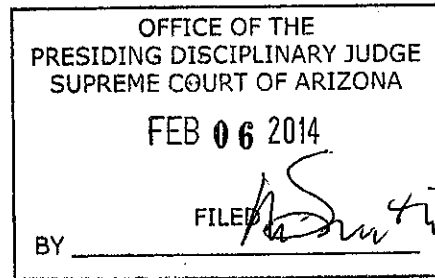


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**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

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

Hubert E. Kelly,
Bar No. 001725,

Respondent.

PDJ-2014- 9012

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

State Bar Nos. 11-1078, 12-0655
and 12-1415

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Hubert E Kelly, who is represented in this matter by counsel J. Scott Rhodes, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A Probable Cause Order was entered on September 17, 2013, but no formal complaint has been filed in this matter. 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 discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainants by letter on December 5, 2013. Complainant(s) have been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. The State Bar is the complainant in File No. 11-1078, therefore no notice of this agreement in that matter is required pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER(s) 1.15, 4.3, 8.4(c) and Rule 43. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: suspension for six months and one day. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

FACTS

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the State of Arizona having been first admitted to practice in Arizona on March 13, 1965.

2. At all times relevant, Respondent was involved in a paternalistic relationship with a person named Miko Wady (Wady); Respondent represented Wady in various legal matters and was thereafter involved as a counselor/advisor and/or escrow agent for Wady's business dealings.

¹ 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.

COUNT ONE (State Bar File No. 11-1078/Trust Account)

3. The State Bar received an overdraft notice dated March 29, 2011, indicating that on March 28, 2011, an electronic debit for \$374.98, attempted to pay against Respondent's Wells Fargo client trust account ending in 9056, when the balance was \$19.63. The Bank returned the electronic debit and charged an overdraft fee, leaving the account with a negative balance of \$15.37.

4. On April 6, 2011, the State Bar received a second insufficient funds notice on Respondent's client trust account indicating that on April 1, 2012, an electronic debit in the amount of \$374.98 attempted to pay against the account when the balance at the time was negative \$15.37. The Bank returned the electronic debit and did not charge an overdraft fee.

5. On April 29, 2011, the State Bar received a third overdraft notice on the same Wells Fargo client trust account indicating that on April 12, 2011, an electronic debit in the amount of \$300.00, attempted to pay against the account when the balance was \$19.63. The bank returned the electronic debit and charged a \$35.00 overdraft fee, leaving the account with a negative balance of \$15.37.

6. On April 29, 2011, the State Bar received a fourth overdraft notice on the same Wells Fargo client trust account indicating that on April 18, 2011, an electronic debit in the amount of \$300.00 attempted to pay against the account when the balance at the time was \$109.12. The bank returned the electronic debit, charged a \$35.00 overdraft fee, leaving the account with a balance of \$74.12.

7. Respondent was requested to provide an explanation of each of the overdrafts and corresponding trust account records.

8. By letter dated May 9, 2011, from Randy Lucero, Wells Fargo Branch Manager, the State Bar was informed that Respondent's Wells Fargo client trust account, ending in 9056, opened in January 2011, had been "compromised via online and mobile banking" and that they were working with Respondent "to get the account resolved and back in proper order."

9. By letter dated May 26, 2011, Respondent explained that he opened the trust account ending in 9056 for the benefit of one client who engages in "creating international trading platforms for making trades in financial paper." Respondent explained that transactions of this type are scrutinized carefully because of the Patriot Act, as well as banking regulations in the U.S. and abroad and that there were "contractual provision(s) that financial paper used to create the trading of platforms would be returned upon the closing of each transaction. Respondent did not expect the account to be active except on instances when funds were received from international trading transactions. Respondent did not initially identify the client for whom the account was opened in his response, but has since confirmed that this trust account was opened for Wady.

10. Respondent stated that although he knew Wady was engaged in "some business activity," he "was never asked nor did I give any advice to him with regard to that activity until he came to me, I believe in late 2007." At that time a civil suit had been filed against Wady and others alleging that Wady and the others had engaged in fraudulent schemes involving securities.

