

BEFORE A HEARING OFFICER OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A NON-MEMBER OF THE STATE BAR OF ARIZONA, L. MARK STEINBERG, RESPONDENT.

Nos. 02-1743, 02-2036 02-2092

HEARING OFFICER'S REPORT AND RECOMMENDATION

PROCEDURAL HISTORY

Probable cause orders in these matters were filed on December 22, 2002. The complaint was filed on July 28, 2003. A notice of default was filed by the Disciplinary Clerk's office on September 4, 2003. Respondent filed his answer on September 8, 2003.

On September 9, 2003 Respondent filed a motion entitled "Motion to Dismiss all Proceedings or, in the Alternative, Motion to Stay all Present and Future Proceedings in Arizona Permanently". This motion was filed under the cause numbers of instant case and another matter that had been pending for some time (01-1843). The State Bar filed its Response to Respondent's motion to dismiss on October 17, 2003. This motion was denied on December 12, 2003.

On September 10, 2003 Respondent made an oral motion to consolidate this case (02-1743, 02-2036 and 02-2092) with his earlier filed case (01-1843). See, Reporter's Transcript of the Proceedings for Case 01-1843, September 10, 2003 ("RTP of 01-1843, Vol. I") 7:20-11:17. This motion was denied. RTP of 01-1843, Vol. I, 16:15-24; 38:11-23.

A settlement conference was held on October 29, 2003. The parties were unable to reach a settlement.

1 A pre-hearing conference was held on November 24, 2003. This telephonic  
2 conference was scheduled for 9:00 a.m. The Disciplinary Clerk's Office initiated contact with  
3 Bar Counsel and was eventually, after several attempts, able to contact the Respondent. The  
4 Respondent informed the Disciplinary Clerk that he was "too busy" to participate in the Pre-  
5 hearing Conference at the appointed time. The conference was then commenced in his  
6 absence.

7 The State Bar requested to proceed with Count 2 and Count 3 prior to Count 1. This  
8 request was made because Counts 2 and 3 both required an interpreter. The State Bar's request  
9 to proceed with Count 2 and Count 3 was granted. The hearing date of December 12, 2003 at  
10 9:00 a.m. was affirmed.

11 The evidentiary hearing began on December 12, 2003. Bar Counsel was present. The  
12 Respondent appeared telephonically. After the hearing had been proceeding for less than one  
13 hour, Respondent disconnected himself from the telephone. This officer ruled that the  
14 Respondent had voluntarily absented himself from the proceeding. RTP, Vol. I, 14:22-21:9.  
15 During Respondent's absence, the State Bar called three (3) witnesses for Count Two.  
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17 After the noon recess, the hearing reconvened. Mr. Steinberg appeared telephonically  
18 for this session. RTP, Vol. I, 76:1-14. At the end of the day the hearing was scheduled to  
19 resume on January 16, 2004 at 8:30 am. RTP, Vol. I, 144:15-145:2.  
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21 On January 16, 2004, the State Bar concluded its evidence regarding Count One.  
22 Respondent requested another opportunity to cross-examine witnesses that had been called  
23 in his absence. The State Bar objected. A briefing schedule was ordered. Oral argument  
24 on the objection was set for February 25, 2004.

25 The State Bar filed a brief in support of its objection. The Respondent filed no brief in  
26 support of his request to cross-examine the witness. The Respondent's request to cross-

1 examine the witness was denied. (Order, March 3, 2004). The State Bar's request to admit  
2 Exhibit 19 (Consent Decree) [sic], having previously been under advisement, was admitted into  
3 evidence. *Id.*

#### 4 FINDINGS OF FACT

- 5 1. At all times relevant hereto, Respondent was an attorney not licensed to practice law in  
6 the State of Arizona, having been admitted to practice only in the State of Texas.  
7 (Respondent's Answer ¶ 1, Respondent's Motion to Dismiss All Proceedings, dated  
8 September 9, 2003, ¶ 4).
- 9 2. Respondent entered into an agreement with the State of Arizona on or about July 13,  
10 2001 (Consent Judgment) that his name would not appear on any "paperwork or business  
11 card unless it said paralegal or legal assistant" following his name. *Reporter's Transcript*  
12 *of Proceedings for January 16, 2004* ("RTP, Vol. II"), 321:03-07; 323:24-324:12;  
13 328:17-329-16; State Bar Exhibit 19.
- 14 3. Respondent entered into an agreement with the State of Arizona on or about July 13,  
15 2001 (Consent Judgment) that he would not offer legal advice unless an Arizona lawyer  
16 was "in proximate physical presence" to the Respondent. RTP, Vol. II, 320:10-14;  
17 323:24-324:12; 328:17-329-16; State Bar Exhibit 19.
- 18 4. All of the conduct listed herein occurred in Arizona.

