

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED
MEMBER OF THE STATE BAR OF
ARIZONA,

THOMAS F. KELLEY,
Bar No. 015842

Respondent.

PDJ-2017-9092

**FINAL JUDGMENT AND
ORDER OF DISBARMENT**

[State Bar Nos. 16-0535, 16-1720]

FILED OCTOBER 26, 2017

This matter was heard by the Hearing Panel, which rendered its Decision and Order on October 2, 2017. No appeal having been filed and the time for appeal having passed, accordingly:

IT IS ORDERED Respondent, **THOMAS F. KELLEY, Bar No. 015842,** is disbarred from the State Bar of Arizona and the name of Respondent is stricken from the roll of lawyers effective October 2, 2017, as ordered in the Hearing Panel's Decision and Order Imposing Sanctions. Mr. Kelley is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the Court.

IT IS FURTHER ORDERED Mr. Kelley shall immediately comply with the requirements relating to notification of clients and others, and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED Mr. Kelley shall pay restitution, with interest at the legal rate, to the following individual in the following amount:

Count Two: \$10,900.00 to Marlene Hartnett.

IT IS FURTHER ORDERED Mr. Kelley shall pay the costs and expenses of the State Bar of Arizona totaling \$2,010.30. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 26th day of October, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 26th day of October, 2017, to:

James D. Lee
Senior Bar Counsel
State Bar of Arizona
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Thomas F. Kelley
2742 S. Las Flores
Mesa, AZ 85202-7247
Email: tomkelley@iliflight.com
Respondent

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED
MEMBER OF THE STATE BAR OF
ARIZONA,

THOMAS F. KELLEY,
Bar No. 015842

Respondent.

PDJ-2017-9092

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar Nos. 16-0535, 16-1720]

FILED OCTOBER 2, 2017

On September 28, 2017, this matter proceeded before the Hearing Panel, composed of attorney member Scott I. Palumbo, and volunteer public member Betty Jane Davies, and the Presiding Disciplinary Judge William J. O’Neil. James D. Lee appeared on behalf of the State Bar. Mr. Kelly did not appear. Exhibits 1- 17 were admitted. At the conclusion, the State Bar requested disbarment and restitution.

I. PROCEDURAL HISTORY

The State Bar of Arizona (“SBA”) filed its complaint on July 20, 2017. On July 25, 2017, the complaint was served on Respondent Thomas F. Kelley by certified, delivery restricted mail, and by regular first-class mail at his address on record with the State Bar of Arizona, pursuant to Rules 47(c) and 58(a) (2), Ariz. R. Sup. Ct. The complaint sent by certified mail was returned to the State Bar as undeliverable.

The Presiding Disciplinary Judge (“PDJ”) was assigned to the matter. Mr. Kelley failed to file an answer or otherwise defend. A *Notice of Default and Entry of Default* was entered on August 22, 2017. Mr. Kelley failed thereafter to file an answer or otherwise defend, so default was properly effective on September 12, 2017. A notice of aggravation/mitigation hearing was sent to the State Bar and Mr. Kelley, notifying them that an aggravation/mitigation hearing was scheduled for September 28, 2017, at 11:00 a.m., at the State Courts Building, 1501 West Washington, Phoenix, Arizona 85007-3231.

On September 15, 2017, bar counsel emailed a message to Mr. Kelley. That email message informed Mr. Kelley that a complaint had been filed against him on July 20, 2017, that a *Notice of Default and Entry of Default* had been entered on August 22, 2017, and that an *Effective Entry of Default and Notice of Aggravation/Mitigation Hearing* had been entered on September 12, 2017. Bar counsel notified Mr. Kelley that an aggravation/mitigation hearing was scheduled for September 28, 2017. A copy of the complaint and the *Effective Entry of Default and Notice of Aggravation/Mitigation Hearing* were attached to that email message.

On September 21, 2017, bar counsel sent a copy of the complaint and the *Effective Order of Default and Notice of Aggravation/Mitigation Hearing* to Mr. Kelley at another address where he was believed to be receiving mail: International

Life Flight, Inc., 2710 East Old Tower Road, Suite A, Phoenix, Arizona 85034-6001.

On or about September 23, 2017, someone at that address signed the U.S.P.S. return receipt card, which was received by the State Bar on September 25, 2017.

The purpose of an aggravation/mitigation hearing is not only to weigh mitigating and aggravating factors, but also to assure there is a nexus between a respondent's conduct deemed admitted and the merits of the State Bar's case. A respondent against whom a default has been entered no may longer litigate the merits of the factual allegations. Mr. Kelley was afforded these rights but did not appear.

Due process requires a hearing panel independently determine whether, under the facts deemed admitted, ethical violations have been proven by clear and convincing evidence. The hearing panel must also exercise discretion in deciding whether sanctions should issue for a respondent's misconduct. If the hearing panel determines that sanctions are warranted, then it independently determines which sanctions should be imposed. It is not the function panel to endorse or "rubber stamp" any request for sanctions.

II. FINDINGS OF FACT

The facts listed below are those set forth in the SBA's complaint and were deemed admitted by Mr. Kelley's default.

1. Mr. Kelley was first admitted to practice law in Arizona on October 22, 1994. Between February 22, 2013, and May 14, 2013, Mr. Kelley was suspended from the practice of law for failure to comply with the requirements of Mandatory Continuing Legal Education. Also, on June 13, 2017, Mr. Kelley was suspended from the practice of law for nonpayment of dues. As of the date this complaint was filed, Mr. Kelley remained suspended from the practice of law in Arizona.