11. The matters alleged in the foregoing suit against Wady and others were unrelated to the international financial transactions described above. Respondent had not represented Wady in business or the matters alleged in the

2007 civil suit. With respect to the later matter Respondent referred Wady to other counsel who could represent him. Respondent remained involved as advisory counsel until all three attorneys withdrew when Wady became unable to pay them. Respondent was also aware of an action before the Arizona Corporation Commission ("ACC") arising out of the same facts as the 2007 civil suit, in which Wady and his co-respondents were ordered to cease-and-desist and to make restitution of approximately \$3 million. There was also a criminal case brought against Wady in 2010 or 2011 related to the same facts as the 2007 civil suit and the ACC, for which Wady was sentenced to federal prison, where he is still incarcerated. Wady was also, according to Respondent, ordered to make restitution of approximately \$30 million. Respondent believed, based on what Wady told him, that the international business concept that Wady brought to him in late 2007 was intended to raise money in anticipation of making restitution.

12. Respondent was integral in all of Wady's newer matters (which began in late 2010) and that Respondent has "negotiated with every entity and person, foreign and domestic, which have been involved in these transactions." Respondent was frequently asked by Wady to participate in telephone calls with Wady's European investment partners, with bankers and with others involved in these financial transactions, primarily to answer questions. However, Respondent was not responsible for obtaining the financial instruments on which the trades were based – that was done by Wady, who then would ask Respondent to assist with the details of the transaction.

13. Respondent opened account 9056 in January 2011, with an initial deposit of \$100. Account 9056 was opened as a client trust account under

Respondent's firm name. As to the first overdraft, the debit of \$374.98 had been reversed, however the \$35 overdraft fee was not, leaving the account with a negative balance. The overdraft fees were debited against Respondent's initial \$100 deposit and therefore did not involve client funds.

14. When the overdraft occurred, Respondent realized that it was not due to an item that Respondent had drafted; he therefore notified the bank, and Mr. Lucero concluded, after a review of the account's records, that the account had been compromised. Respondent stated that he had changed the PIN and password to the account and had consulted with counsel and his accountant about the situation.

15. During the course of the State Bar's investigation, two additional checking accounts were identified as having received funds from account 9056. Those accounts, ending in 2436 and 2172, were opened by Respondent under his firm name for the benefit of Wady. Account 2436 was opened by Respondent to pay Wady's bills during the time when Wady was under investigation and later indictment in the fraudulent schemes case that resulted in his incarceration.

16. Respondent provided additional records and stated that account 9056 was compromised by Wady. While Respondent expressed distress that the client had compromised the account, he stated that the funds in the account were there for the benefit of Wady, and that Wady was dealing with his own available funds. Respondent stated that at the time the disbursements and deposits occurred he was totally unaware of the fact that Wady had compromised the account.

17. Respondent stated that after the overdraft and other transactions on account 9056 became known to him, he had a stern talk with Wady and informed

Wady that he (Wady) had exercised poor judgment, but Respondent believed at that time that there was no fraud. Respondent did not immediately close the account and continued to maintain it for Wady's benefit.

18. Respondent admitted that he became aware that Wady had misappropriated \$40,000.00² of funds that had been deposited into account 9056 on behalf of the Dream Foundation by Danforth Capital Advisors, Inc. After Respondent discovered this fact, he spoke with Wady in June 2011, and he informed Wady that he needed to authorize Respondent to withdraw \$40,000.00 and deposit it back in account 9056 to remedy Wady's actions. Notwithstanding this apparent misappropriation, Respondent continued to represent Wady, continued to maintain the 9056 and 2436 accounts for Wady's benefit. Were this matter to proceed to hearing, Respondent would testify that in hindsight he realizes that Wady did not deserve his trust and that he should have immediately taken remedial steps at that time to secure funds in which third parties had an interest.