#### 19 Count One (02-1743, Rounds)

- 20 5. In 1997, Richard and Dian Rounds called Respondent to discuss filing a bankruptcy.  
21 *Reporter's Transcript of Proceedings for January 16, 2004* ("RTP, Vol. II"), 166:06-  
22 172:07.
- 23 6. Mrs. Rounds and her husband located Respondent after looking for bankruptcy lawyers in  
24 the Yellow Pages. RTP, Vol. II, 166:8-167:19; 202:20-203:6; 299:01-06.  
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7. In the winter of 1997, Richard and Dian Rounds met with Respondent to discuss filing bankruptcy. RTP, Vol. II, 182:16-25; 202:20-203:7.
8. Mr. and Mrs. Rounds met with Respondent at a Scottsdale address, on Chaparral. RTP, Vol. II, 173:4-10. That was only "office" they ever went. RTP, Vol. II, 315:12-16.
9. The Rounds thought that Respondent was a lawyer. RTP, Vol. II, 187:17-22; 211:01-218:05; 299:01-302:25.
10. Respondent gave the Rounds a business card (State Bar Exhibit 15 A). The card contains the title "lawyer" printed underneath Respondent's name. RTP, Vol. II, 175:08-180:10; 190:01-18; 299:15-20.
11. Because the Rounds did not want to lose their mobile home and their car, it was decided that they would file a Chapter 13 bankruptcy. RTP, Vol. II, 201:19-25; 227:19-231:16.
12. The Rounds hired Respondent to do the Chapter 13 bankruptcy. RTP, Vol. II, 182:17-25.
13. Respondent told the Rounds that he would prepare the bankruptcy paperwork, and go to the creditors' hearing with them. RTP, Vol. II, 184:21-185:2.
14. Respondent told the Rounds that they would be charged for his services. RTP, Vol. II, 185:03-186:11; 300:04-301:07. The Rounds gave Respondent two checks. *Id* One check was postdated. *Id* Both checks were made out to Respondent. *Id* The total amount was \$1,200.00. *Id* Both checks were handed directly to Respondent. *Id*
15. During the Rounds' meeting with Respondent at the Scottsdale location, Respondent started the bankruptcy paperwork. RTP, Vol. II, 186:11-189:11.
16. The Rounds met with Respondent one more time, to sign some bankruptcy paperwork. *Id*

17. The Rounds obtained a second business card (State Bar Exhibit 15 B) from Respondent. RTP, Vol. II, 190:1-18. This business card also shows the title "lawyer" underneath Respondent's name.
18. Respondent did not tell the Rounds that he was not licensed as a lawyer in Arizona. RTP, Vol. II, 197:21-198:05; 302:010-303:25.
19. Respondent did not tell the Rounds that he was working as a paralegal. RTP, Vol. II, 198:01-25; 303:02-7.
20. When Respondent met with the Rounds, he did not tell them that another lawyer was in charge of their case. *Id.*
21. On or about August 15, 2002, the Rounds received a letter (State Bar Exhibit 13) from Russell A. Brown referencing a significant shortfall (\$7,200) in the funding of the Rounds' Chapter 13 plan. RTP, Vol. II, 189:18-192:25.
22. Because of receiving the letter (State Bar Exhibit 13), Mrs. Rounds tried to call Respondent. She called the numbers on Respondent's business cards. RTP, Vol. II, 192:20-193:20. Mrs. Rounds was told that the Respondent no longer had their case and that there was nothing that could be done for them. *Id.*
23. After receiving the letter, Mr. Rounds was also unable to reach the Respondent. RTP, Vol. II, 301:12-16. Mr. Rounds eventually reached Russell Olds. *Id.*, 301:13-20. Mr. Olds said he did not do bankruptcy, and gave Mr. Rounds the phone number for Mr. Frost. *Id.*
24. When Mr. Rounds contacted Mr. Frost, Mr. Frost explained that he no longer had a license to practice law and was unable to assist them with their problem. RTP, Vol. II, 302: 07-15.

25. The Rounds hired another attorney to fix the shortfall. RTP, Vol. II, 199:01-202:06. They hired Edward Doney. *Id.*; see also RTP, Vol. II, 208:19-211:25. They paid the second lawyer \$1,080.00. *Id.* He was able to have the bankruptcy discharged on time. *Id.*
26. Respondent told them that they would not lose any property through the bankruptcy. RTP, Vol. II, 201:01-25; 227-239.
27. The Rounds lost their automobile as a result of the shortfall. RTP, Vol. II, 201: 07-25.
28. The vehicle that the Rounds lost was worth \$2,000.00. RTP, Vol. II, 311:05-312:01.
29. The Rounds are unsatisfied with Respondent's representations to them. RTP, Vol. II, 285:01-25; 304:01-25. He did not complete their bankruptcy. *Id.*
30. Mrs. Rounds is unsatisfied because she made all the payments as she was told to do and yet there was a shortfall. RTP, Vol. II, 214:10-216:25.

