

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**AARON MATTHEW KELLY,  
Bar No. 025043,**

Respondent.

**PDJ 2018-9012**

**FINAL JUDGMENT AND  
ORDER**

[State Bar No. 17-1236]

**FILED JULY 30, 2018**

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on July 27, 2018, pursuant to Rule 57(a), Ariz. R. Sup. Ct., accepts the parties' proposed Agreement.

Accordingly:

**IT IS ORDERED** Respondent, **Aaron Matthew Kelly**, is reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents effective the date of this order.

**IT IS FURTHER ORDERED** **Aaron Matthew Kelly**, is placed on probation for two (2) years.

**IT IS FURTHER ORDERED** Mr. Kelly shall participate in LOMAP. Mr. Kelly shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from this order. Mr. Kelly shall sign terms and conditions of participation, including reporting requirements, are incorporated by reference. Mr. Kelly shall be responsible for any costs associated with LOMAP.

**IT IS FURTHER ORDERED** Mr. Kelly shall pay the costs and expenses of the State Bar of Arizona for \$1,437.80, within thirty (30) days from this order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in these disciplinary proceedings.

**DATED** this 30th day of July, 2018.

*William J. O'Neil*

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**William J. O'Neil, Presiding Disciplinary Judge**

COPY of the foregoing e-mailed on this 30<sup>th</sup> day of July, 2018, and mailed July 31, 2018, to:

Bradley F. Perry  
Staff Bar Counsel  
4201 N 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: LRO@staff.azbar.org

Nancy A. Greenlee  
821 East Fern Drive North  
Phoenix, Arizona 85014-3248  
Email: nancy@nancygreenlee.com  
Respondent's Counsel

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**AARON MATTHEW KELLY,  
Bar No. 025043**

Respondent.

**PDJ 2018-9012**

**AMENDED DECISION ACCEPTING  
DISCIPLINE BY CONSENT  
NUNC PRO TUNC TO JULY 30, 2018**

[State Bar No. 17-1236]

**FILED JULY 31, 2018**

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Under Rule 57(a), Ariz. R. S. Ct.,<sup>1</sup> an Agreement for Discipline by Consent (“Agreement”), was filed on July 27, 2018. A Probable Cause Order issued on November 2, 2018 and the formal complaint was filed on January 26, 2018. Mr. Kelly is represented by Nancy A. Greenlee. The State Bar of Arizona is represented by Staff Bar Counsel Bradley F. Perry.

Rule 57 requires admissions be tendered solely “...in exchange for the stated form of discipline...” Under that rule, the right to an adjudicatory hearing is waived only if the “...conditional admission and proposed form of discipline is approved...” If the agreement is not accepted, those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding. Mr. Kelly has voluntarily waived the right to an adjudicatory hearing, and waived all

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<sup>1</sup> Unless otherwise stated all Rule references are to the Ariz. R. Sup. Ct.

motions, defenses, objections or requests that could be asserted upon approval of the proposed form of discipline. Notice of the Agreement and an opportunity to object pursuant to Rule 53(b)(3), is not required as the State Bar of Arizona is the complainant in this proceeding.

The Agreement details a factual basis to support the conditional admissions. It is incorporated by this reference. Mr. Kelly admits a Rule 42, violation of ER 1.3 (diligence) and ER 3.1 (meritorious claims and contentions).

Mr. Kelly was referred a client by Richart Ruddle who owned a company named Profile Defenders. Ruddle and his company had been clients of Kelly since 2012. Part of the services offered by Ruddle and his company was the removal of online content that criticized a client or a client's business. The parties stipulate that no ethical violations occurred in this matter and the information is provided for background information.