19. Respondent learned that Wady had made deposits to the trust account without notifying Respondent, but Wady was not a signer on the account and was not authorized to make deposits or withdrawals from the account. Respondent stated that he "g(o)t the impression that he (Wady) thought that his (sic) was his account (which had only his funds in it) for business purposes and that he concluded he could do what he could do." Respondent does not know how Wady obtained Respondent's PIN. Respondent conditionally admits that he was not appropriately maintaining this client trust account on a monthly basis as evidenced by Wady's unauthorized use of the account.

² The amount was actually \$48,000 (or 35,000 Euros) per information provided by Thomas Bartolozzi in 12-1415.

20. Wady had access to Respondent's office and with Respondent's permission had used either Respondent's office or conference room occasionally during this period. Respondent's trust account checkbook, and presumably other checkbooks and private information, were kept in his desk that was not locked. Respondent could not say whether Wady had come to his office when Respondent was not present, but he could not eliminate that possibility.

21. Much of the legal work Respondent did for Wady, other than a domestic relations case, was comprised of the review of documentation, revision and redrafting of contracts and related documents, participation in negotiations, and telephone communications. Respondent also represented Wady in two civil matters in which he claimed that Wady and others became victims of fraudulent schemes, but in which Wady was actually accused of conducting the fraudulent schemes.

22. Respondent identified numerous transactions from account 9056 that were not made on behalf of the firm, but were made on behalf of and at the direction of Wady. For example, checks from Deans Fence & Gate, Inc., and to S.P. Grocery, Inc., were identified by Respondent as deposits made by Wady about which he (Respondent) was unaware. A disbursement to Sprint identified as for the benefit of Respondent's firm was actually for Wady's grandfather. A deposit of \$52,000.00 into the client trust account was made by a person with the last name of Persad. Respondent stated that Persad was not a client, but was a person with whom Wady was performing work and that the funds were deposited for "call options." Wady then transferred the funds to Europe and, after Persad decided to back out, Respondent claimed, but the State Bar has not independently verified,

that the funds were returned to Persad. Respondent provided documentation showing that these funds were wire transferred back to Persad on May 25, 2011 per 9056 bank statement:

5/25 WTFed#02635 Banco Popular DE/Ftr/Bnf=Bhagwandeem
Persad Srf#006314145729015 Trn#110525054470 Rtb# \$52,000.00.

23. Respondent confirmed that the interest on the client trust account was not going to either Wady or the Arizona Bar Foundation because the money deposited was not in the account long enough.

24. In the reconstruction of Respondent's trust account history for March and April 2011, the Trust Account Examiner/Staff Examiner found the following:

a. That on March 7, 2011, Respondent disbursed \$4,200.00 from his client trust account by cashier's check purchased in the name TLD which Respondent contends went directly to Wady;

b. That on March 25, 2011, \$4,500.00 was disbursed from Respondent's trust account by a withdrawal signed by Respondent and made at a bank branch;

c. That on April 14, 2011, \$7,000.51 was disbursed from the trust account by a withdrawal signed by Respondent at a bank branch. Respondent contends that \$3,002.51 was used for a cashier's check payable to Ronald Bender Re: Enterprise. Records obtained by the State Bar show that the \$4,000 was used to purchase a cashier's check made payable to Jaime Degideo; Respondent contends that \$4,000 went to Wady.

d. That on April 15, 2011, \$2,400.00 was disbursed from Respondent's trust account by a withdrawal signed by Respondent and made at a bank branch. Respondent contends that this withdrawal was for the benefit of Wady;

e. There were 15 instances in March 2011, identified by Respondent as transactions (deposits and disbursements) conducted by the client that Respondent stated were unauthorized; there were ten instances in April 2011 of similar transactions identified by Respondent as unauthorized;

f. Respondent did not keep copies of deposit slips or the equivalent for deposits of \$2,000.00 and \$1,750.00 made to his client trust account on March 4, 2011. Respondent contends he did not make these deposits;

g. Respondent did not maintain an administrative funds ledger, did not record payor of funds deposited into the client trust account, and did not record the payee of the funds disbursed from the client trust account;

h. Respondent disbursed funds without using a pre-numbered check or electronic transfer and did not maintain a record of such disbursements in accordance with the requirements of this Rule in making the following disbursements from his client trust account: \$4,200.00 on 3/7/2011, \$4,500.00 on 3/25/2011, \$7,000.51 on 4/14/2011, and \$2,400.00 on 4/15/2011.