COUNT ONE (File No. 16-0535/Dunn)

2. Mr. Kelley was/is the General Counsel, president and/or CEO of International Air Medical Services, Inc. (IAMS), which did business as International Life Flight during some or all times relevant hereto.

3. The Arizona Corporation Commission (ACC) investigated Mr. Kelley and his wife regarding possible fraud involved in the solicitation of IAMS investors and whether the sales of stock were properly registered (*International Air Medical Services, Inc. Thomas F. Kelley and Laura Kelly, husband and wife*, Docket No. S-20858A-12-0412).

4. On June 27, 2013, the ACC filed an *Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same By: Respondents International Air Medical Services, Inc., Thomas F. Kelley, and Laura Kelley* (Order). The Order directed Mr. Kelley and the other respondents in the ACC

case to pay an administrative penalty of \$50,000 and restitution for \$1,406,300 to the State of Arizona. As of at least June 29, 2017, neither Mr. Kelley nor any of the other respondents had paid any of the ordered amounts.

5. The Order included findings that Mr. Kelley committed numerous violations of the Arizona Securities Act, including but not limited to, A.R.S. § 44-1841 (Sale of Unregistered Securities), a class 4 felony; A.R.S. § 44-1842 (Transactions by Unregistered Dealers and Salesmen Prohibited), a class 4 felony; and A.R.S. § 44-1991(A) (Fraud in Purchase or Sale of Securities).

6. Between 2009 and at least June 2012, Mr. Kelley offered and sold unregistered securities within and from Arizona in his individual capacity and on behalf of IAMS, as its CEO/president and General Counsel. Neither Mr. Kelley nor IAMS had been registered by the ACC as a securities salesman or dealer.

7. Mr. Kelley provided investors with a business plan that stated: “We have created this unique opportunity where the investor can elect to have the security of getting 100% of their money returned plus interest.”

8. Mr. Kelley represented to at least one investor to whom IAMS issued promissory notes in conjunction with either preferred or common stock in IAMS (Equity + Note Investors) that there would be an escrow account holding up to \$200,000, which would be available to IAMS for its operating expenses. Mr.

Kelley/IAMS, however, placed no funds, including investor funds, into an escrow account for operating expenses.

9. For at least five Equity + Note Investors, IAMS issued *Stock Purchase Agreements* or *Secured Loan Agreements* in conjunction with a promissory note (Secured Equity + Note Investors). Those agreements provided, among other things, for IAMS stock, a promissory note and a security agreement to be issued to the investor upon receipt of investment funds. The investment documents included, among other things, statements that IAMS pledged security in all assets for each investor and that the collateral was free from any liens or claims. They further stated that IAMS would not grant a security interest in or sell the collateral to any other person/entity without the investor's consent. Except for the first Secured Equity + Note Investors, Mr. Kelley/IAMS (a) misrepresented that the collateral was free from any liens or claims; (b) misrepresented that they held the most senior debt; and (c) failed to disclose previous security interests pledged in the same collateral. Mr. Kelley/IAMS also failed to obtain the Secured Equity + Note Investors' written consent when pledging the same collateral to subsequent investors.

10. Mr. Kelley signed, on behalf of IAMS, the promissory notes and security agreements issued to investors.

11. Most investors who invested in IAMS via promissory notes were not paid as required under the notes, with many receiving no payments.

12. Mr. Kelley/IAMS also issued IAMS common or preferred stock to investors for capital contributions (Equity Investors). The majority executed *Stock Purchase Agreements* with IAMS. Mr. Kelley signed those agreements as President/General Counsel of IAMS. The agreements required IAMS to deliver stock certificates to the investors, but Mr. Kelley/IAMS failed to do so for several investors. Mr. Kelley signed the stock certificates actually issued.

13. Mr. Kelley offered seats on the IAMS board of directors to investors without board resolutions authorizing him to do so. Those board member investors were never advised of board meetings or presented with the opportunity to vote.

14. Mr. Kelley/IAMS issued and sold promissory notes and/or stock in IAMS to investors totaling approximately \$1,552,000. The investors, however, received payments totaling only approximately \$115,700.

15. Investor funds were deposited into bank accounts owned and controlled by Mr. Kelley. Mr. Kelley and another IAMS officer did not use investors' funds to operate IAMS, but instead used utilized the IAMS account, which included investor funds, for their own personal expenses/purposes. Mr. Kelley, however, did not draw

a salary from IAMS and the board of directors never approved compensation or salaries for officers of IAMS, as required by IAMS' bylaws.

16. Mr. Kelley's family members and friends comprised only a portion of the IAMS' investors. Mr. Kelley was, therefore, required to comply with all relevant statutory provisions unless his family members and friends who invested had business acumen in the area in which they were investing. Mr. Kelley failed to comply with all relevant statutory provisions, as required.

17. In response to a screening investigation letter from bar counsel, Mr. Kelley stated:

I disagree with everything and anything contained in the Order.

I believe that the Corporation Commission's investigation was a 'witch hunt.'

18. Under the terms of the Order, while Mr. Kelley did not admit or deny the Findings of Fact and Conclusions of Law contained, he agreed not to contest their validity in any future proceeding in which the ACC or any other state agency is a party concerning the denial or issuance of any license or registration required by the State of Arizona.