In August 2015 Ruddle referred another client ("Varden") to Kelly to assist in removing allegedly defamatory online criticism. Kelly had no direct substantive communications with Varden prior to or after accepting representation. He filed a suit against the person who allegedly posted defamatory statements online. Alleged defendant Lentz emailed the signed stipulated request for injunction and the settlement agreement to Kelly. Kelly failed to properly inform himself about the facts of his

client's case to determine if his claims had merit. He successfully obtained a stipulated order for permanent injunction.

In September 2015, Ruddle referred Nicholas Gottuso to Kelly. He also accomplished the goal of obtaining a stipulated injunction against defamation and presenting the injunction to various owners of search engines. Kelly had no direct substantive communications with Gottuso prior to accepting representation. He spoke only to Ruddle. He filed a complaint on behalf of Gottuso, and then spoke to client Gottuso shortly after the filing.

In 2016, Kelly learned that Ruddle was accused of engaging in fraud to obtain injunctions. Through investigation it appears false addresses were used for the purported defendants in the cases referred to Kelly. The parties stipulate that Kelly was unaware of any potential fraud.

The parties stipulate to reprimand with two years of probation, the terms of which shall be by participation in the Arizona State Bar Law Office Management Assistance Program (LOMAP), and payment of costs of \$1,437.80 within thirty (30) days.

*Standard 4.43, Lack of Diligence* applies to Mr. Kelly's violation of ER 1.3 and provides reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client and causes injury or potential injury to a client.

*Standard 6.23 Abuse of the Legal System* applies to Mr. Kelly's violation of ER 3.1 and provides reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule and causes injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

Mr. Kelly failed to diligently represent his client and failed to inform himself regarding the facts of the claim. He further failed to communicate directly with his client to determine if their claim was meritorious before filing the civil complaint.

Mr. Kelly's misconduct violated his duty to his client and to the legal system and caused potential harm to the client and the legal system. The parties stipulate the presumptive sanction is reprimand. The allegations in the complaint are troubling and raise multiple concerns. However, the presumption of innocence when coupled with the apparent absence of proof for the claims in the complaint overshadow those concerns. The facts stipulated to warrant a finding of misconduct.

After misconduct is established, aggravating and mitigating factors may be considered in deciding what sanction to impose. The parties stipulate aggravating factors 9.22(c) pattern of misconduct and 9.22(i) substantial experience in the practice of law are present. In mitigation are factors 9.32(a) absence of prior disciplinary record, 9.32(d) timely good faith effort to rectify the consequences of the misconduct, 9.32(e) full and free disclosure to the disciplinary board or cooperative attitude towards

proceedings, and 9.32(g) character or reputation. [2 Character Letters, Agreement, Exhibit B.]

Accordingly,

**IT IS ORDERED** accepting the Agreement and incorporating it with any supporting documents by this reference. A final judgment and order is signed this date.

**DATED** this 31<sup>st</sup> day of July, 2018.

*William J. O'Neil*  

---

**William J. O'Neil, Presiding Disciplinary Judge**

COPY of the foregoing e-mailed on this 31<sup>st</sup> day of July, 2018, and mailed August 1, 2018, to:

Bradley F. Perry  
*State Bar of Arizona*  
4201 N 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: LRO@staff.azbar.org

Nancy A. Greenlee  
821 East Fern Drive North  
Phoenix, AZ 85014-3248  
Email: nancy@nancygreenlee.com  
Respondent's Counsel

by: AMcQueen

Bradley F. Perry, Bar No. 025682  
Staff Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
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Telephone (602)340-7247  
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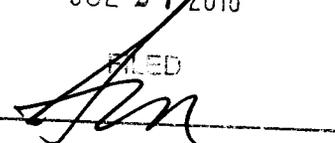
Nancy A. Greenlee, Bar No. 010892  
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Respondent's Counsel

OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

JUL 27 2018

FILED

BY



**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**AARON MATTHEW KELLY,  
Bar No. 025043,**

Respondent.