CONDITIONAL ADMISSIONS, COUNT ONE

Respondent's admissions in this Count, as well as in Counts Two and Three, are being tendered in exchange for the form of discipline stated below and is submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct in Count One violated Rule 42, Ariz. R. S. Ct., specifically ER 1.15(a); Rule 43(b)(2)(A); Rule 43(b)(1)(A), Ariz. R. S. Ct.; Rule 43(b)(1)(C), Ariz. R. S. Ct.; Rule 43(b)(2)(B), Ariz. R. S. Ct.; Rule 43(b)(2)(D), Ariz. R. S. Ct.; Rule 43(b)(5), Ariz. R. S. Ct.

COUNT TWO (State Bar File No. 12-0655/Gazian)

25. In or about September 2011, Complainant contends he was introduced by telephone to Respondent by a person of Complainant's acquaintance, Scoville Walker. If this matter proceeded to hearing, Respondent would testify that he did not know Walker nor did he recall being formally introduced to Complainant.

26. Complainant thereafter spoke with a person who identified himself as Respondent, and was informed that Respondent and one Vern Slocum were part of a business team that was seeking short term investors for a "\$100M pending international transaction on the purchase of US securities from London Securities Exchange" and that the business team had a net worth of over \$450 million. Complainant was told that the transaction was secure and based on the information he was given believed that it was being controlled by Respondent and his firm, Kelly & Kelly, PC, who was also serving as the escrow agent. Complainant was informed by Slocum that for an \$80,000.00 investment he could expect to receive a return of \$280,000.00 on completion of the transaction.

27. Complainant alleges that he believed that he faced no risk in placing an escrow deposit with Respondent because it was subject to an Irrevocable Commitment drafted by Respondent, a reputable lawyer, and was being deposited into Wells Fargo Bank, a reputable bank.

28. Respondent admits the he worked on transactions related to Complainant's investment through November 2011, with Wells Fargo until "Wells Fargo withdrew."

29. An Irrevocable Commitment in the amount of \$280,000.00 was executed by Respondent and was endorsed by Wells Fargo personnel. Complainant

received verification from Wells Fargo that Respondent's firm account with Wells Fargo, ending in 2436 (a checking account, but not a client trust account), had funds in excess of \$280,000.00 that were pledged for a transaction code Complainant believed to be associated with the business transaction he was contemplating.

30. In early October 2011, Complainant transferred \$80,000.00 via wire transfer to Respondent's Wells Fargo account ending in 2436. This account was maintained in the name of Kelly and Kelly, PC for the benefit of Wady. Complainant stated that he contacted Respondent thereafter and provided him with a proof of the transfer, and received confirmation of the transfer from Wells Fargo.

31. An escrow agreement was executed between Respondent and his firm, and Complainant on October 11, 2011, in which Respondent and his firm were identified as the escrow agent for Complainant's investment. The escrow agreement provided, among other things, that Complainant was to deposit \$250,000 into Respondent's IOLTA account as collateral for 60 days. The agreement further recited that "in the event the current transaction fails to close, 100% of the initial deposit will be fully refunded back to the original banking coordinates" of Complainant, minus a nominal \$500 fee to the Escrow Agent (Respondent). The wire transfer instructions were for the funds to be deposited into the 2436 account, identified in the instructions as "Kelly & Kelly, PC IOLTA." In fact, that account was not an IOLTA account, but was the checking account opened by Respondent in his firm name for Wady's use.

