finally compromised and it was time to "head for the hills," which is what he had already

done in filing his Motion to Withdraw as Counsel earlier that month. It has become abundantly clear that the **NO** "final judgment" mantra for **NINETEEN (19) MONTHS** was a hoax to keep Rodrick onboard as the **ONLY** paying client for Harnden's legal practice for other cases not associated to the federal case.

The above pattern of malfeasance is in direct contradiction to the dictates of **ER 1.1 – Competence, ER 1.2 – Scope of Representation and Allocation of Authority Between Client and Lawyer, ER 1.3 – Diligence, ER 1.4 – Communication, ER 1.5 – Fees, ER 1.16 – Declining or Termination Representation, ER 3.2 – Expediting Litigation, ER 3.3 – Candor Toward the Tribunal and ER 8.4 – Misconduct.**

D) Harnden shared his fabricated final judgment legal analysis that the status of the federal case was effectively "on-hold" conveyed to Rodrick with others.

Harnden's proclamations concerning his "legal research" assessment that the Court had not issued a final judgment in the federal case were not limited to his communications with Rodrick. The assertion by Rodrick of Harnden's stated legal counsel in regard to the final judgment is not limited to email communications and/or a "he said, he said" debate. There were many incidences of Harnden directly confirming the legal counsel he had conveyed to Rodrick to others. There are two examples that provide both witnesses present and support documentation. One involved a meeting that was held in Phoenix, Arizona and the other a court hearing that occurred in Seattle, Washington.

1) Harnden shared his legal analysis of Rodrick's status with the federal case with others at a meeting on March 16, 2017.

On March 16, 2017 a meeting was held to discuss the status of the federal case. The parties in attendance were Rodrick, Harnden, Oesterblad and Kelley Bradbury (*hereafter*, "Bradbury"). The meeting lasted approximately three hours and the discussions included the status of the federal case which included the filing of post-trial motions, Notice of Appeal, and potential issues to present to the appellant court.

At the meeting, Harnden conveyed his legal opinion that a final judgment had **NOT** been issued by the Court. Harnden detailed the significance being that Rodrick was precluded from pursuing any post-judgment motions and/or filing a Notice of Appeal. Harnden asserted that without a final judgment for the federal case, it was not officially terminated. Having witnessed firsthand the legal analysis being conveyed by Harnden as to the final judgment, both Oesterblad and Bradbury signed affidavits to memorialize the meeting (*see*, Exhibit P).

2) Harnden declared for the court's record in March of 2017 that a final judgment had NOT been issues by the Court for the federal case.

Another source of documentation of Harnden's legal analysis being conveyed to Rodrick concerning the final judgment was Case No. 16-2-21498-3-SEA in the Superior Court in the State of Washington in and for the County of King. In this case Harnden was retained for limited representation *pro hac vice* to prepare and argue before the Washington Court a Response to a Motion for Summary Judgment. The Response was prepared by Harnden and filed with the clerk of the court March 29, 2017 (*see*, Exhibit Q). What is relevant to the Motion is Harnden documenting in an official court filing his assertion "The Arizona federal case has been fully adjudicated. MSJ, 8:15-17. While there is a partial judgment in that case, Mr. Rodrick remains **waiting for the Federal District Court to issue its Final Judgment so that he may proceed with his post-verdict remedies, including a motion for new trail"** (*see*, Exhibit Q, pg. 3:¶6). This filing occurred nine (9) months after the Clerk's Judgment was filed in the Court Docket (Docket #411).

On April 12, 2017, the hearing addressing the Motion for Summary Judgment that Harnden had prepared the Response occurred before the Honorable Catherine Moore in the Superior Court of the State of Washington in and for the County of King, Department 44. Harnden appeared telephonically representing Rodrick. In the courtroom for the hearing was Oesterblad as a *pro per* Plaintiff. He prepared an Affidavit detailing what he witnessed firsthand as to relevant statements to this case made by Harnden before the Washington Court on the official record. Oesterblad describes what he witnessed as the following (*see*, Exhibit P, pg. 4:¶11):

*"During the court hearing attorney Michael Harnden would declare on the record that there had **NOT** been a final judgment issued in the U.S. District Court District of Arizona, Case No. 13-CV-01300-PHX-SRB."*

It had been nine and half (9.5) months since the Court had issued the final judgment, Harnden stated in an open court hearing in another jurisdiction, falsely, that the final judgment had **NOT** been issued by the Court. As Rodrick was also present for the Washington court hearing telephonically, he witnessed Harnden's assertion what had been conveyed to him for months. It is why Rodrick would continue to believe the legal counsel he was receiving from Harnden was legally and factually accurate. Unfortunately, that simply was not the case and the truth would not be revealed to Rodrick for another nine (9) months.

