

**BEFORE A HEARING OFFICER  
OF THE SUPREME COURT OF ARIZONA**

**IN THE MATTER OF A  
NON-MEMBER OF THE STATE  
BAR OF ARIZONA,**  
  
**LARRY KEE YAZZIE**  
  
Respondent.

**No. 06-0063**

**HEARING OFFICER'S REPORT**

**PROCEDURAL HISTORY**

The State Bar filed a Complaint against Respondent on September 6, 2006. The Complaint was served upon the Respondent by mail on September 5, 2006. Respondent failed to file an Answer within the twenty day period as required by Rule 57 (b) Ariz.R.Sup.Ct. A Notice of Default was filed on October 4, 2006, and served by mail on Respondent on the same date. Respondent still failed to file an Answer within ten days of the Notice as required by Rule 57 (b) Ariz.R.Sup.Ct., resulting in an Entry of Default being filed by the Disciplinary Clerk on October 25, 2006.

On October 26, 2006, Respondent filed a Response to the Complaint by facsimile only, and without original signatures.

On November 6, 2006, the State Bar requested an Aggravation/Mitigation Hearing, which was set to be held on December 1, 2006.

On November 17, 2006, the State Bar moved to strike Respondent's Response to the Complaint pursuant to Rules 57 (b) and (d) 57 (b) Ariz.R.Sup.Ct., for the reason, among others, that it was late. Respondent did not file any written response to this Motion to Strike.

Without the benefit of the parties having filed a Joint Pre-Hearing Statement, but with both the State Bar and the Respondent appearing telephonically, a formal hearing on the matter was held on December 1, 2006, before the undersigned Hearing Officer.

The first matter to be taken up at the hearing was the State Bar's Motion to Strike the Respondent's Response. After argument and consideration, the motion was granted. Thereafter, the

1 State Bar and the Respondent presented both oral and affidavit evidence and testimony and set forth  
2 what aggravating and mitigating they believed should be considered. As requested, Counsel for the  
3 State Bar then submitted the State Bar's Proposed Hearing Officer Report and Recommendation.

#### 4 **FINDINGS OF FACT**

5 1. All of the procedural facts and statements set forth above are found to be true.

6 2. At all times relevant hereto, the Respondent was not a member of the State Bar of  
7 Arizona, nor was he an attorney licensed or otherwise authorized to practice law in the State of  
8 Arizona. Respondent was, however, an attorney licensed to practice law in the State of Utah, having  
9 been admitted to that Bar on April 30, 1981.

10 3. During the period of time relevant hereto, the State Bar of Arizona alleged that  
11 Respondent violated ERs 1.1, 1.2, 1.3, 1.4, 1.5, 4.1, 5.5, 7.1, 7.2, 7.4 and 8.4 (c) and (d), Rule  
12 42, Ariz.R.Sup.Ct., while operating a law office in Tuba City, Arizona, under the name "Larry Kee  
13 Yazzie, Attorney At Law".

14 4. The following specific allegations contained in the Complaint filed by the State Bar of  
15 Arizona concerning Ms. Ann Thompson are found to be true:

16 A. On or about December 23, 2004, Ms. Thompson retained Respondent to  
17 represent her in a criminal matter pending before the Phoenix Municipal Court, in Phoenix, Arizona.  
18 She also engaged Respondent to represent her minor son in a personal injury matter;

19 B. At the time Ms. Thompson engaged Respondent to represent her and her minor  
20 son (a) she did not know, nor was she informed by Respondent, that he was not licensed to practice  
21 law in the State of Arizona, (b) that as a result he would not be able to represent her in a criminal  
22 matter or make an appearance on her behalf in the Phoenix Municipal Court or (c) he was not  
23 authorized to represent her son in his personal injury matter in the State of Arizona;

24 C. Respondent was not licensed to practice law in the State of Arizona at the time  
25 he undertook to represent Ms. Thompson and her minor son;

26 D. At the time Ms. Thompson engaged Respondent to represent her she signed an  
27 "Attorney Fee Agreement" and paid Respondent an \$80 consultation fee; and

1 E. Thereafter, Ms. Thompson paid Respondent additional attorney's fees of \$550  
2 on January 17, 2005, \$300 on February 2, 2005, and \$100 on March 8, 2005.