**Count Two (02-2036, Hernandez)**

31. On January 29, 2002, Angel Hernandez retained Frost Law Offices to represent him in his divorce and custody matter. *Reporter's Transcript of Proceedings for December 12, 2003* ("RTP, Vol. I"), 28:09-24; 70:12-71:21
32. Mr. Hernandez found Respondent's telephone number through an advertisement in a Spanish language publication that was a "TV guide." RTP, Vol. I., 22:10-23:4. The advertisement mentioned divorce attorneys. *Id.*
33. When Mr. Hernandez called the number, he spoke to Respondent and set an appointment with the Respondent. *Id.*
34. Mr. Hernandez met with Respondent in a Bank of America building where he had an office. RTP, Vol. I, 23:05-25:02. Mr. Hernandez saw documents hanging on the walls that said that Respondent was a lawyer. *Id.* A translator came in, who told Mr. Hernandez that Respondent was a good lawyer. *Id.*

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35. Respondent informed Mr. Hernandez that he was a lawyer. RTP, Vol. I, 25:02-25:14; 48:12-17. Mr. Hernandez explained what he wanted a divorce and to keep custody of his two daughters. RTP, Vol. I, 25:04-25:14. Respondent told Mr. Hernandez to bring him \$1,000.00 and everything would be okay. *Id.*
36. During the above meeting between Mr. Hernandez and the Respondent, there was no licensed Arizona attorney present. RTP, Vol. I, 23:2-24:19; 71:20-72:20; Vol. II, 316:25-318:21.
37. Mr. Hernandez paid Respondent \$1,000.00 on January 29, 2002. RTP, Vol. I, 25:17-28:24; State Bar's Exhibit 1. Mr. Hernandez saw Respondent write the information on the receipt (State Bar's Exhibit 1) for \$1,000.00. *Id.*
38. Mr. Hernandez paid the \$1,000.00 to Respondent in cash. RTP, Vol. I, 30:02-30:10.
39. Later, Mr. Hernandez paid another \$3,000.00 to Respondent. RTP, Vol. I, 29:10-30:23; State Bar's Exhibit 2.
40. The \$3,000.00 payment was made by check, dated January 30, 2002. *Id.* The check was made out to Frost Law Offices, at Respondent's request. *Id.* Mr. Hernandez handed the check to Respondent, who wrote a telephone number on the bottom of the check. *Id.*
41. Mr. Hernandez did not hear from Respondent "for a long time." RTP, Vol. I, 31:06-31:17. Mr. Hernandez believes it was about five months that he did not hear from Respondent. RTP, Vol. I, 26:4-10. Mr. Hernandez received a letter telling him that his divorce "had been canceled because it hadn't been pursued." RTP, Vol. I, 31:06-31:17.
42. Mr. Hernandez tried to find Respondent to inquire about the case. *Id.* Mr. Hernandez went to the office where he had met with Respondent previously, but Respondent was not there. *Id.*

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43. There were many times that Mr. Hernandez tried to call Respondent and Respondent did not call him back. RTP, Vol. I, 37:17-22. Respondent never sent Mr. Hernandez any letters, or called Mr. Hernandez about the status of his case. RTP, Vol. I, 48:05-12.
44. Mr. Hernandez was told at the Bank of America building that Respondent was no longer there. RTP, Vol. I, 49:10-22. A lady who worked there had a card with the new address and telephone number for Respondent. *Id.* Mr. Hernandez called Respondent at the new number to ask why Respondent had not told him the new address. *Id.*
45. Mr. Hernandez went to see Respondent at the first location at the Bank of America building two times. RTP, Vol. I, 48:18-23. Mr. Hernandez went to see Respondent at the new location two or three times. *Id.*
46. During the week of July 15, 2002, Respondent told Mr. Hernandez he needed another \$1,000.00 to pursue the matter. RTP, Vol. I, 71:24-72:1; *see also* 32:06-12; 33:10-24.
47. Mr. Hernandez had talked about his divorce to a friend that he worked with in construction. RTP, Vol. I, 34:25-35:22. The friend thought something was "going on" with the Respondent. *Id.* The friend and his wife offered to help Mr. Hernandez talk to Respondent. *Id.*
48. The friend's wife was Irene Pentecost. RTP, Vol. I, 57:21-59:03. Ms. Pentecost spoke English and Spanish. *Id.*
49. Ms. Pentecost and her husband went with Mr. Hernandez to meet with Respondent on or about July 20, 2002. RTP, Vol. I, 34:25-36:18; 57:21-59:23; 71:24-72:19.
50. At that time, Mr. Hernandez gave Respondent \$500.00 in cash. RTP, Vol. I, 31:02-33:24; 61:14-62:25. Respondent wanted \$1,000.00 but after Mr. Hernandez learned that Respondent was not a licensed lawyer in Arizona he did not pay the additional \$500.00. *Id.*