19. Mr. Kelley also agreed, as part of the Order, not to take any action or to make, or permit to be made, any public statement denying, directly or indirectly, any

Finding of Fact or Conclusion of Law in the Order or creating the impression that the Order is without factual basis.

COUNT TWO (File No. 16-1720/Hartnett)

20. In November 2013, Marlene Hartnett and her now-deceased husband, George Hartnett (George), were in New York when he became critically ill and needed medical transportation to Connecticut. Ms. Hartnett found International Air Medical Services, Inc. (IAMS), dba International Life Flight, online and executed a *Service Agreement* (Agreement) with the company to transport George. Mr. Kelley was/is the General Counsel, president and/or CEO of IAMS.

21. The Agreement required the payment of an advance fee, which Ms. Hartnett paid for \$11,900. Under the Agreement, if IAMS received payment in full for the services provided, IAMS agreed to reimburse the advance payment less any co-insurance or co-deductible. Also under the agreement, any insurance payment received by Marlene or George was deemed to be the property of IAMS. Ms. Hartnett agreed to direct insurance payments to IAMS, which agreed to reimburse the advance payment within 30 days after receiving payment in full. The Agreement gave IAMS authority to bill any insurance company on George's behalf for services provided.

22. The Agreement included (a) an “Appointment of Authorized Representative,” which named IAMS and Mr. Kelley as George’s authorized representative to seek reimbursement payments for health benefits for the services provided; and (b) an “Assignment of Benefits in Accordance with Title 20 U.S.C. § 1132(a)(1)(B),” which designated “IAMS and Thomas F. Kelley, Esq. (IAMS and Counsel)” as George’s beneficiary, and which irrevocably assigned to them George’s insurance benefits, which were to be applied against the charges for services provided to George.

23. George died on November 13, 2013, ten days after he was transported by IAMS/ International Life Flight.

24. During or about January 2014, Ms. Hartnett contacted Mr. Kelley to check on the status of the insurance payments and any reimbursement she was entitled to receive pursuant to the terms of the Agreement. Mr. Kelley informed Ms. Hartnett that IAMS had been “infiltrated” by a competitor and that “he was an attorney and he would handle [the insurance claims] himself.” Thereafter, Mr. Kelley worked closely with Ms. Hartnett regarding the insurance claims and appeals from denials.

25. On or about June 16, 2014, Mr. Kelley sent an undated letter to Ms. Hartnett to inform her about the status of his efforts to secure payment of claims

submitted to various insurance companies for the services that IAMS/International Life Flight had provided to George. Mr. Kelley signed the letter as “Thomas F. Kelley, CEO & General Counsel, International Life Flight.”

26. On June 17, 2014, Maricopa County Superior Court Judge Colleen French entered a judgment and order for \$4,388,215.00 (not including attorney’s fees, costs, or subsequent interest) in favor of Wallace Olsen, Jr., and against IAMS, based upon a stipulation of the parties in *Wallace Olsen, Jr., v. International Air Medical Services, Inc.*, Maricopa County Superior Court No. CV2013-011833. Mr. Kelley represented himself, his wife and IAMS regarding the stipulation.

27. In the claim for insurance proceeds related to the transportation of George, Mr. Kelley identified himself in letters to insurance companies as George’s “Authorized Representative.” He also identified himself as “Thomas F. Kelley, CEO & General Counsel, International Life Flight.”

28. By check dated December 16, 2014, Anthem, Inc., an insurance company, paid \$99,800 of the insurance claim submitted for George’s medical transportation. The check was made payable to George E. Hartnett, who was deceased. When Ms. Hartnett received that first check from Anthem, she consulted with a Connecticut attorney who advised her to return the check and advise Anthem that George had died. However, when she told Mr. Kelley of her intention to follow

the advice she had been given, Mr. Kelley told her it would take a long time before the check was reissued and that it would be “very complicated.” He told Ms. Hartnett that if she would endorse the check as he directed, she would “get the money faster.” In reliance upon Mr. Kelley’s advice and direction, instead of sending the check back to Anthem and requesting that it be re-issued to the appropriate party, Ms. Hartnett endorsed the check as directed by Mr. Kelley: “George E. Hartnett, pay to the order of IAMS, dba International Flight, as Assignee under the Assignments of Benefits dated November 3, 2015.”

29. By check dated February 6, 2015, Anthem paid an additional \$45,375 of the insurance claim submitted for George’s medical transportation. That check was also made payable to George E. Hartnett. Mr. Kelley informed Ms. Hartnett that Wallace Olsen, Jr., was an investor in IAMS, and directed her to endorse that second check over to Olsen, who would then deposit it into his own account. Ms. Hartnett complied with Mr. Kelley’s direction to endorse the check: “George E. Hartnett, pay to the order of Wallace Olsen, Jr. under the assignment of benefits dated February 6, 2015.” Olsen received those funds during or about February 2015. Mr. Kelley told Ms. Hartnett she could expect to receive a reimbursement check (for the advance fee of \$11,900 she had paid) 30 days later.

30. Respondent directed Marlene to endorse the checks “[s]o that we could deposit them and cash them.”

31. Under the terms of the Agreement, IAMS was obligated to reimburse Ms. Hartnett the advance payment of \$11,900 in March 2015. Beginning in March 2015, Mr. Kelley repeatedly promised to reimburse Ms. Hartnett, but failed to do so.

