FILED

OCT 29 2003

NOEL K. DESSAINT
CLERK SUPREME COURT
BY

SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA	) Supreme Court No. SB-03-0124-D
	) Disciplinary Commission Nos. 00-1497, 00-1936, 01-1007, 02-0055, 02-1611, 02-1763, 02-1825
MICHAEL E. KELLY, Bar No. 004993	)
RESPONDENT.	) **JUDGMENT AND ORDER**

This matter having come on for hearing before the Disciplinary Commission of the Supreme Court of Arizona, it having duly rendered its decision and no discretionary or *sua sponte* review occurring,

IT IS ORDERED, ADJUDGED AND DECREED that **MICHAEL E. KELLY**, a member of the State Bar of Arizona, is hereby suspended from the practice of law for a period of forty-five (45) days, effective thirty (30) days from the date of this order, for conduct in violation of his duties and obligations as a lawyer, as disclosed in the commission report.

IT IS FURTHER ORDERED that **MICHAEL E. KELLY** shall be placed on probation for a period of two (2) years, upon reinstatement, under the following terms and conditions:

1) Respondent will, within thirty (30) days after reinstatement, contact the director of the Law Office Management Assistance Program (LOMAP) at the State Bar of Arizona to schedule a law office audit regarding communication, calendaring, and diligent representation of clients (e.g., a tickler system). The LOMAP director or her designee will complete an audit of Respondent's law office procedures no later than ninety (90) days after Respondent is reinstated, unless extraordinary circumstances require additional time. Following the audit, Respondent will enter into a Memorandum of Understanding that will be effective for a period of two (2) years after all parties have signed the Memorandum. Respondent will have contact with the director of LOMAP (or her designee) on a monthly basis to discuss his compliance with the terms of the Memorandum of Understanding and will meet with the director of LOMAP every three (3) months after the parties have signed the Memorandum. Respondent understands he may be required to have a Practice Monitor acceptable to bar counsel, who will take steps to ensure he complies with the requirements of the Memorandum of Understanding. Such steps may include personal meetings with the Practice Monitor on a monthly basis to review and discuss his compliance with the terms of the Memorandum of Understanding. Respondent understands that no attorney/client relationship will exist between himself and a Practice Monitor, and that the Practice Monitor will be required to report any violation of the

Memorandum of Understanding, the Rules of Professional conduct or the Rules of the Supreme Court to bar counsel.

2) Respondent shall participate in fee arbitration through the State Bar of Arizona as set forth in the Agreement. Respondent shall pay any amount ordered within the time set forth in the fee arbitration awards.

3) Respondent shall pay restitution to Lisa Marie Prososki (fna Lisa Marie Green) in the amount of $2000.

4) Respondent will be responsible for the costs and expenses associated with his participation in LOMAP.

5) In the event Respondent fails to comply with any of the foregoing terms and information thereof is received by the State Bar, bar counsel shall file a Notice of Non-Compliance with the Disciplinary Commission. The Disciplinary Commission may refer the matter to a hearing officer to conduct a hearing at the earliest possible date, but in no event later than thirty days following receipt of said notice. If the matter is referred to a hearing officer, the hearing officer shall determine whether the terms of probation have been breached, and if so, to recommend appropriate action and response to such breach.

6) If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.

IT IS FURTHER ORDERED that Respondent shall pay in full any and all claims paid by the Client Protection Fund, not to exceed the maximum permissible payment of $100,000.00.

IT IS FURTHER ORDERED that Respondent shall comply with all the provisions of Rule 63, Rules of the Supreme Court of Arizona, including, but not limited to, Rule 63(a), which requires that Respondent notify all of his clients, within ten (10) days from the date hereof, of his inability to represent them and that he should promptly inform this Court of his compliance with this Order as provided in Rule 63(d).

IT IS FURTHER ORDERED that Respondent shall comply with all rule provisions regarding reinstatement proceedings.

IT IS FURTHER ORDERED that pursuant to Rule 52(a)8, the State Bar of Arizona is granted judgment against **MICHAEL E. KELLY** for costs and expenses of these proceedings in the amount of $1,505.97, together with interest at the legal rate from the date of this judgment.

DATED this 29th day of October, 2003.

The foregoing instrument is a full, true and correct copy of the original on file in this office

ATTEST: Noel K. Dessaint, Clerk of the Supreme Court State of Arizona

By Karen Gehres Deputy

Noël K. Dessaint

NOEL K. DESSAINT, Clerk

TO:
Michael E. Kelly, Respondent (Certified Mail, Return Receipt)
Holly E. Gieszl, Respondent's Counsel
James D. Lee, Senior Bar Counsel
Harry T. Goss, Hearing Officer 8H
Douglas M. Brooks, Clerk, Disciplinary Commission (Cert. Copy)
Lawyer Regulation Records Manager, State Bar of Arizona (Cert. Copy)
Cathy Catterson, Clerk, United States Court of Appeals for the Ninth Circuit (Cert. Copy)
Richard Weare, Clerk, United States District Court, District of Arizona (Cert. Copy)
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