**PDJ 2018-9012**

**State Bar File No. 17-1236**

**AGREEMENT FOR DISCIPLINE  
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Aaron M. Kelly, who is represented in this matter by counsel, Nancy A. Greenlee, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A Probable Cause Order was entered on November 2, 2017. A formal Complaint was filed on January 26, 2018. Respondent timely answered on

February 26, 2018. Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections, or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of sanction is approved.

The State Bar is the Complainant in this matter; therefore, no notice of this Agreement is required pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct.

Respondent conditionally admits that he violated Rule 42, ERs 1.3 (diligence) and 3.1 (meritorious claims and contentions) in *Varden v. Lentz* by failing to properly inform himself about the facts of his client's case in order to adequately determine if the filed claim was meritorious. Respondent conditionally admits that he violated ER 1.3 (diligence) with respect to his initial handling of *Gottuso v. Marks* by failing to adequately collect facts from his client prior to filing the complaint. The State Bar is dismissing the alleged violations of fraud and ERs 1.2, 1.4, 3.3, 8.4(a), 8.4(c), and 8.4(d).

Upon acceptance of this Agreement, Respondent agrees to accept imposition of the following discipline: Respondent shall be reprimanded and placed on probation for a period of two (2) years, the term of which shall be participation in the State Bar's Law Office Management Assistance Program (LOMAP).

Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within thirty (30) days from the date of this Order, and if costs are not paid within the thirty (30) days, interest will begin to accrue at the legal rate.<sup>1</sup> The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

## **FACTS**

### **GENERAL ALLEGATIONS**

1. Respondent became licensed to practice law in Arizona on February, 15, 2007.

#### **COUNT ONE (File No. 17-1236/ State Bar of Arizona)**

2. In May 2015, Richart Ruddle referred client Gil Cohen to Respondent. Richart Ruddle owned a company named Profile Defenders, a reputation management firm that helped clients maintain a positive online presence. Part of the services offered by Ruddle was facilitating the removal of online content that criticized a client or a client's business.

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<sup>1</sup> Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

3. Respondent had a business relationship with Ruddle. Ruddle and his company had been clients of Respondent's firm since 2012, and, in mid-2015, the firm employed Ruddle as an expert in a case in the U.S. District Court for the Eastern District of Pennsylvania (Case No. 2:14-cv-05980-GAM).

4. Ruddle referred Gil Cohen to Respondent so Respondent could remove allegedly defamatory statements about Cohen from the internet.

5. Respondent would accomplish Cohen's goal by obtaining a stipulated injunction against defamation, presenting the injunction to Google and/or other search engines, and requesting the search engines de-index the offending websites from search results.

6. Prior to accepting the representation, Respondent spoke with Cohen to obtain the facts of the case. Cohen informed Respondent that the allegedly defamatory statements were written by a man named Robert Smith, who was willing to cooperate with Respondent and Cohen to have the statements removed. Cohen provided contact information for Smith.

7. In May 2015, Respondent drafted a civil complaint and provided it to Cohen prior to filing. Cohen approved the complaint and signed a verification for the complaint.

8. Respondent filed the complaint in *Cohen v. Smith*, CV 2015-002017, alleging Robert Smith posted a defamatory statement about client Cohen at: <http://www.ripoffreport.com/r/Gil-D-Cohen-Cypress-Financial-Group-MetLife/internet/Gil-D-Cohen-Cypress-Financial-Group-MetLife-Gil-Cohen-Gil-Daniel-Cohen-CorruptUntrus-991323>.

9. After filing the complaint, Respondent spoke with Cohen and someone purporting to be defendant Smith. Respondent thereafter drafted and filed a stipulated request for permanent injunction.

10. Respondent successfully obtained a stipulated order for permanent injunction.

11. For purposes of this Agreement, the State Bar agrees that Respondent committed no ethical violations with regard to the handling of Cohen's case.

12. In August 2015, Richard Ruddle referred client Don Varden to Respondent. Respondent was to assist Varden in removing allegedly defamatory online criticism.