32. Ms. Hartnett’s son, Scott Tibbals, spoke with Mr. Kelley frequently during October 2015 to get him to commit to a date by which he would reimburse Ms. Hartnett, but he refused to do so.

33. Ms. Hartnett and Tibbals then contacted the Scottsdale Police Department (SPD). SPD Officer Marcos Hernandez contacted Mr. Kelley, who promised to pay Ms. Hartnett by December 31, 2015. Upon information and belief, the SPD took no further action against Mr. Kelley.

34. By email dated December 7, 2015, Mr. Kelley advised Mr. Tibbals he would “do [his] very best to get [his] mother a cashier’s check for \$11,900 by the first of January.” That email message was “signed” by Mr. Kelley in his personal capacity.

35. On or about December 31, 2015, Mr. Kelley issued a \$1,000 check to Ms. Hartnett, which she received on January 7, 2016. Mr. Kelley made no further payments to her. Ms. Hartnett perceived that \$1,000 payment as Mr. Kelley’s

attempt to “pacify” her, while he/IAMS collected more than \$157,000 for IAMS’ medical transportation of George.

36. On January 8, 2016, Ms. Hartnett filed a complaint with the Arizona Attorney General’s Office (AGO) regarding Mr. Kelley’s conduct. When contacted by that office, Mr. Kelley stated that his financial situation was “turning around” and that he would pay Ms. Hartnett in full in a few weeks. He failed to do so, however. Upon information and belief, the AGO took no further action against Mr. Kelley.

37. During March 2016, Ms. Hartnett informed Anthem that she believed Mr. Kelley and IAMS had engaged in fraudulent billing.

38. During April 2016, Tibbals spoke with Wallace Olsen, Jr., who advised he was an investor and that Mr. Kelley owed him a large sum of money.

39. Mr. Kelley has claimed that IAMS owes Ms. Hartnett for reimbursement of the advance fee, not International Life Flight or himself. The insurance claim letters, appeal letters and correspondence from Mr. Kelley to Ms. Hartnett, however, are on International Life Flight letterhead and were signed by Mr. Kelley as CEO and General Counsel of International Life Flight. The Agreement is written on International Life Flight letterhead and International Life Flight is identified as a dba of IAMS. Mr. Kelley’s statements to Ms. Harnett that he was an attorney and going to handle her claim in attempting to recover funds from Anthem on her behalf, led

her to believe he was representing her and amount to legal representation of Ms. Hartnett.

40. Mr. Kelley repeatedly told Ms. Hartnett that he would pay her. He maintains, however, that IAMS was “put out of business” and that while he has been able to “rebuild” IAMS, he has “not yet re-commence[d] operations.” As of the complaint, IAMS is operational and its website includes Mr. Kelley’s biography, which states, “Kelley is licensed to practice law in Arizona.” As of about mid-February 2017, IAMS’ website also stated, “As an attorney, Kelley can help you press your rights for coverage – and does so!”

41. Mr. Kelley/IAMS has paid Ms. Hartnett only \$1,000 of the \$11,900 owed to her.

42. Mr. Kelley told bar counsel he has always been “above reproach in that [he is] truthful to a fault.” That statement is false or, at a minimum, inaccurate. For example, on June 27, 2013, an *Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same By: Respondents International Air Medical Services, Inc., Thomas F. Kelley and Laura Kelley* (the Order) was filed with the Arizona Corporation Commission (ACC), Docket No. S-20858A-12-0412. Under the terms of the Order, Mr. Kelley was ordered to permanently cease and desist from violating the Arizona Securities Act, pay

restitution to the Commission in the principle amount of \$1,406,300, plus accruing interest, which is to be disbursed on a pro-rata basis to investors of IAMS, along with a \$50,000 administrative penalty. As of at least June 29, 2017, neither Mr. Kelley nor any of the other respondents had paid any of the ordered amounts.

In Arizona, the courts have acknowledged that an attorney-client relationship can arise from the short consultation. In *Foulke v. Knuck*, 162 Ariz. 517, 784 P.2d 723 (App. 1989) the court stated the “fact that a consultation is relatively brief does not negate the establishment of an attorney-client relationship.” We find Mr. Kelley led Ms. Harnett to conclude he represented her as her attorney.

III. CONCLUSIONS OF LAW

Under Rule 58(d), Ariz. R. Sup. Ct. the facts deemed admitted and the exhibits submitted by the State Bar at the aggravation/mitigation hearing, the Hearing Panel finds by clear and convincing evidence that Mr. Kelley violated:

Count One: Rule 42, Ariz. R. Sup. Ct., specifically ER 3.4(c), ER 4.1(a) and (b), ER 8.4(b), (c) and (d).

Count Two: Rule 42, Ariz. R. Sup. Ct., specifically ER 4.1(a), ER 4.3, ER 8.1(a), and ER 8.4(c) and (d).

ABA STANDARDS ANALYSIS

The American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). In imposing a sanction, the following factors should consider: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standard 3.0*.

Duties Violated

Mr. Kelley violated his duty to the general public by violating ER 8.4(b) and (c).

Mr. Kelley violated his duty to the legal system by violating ER 3.4(c), ER 4.1(a) and (b), ER 4.3, and ER 8.4(d).

Mr. Kelley violated his duty to the legal profession by violating ER 8.1(a).

Mr. Kelley's Mental State

Mr. Kelley acted with a "knowing" state of mind when he provided false or inaccurate information to prospective investors, violated A.R.S. § 44-1991 (fraud in purchase or sale of securities), and intentionally when he had Marlene Hartnett sign the second Anthem insurance check over to Wallace Olsen, Jr., even though he knew she was entitled to \$11,900 of those funds.