Harnden was in clear violation of **ER 1.1 – Competence, ER 1.2 – Scope of Representation and Allocation of Authority Between Client and Lawyer, ER 1.3 – Diligence, ER 1.4 – Communication, ER 3.2 – Expediting Litigation and ER 8.4 – Misconduct.**

E) Harnden proposed a "Flat Fee Agreement" in March of 2018 to handle ALL litigation matters for Rodrick.

After the conclusion of the Phoenix meeting of March 16, 2018, Oesterblad and Bradbury had departed, Rodrick and Harnden had a private meeting to discuss their working relationship going forward. The main objective of the meeting was Harnden's proposal to work on any and **ALL** legal matters for Rodrick on a flat fee monthly basis. After the discussion, Harnden would write up the matters discussed and present a proposal titled "Flat Fee Agreement" (*see*, Exhibit R).

In the flat fee agreement document are a few notes of relevance to the complaint. Harnden documented that he was providing legal counsel proposing a post-trial motion for a new trial. He wrote: "All research, filings, arguments, and other actions necessary to **pursue a motion for new trial** in Arizona federal Case No. 2:13-cv-01300-SRM including any related appellate proceeding" (see, Exhibit R, pg. 1).

Harnden also documents the reiteration of his claim that there had not been a final judgment issued by the Court when writing: "The immediate pursuit of all legal fees **once final judgement has been finalized** against each individual plaintiff in Arizona federal Case No. 2:13-cv-01300-SRB. (This would not include collection only court proceedings to obtain the actual judgements)" (*see*, Exhibit R, pg. 1).

What is an important detail is the proposed agreement was to commence March 17, 2017. This date was eight and half (8.5) months after the conclusion of the trial and the filling of the Clerk's Judgment on July 1, 2016 (Docket #411). Harnden was proposing a monthly flat fee payment from Rodrick to "pursue" legal work that he had already paid $10,000.00 to "pursue" the post-trial motions such as a motion for a new trial on July 1, 2016 (*see*, Exhibit D). The document memorializes Harnden's legal counsel conveying his assertion that the Court had **NOT** issued a final judgment eight and half (8.5) months after the Court had in fact issued the final judgment and all timelines were "long past" to file post-trial motions and/or Notice of Appeal pursuant Rule 4(a)(1)(A).

Harnden did not have a job and Rodrick was his only client. It is very plausible the disclosure that all post-trial motions or even a Notice of Appeal in this case were no longer available as time to file had "long past" was simply not a viable option for fear of losing his only paying client's business.

F) In December of 2017 Rodrick began to demand answers from Harnden to validate his "legal analysis" based on his alleged extensive "legal research" concerning final judgment, the Motion to Withdraw as Counsel was filed January 2, 2018.

After a year and a half of countless assertions by Harnden that a final judgment had **NOT** been issued and the post-judgment motions and/or Notice of Appeal could **NOT** be filed until the Court resolved this specific requirement, Rodrick became insistent in

being provided a thorough update and explanation in regard to the status to the "AZ Federal case." An email from Rodrick to Harnden on December 5, 2017 stated: "I am requesting an update and to verify that there is in fact no final judgment…" (*see*, Exhibit S, #6). Rodrick did not receive a response from Harnden. A follow up email was sent on December 7, 2017 stating: "Please answer my emails and my questions as I have not had any updates or plan to move the case forward and bring it to a close" (*see*, Exhibit B, #5). Rodrick did not receive a response from Harnden. Rodrick received an email from Harnden on December 13, 2017 that provided a very sparse and incomplete update and/or status report of the case by stating: "Included in the case file is my research regarding a motion for new trial. The research I completed long ago showed that **a new trial motion based on fraud (or fraud on the court) may be filed at any time**" (*see*, Exhibit T, #4). The provided "case file" had no such claimed "research" as asserted.