51. Hernandez paid Respondent a total amount of \$4,500.00. RTP, Vol. I, 32:13-20.
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52. When Ms. Pentecost and her husband accompanied Mr. Hernandez to see Respondent, the location was at an apartment. RTP, Vol. I, 57:21-59:23. Ms. Pentecost saw a law diploma on the wall. *Id.* Ms. Pentecost inquired into the status of Mr. Hernandez's case. *Id.*; RTP, Vol. I, 59:23-61:06.
53. At first Respondent started to tell Ms. Pentecost and Mr. Hernandez he would turn his case over to Mr. Frost and then suggested that he would turn it over to Jack Levine. *Id.*
54. After the meeting with Respondent, Ms. Pentecost called the State Bar and was told that Respondent was not licensed to practice law in Arizona. RTP, Vol. I, 61:07-62:25; 72:24-73:04. Ms. Pentecost also learned that Mr. Frost had been suspended and could no longer practice law. RTP, Vol. I, 71:20-72:20.
55. Ms. Pentecost also called Mr. Levine who stated that he represented Respondent and was not Respondent's associate. RTP, Vol. I, 63:1-14; 65:2-4.
56. Mr. Hernandez then tried to contact Respondent about this, but Respondent failed to return any of Mr. Hernandez's calls. RTP, Vol. I, 72:20-73:06.
57. Later, Mr. Hernandez picked up a folder from Mr. Levine that was from Respondent. RTP, Vol. I, 37:22-41:12; 51:06-56:17. The folder contained a few documents with Respondent's handwriting. RTP, Vol. I, 37:22-46:25. The items in the folder were not legal work. *Id.*
58. The folder contained an intake sheet that Mr. Hernandez testified was given to him by Respondent. RTP, Vol. I, 41:13-46:25; *see*, State Bar's Exhibit 7. The heading on the intake sheet contains the printed language: "L. Mark Steinberg, J.D." underneath the title "Frost Law Offices." *Id.*

1 59. Mr. Hernandez was unable to hire another attorney because he had no more money.  
RTP, Vol. I, 47:01-11.

2 60. Respondent did not perform the legal work requested by Mr. Hernandez. *Id.*; RTP, Vol.  
3 I, 31:02-12; 34:16-24.

4 61. Mr. Hernandez never met Mr. Frost. RTP, Vol. I, 36:17-37:07.

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6 **Count Three (File No. 02-2092, Carrera)**

7 62. Jaime Carrera's children lived in Colorado with their mother. RTP, Vol. I, 77:14-79:17;  
8 138:13-139:15. The children's mother passed away on or about January 11, 2002. RTP,  
9 Vol. I, 135:23-136:07. Mr. Carrera learned of the death a few days later. *Id.*

10 63. Mr. Carrera sought to find an attorney to help him understand what his options were.  
11 RTP, Vol. I, 77:12-81:15; 138:13-139:15.

12 64. Mr. Carrera wanted to have his children live with him in Arizona. RTP, Vol. I, 139:11-  
13 15.

14 65. Mr. Carrera found Respondent through an advertisement in a Spanish language  
15 newspaper. RTP, Vol. I, 77:12-81:15.

16 66. Mr. Carrera called the telephone number that was in the advertisement and he spoke to a  
17 woman named Maria who was the interpreter for Respondent. *Id.*

18 67. Maria said that Respondent was a good attorney and scheduled an appointment for Mr.  
19 Carrera. *Id.*

20 68. Mr. Carrera went to the appointment to meet Respondent. *Id.* The office was in Mesa,  
21 on Alma School, at the Bank of America building. *Id.*

22 69. When Mr. Carrera arrived, Maria was not present. *Id.* Respondent called another person  
23 to act as interpreter over the telephone. *Id.* Mr. Carrera told the interpreter his problem.  
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26 *Id.*

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- 70. During the above meeting between Mr. Carrera and the Respondent, there was no licensed Arizona attorney present. RTP, Vol. I, 80:01-21.
- 71. Respondent said that he could help Mr. Carrera. *Id.* Respondent said that Mr. Carrera did not need to travel to the state of Colorado, where the children were. *Id.* Respondent stated that it could all be taken care of in Arizona. *Id.*; Vol. I, 138:13-139:15.
- 72. Jaime Carrera retained Respondent to assist him with the child custody matter because Respondent stated that the matter could be taken care of from Arizona. RTP, Vol. I, 77:12-81:15; 138:13-139:15.
- 73. Mr. Carrera had already spoken with other attorneys in Colorado, who said that he would have to travel to Colorado for the court hearings. *Id.*
- 74. Respondent was asking for more money than the attorneys in Colorado were. *Id.* Respondent said he would charge Mr. Carrera \$3,000.00 overall, to secure the custody of Mr. Carrera's children. *Id.*
- 75. Respondent told Mr. Carrera that Respondent would go to court to take care of all the paperwork in Arizona, after which he said that he would hand Mr. Carrera a piece of paper that would allow him to go pick up the children in Colorado. *Id.*
- 76. Mr. Carrera decided it was better for him to pay Respondent more since he would be able to stay in Arizona and save more money in the long run by avoiding travel fees. *Id.*, see also, 138:13-139:15.
- 77. On February 6, 2002, Mr. Carrera paid Respondent \$2,000.00 in cash. RTP, Vol. I, 80:22-86:17; 97:10-99:02; State Bar's Exhibit 9A.
- 78. Respondent gave Mr. Carrera a receipt for the amount paid. *Id.* The receipt says "Frost Law Offices." *Id.* Mr. Carrera saw Respondent write on the receipt himself. *Id.* ; Vol. I,

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128:13-129:20. Respondent made out a receipt and gave it to Mr. Carrera. RTP, Vol I, 85:16-20.