Actual or Potential Injury

The actual injury to IAMS's investors amounted to approximately \$1.4 million (the ACC Order required the Commission to "disburse the funds on a pro-rata basis to investors shown on the records of the Commission"). In addition, Marlene Hartnett has been harmed in the amount of \$10,900, which was the amount that Mr. Kelley was to have reimbursed upon payment from the insurance carrier, but which Mr. Kelley failed to pay.

Presumptive Standards

Standard 4.61 – "Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potentially serious injury to a client."

Standard 5.11(a) – "Disbarment is generally appropriate when a lawyer engages in serious criminal conduct a necessary element of which includes . . . misrepresentation, fraud, extortion, misappropriation, or theft . . . or an attempt or conspiracy or solicitation of another to commit any of these offenses."

Standard 6.22 – "Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding."

Standard 7.2 – "Suspension is generally appropriate when a lawyer knowingly

engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.”

Aggravating and Mitigating Factors

The Hearing Panel finds the following aggravating factors are present in this matter:

- *Standard 9.22(b)* – dishonest or selfish motive;
- *Standard 9.22(c)* – a pattern of misconduct (a pattern of misconduct is generally found when the misconduct involves multiple clients or the respondent-lawyer has a prior disciplinary record involving the same or similar wrongdoing. *See, e.g., In re Levine*, 174 Ariz. 146, 847 P.2d 1093 (1993));
- *Standard 9.22(d)* – multiple offenses (the Arizona Supreme Court has generally applied the aggravating factor of multiple offenses in cases where the lawyer’s misconduct involved multiple clients or multiple matters);
- *Standard 9.22(e)* – bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency (Mr. Kelley knowingly made a false statement of material fact).
- *Standard 9.22(f)* – submission of false evidence, false statements, or other

deceptive practices during the disciplinary process;

- *Standard 9.22(g)* – refusal to acknowledge wrongful nature of conduct (in response to the State Bar’s screening investigation, Mr. Kelley stated: “I disagree with everything and anything contained in the [ACC] Order. I believe that the Corporation Commission’s investigation was a ‘witch hunt.’”);
- *Standard 9.22(h)* – vulnerability of the victims;
- *Standard 9.22(i)* – substantial experience in the practice of law (Mr. Kelley was admitted to practice law in Arizona on October 22, 1994);
- *Standard 9.31(j)* – indifference to making restitution (as of at least June 29, 2017, neither Mr. Kelley nor any of the other respondents appearing before the ACC had paid any of the amounts ordered in the ACC Order and Mr. Kelley has failed to pay the money owed Ms. Hartnett); and
- *Standard 9.22(k)* – illegal conduct (Mr. Kelley consented to the ACC’s entry of an order finding he violated A.R.S. § 44-1841, Sale of Unregistered Securities, a class 4 felony; A.R.S. § 44-1842, Transactions by Unregistered Dealers and Salesmen Prohibited, a class 4 felony; and A.R.S. § 44-1991(A), Fraud in Purchase or Sale of Securities. In addition, his failure to reimburse Ms. Hartnett amounts to a violation of A.R.S. §

13-1802, theft, a class 3 felony.).

The Hearing Panel finds the following mitigating factors are present in this matter:

- *Standard 9.32(a)* – absence of a prior disciplinary record;
- *Standard 9.32(j)* – delay in disciplinary proceedings (the Order in Count One was entered on June 27, 2013, but it was not forwarded to the State Bar of Arizona until February 11, 2016, when an aviation company provided the State Bar with a copy); and
- *Standard 9.32(k)* – imposition of other penalties or sanctions (on June 27, 2013, the ACC entered an *Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties* against Mr. Kelley, his wife and IAMS, ACC Docket No. S-20858A-12-0412; under the terms of the Order, Mr. Kelley was ordered to permanently cease and desist from violating the Arizona Securities Act, pay restitution to the Commission in the principle amount of \$1,406,300, plus accruing interest, which is to be disbursed on a pro-rata basis to investors of IAMS, and pay a \$50,000 administrative penalty; as of at least June 29, 2017, however, neither Mr. Kelley nor any of the other respondents had paid any of the ordered amounts).

IV. CONCLUSION

The Supreme Court “has long held that ‘the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.’” *Alcorn*, 202 Ariz. at 74, 41 P.3d at 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). A purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). A goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the SBA. *In re Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

The Hearing Panel has determined the sanction using the facts deemed admitted, the Standards, the aggravating factors, the mitigating factors, and the objective, purpose and goal of the attorney discipline system. The Hearing Panel orders:

1. Mr. Kelley is disbarred from the practice of law effective immediately.
2. Mr. Kelly shall immediately comply with the requirements relating to notification of clients and others, and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.
3. Mr. Kelley shall pay restitution to the following individual:
 - a. \$10,900.00 to Marlene Hartnett (Count Two).

4. Mr. Kelley shall pay all costs and expenses incurred by the SBA and the Office of the Presiding Disciplinary Judge in this proceeding.

A Final Judgment and Order will follow.

DATED this 2nd day of October, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Betty J. Davies

Betty J. Davies, Volunteer Public Member

Scott I. Palumbo

Scott I. Palumbo, Volunteer Attorney Member

Copy of the foregoing emailed/mailed
this 2nd day of October, 2017, to:

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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

JUL 20 2017

FILED
BY 

BEFORE THE PRESIDING DISCIPLINARY JUDGE

In the Matter of a Suspended Member
of the State Bar of Arizona,

THOMAS F. KELLEY,
Bar No. 015842,

Respondent.