13. Respondent would accomplish Varden's goal by obtaining a stipulated injunction against defamation, presenting the injunction to Google and/or other

search engines, and requesting the search engines de-index the offending websites from search results.

14. Respondent did not speak to or otherwise have direct substantive communications with client Varden prior to accepting the representation. Respondent spoke only to Ruddle, who informed Respondent that he was authorized by Varden to retain Respondent and that the allegedly defamatory statements were written by a man named Damon Lentz, who was willing to cooperate with Respondent and Varden to have the statements removed.

15. In August 2015, Respondent filed a complaint on behalf of client Varden alleging Damon Lentz posted defamatory statements at: <http://www.ripoffreport.com/reports/seasons-recovery-center-in-malibu/malibu-california-/seasons-recovery-center-in-malibu-serenity-malibu-ripoff-malibu-california-885202>.

16. Respondent did not speak to or otherwise have direct substantive communications with Varden prior to filing the complaint. Respondent failed to properly inform himself about the facts of his client's case in order to adequately determine if the filed claim was meritorious. Varden signed a verification of the complaint and that document was emailed to Respondent.

17. After filing the complaint, Respondent drafted a letter to alleged defendant Lentz and provided the complaint, a proposed stipulated request for permanent injunction and a settlement agreement. Respondent's support staff forwarded those documents by email to Lentz. Respondent did not speak to or otherwise have direct substantive communications with Varden or alleged defendant Lentz prior to filing the request for injunction. Alleged defendant Lentz emailed the signed stipulated request for injunction and the settlement agreement to Respondent's staff.

18. Respondent did not speak to or otherwise have direct substantive communications with client Varden during the pendency of the case. Respondent communicated with individuals at Ruddle's company who acted as intermediaries between Respondent's firm and the parties in the case.

19. Respondent successfully obtained a stipulated order for permanent injunction.

20. In September 2015, Richard Ruddle referred client Nicholas Gottuso to Respondent. Respondent was to assist Gottuso in removing allegedly defamatory online criticism.

21. Respondent would accomplish Gottuso's goal by obtaining a stipulated injunction against defamation, presenting the injunction to Google and/or other

search engines, and requesting the search engines de-index the offending websites from search results.

22. Respondent did not speak to or otherwise have direct substantive communications with client Gottuso prior to accepting the representation. Respondent spoke only to Ruddle, who informed Respondent that the allegedly defamatory statements were written by a man named Howard Marks, who was willing to cooperate with Respondent and Gottuso to have the statements removed.

23. In September 2015, Respondent Kelly filed a complaint on behalf of client Gottuso in *Gottuso v. Marks*, CV 2015-009393, alleging Howard Marks posted a defamatory statement at: <http://www.ripoffreport.com/r/Nick-Nicholas-Gottuso-FRAUDULENT-BUSINESS-PRACTICES/Pasadena-California-91105/Nick-Nicholas-Gottuso-FRAUDULENT-BUSINESS-PRACTICES-Nicholas-Nick-Gottuso-Brian-Linneki-586368>.

24. Respondent did not speak to or otherwise have direct substantive communications with client Gottuso prior to filing the complaint. Respondent prepared a letter to alleged defendant Marks explaining the process and enclosing the complaint, proposed stipulated order for permanent injunction, and settlement

agreement, and Respondent's support staff emailed those documents to defendant Marks.

25. Respondent did speak with client Gottuso shortly after filing the complaint.

26. Respondent successfully obtained a stipulated order for permanent injunction.

27. In 2016, Respondent learned that Richard Ruddle was accused of engaging in fraud to obtain injunctions for Profile Defender's clients. The Washington Post detailed 25 court cases, at least 15 of which purportedly listed a false address for the defendant. In the cases, the defendant agreed to an injunction by the plaintiff, which allowed the reputation management company to issue takedown notices to Google, Yelp, Leagle, Ripoff Report, various news sites, and other websites. Two of the court cases were linked to Profile Defenders.