79. Respondent made a mistake on the date of the receipt by writing February 6, 2001. RTP, Vol I, 128:12-129:20. The correct date was February 6, 2002. *Id*

80. On March 8, 2002, Mr. Carrera gave Respondent an additional \$1,000.00 for the representation. RTP, Vol. I, 87:02-88:10. Mr. Carrera gave the money directly to Respondent. *Id* Mr. Carrera received a receipt from Respondent. *Id* Respondent wrote the receipt himself. *Id*

81. During the above meeting, there was no other lawyer present. *Id* At that time, Respondent requested another \$500.00. *Id* Mr. Carrera refused to pay because he stated that the fee was set at \$3,000.00. *Id*

82. At the time of the second payment (March 8, 2002) Mr. Carrera expected to hear what work had been accomplished in the month since Respondent's retainer. RTP, Vol I, 88:11-91:07. Respondent had stated at the first meeting that he could take care of everything within 15 days. *Id*; 120:01-06.

83. At the second meeting on March 8, 2002, Respondent started to fill out the paperwork for Mr. Carrera. *Id* Respondent wrote on the paperwork himself. *Id* Respondent wrote "Frost Law Offices" on the top of the paperwork. (State Bar Exhibit 10).

84. Nobody else was present except Respondent and Mr. Carrera. RTP, Vol. I, 88:11-91:07. Mr. Carrera took the last page to be notarized in a different office in the building. *Id*

85. The second meeting, March 8, 2002, was the only time that Mr. Carrera and Respondent filled out any paperwork. RTP, Vol. I, 92:02-92:08. Mr. Carrera does not know of any work that Respondent did for him, other than to fill out the papers. RTP, Vol. I, 94:07-

22. Mr. Carrera was never informed about any time for a hearing in the matter. RTP, Vol. I, 94:24-95:02.

86. At some point in April of 2002, Mr. Carrera received a notice from Colorado that he had a court hearing scheduled for April 24, 2002, in Colorado. RTP, Vol. I, 109:05-110:21. The court hearing was because Edgar Martinez was claiming that Mr. Carrera had abandoned the children and Mr. Martinez wanted custody. *Id.*

87. The Arizona action had been filed prior to the above Colorado action. RTP, Vol. I, 120:15-20; 134:12-15.

88. Mr. Carrera informed Respondent about this and Respondent told Mr. Carrera that he needed an additional \$6,500.00 in order to appear in Colorado for Mr. Carrera. RTP, Vol. I, 100:15-102:17; 117:09-118:03.

89. Respondent escorted Mr. Carrera to the bank to collect the \$6,500.00. RTP, Vol. I, 100:15-102:17; 110:01-11. Mr. Carrera had not understood that Respondent wanted that much more money, and when they arrived at the bank, Mr. Carrera did not have that much money in his account. RTP, Vol. I, 100:15-102:17.

90. When Mr. Carrera attempted to contact Respondent later, he was unable to get Respondent to return any of his calls. RTP, Vol. I, 99:23-100:23; 102:13-103:06.

91. Mr. Carrera received only one document from the court about the case. RTP, Vol. I, 94:24-99:22. The document he received was from "Family Court Administration" entitled "Notice of Placement of Case on Inactive Calendar and Intent to Dismiss Your Case." *Id.* Mr. Carrera understood that it meant if they didn't show up in court, they were going to dismiss the paperwork. *Id.*

92. Mr. Carrera had not filed the paperwork that he filled out with Respondent in court himself. *Id.* He assumed that Respondent had done so. *Id.*

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93. During the discipline hearing Respondent admitted into evidence an Arizona Family Court docket that reflects that a Complaint was filed by Mr. Carrera as Petitioner, on April 10, 2002. RTP, Vol. I, 130:05-134:04; *see also* Respondent's Exhibit 2. The docket reflects Mr. Carrera's representation as "Pro Per." *Id* Mr. Carrera testified that he did not know what "pro per" meant, and had never seen the piece of paper before. *Id*
94. Mr. Carrera received the "Inactive Notice" in or about November of 2002. RTP, Vol. I, 118:08-119:06.
95. At the time Mr. Carrera received the "Inactive Notice," he had already lost contact with Respondent. RTP, Vol. I, 99:24-102:25. Respondent had changed his address and telephone number. *Id* Mr. Carrera knew this because he had called the old telephone number. *Id* Later, the interpreter named Maria who Mr. Carrera had first spoken to, told Mr. Carrera that Respondent had changed offices. *Id* Maria was unable to give Mr. Carrera the address. *Id*
96. At some point, Maria gave Mr. Carrera a number for Respondent that Mr. Carrera believed was Respondent's home number. RTP, Vol. I, 122:05-22. Mr. Carrera contacted Respondent at that number, and Respondent said "give me your number, I'll call you back. I'll look up on the computer." *Id*
97. Mr. Carrera was forced to hire another attorney to assist him in Colorado. RTP, Vol. I, 103:09-105:09; 136:14- 139:15. The second attorney, Maria Garcia, charged Mr. Carrera a total of \$2182.50. *Id*
98. Mr. Carrera did not receive any legal work for the \$3,000.00 that he paid to Respondent. RTP, Vol. I, 105:11-21; 135:14-19. Respondent did not give Mr. Carrera a refund. *Id*

1 99. Respondent never told Mr. Carrera that Respondent was working as a paralegal. RTP,  
2 Vol. I, 105:23-106:08. Respondent never told Mr. Carrera that Respondent was not a  
3 licensed lawyer. *Id.*

4 100. Respondent told Mr. Carrera that Respondent was a lawyer. *Id.*

5 101. Mr. Carrera would like his \$3,000.00 returned. RTP, Vol. I, 135:14-19.