PDJ-2017- 9092

COMPLAINT

[State Bar Nos. 16-0535, 16-1720]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. Respondent was first admitted to practice law in Arizona on October 22, 1994. Between February 22, 2013, and May 14, 2013, Respondent was suspended from the practice of law for failure to comply with the

requirements of Mandatory Continuing Legal Education. Also, on June 13, 2017, Respondent was suspended from the practice of law for nonpayment of dues. As of the date this complaint was filed, Respondent remained suspended from the practice of law in Arizona.

COUNT ONE (File No. 16-0535/Dunn)

2. Respondent was/is the General Counsel, president and/or CEO of International Air Medical Services, Inc. (IAMS), which did business as International Life Flight during some or all times relevant hereto.

3. The Arizona Corporation Commission (ACC) investigated Respondent and his wife regarding possible fraud involved in the solicitation of IAMS investors and whether the sales of stock were properly registered (*International Air Medical Services, Inc. Thomas F. Kelley and Laura Kelly, husband and wife*, Docket No. S-20858A-12-0412).

4. On June 27, 2013, the ACC filed an *Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same By: Respondents International Air Medical Services, Inc., Thomas F. Kelley, and Laura Kelley* (Order). The Order directed Respondent and the other respondents in the ACC case to pay an administrative penalty of \$50,000 and restitution in the

amount of \$1,406,300 to the State of Arizona. As of at least June 29, 2017, neither Respondent nor any of the other respondents had paid any of the ordered amounts.

5. The Order included findings that Respondent committed numerous violations of the Arizona Securities Act, including but not limited to, A.R.S. § 44-1841 (Sale of Unregistered Securities), a class 4 felony; A.R.S. § 44-1842 (Transactions by Unregistered Dealers and Salesmen Prohibited), a class 4 felony; and A.R.S. § 44-1991(A) (Fraud in Purchase or Sale of Securities).

6. Between 2009 and at least June 2012, Respondent offered and sold unregistered securities within and from Arizona in his individual capacity and on behalf of IAMS, as its CEO/president and General Counsel. Neither Respondent nor IAMS had been registered by the ACC as a securities salesman or dealer.

7. Among other things, Respondent provided investors with a business plan that stated: "We have created this unique opportunity where the investor can elect to have the security of getting 100% of their money returned plus interest."

8. Respondent represented to at least one investor to whom IAMS issued promissory notes in conjunction with either preferred or common stock in IAMS (Equity + Note Investors) that there would be an escrow account holding up to \$200,000, which would be available to IAMS for its operating expenses.

Respondent/IAMS, however, never placed any funds, including investor funds, into an escrow account for operating expenses.

9. For at least five of the Equity + Note Investors, IAMS issued *Stock Purchase Agreements* or *Secured Loan Agreements* in conjunction with a promissory note (Secured Equity + Note Investors). Those agreements provided, among other things, for IAMS stock, a promissory note and a security agreement to be issued to the investor upon receipt of investment funds. The investment documents included, among other things, statements that IAMS pledged security in all assets for each investor and that the collateral was free from any liens or claims. They further stated that IAMS would not grant a security interest in or sell the collateral to any other person/entity without the investor's consent. With the exception of the first Secured Equity + Note Investors, Respondent/IAMS (a) misrepresented that the collateral was free from any liens or claims; (b) misrepresented that they held the most senior debt; and (c) failed to disclose previous security interests pledged in the same collateral. Respondent/IAMS also failed to obtain the Secured Equity + Note Investors' written consent when pledging the same collateral to subsequent investors.

10. Respondent signed, on behalf of IAMS, the promissory notes and security agreements issued to investors.

11. The majority of investors who invested in IAMS via promissory notes were not paid as required under the terms of the notes, with many receiving no payments at all.

12. Respondent/IAMS also issued IAMS common or preferred stock to investors in exchange for capital contributions (Equity Investors). The majority of those investors executed *Stock Purchase Agreements* with IAMS. Respondent signed those agreements as President/General Counsel of IAMS. The agreements required IAMS to deliver stock certificates to the investors, but Respondent/IAMS failed to do so for a number of investors. Respondent signed the stock certificates that were actually issued.

13. Respondent offered seats on the IAMS board of directors to investors without board resolutions authorizing him to do so. Those board member investors were never advised of board meetings or presented with the opportunity to vote.

14. Respondent/IAMS issued and sold promissory notes and/or stock in IAMS to investors totaling approximately \$1,552,000. The investors, however, received payments totaling only approximately \$115,700.

15. Investor funds were deposited into bank accounts owned and controlled by Respondent. Respondent and another IAMS officer did not use investors' funds to operate IAMS, but rather used utilized the IAMS account, which included investor funds, for their own personal expenses/purposes. Respondent, however, did not draw a salary from IAMS and the board of directors never approved compensation or salaries for officers of IAMS, as required by IAMS' bylaws.

16. Respondent's family members and friends comprised only a portion of the IAMS' investors. Respondent was, therefore, required to comply with all relevant statutory provisions unless his family members and friends who invested had business acumen in the area in which they were investing. Respondent failed to comply with all relevant statutory provisions, as required.