32. Complainant was thereafter offered another investment opportunity by Slocum. Slocum made various representations to Complainant about the financial

assets of Respondent, but it does not appear that Respondent was part of that conversation. Complainant subsequently met in person with Slocum, who flew to Dallas for that purpose at Complainant's request. Respondent was not present. Complainant stated that Slocum made numerous representations to him about possible business opportunities, and informed him that Respondent was Slocum's escrow agent. An escrow agreement for a \$5 million loan for the purchase of property in Texas was presented to Complainant by Slocum. Complainant stated that the agreement required Respondent's signature as escrow agent and managing partner.

33. Slocum solicited another investment, of \$250,000.00, from Complainant and instructed Complainant to wire-transfer that amount into Respondent's Wells Fargo account ending in 2436. Complainant declined to invest that amount but ultimately decided to wire-transfer another \$50,000.00 into account 2436 using the prior Irrevocable Commitment as security for the additional \$50,000.00. By letter on Kelly & Kelly, P.C. letterhead, dated November 16, 2011, Respondent acknowledged receipt of \$50,000 from Complainant, giving the anticipated closing date of December 27, 2011, and asking for IRS forms from Complainant so that Complainant's proceeds could be sent to him.

34. On or about November 16, 2011, on the date the Irrevocable Commitment matured and Complainant expected to be paid \$30,000.00. When Complainant contacted Wells Fargo he was told that Respondent and Wady had closed their account at Wells Fargo that morning and had transferred all funds (which Complainant apparently erroneously believed to be about \$450M) into another account at another bank. If this matter were to proceed to hearing,

Respondent would testify that accounts 2436 and 9056 were closed because Wells Fargo no longer wanted the transactions at their bank.

35. Complainant immediately contacted Respondent for an explanation; the substance of the ensuing conversation between Respondent and Complainant on that matter is the subject of dispute. Respondent, however, contends that the irrevocable commitment had expired by its own terms and therefore there was no obligation to pay Complainant at that time.

36. Complainant was thereafter in regular contact with Respondent and alleges that he received inconsistent information from Respondent about his investment, the amount on deposit, the nature of the pending financial transaction, and about delays in making payments or transfers to Complainant. Complainant was informed by Respondent that Respondent did not have \$450 million available, but that he was waiting for an international wire-transfer of \$45 million. By December 2011, Complainant no longer felt comfortable about these transactions and asked Respondent for proof of the statements he had been making; Respondent declined to provide such proof. It was about this time that Complainant learned about the arrest and/or conviction of Miko Wady for the first time.

37. Complainant stated that in February 2012, Respondent informed him that he had no funds to return to Complainant, and Complainant then realized that the entire investment scheme had been a scam. Complainant stated that Slocum provided him with what purported to be a copy of a Wells Fargo bank statement showing the availability of a significant amount of funds. This was apparently a

forgery. Respondent had no involvement in that document and agreed that any such bank statement provided by Slocum would have been a forgery.

38. If this matter proceeded to hearing, Respondent would testify that it was about this time that he also discovered that the financial transaction had been a scam and thereafter formed the belief that Wady was involved in the scam. Respondent did not provide this information to Complainant.

39. Respondent's role in this matter is substantiated by a number of documents provided by Complainant to the State Bar, including:

a. The letter dated November 16, 2011, on Kelly & Kelly, PC, letterhead signed by Respondent confirming the receipt of \$50,000.00 from Complainant and confirming that Complainant would receive funds back upon closing on the purchase of the property. The letter signed by Respondent also recites that Respondent had authority to transmit to Complainant a \$5 million credit line for use on the purchase and improvement of the property to be purchased.

b. An escrow agreement signed by Respondent.

c. A document entitled, "Irrevocable Commitment" addressed to Complainant, signed by Respondent that recites that it is presented as an "Irrevocable, Assignable, Transferrable and callable Cash Backed Bank Pay Order" in Complainant's favor, for \$280,000.00. The Irrevocable Commitment identifies the 2436 account number and the holder of the account as Kelly & Kelly, P.C. The commitment appears to have been endorsed by Lucero and Miranda, and it was signed by Respondent.