6 **CONCLUSIONS OF LAW**

7 1. Respondent submitted himself to the disciplinary jurisdiction of the Arizona Supreme  
8 Court by practicing law in the State of Arizona. See Ariz. R. S. Ct. Rule 46(b).; *In re*  
9 *Creasy*, 198 Ariz. 539, 541, 12 P.3d 214, 216 (2000)

10 **Count One (02-1743, Rounds)**

11 2. There is clear and convincing evidence that Respondent's conduct violated Rule 42, Ariz.  
12 R. S. Ct., ERs 1.2,1.3, 1.4, 5.5 and 8.4.

13 **Count Two (02-2036 Hernandez)**

14 3. There is clear and convincing evidence that Respondent's conduct violated Rule 42, Ariz.  
15 R. S. Ct., ERs 1.2, 1.4, 1.15, 5.5, 8.4(c) and (d) and Rule 31(b), Ariz. R. S. Ct.

16 **Count Three (02-2092, Carrera)**

17 4. There is clear and convincing evidence that Respondent's conduct violated Rule 42,  
18 Ariz. R. S. Ct., ERs 1.2, 1.4, 1.15, 5.5, 8.4(c) and (d).  
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20 **DISCUSSION AND ABA STANDARDS**

21 In imposing discipline, it is appropriate to consider the facts of the case, the  
22 American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") and  
23 the proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178 Ariz.  
24 283, 286, 872 P.2d 1235, 1238 (1994).  
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1 ABA *Standard* 3.0 provides that four criteria should be considered: (1) the duty  
2 violated; (2) the lawyer's mental state and (3) the actual or potential injury caused by the  
3 lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. These  
4 specific criteria are discussed below.

5 **Duty Violated.** The ABA Standards direct that a lawyer has duties to his client  
6 (ABA *Standard* 4.0), duties to the public (ABA *Standard* 5.0), duties to the legal system  
7 (ABA *Standard* 6.0), and duties to the profession. (ABA *Standard* 7.0). The Respondent  
8 violated his duties in all four areas.

9 **Mental State of Respondent.** Respondent's mental state in reference to all of the  
10 underlying allegations is either intentional or knowing. The most culpable mental state is  
11 that of intent. Intent is "[w]hen a lawyer acts with the conscious objective or purpose to  
12 accomplish a particular result." *ABA Standards* at p. 6. Knowing is defined as "the  
13 conscious awareness of the nature or attendant circumstances of the conduct without the  
14 conscious objective or purpose to accomplish a particular result." *ABA Standards* at p. 7.

15 The testimony of the client/witnesses clearly established that Respondent's actions  
16 were intentional and knowing. Respondent's own testimony, especially when considered in  
17 light of the consent judgment (State Bar Exhibit 19), further established that his actions were  
18 intentional and knowing.  
19

20 **The Actual or Potential Injury Caused by the Misconduct.** Respondent's conduct  
21 resulted in injury to each of the above-mentioned clients. Some of the harm in this matter is  
22 quantifiable in monetary terms. Each of the clients also suffered harm that is not easily  
23 quantifiable. They all have had to participate in hearings and other legal matters against Mr.  
24 Steinberg, for which they have not been compensated and for which some have had to miss  
25 work. *See* RTP Vol. I and Vol. II.  
26

1 The Rounds (Count One, 02-1743) were promised a bankruptcy that would  
2 restructure their debt so they could keep their car. Respondent's ineptitude and lack of  
3 diligence caused them to lose their car. Respondent's inattentiveness brought the Rounds the  
4 heart stopping letter dated August 15, 2002 telling them that they must pay "\$7,200.00 plus  
5 any additional interest" by the end of October, 2002. Respondent had completely abandoned  
6 these people. The Rounds had to hire a new attorney to undo the problems the Respondent  
7 had created.

8 Angel Hernandez (Count Two, 02-2036) paid Respondent \$4,500.00 to handle a  
9 divorce and custody matter. Mr. Hernandez received no services for his payment. Mr.  
10 Hernandez was unable to hire a new attorney when he discovered his case had been  
11 dismissed.

12 Jaime Carrera (Count Three, 02-2092) sought legal advice from Respondent after the  
13 death of his children's mother. The children (and mother) were residing in Colorado. The  
14 Respondent urged action in Arizona rather than Colorado. However, the only action he took  
15 was insufficient and ineffectual. The result was that Mr. Carrera was put on the defensive  
16 and had to refute allegations that he had abandoned his children. His goal of bringing the  
17 children to live with him was lost. Had Mr. Carrera been given adequate and timely  
18 representation, the result could very well have been different.