17. In response to a screening investigation letter from bar counsel, Respondent stated:

I disagree with everything and anything contained in the Order. I believe that the Corporation Commission's investigation was a 'witch hunt.'

18. Under the terms of the Order, while Respondent did not admit or deny the Findings of Fact and Conclusions of Law contained therein, he agreed not to contest their validity in any future proceeding in which the ACC or any other state

agency is a party concerning the denial or issuance of any license or registration required by the State of Arizona.

19. Respondent also agreed, as part of the Order, not to take any action or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of Fact or Conclusion of Law in the Order or creating the impression that the Order is without factual basis.

20. By engaging in the conduct set forth above, Respondent violated ER 3.4(c), ER 4.1(a) and (b), ER 8.4(b), (c) and (d).

COUNT TWO (File No. 16-1720/Hartnett)

21. In November 2013, Marlene Hartnett (Marlene) and her now-deceased husband, George Hartnett (George), were in New York when he became critically ill and needed medical transportation to Connecticut. Marlene found International Air Medical Services, Inc. (IAMS), dba International Life Flight, online and executed a *Service Agreement* (Agreement) with the company to transport George. Respondent was/is the General Counsel, president and/or CEO of IAMS.

22. The Agreement required the payment of an advance fee, which Marlene paid in the amount of \$11,900. Under the terms of the Agreement, if IAMS received payment in full for the services provided, IAMS agreed to reimburse the

advance payment less any co-insurance or co-deductible. Also under the terms of the agreement, any insurance payment received by Marlene or George was deemed to be the property of IAMS. Marlene agreed to direct insurance payments to IAMS, which agreed to reimburse the advance payment within 30 days after receiving payment in full. The Agreement gave IAMS authority to bill any insurance company on George's behalf for services provided.

23. The Agreement included (a) an "Appointment of Authorized Representative," which named IAMS and Respondent as George's authorized representative to seek reimbursement payments for health benefits for the services provided; and (b) an "Assignment of Benefits in Accordance with Title 20 U.S.C. § 1132(a)(1)(B)," which designated "IAMS and Thomas F. Kelley, Esq. (IAMS and Counsel)" as George's beneficiary, and which irrevocably assigned to them George's insurance benefits, which were to be applied against the charges for services provided to George.

24. George died on November 13, 2013, ten days after he was transported by IAMS/ International Life Flight.

25. During or about January 2014, Marlene contacted Respondent to check on the status of the insurance payments and any reimbursement she was entitled to

receive pursuant to the terms of the Agreement. Respondent informed Marlene that IAMS had been “infiltrated” by a competitor and that “he was an attorney and he would handle [the insurance claims] himself.” Thereafter, Respondent worked closely with Marlene regarding the insurance claims and appeals from denials.

26. On or about June 16, 2014, Respondent sent an undated letter to Marlene to inform her about the status of his efforts to secure payment of claims submitted to various insurance companies for the services that IAMS/International Life Flight had provided to George. Respondent signed the letter as “Thomas F. Kelley, CEO & General Counsel, International Life Flight.”

27. On June 17, 2014, Maricopa County Superior Court Judge Colleen French entered a judgment and order in the amount of \$4,388,215 (not including attorney’s fees, costs, or subsequent interest) in favor of Wallace Olsen, Jr., and against IAMS, based upon a stipulation of the parties in *Wallace Olsen, Jr., v. International Air Medical Services, Inc.*, Maricopa County Superior Court No. CV2013-011833. Respondent represented himself, his wife and IAMS regarding the stipulation.

28. Regarding the claim for insurance proceeds related to the transportation of George, Respondent identified himself in letters to insurance companies as

George's "Authorized Representative." He also identified himself as "Thomas F. Kelley, CEO & General Counsel, International Life Flight."

29. By check dated December 16, 2014, Anthem, Inc., an insurance company, paid \$99,800 of the insurance claim submitted for George's medical transportation. The check was made payable to George E. Hartnett, who was deceased. When Marlene received that first check from Anthem, she consulted with a Connecticut attorney who advised her to return the check and advise Anthem that George had died. However, when she told Respondent of her intention to follow the advice she had been given, Respondent told her it would take a long time before the check was reissued and that it would be "very complicated." He told Marlene that if she would endorse the check as he directed, she would "get the money faster." In reliance upon Respondent's advice and direction, instead of sending the check back to Anthem and requesting that it be re-issued to the appropriate party, Marlene endorsed the check as directed by Respondent: "George E. Hartnett, pay to the order of IAMS, dba International Flight, as Assignee under the Assignments of Benefits dated November 3, 2015."

30. By check dated February 6, 2015, Anthem paid an additional \$45,375 of the insurance claim submitted for George's medical transportation. That check

was also made payable to George E. Hartnett. Respondent informed Marlene that Wallace Olsen, Jr., was an investor in IAMS, and directed her to endorse that second check over to Olsen, who would then deposit it into his own account. Marlene complied with Respondent's direction to endorse the check as follows: "George E. Hartnett, pay to the order of Wallace Olsen, Jr. under the assignment of benefits dated February 6, 2015." Olsen received those funds during or about February 2015. Respondent told Marlene that she could expect to receive a reimbursement check (for the advance fee of \$11,900 that she had paid) 30 days later.

31. Respondent deposited both Anthem checks. He directed Marlene to endorse the checks "[s]o that we could deposit them and cash them." He also told Marlene, "It's not uncommon in our industry for an insurance company to send payment to a dead man."