Another follow up email was sent to Harnden on December 19, 2017 stating: "I do not understand the non communication from you about my AZ Fed Case. I have not been updated by you since the last 10,000 check written to you. Last year you claimed the AZ Fed case was not over and no final judgment has been made and the appeal was not an issue as far as time wise. I do not know if they are correct or not and I am looking for clarification from you. I am asking you to update me on my case and let me know my options for an appeal and obtain a judgment or a new trial and if you are unable to then file for clarification from judge Susan Bolton" (*see*, Exhibit S, #4). Rodrick did not receive a response from Harnden.

The potential problems with Harnden's repeated proclaimed legal position concerning final judgment was highlighted to Rodrick with the discovery of a "Clerk's Certification of a Judgment To Be Registered In Another District" that had been filed with the U.S. District Court District of Nevada, Case No. 3:17-ms-00008 (*see*, Exhibit U). The "Certification" was being used to submit applications for writ of garnishments (*see*, Exhibit V). Once again a follow up email demanding answers was sent on December 20, 2017 stating with urgency and clarity: "This document comes from Arizona filed in Nevada to collect on a judgment. It clearly says the time for appeal has in fact expired or no appeal filed. There is a serious problem with this based on you claiming there is no final judgment and ignoring the case and losing all my legal options that were available to me. If the court is wrong please advise what you will be doing about it. This may explain why you have been ignoring the case and all requests for updates" (*see*, Exhibit S, #2).

On December 21, 2017, Harnden finally revealed to Rodrick the true agenda and position that had been undisclosed as to filing any post-judgment pleadings associated to the "AZ Fed Case." An email received from Harnden would assert "two things": "First my position, based on my research done at the time, has not changed. Because the verdict signed by the judge (the document you attached) did not relate to the dismissed Doe Plaintiffs, and the fact that the judge specifically denied entering a final judgment against them when Bellucci requested after the 12b6, **I do not believe it constitutes a**

'final' judgment that would trigger post-judgment motion or appeal deadlines." Continuing: "Second, you are confused that I am responsible for this matter. I continued litigating the case and handled the trial out of a sense of duty to Barry and with the expectation he would return. That does not mean I am obligated to continue to represent you" (*see*, Exhibit S, #1).

The December 21, 2107 email was the first time Harnden had ever conveyed that there was "**no obligation**" for him to continue to provide legal representation for Rodrick in the federal case. In reality what had occurred in December of 2017 was Harnden's realization that, as the sayings goes, "the gig was up" and it was time to "turn tail and run for the hills."

CONCLUSION

The SBA is charged with the responsibility of protecting the public from problematic attorneys. In the case of Harnden, he has demonstrated a propensity to engage in ethical violations with willful disregard to the Rules. In particular the history of Harnden to abandon a case to the legal jeopardy of clients is reprehensible. As part of its duty, the SBA 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 SBA Bar should conduct an in-depth investigation into the allegations outlined in detail in this complaint in regards to attorney Harnden and the firm. The damages realized by Rodrick due to the misconduct of Harnden are significant and must be thoroughly reviewed to determine the amount of culpability that can be associated with the identified malpractice. Rodrick is requesting Harnden be Sanctioned in the form of financially reimbursing the $10,000.00 for services not rendered in providing legal representation for post-trial motions and Notice of Appeal. Due to the extraordinary circumstances associated with Harnden's abandonment of the case and numerous unethical violations, the only conclusion to the appropriate SBA investigation is a recommendation for permanent disbarment from practicing law in the State of Arizona. It is worth noting for the attention of the SBA that Harnden ethical violations are NOT limited to the federal case. Another complaint was filed with the SBA and the Nevada State Bar concerning Harnden's abandonment of a case adjudicated (successfully to a Rodrick victory) in Nevada District Court. Harnden has chosen to defy the disciplinary process procedures in regard to BOTH complaints. There is a pattern of conduct well established at this point that demonstrates Harnden's refusal to abide to the Rules as required to practice law in Arizona. The results to which should be to provide all the relevant facts for the public's review in order to provide the appropriate protections to the public in general.

Respectfully submitted this 13th day of August, 2018,


Charles Rodrick