3 5. Respondent rendered legal services to Ms. Thompson during the initial consultation  
4 and on the subsequent occasions which comprised the following activities:

5 A. Directing Ms. Thompson to request that her initial Phoenix Municipal Court  
6 appearance be continued so that Respondent could later appear with her; and

7 B. Despite the Court having granted Ms. Thompson the continuance she had  
8 requested on Respondent's behalf, Respondent thereafter failed to appear at either the newly  
9 rescheduled court appearance, or again at an additionally scheduled court date, at which point Ms.  
10 Thompson was called to task by the sitting judge for improperly attempting to delay the proceedings.  
11 After explaining to the judge and prosecutor that she had paid the Respondent \$950 to represent her,  
12 and could not explain why he had not shown up for either this or the two prior hearings to represent  
13 her, Ms. Thompson learned from another attorney present in court that Respondent was not licensed  
14 to practice law in the State of Arizona. As a result, Ms. Thompson fired Respondent since he was  
15 not a licensed Arizona attorney, and filed a small claims action, entitled *Thompson v. Yazzie, No. TC-*  
16 *CV-034-2006, District of the Navajo nation, Judicial District of Tuba City, Arizona*, in which she  
17 recovered a judgment against Respondent in the amount of \$1,040.00 for the attorney's fees  
18 previously paid to Respondent.<sup>1</sup>

19 6. Respondent's charges of \$80 for an initial consultation fee and a total of \$950 for legal  
20 services, allegedly performed by him on behalf of Ms. Thompson, were improper, falsely induced,  
21 and under the circumstances, completely unreasonable.

22 7. Respondent failed to take any action, through the proper form of a *pro hoc vice* request  
23 for admission to practice law in the State of Arizona, to represent Ms. Thompson or her son in the  
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25 <sup>1</sup> According to Bar Counsel, at the time of the December 1, 2006, hearing Respondent provided her  
26 with a letter dated November 28, 2006, addressed to Ms Thompson, which represented that he had sent Ms.  
27 Thompson a money order to satisfy the \$1,040 judgment. Ms. Thompson denied she had ever received the  
28 money order. As of January 4, 2007, Bar Counsel had been unable to verify whether Ms. Thompson had been  
paid, nor, as of the date of this report, has this hearing officer been advised by Bar Counsel of its satisfaction.

1 courts of the State of Arizona.

2 8. During the period of Respondent's representation, both in letters to Ms. Thompson,  
3 dated September 27, 2005, and DNA People's Legal Services, dated August 22, 2005, Respondent's  
4 letterhead identified his office as "Larry Kee Yazzie, Attorney at Law", thus implying that  
5 Respondent was admitted to practice law in the State of Arizona.

6 9. Respondent maintained a print advertisement in the Frontier yellow pages directory  
7 circulated in Tuba City, Arizona, stating the following: "Larry Kee Yazzie, Attorney at Law.  
8 Specializing in Personal Injury and Insurance Claims. Over 20 Years Experience in State, Federal  
9 and Indian Law. J.D. BYU Law School, 1978." By asserting that Respondent specialized in the  
10 areas of personal injury and insurance law, his print advertisement implied that Respondent had  
11 achieved and obtained accredited special certification in both of those areas of the law.

12 10. Respondent failed to disclose on his letterhead or in his Frontier yellow pages  
13 advertisement that he was not licensed to practice law in the State of Arizona and had received no  
14 such designated legal specialization from the State of Arizona.<sup>2</sup>

#### 15 CONCLUSIONS OF LAW

16 1. The practice of law in the State of Arizona rests "exclusively within the authority of  
17 the Judiciary". See *Arizona Constitution, Article III, In re Creasy, 198 Ariz. 539, 12 P.3d 214 (2000)*.

18 2. The Arizona Supreme Court is the judicial authority which has jurisdiction over the  
19 practice of law in the State of Arizona. See *Rule 31 (a) Ariz.R.Sup.Ct.*

20 3. The Arizona Supreme Court has jurisdiction over persons engaged in the unauthorized  
21 practice of law in the State of Arizona and defines the unauthorized practice of law as the act of  
22 providing legal advice or services to or for another by "representing another in a judicial, quasi-  
23 judicial, or administrative proceeding..." See *Rule 31 (a)(1) Ariz.R.Sup.Ct., and In re Creasy, 198*  
24 *Ariz. 539, 12 P.3d 214 (2000)*.

25 3. The Disciplinary Commission of the Arizona Supreme Court has jurisdiction over

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26 <sup>2</sup> Respondent presented no evidence or testimony at the hearing concerning his ability to hold himself  
27 out as being a specialist in these two areas of the law, even in the State of Utah.

1 anyone practicing law as defined in Rule 31. See *Rule 46 (b)*.