19  
20  
21 **The Presence of Aggravating or Mitigating Factors.** *ABA Standards 9.22 and*  
22 *9.32, respectively detail the approved aggravating and mitigating factors to be considered*  
23 *when a sanction for various types of conduct is recommended. That recommended sanction*  
24 *may increase or decrease depending on the evidence of aggravation or mitigation.*

25 Several aggravating factors are present. Respondent's actions were dishonest and  
26 selfish. *See Standard 9.22(b).* All of the clients retained Respondent under the mistaken

1 apprehension that he was licensed to practice in Arizona. Examples of Respondent's  
2 dishonesty are rampant throughout the record. For example, although Mr. Carrera was hiring  
3 Respondent to represent him, when Respondent filled out the form (State Bar Exhibit 10)  
4 Respondent check the box indicating that Mr. Carrera was representing himself.

5 Respondent has engaged in a pattern of misconduct and has multiple offenses within  
6 the context of this particular complaint. *See Standard 9.22(c) and (d)*. The Respondent's  
7 history from his complaint in case number 01-1843 is strikingly similar. Lastly, the consent  
8 judgment (State Bar Exhibit 19) and the testimony about the judgment evidence a prior  
9 history that essentially demonstrated the same type of misconduct.

10 On July 13, 2001 Respondent entered in a consent judgment where he agreed that he  
11 would not offer legal advice unless an Arizona lawyer was "in proximate physical presence"  
12 to the Respondent. Yet, within months of signing this agreement, Respondent was blatantly  
13 violating it. (January 19, 2002-Angel Hernandez; February 6, 2002-Jaime Carrera).

14 Respondent also exhibited a refusal to acknowledge the wrongful nature of his  
15 conduct. This is an aggravating factor under *ABA Standard 9.22(g)*. Respondent is fully  
16 aware that his conduct was improper. *See State Bar Exhibit 19*. His attitude to the consent  
17 judgment and professional conduct is both cavalier and inappropriate. Bar counsel  
18 questioning of Respondent is illustrative. Q: "... did you agree with the State of Arizona that  
19 you would not offer legal advice with an Arizona lawyer in proximate physical presence?"  
20 A: "I agreed, but proximate physical presence, you know, as we've discussed before, I don't  
21 know what that means exactly. Do I have to be in Art Frost's lap? . . ." RTP, Vol. II,  
22 320:10-16.  
23  
24

25 The Respondent is indifferent to making restitution. This indifference is an  
26 aggravating factor under *ABA Standard 9.22(j)*.

1 The State Bar suggests that the Respondent's experience in the practice of law should  
2 be considered in aggravation pursuant to ABA *Standard 9.22(i)*. Although the Respondent  
3 was a member of the Texas Bar, the record does not adequately determine the duration of his  
4 practice. Accordingly, this factor will not be considered.

5 *ABA Standard 9.22(h)* provides that the vulnerability of the victim is an aggravating  
6 factor. Two of Respondent's victims (Angel Hernandez and Jaime Carrera) did not speak  
7 English. The inability to understand English makes them vulnerable and susceptible to abuse  
8 because they can't read the relevant documents. The Respondent was actively advertising to  
9 this group.

10 *ABA Standard 9.32* sets forth the mitigating factors that may be considered. There  
11 has been no evidence of mitigation presented.

12 **Application of ABA Standards.** The ultimate sanction imposed should at least be  
13 consistent with the sanction for the most serious instance of misconduct among a number of  
14 violations; it might well be and generally should be greater than the sanction for the most  
15 serious misconduct." *ABA Standards* at p. 6. ABA Standards 4.6, 5.1, 6.0 and 7.0 address  
16 the violations of ERs 5.5 and 8.4(c) and (d) which are the most serious violations in this  
17 matter. This Hearing Officer considered the following *ABA Standards* as noted below.

18 ***ABA Standard 4.6 -Lack of Candor.*** This Standard reads as follows:

19 "Absent aggravating or mitigating circumstances, upon application of the factors set  
20 out in Standard 3.0, the following sanctions are generally appropriate in cases where the  
21 lawyer engages in fraud, deceit, or misrepresentation directed toward a client."  
22  
23

24 **4.61** Disbarment is generally appropriate when a lawyer knowingly converts  
25 client property and causes injury or potential injury to a client.

26 **4.62** Suspension is generally appropriate when a lawyer knowingly deceives a  
client, and causes injury or potential injury to the client.

**ABA Standard 5.1- Failure to Maintain Personal Integrity.** This standard reads:

1 “Absent aggravating or mitigating circumstances, upon application of the factors set  
2 out in 3.0, the following sanctions are generally appropriate in cases with conduct involving  
3 dishonesty, fraud, deceit, or misrepresentation.”

4  
5 5.11 Disbarment is generally appropriate when: [. . .] (b) a lawyer engages in  
6 any other intentional conduct involving dishonesty, fraud, deceit, or  
7 misrepresentation that seriously adversely reflects on the lawyer’s  
8 fitness to practice.

9 The Respondent’s conduct evinced many acts of intentional deception.

10 **5.1 Failure to Maintain Personal Integrity**

11 Absent aggravating or mitigating circumstances, upon application of the factors set  
12 out in 3.0, the following sanctions are generally appropriate in cases with conduct involving  
13 dishonesty, fraud, deceit, or misrepresentation.