28. Evidence obtained during the State Bar's investigation suggests false addresses were used for the purported defendants in *Varden* and *Gottuso*. The State Bar investigated whether defendant Lentz in *Varden* was associated with the address provided to Respondent. The State Bar could not locate anyone by the name of Damon Lentz in California. The investigator was able to locate one individual named

Damon Lantz, but he was not associated with the address listed for the defendant in this matter. The State Bar investigated whether defendant Marks in Gottuso was associated with the address provided to Respondent. The address provided was "10979 Bluffside Drive, Studio City, CA 91604." The State Bar could find no records linking a "Howard Marks" to the address.

29. Respondent was unaware of any potential fraud while *Cohen*, *Varden*, and *Gottuso* were pending.

#### **CONDITIONAL ADMISSIONS**

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that with regard to client Varden's case, his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.3 and 3.1, and regarding client Gottuso, his conduct violated ER 1.3.

#### **CONDITIONAL DISMISSALS**

The State Bar has conditionally agreed to dismiss all remaining alleged violations, including allegations in *Lynd*, and ERs 1.2, 1.4, 3.3, 8.4(a), 8.4(c), and 8.4(d).

## **RESTITUTION**

Restitution is not an issue in this matter.

## **SANCTION**

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are appropriate: Respondent shall be reprimanded and placed on probation for a period of two (2) years, the term of which shall be participation in the State Bar's Law Office Management Assistance Program (LOMAP). Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within thirty (30) days from the date of this Order, and if costs are not paid within the thirty (30) days, interest will begin to accrue at the legal rate.

If Respondent violates any of the terms of this Agreement, further discipline proceedings may be brought.

## **NON-COMPLIANCE LANGUAGE**

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may

conduct a hearing within thirty (30) days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. 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 of Arizona to prove noncompliance by a preponderance of the evidence.

### **LEGAL GROUNDS IN SUPPORT OF SANCTION**

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction, consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the

misconduct, and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard 3.0*.

A violation of ER 1.3 implicates *Standard 4.43*. *Standard 4.43* provides that reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

A violation of ER 3.1 implicates *Standard 6.23*. *Standard 6.23* provides that reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

For the purposes of this consent, the parties conditionally agree that *Standard 4.43* is controlling.

**The duty violated**

As described above, Respondent's conduct violated his duty to his client and the legal system.

**The lawyer's mental state**

For purposes of this Agreement, the parties agree that with respect to clients Varden and Gottuso, Respondent negligently failed to exercise due diligence in

communicating directly with his clients to determine if his client's claim was meritorious and that his conduct was in violation of the Rules of Professional Conduct.

**The extent of the actual or potential injury**

For purposes of this Agreement, the parties agree that there was potential harm to the client and the legal system.

**Aggravating and mitigating circumstances**

The presumptive sanction in this matter is reprimand. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

**In aggravation:**

9.22(c) – a pattern of misconduct;

9.22(i) – substantial experience in the practice of law.

**In mitigation:**

9.32 (a) – absence of a prior disciplinary record;

9.32(d) – timely good faith effort to rectify the consequences of misconduct, as explained more fully below;

9.32 (e) – full and free disclosure to the disciplinary board or cooperative attitude toward proceedings;

9.32 (g) – character or reputation. Attached as Exhibit B are letters attesting to Respondent’s character and general reputation in the legal community.

### **Discussion**

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction is appropriate.

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This Agreement is based on the following: With respect to Varden, Respondent relied on representations made by Richard Ruddle, whom he trusted due to his long-time business association with him, when determining how to process Varden’s case. Because Respondent encountered no problems when litigating *Cohen v. Smith*, the first case referred by Ruddle, Respondent relied solely on Ruddle when he handled Varden. Respondent did not verify the information directly with Gottuso before he filed the complaint, although he had communication with Gottuso later in the case. While Respondent had no reason to doubt the validity of the information provided

by Ruddle, obtaining information from a third party is not a substitute for having substantive conversations with the client and other available witnesses/parties in a case. Respondent learned from his mistakes in *Varden* and *Gottuso* and changed his practice in subsequent matters.

Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

### **CONCLUSION**

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of reprimand, probation, participation in LOMAP, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit C.

DATED this 26<sup>th</sup> day of July 2018.

**STATE BAR OF ARIZONA**

  
\_\_\_\_\_  
Bradley F. Perry  
Staff Bar Counsel

**This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.**

DATED this \_\_\_\_\_ day of July, 2018.

\_\_\_\_\_  
Aaron M. Kelly  
Respondent

DATED this \_\_\_\_\_ day of July, 2018.

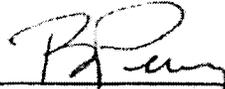
\_\_\_\_\_  
Nancy A. Greenlee  
Counsel for Respondent

Approved as to form and content

  
\_\_\_\_\_  
Maret Vessella  
Chief Bar Counsel

DATED this \_\_\_\_\_ day of July 2018.

STATE BAR OF ARIZONA



Bradley F. Perry  
Staff Bar Counsel

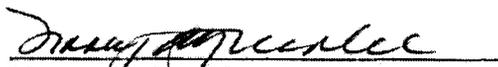
**This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.**

DATED this 26<sup>th</sup> day of July, 2018.



Aaron M. Kelly  
Respondent

DATED this 26<sup>th</sup> day of July, 2018.



Nancy A. Greenlee  
Counsel for Respondent

Approved as to form and content

\_\_\_\_\_  
Maret Vessella  
Chief Bar Counsel

**Original** filed with the Disciplinary Clerk of the Office of the Presiding Disciplinary Judge of the Supreme Court of Arizona this 27<sup>th</sup> day of July, 2018.

**Copy** of the foregoing emailed this 27<sup>th</sup> day of July, 2018, to:

The Honorable William J. O'Neil  
Presiding Disciplinary Judge  
Supreme Court of Arizona  
1501 West Washington Street, Suite 102  
Phoenix, Arizona 85007  
E-mail: [officepdj@courts.az.gov](mailto:officepdj@courts.az.gov)

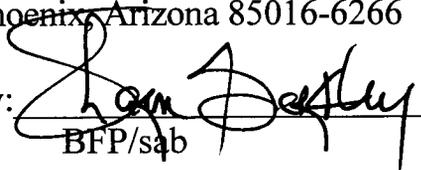
**Copy** of the foregoing mailed/emailed this 27<sup>th</sup> day of July, 2018, to:

Nancy A. Greenlee  
821 East Fern Drive North  
Phoenix, Arizona 85014-3248  
Email: [nancy@nancygreenlee.com](mailto:nancy@nancygreenlee.com)  
Respondent's Counsel

**Copy** of the foregoing hand-delivered this 27<sup>th</sup> day of July, 2018, to:

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266

by:

  
BFP/sab

**EXHIBIT A**

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,  
Aaron Matthew Kelly, Bar No. 025043, Respondent

File No. 17-1236

### Administrative Expenses

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

*General Administrative Expenses*  
*for above-numbered proceedings* **\$1,200.00**

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

### Staff Investigator/Miscellaneous Charges

04/20/18	Flash Drive Purchase for Deposition Exhibits	\$ 12.80
04/30/18	Alliance invoice: Deposition of Aaron Kelly	\$ 225.00

Total for staff investigator charges \$ 237.80

TOTAL COSTS AND EXPENSES INCURRED \$1,437.80

**EXHIBIT B**

**Hal M. Nevitt  
13835 N. Tatum Blvd; #9-178  
Phoenix, Arizona 85032  
602-885-4533**

July 13, 2018

Ms. Nancy Greenlee, Esq.  
821 Fern Drive North  
Phoenix, Arizona

Re: Mr. Arron Kelly

Dear Ms. Greenlee,

I am writing this letter to detail my experience with Mr. Kelly, particularly as it relates to his character and his ethical approach in his practice, and in helping others.