2 4. The Disciplinary Commission of the Arizona Supreme Court has jurisdiction over non-  
3 members engaged in the practice of law in the State of Arizona. See *Rules 31 (a)(1) and 46 (b)*  
4 *Ariz.R.Sup.Ct., and In re Creasy, 198 Ariz. 539, 12 P.3d 214 (2000)*. Non-members are defined as  
5 lawyers admitted in another jurisdiction. See *Rule 46 (f) (15) Ariz.R.Sup.Ct.*

6 5. By Respondent initially failing to file a Response to the Complaint filed by the State  
7 Bar of Arizona, and then by having his late and deficient Response struck by the Hearing Officer, all  
8 of the allegations contained in the Complaint are deemed to have been admitted. See *Rule 53 (c)(1),*  
9 *Ariz.R.Sup.Ct., Matter of Zang, 158 Ariz. 251, 762 P.2d 538 (1988)*.

10 6. Independent of the conclusions of law set forth in Paragraph 5, above, as a matter of  
11 law, Respondent is found to be a non-member of the State Bar of Arizona who has engaged in the  
12 unauthorized practice of law in Arizona in violation of *ER 5.5, Rule 42, Ariz.R.Sup.Ct.*, in the  
13 following particulars:

14 A. By undertaking to represent Ms. Thompson in a criminal matter pending before  
15 the Phoenix Municipal Court, in Phoenix, Arizona, on or about December 23, 2004;

16 B. By also undertaking to represent Ms. Thompson's minor son in a personal  
17 injury matter, on or about December 23, 2004;

18 C. By failing to disclose to Ms. Thompson, at the time he undertook to represent  
19 her and her minor son (a) that he was not licensed to practice law in the State of Arizona, (b) that as  
20 a result he would not be able to represent her in a criminal matter or make an appearance on her  
21 behalf in the Phoenix Municipal Court in the State of Arizona, and (c) that he was not authorized to  
22 represent her son in his personal injury matter in the State of Arizona, Respondent at first knowingly  
23 omitted disclosing a material fact vitally necessary to Ms. Thompson in making her decision about  
24 hiring him to represent her, and thereafter made false statements of material fact concerning his ability  
25 to represent her in the State of Arizona as her attorney when he legally could not, all in violation of  
26 *ERs 4.1, 7.1, and 8.4 (c) and (d), Rule 42, Ariz.R.Sup.Ct.;*

27 D. By thereafter rendering legal services to Ms. Thompson, by way of directing  
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1 her to request a continuance at her initial Phoenix Municipal Court appearance so that Respondent  
2 could later appear with her, despite his inability to validly appear as her attorney of record, or to  
3 validly undertake to represent her son in his personal injury matter, Respondent (1) failed to provide  
4 Ms. Thompson and her son with competent representation, (2) he failed adequately to consult with  
5 her concerning the objectives of the representation he had been retained to handle for her and her son,  
6 (3) he failed to act with reasonable diligence and promptness in his offered representation, and (4) he  
7 failed adequately to communicate with her, all of the above in violation of *ERs 1.1, 1.2, 1.3 and 1.4,*  
8 *Rule 42, Ariz.R.Sup. Ct.;*

9 E. By initially inducing Ms. Thompson to sign an "Attorney Fee Agreement" and  
10 pay Respondent an \$80 consultation fee, despite the fact that he knew he was not licensed to practice  
11 law in the State of Arizona, and, therefore, not legally entitled to represent her in either a criminal  
12 matter or make an appearance on her behalf in the Phoenix Municipal Court in the State of Arizona,  
13 nor to represent her son in his personal injury matter in the State of Arizona, Respondent violated  
14 *ER 1.5, Rule 42, Ariz.R.Sup. Ct.;*

15 F. By thereafter inducing Ms. Thompson to pay additional attorney's fees to him  
16 of \$550 on January 17, 2005, \$300 on February 2, 2005, and \$100 on March 8, 2005, without at  
17 least attending her court appearances before the Phoenix Municipal Court, or for that matter,  
18 providing even minimal competent representation to her, Respondent is deemed to have charged an  
19 unreasonable attorney fee in violation of *ER 1.5 and also ERs 1.1, 1.2 and 1.4, Rule 42,*  
20 *Ariz.R.Sup. Ct.;*

21 G. By Respondent failing to take any action, through the proper form of a *pro hoc*  
22 *vice* request for admission to practice law in the State of Arizona, in order to represent Ms. Thompson  
23 and her son in the courts of the State of Arizona, Respondent violated *ERs 1.1, 1.2, 1.3 and 8.4 (d),*  
24 *Rule 42, Ariz.R.Sup. Ct.;*