32. Under the terms of the Agreement, IAMS was obligated to reimburse Marlene the advance payment of \$11,900 in March 2015. Beginning in March 2015, Respondent repeatedly promised to reimburse Marlene, but failed to do so.

///

33. Marlene's son, Scott Tibbals, spoke with Respondent on a number of occasions during October 2015 in an attempt to get him to commit to a date by which he would reimburse Marlene, but he refused to do so.

34. Marlene and Tibbals then contacted the Scottsdale Police Department (SPD). SPD Officer Marcos Hernandez contacted Respondent, who promised to pay Marlene by December 31, 2015. Upon information and belief, the SPD took no further action against Respondent.

35. By email dated December 7, 2015, Respondent advised Tibbals that he would "do [his] very best to get [his] mother a cashier's check for \$11,900 by the first of January." That email message was "signed" by Respondent in his personal capacity.

36. On or about December 31, 2015, Respondent issued a \$1,000 check to Marlene, which she received on January 7, 2016. Respondent failed to make any further payments to Marlene. Marlene perceived that \$1,000 payment as Respondent's attempt to "pacify" her, while he/IAMS collected more than \$157,000 for IAMS' medical transportation of George.

37. On January 8, 2016, Marlene filed a complaint with the Arizona Attorney General's Office (AGO) regarding Respondent's conduct. When

contacted by that office, Respondent stated that his financial situation was “turning around” and that he would pay Marlene in full in a few weeks. He failed to do so, however. Upon information and belief, the AGO took no further action against Respondent.

38. During March 2016, Marlene informed Anthem that she believed Respondent and IAMS had engaged in fraudulent billing.

39. During April 2016, Tibbals spoke with Wallace Olsen, Jr., who advised he was an investor and that Respondent owed him a large sum of money.

40. Respondent has taken the position that IAMS owes Marlene for reimbursement of the advance fee, not International Life Flight or himself. The insurance claim letters, appeal letters and correspondence from Respondent to Marlene, however, are on International Life Flight letterhead and were signed by Respondent as CEO and General Counsel of International Life Flight. The Agreement is written on International Life Flight letterhead and International Life Flight is identified therein as a dba of IAMS. Respondent’s actions in attempting to recover funds from Anthem on Marlene’s behalf, especially given Marlene’s belief that he was representing her, amount to legal representation of Marlene.

41. Respondent repeatedly told Marlene that he would pay her. He maintains, however, that IAMS was “put out of business” and that while he has been able to “rebuild” IAMS, he has “not yet re-commence[d] operations.” As of the date of this complaint, IAMS is operational and its website includes Respondent’s biography, which states, “Kelley is licensed to practice law in Arizona.” As of about mid-February 2017, IAMS’ website also stated, “As an attorney, Kelley can help you press your rights for coverage – and does so!”

42. Respondent/IAMS has paid Marlene only \$1,000 of the \$11,900 owed to her.

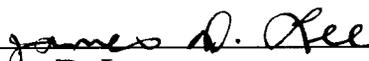
43. Respondent told bar counsel that he has always been “above reproach in that [he is] truthful to a fault.” That statement is false or, at a minimum, inaccurate. By way of example only, on June 27, 2013, an *Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same By: Respondents International Air Medical Services, Inc., Thomas F. Kelley and Laura Kelley* (the Order) was filed with the Arizona Corporation Commission (ACC), Docket No. S-20858A-12-0412. Under the terms of the Order, Respondent was ordered to permanently cease and desist from violating the Arizona Securities Act, pay restitution to the Commission in the principle amount of \$1,406,300, plus

accruing interest, which is to be disbursed on a pro-rata basis to investors of IAMS, along with a \$50,000 administrative penalty. As of at least June 29, 2017, neither Respondent nor any of the other respondents had paid any of the ordered amounts.

44. By engaging in the conduct set forth above, Respondent violated ER 4.1(a), ER 4.3, ER 8.1(a), and ER 8.4(c) and (d).

DATED this 20th day of July, 2017.

STATE BAR OF ARIZONA



James D. Lee
Senior Bar Counsel

Original filed with the Disciplinary Clerk of the Office of the Presiding Disciplinary Judge of the Supreme Court of Arizona this 20th day of July, 2017.

by: 

JDL:nr

BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,

THOMAS F. KELLEY
Bar No. 015842

Respondent.

No. 16-0535

PROBABLE CAUSE ORDER



The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on April 7, 2017, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-0535.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 3rd day of May, 2017.

A handwritten signature in cursive script that reads "Lawrence F. Winthrop".

Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

Original filed this th4 day
of May, 2017 with:

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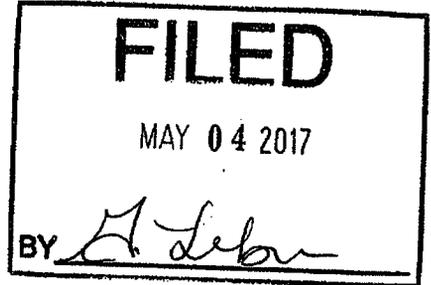
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by: Karen E. Calapuz

BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA



IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,

No. 16-1720

THOMAS F. KELLEY
Bar No. 015842

PROBABLE CAUSE ORDER

Respondent.

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on April 7, 2017, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-1720.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 3rd day of May, 2017.

A handwritten signature in cursive that reads "Lawrence F. Winthrop".

Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

Original filed this 4th day
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by: Karen E. Calcagno