I initially met Mr. Kelly in 2008, when I was employed as the Director of Member Assistance for the State Bar of Arizona. Mr. Kelly contacted my office voluntarily and inquired as to how he could help others who were engaged in the process of the Member Assistance Program. To be clear, his call, and eventual participation in the Peer Support function of member assistance was uncommon, as was his vibrant energy in his assisting other lawyers.

From the instant he became involved in member assistance Mr. Kelly immersed himself in the process. He was actively engaged in monitoring and mentoring other lawyers. He was very observant of the ethics and confidential nature of those seeking assistance; as well as the duties incurred when monitoring those who were mandated to such a protocol.

Mr. Kelly actively participated in increasing awareness of the Member Assistance Program to law students at the three, statewide institutions in Arizona. This included his actual participation in program presentation to students. Moreover, Mr. Kelly was responsive to my requests to provide guidance, structure, and other assistance aspects to this vulnerable population, each and every time I made such a request.

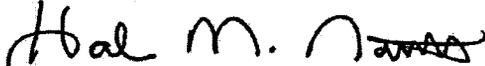
Mr. Kelly actively participated in preparations by the American Bar Associations Commission on Lawyer Assistance Programs (COLAP) when the Annual COLAP Conference was held in Arizona. Mr. Kelly provided numerous hours of voluntary time, and energy, to support the conference.

Through the years that I worked with Mr. Kelly his enthusiasm for helping others was only surpassed by his character traits of responsibility, accountability, willingness to

share, accurate and ethical reporting, and his willingness to ask for help when faced with unfamiliar situations. I came to rely upon him when I had a particularly tough case for assistance or monitoring. He was always available for consult, and no task was too big, or too small for him, and his approach was infectious to the others engaged in the member assistance process.

I have been made aware of his current situation with the State Bar of Arizona. He has approached this situation, in typical Aaron Kelly fashion, as an opportunity to learn about himself, and others. This situation, and specifically the allegations made against him, in no way change the way I perceive Mr. Kelly's character.

Sincerely,

A handwritten signature in black ink that reads "Hal M. Nevitt". The signature is written in a cursive style with a large initial "H" and a long, sweeping tail.

Hal M. Nevitt  
LCSW/LISAC/CEAP

FREDERICK C. BERRY, JR.  
J.D., CPCU, CLU  
frederick.c.berry@gmail.com

Law Offices Of  
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1951 WEST CAMELBACK ROAD  
PHOENIX, ARIZONA 85015  
  
TELEPHONE (602) 274-5700  
FAX (602) 254-0656

July 23, 2018

**SENT BY U.S. MAIL TO:**

Nancy Greenlee, Esq.  
821 E. Fern Drive North  
Phoenix, Arizona 85014

**Re: Aaron Kelly**

Dear Ms. Greenlee,

Aaron Kelly has asked me to address this letter to you in connection with an attorney disciplinary proceeding brought by the State Bar of Arizona. I have discussed this matter with Aaron and understand that a resolution is being proposed whereby Aaron will consent to an order imposing a reprimand and payment of certain costs. This matter arises out of an allegation that Aaron violated certain ethical rules including an ethical rule relating to the representation of a client without the knowledge of the client.

I have known Aaron for approximately 10 years. I first got to know him as a member of the State Bar's Membership Assistance Committee (as it was previously known). In the first several years that I knew Aaron, I saw him quite often as he became active on the Membership Assistance Committee. In fact, he served as chair or co-chair of this committee for several years. While he was chair, he contributed significantly to the well-being of many law students, applicants for admission to practice law in Arizona, lawyers and former lawyers (and their significant others) as he worked with them as part of the outreach effort made by the Membership Assistance Committee ("MAC"). Aaron's contributions in this regard were significant and positive.