25 H. By Respondent identifying himself on both his letterhead and in advertisements  
26 used to solicit legal business in State of Arizona, in and around Tuba City, Arizona, as "Larry Kee  
27 Yazzie, Attorney at Law", which by implication indicated he was capable of practicing law in the  
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1 State of Arizona, without disclosing that he was admitted to practice law only in the State of Utah and  
2 not in the State of Arizona, he knowingly omitted disclosing a material fact vitally necessary to Ms.  
3 Thompson in making her decision about hiring him to represent her and her son concerning two  
4 Arizona legal matters, thereby directly misrepresenting himself as an attorney with the ability to do  
5 so when he legally could not, in each instance in violation of *ERs 4.1, 7.1 and 7.2, Rule 42,*  
6 *Ariz.R.Sup.Ct.*; and

7 I. By Respondent maintaining print advertising with the Frontier yellow pages,  
8 a directory circulated in Tuba City, Arizona, which stated the following: "Larry Kee Yazzie,  
9 Attorney at Law. Specializing in Personal Injury and Insurance Claims. Over 20 Years Experience  
10 in State, Federal and Indian Law. J.D. BYU Law School, 1978" (Emphasis Added), implicitly  
11 indicating he possessed both training and experience in the areas of personal injury and insurance  
12 claims in the State of Arizona, without disclosing that he was not admitted to practice law of any kind  
13 in the State of Arizona, let alone those advertised, he knowingly omitted disclosing a material fact  
14 to the general public by misrepresenting himself as an attorney who held legal specialization to  
15 practice in those two areas of the law in the State of Arizona, when he was not so admitted and did  
16 not possess those specializations, both in violation of *ERs 4.1, 7.1, 7.2, 7.4 and 8.4 (c) and (d), Rule*  
17 *42, Ariz.R.Sup.Ct.*

18 As a result of the foregoing, this Hearing Officer finds there is clear and convincing evidence  
19 to sustain a finding that Respondent has violated *Rule 42, Ariz.R.Sup.Ct.*, and specifically, *ERs 1.1,*  
20 *1.2, 1.3, 1.4, 1.5, 4.1, 5.5, 7.1, 7.2, 7.4 and 8.4 (c) and (d)*, while operating a law office in Tuba  
21 City, Arizona, under the name "Larry Kee Yassie, Attorney At Law. Specializing in Personal Injury  
22 and Insurance Claims. Over 20 Years Experience in State, Federal and Indian Law. J.D. BYU Law  
23 School, 1978".

#### 24 ABA STANDARDS

25 The 1991 Edition of the *ABA Standards For Imposing Lawyer Sanctions* (the "Standards")  
26 are accepted by the Arizona Supreme Court and its Disciplinary Commission as providing a suitable  
27 guide to Hearing Officers who attempt to determine what appropriate sanction is to be imposed against  
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1 an attorney who has been found to have violated *Rule 42, Ariz.R. Sup. Ct. In re Peasley, 208 Ariz.*  
2 *27, 90 P.3d 764 (2004); In re Rivkind, 164 Ariz. 154, 791 P.2d 1037 (1990).* These *Standards* have  
3 been used consistently by these two bodies in determining the severity of attorney discipline, *In re*  
4 *Clark, 207 Ariz. 414, 87 P.3d 827 (2004),* since they are designed to promote a uniformity of  
5 application. *Standard 1.3, Commentary.*

6 Specifically, *Standard 3.0* provides that four criteria should be considered: (1) the duty  
7 violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's  
8 misconduct; and (4) the existence of mitigating factors.

9 This Hearing Officer considered *Standard 4.4, 4.5, 6.1, 7.0 and 9.1, 9.2, 9.3 and 9.4* in  
10 determining the appropriate sanction warranted by Respondent's conduct, as follows:.

11 1. *Standard 4.4,* which provides "in cases involving a failure to act with  
12 reasonable diligence and promptness in representing a client" that... "[r]eprimand is generally  
13 appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a  
14 client, and causes injury or potential injury to a client."

15 2. *Standard 4.5,* which provides "in cases involving a failure to provide  
16 competent representation to a client" that "[r]eprimand is generally appropriate when a lawyer:...(b)  
17 is negligent in determining whether he or she is competent to handle a legal matter and causes injury  
18 or potential injury to a client."

19 3. *Standard 6.1,* which provides "in cases involving conduct that is prejudicial to  
20 the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court"  
21 that... "[r]eprimand is generally appropriate when a lawyer ...causes injury or potential injury to a  
22 party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal  
23 proceeding."