14 5.11 Disbarment is generally appropriate when: [. . .] (b) a lawyer engages in  
15 any other intentional conduct involving dishonesty, fraud, deceit, or  
16 misrepresentation that seriously adversely reflects on the lawyer’s  
17 fitness to practice.

18 **ABA Standard 6.0- Violations of Duties Owed to the Legal System.**

19 *ABA Standard 6.22* directs that “suspension is appropriate when a lawyer knowingly  
20 violates a court order or rule, and there is injury or potential injury to a client or a party”.

21 *ABA Standard 6.21* directs that “disbarment is generally appropriate when a lawyer  
22 knowingly violates a court order or rule, with the intent to obtain a benefit for the lawyer or  
23 another, and causes serious injury or potentially serious injury to a party . . .”.

24 The Respondent knew that he was violating the Code of Professional Responsibility  
25 as well as the consent judgment. His intent was to benefit himself.

26 **ABA Standard 7.0- Violations of Duties Owed to the Profession.**



1 letterhead that failed to indicate that he was not admitted to practice in Arizona. The Court noted  
2 that normally Mothershed's conduct would warrant disbarment but, since he was not a member  
3 of the Arizona bar, he could only be censured for his intentional conduct. Mothershed was found  
4 to have violated, among others, ERs 5.5, 8.4(c) and (d) and Rule 31(a)(3), Ariz. R. S. Ct.

5 In *Matter of Richardson*, SB-02-0145-D, 2002 Ariz. LEXIS, (November 14, 2002),  
6 Richardson was not an attorney licensed to practice law in the State of Arizona but practiced  
7 law and prepared bankruptcy petitions in Arizona. The Court found that Richardson had  
8 violated ER 1.2, 1.4, 5.5, 8.4 as well as ER 8.1(b) and Rule 51(h) and (i) for failing to respond  
9 to requests for information concerning allegations made against her for unauthorized practice.  
10 The court noted there were three aggravating factors, pattern of misconduct, multiple offenses  
11 and bad faith obstruction and one mitigating factor, absence of prior disciplinary record.  
12 Richardson received a censure as she was not a member of the Arizona Bar.

13 In *Matter of Sodaro*, SB-00-0013-D, 2002 Ariz. LEXIS 125, (2002), Sodaro agreed to a  
14 censure and payment of the costs and expenses of the disciplinary proceedings for the  
15 unauthorized practice of law in Arizona and failing to note on her letterhead that she was not  
16 admitted to practice in Arizona in violation of ER 5.5, 7.1(a), 7.5 and Rule 31(a)(3), Ariz. R. S.  
17 Ct.

18 Because Respondent is not a member of the State Bar of Arizona, and there was actual  
19 harm to clients, the most severe sanction available is a censure, with imposition of the costs and  
20 expenses of the disciplinary process and an order of restitution.  
21

### 22 **Restitution**

23 The Rounds (02-1743) paid the Respondent \$1,080.00 in fees. Because of  
24 Respondent's actions, the Rounds also lost a vehicle worth \$2,000.00. The Rounds are  
25 entitled to restitution in the amount of \$3,080.00.  
26

1 Angel Hernandez (02-2036) paid the Respondent \$4,500.00 in fees. Mr. Hernandez is  
entitled to restitution in the amount of \$4,500.00.

2 Jaime Carrera (02-2092) paid the Respondent \$3,000.00 in fees. Mr. Carrera is  
3 entitled to restitution in the amount of \$3,000.00.

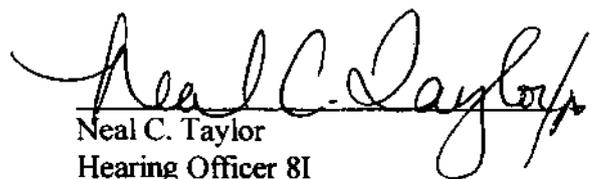
4 **RECOMMENDATION**

5 The purpose of lawyer discipline is not to punish the lawyer, but to protect the public  
6 and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320  
7 (1993). It is also the objective of lawyer discipline to protect the public, the profession and  
8 the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Yet  
9 another purpose is to instill public confidence in the bar's integrity. *Matter of Horwitz*, 180  
10 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

11 Upon consideration of the facts, application of the *Standards*, including aggravating  
12 and mitigation factors, and a proportionally analysis, this Hearing Officer recommends the  
13 following:

- 14
- 15 1. That the Respondent be censured;
  - 16 2. That the Respondent be ordered to pay restitution of \$3,080.00 to Dian and  
17 Richard Rounds; \$4,500.00 to Angel Hernandez; \$3,000.00 to Jaime  
18 Carrera; and
  - 19 3. That the Respondent be ordered to pay the costs and expenses incurred in  
20 these disciplinary proceedings.
- 21
- 22

23 DATED this 13<sup>th</sup> day of April, 2004.

24  
25   
26 Neal C. Taylor  
Hearing Officer 8I

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Original filed with the Disciplinary Clerk  
this 14<sup>th</sup> day of April, 2003.

Copy of the foregoing mailed  
this 14<sup>th</sup> day of April, 2004, to:

L. Mark Steinberg  
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Respondent

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by: K Weigand