These days, I see Aaron from time to time but we talk over the phone probably about once every other month. Aaron will typically call me just to talk about what's going on in the lawyer recovery community or refer another lawyer for MAC support as he knows I usually attend the "Lawyer Group" each week in central Phoenix.

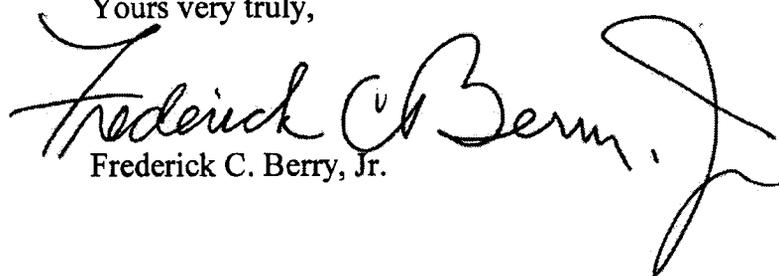
Law Offices of  
**FREDERICK C. BERRY, JR.**

July 23, 2018  
Nancy Greenlee, Esq.  
Page 2

Although I have never practice as co-counsel with Aaron, in all my personal dealings with him I have found him to be honest and forthright. He appropriately pays due regard to ethical considerations and ethical rules. I have never observed him engaging in any unethical or unprofessional practice or fail to appropriately conduct himself well within the bounds of the law.

I have always been proud to be a fellow member of the State Bar of Arizona with Aaron. I sincerely expect that he will learn from his disciplinary experience and how to become a better lawyer as he continues to serve in our profession.

Yours very truly,

A handwritten signature in cursive script that reads "Frederick C. Berry, Jr." The signature is fluid and includes a large, sweeping flourish at the end.

Frederick C. Berry, Jr.

FCB:tpf

EXHIBIT C

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**AARON MATTHEW KELLY,  
Bar No. 025043,**

Respondent.

**PDJ 2018-9012**

**FINAL JUDGMENT AND  
ORDER**

[State Bar No. 17-1236]

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on \_\_\_\_\_, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed Agreement. Accordingly:

**IT IS HEREBY ORDERED** that Respondent, **Aaron Matthew Kelly**, is hereby reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

**IT IS FURTHER ORDERED** that, **Aaron Matthew Kelly**, is placed on probation for a period of two (2) years.

**IT IS FURTHER ORDERED** that: Respondent shall participate in LOMAP. Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of service of this Order. Respondent shall sign

terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Respondent will be responsible for any costs associated with LOMAP.

**IT IS FURTHER ORDERED** that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ \_\_\_\_\_, within thirty (30) days from the date of service of this Order.

**IT IS FURTHER ORDERED** that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge’s Office in connection with these disciplinary proceedings in the amount of \_\_\_\_\_, within thirty (30) days from the date of service of this Order.

**DATED** this \_\_\_\_\_ day of July, 2018.

\_\_\_\_\_  
**William J. O’Neil, Presiding Disciplinary Judge**

Original filed with the Disciplinary Clerk of the Office of the Presiding Disciplinary Judge of the Supreme Court of Arizona this \_\_\_\_\_ day of July, 2018.

Copy of the foregoing mailed/mailed  
this \_\_\_\_\_ day of July, 2018, to:

Nancy A. Greenlee  
821 East Fern Drive North  
Phoenix, Arizona 85014-3248  
Email: [nancy@nancygreenlee.com](mailto:nancy@nancygreenlee.com)  
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered  
this \_\_\_\_\_ day of July, 2018, to:

Bradley F. Perry  
Staff Bar Counsel  
State Bar of Arizona  
4201 N 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

Copy of the foregoing hand-delivered  
this \_\_\_\_\_ day of July, 2018 to:

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266

by: \_\_\_\_\_