24 4. *Standard 7.0,* which provides "in cases involving false or misleading  
25 communication about the lawyer or the lawyer's services, improper communication of fields of  
26 practice, improper solicitation of professional employment from a prospective client, unreasonable  
27 or improper fees,...[or]... unauthorized practice of law, that "[r]eprimand is generally appropriate  
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1 when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession and  
2 causes injury or potential injury to a client, the public, or the legal system.”

3 5. *Standard 9.0*, which deals with factors which are aggravating (9.2), mitigating  
4 (9.3) and neither aggravating nor mitigating (9.4) circumstances to be considered in deciding what  
5 sanction is to be imposed, after misconduct has been established.

### 6 PROPORTIONALITY REVIEW

7 The Supreme Court has held, in order to achieve proportionality when imposing discipline,  
8 that the discipline in each situation must be tailored to the individual facts of the case in order to  
9 achieve the purposes of discipline. *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983) and *In re*  
10 *Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993). Thus, it has taken into account similar conduct, *In re*  
11 *Struthers*, 179 Ariz. 216, 887 P.2d 789 (1994), and has made analogous comparisons, *Matter of*  
12 *Bowen*, 178 Ariz. 283, 872 P.2d 1235 (1994), in an attempt fairly to assess the proportionality of the  
13 sanction recommended, while at the same time recognizing that no two cases are ever exactly alike,  
14 *In re Owens*, 182 Ariz. 121, 893 P.2d 1284 (1995). Only in this way can there be any hope to  
15 achieve consistency in the imposition of sanctions. See *In re Peasley*, 208 Ariz. 27, 90 P.3d 764  
16 (2004) and *In re Rivkind*, 164 Ariz. 154, 791 P.2d 1037 (1990).

17 As a result, the following factors of Respondent's conduct and actions were assessed and  
18 weighed:

19 1. Respondent's duty. Clearly, Respondent had a duty not to hold himself out as  
20 a member of the Arizona Bar, when he was not, he had a duty not to undertake to represent clients  
21 in any Arizona State court, yet he did, and he had a duty to be honest and forthright about his  
22 inability to provide competent legal representation in areas of the law in which he was not qualified  
23 and did not hold certified specialization, which he certainly did not.

24 2. Respondent's state of mind. In this regard it is clear that Respondent acted  
25 knowingly when he agreed to perform legal services and offer legal advice to Ms. Thompson when  
26 he was not legally authorized to practice law in the State of Arizona. Further, Respondent acted  
27 knowingly when he used letterhead and advertising which was misleading, and which by implication  
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1 available sanction which can be imposed in this instance, this Hearing Officer recommends the  
2 following:

3 1. Respondent be censured for operating a law office in Tuba City, Arizona, under the  
4 name "Larry Kee Yazzie, Attorney At Law. Specializing in Personal Injury and Insurance Claims.  
5 Over 20 Years Experience in State, Federal and Indian Law. J.D. BYU Law School, 1978";

6 2. Respondent be ordered to take immediate action to refrain from using any  
7 letterhead/stationery or other means of advertising which holds himself out, by implication or  
8 otherwise, as an attorney licensed to practice law in the State of Arizona;

9 3. Respondent be ordered to withdraw any and all means of advertising which falsely and  
10 improperly holds himself out as an attorney licensed to practice law in the State of Arizona;

11 4. Respondent be ordered to pay restitution to Ms. Thompson in the amount of \$1,040,  
12 this amount to be paid within thirty (30) days of the date of a final Order of the Disciplinary  
13 Commission in this matter;

14 5. Respondent be required to pay the costs and expenses incurred in these disciplinary  
15 proceedings; and

16 6. Since Respondent is an attorney who should be disciplined for his unauthorized practice  
17 of law in the State of Arizona, and as a result also may be subject to appropriate reciprocal discipline  
18 for that conduct in any other state in which he is a licensed attorney, it is recommended that this  
19 matter be forwarded to the attention of both the State Bar and the Supreme Court of the State of Utah.

20 DATED this 21<sup>st</sup> day of February, 2007.

21  
22   
23 Michael L. Rubin  
24 Hearing Officer 7K

25 Original mailed for filing  
26 with the Disciplinary Clerk  
27 this 21<sup>st</sup> day of February, 2007,

28 and

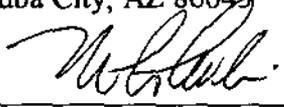
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a Copy of the foregoing mailed  
this 21<sup>st</sup> day of February, 2007, to:

Denise K. Tomaiko  
Staff Bar Counsel  
State Bar of Arizona  
4201 N. 24th St., Suite 200  
Phoenix, Arizona 85016-6288

and

Larry KeeYazzie  
Larry Kee Yazzie, P.C.  
P.O. Box 3277  
Tuba City, AZ 86045



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