40. Respondent also confirmed his involvement in written communication with the State Bar. Respondent claims that his involvement in the transactions

was based on his innocent belief, based not only on discussions with Wady but with international businesspersons also involved in the transactions, that the transactions were legitimate and would be approved for the benefit of the investors. He claims that he committed errors that resulted from an excess of trust, lack of adequate vigilance over the management of accounts solely opened for Wady's benefit, and the fact that, during most of the events at issue, he did not yet have personal knowledge that Wady had engaged in any fraudulent acts of any kind.

41. A civil suit against Respondent based on these events was resolved by settlement.

CONDITIONAL ADMISSIONS, COUNT TWO

Respondent conditionally admits that his conduct in Count Two violated the following rules:

Rule 42, ER 1.15, by failing in his fiduciary duty to third parties for funds he permitted to be deposited and/or remain in one or more bank accounts opened by Respondent use by Wady under his firm name, Kelly & Kelly, P.C. Respondent voluntarily served as escrow agent for a deal that ultimately was shown to be a scam. He had a responsibility as the escrow agent to safeguard funds but did not exercise adequate care to do so.

Rule 42, ER 4.3. Respondent opened two bank accounts solely for use by Wady. Although one of the accounts was denominated a client trust account, Wady had access to one or both and conducted transactions by having funds deposited into and drawing funds out of these accounts. By creating these accounts, particularly the 2436 account, Respondent allowed investors to believe their

investment was safer than it actually was – that it was to a law firm, when in actuality Respondent had ceded total control over those funds to Wady. Further, Respondent signed legal documents, including the “Irrevocable Commitment,” the escrow agreement and admitted to have participated in the business transactions that Respondent now admits were a sham. Respondent did not take adequate measures to assure that the investors understood he was not disinterested in the transaction and that he represented Wady, and that Wady had control of the funds.

COUNT THREE (State Bar File No. 12-0655/Bartolozzi)

42. Complainant and his firm represented Danforth Capital Advisors, LLC (“DCA”). By agreement dated January 28, 2011, Respondent on behalf of his firm Kelly & Kelly, P.C. agreed to serve as an escrow agent for a financial investment transaction between DCA, The Dream Foundation (“Dream”) and other parties. The financial deal was allegedly to benefit Dream.

43. DCA thereafter deposited approximately \$48,000 (35,000 Euros) into Respondent’s client trust account. There were two guarantors of the funds, Messrs. Duback and Bobst. The escrow agreement was amended ten times to extend the deadline for certain conditions to occur. The conditions were conditions precedent to the release of the deposited funds for the planned financial transaction. The escrow agreement required that if certain terms were not met by November 30, 2011, Respondent, as the escrow agent, was required to wire back to DCA by December 2, 2011, the \$48,000 (35,000 Euros) previously deposited by them. Respondent failed to do so as required.

44. DCA inquired about the status of the transfer several times after December 2, 2011, but received no response from Respondent. Gregory Cooper,

the President of DCA, wrote to Respondent by letter dated March 1, 2012, instructing Respondent to deposit the \$48,000 to their Wells Fargo account no later than March 6, 2012. Respondent failed to do so.

45. By letter dated March 7, 2012, Complainant on behalf of his clients demanded payment of the promised funds. Respondent responded by letter dated March 9, 2012. In his letter, Respondent stated that he had been informed by his client, Miko Wady, as late as January and February of 2012, of the existence of four financial instruments on which trading was supposed to occur but that rather than trading in Europe, the trading on those instruments would occur in Hong Kong. Respondent stated that Wady had informed him that funds relating to the financial transactions were expected at any time.

46. Respondent thereafter continued to explain to Complainant that on February 2, 2012, he had been informed by telephone by a person identifying herself as Laura that the funds had been received, that Homeland Security had examined the funds to assure they were not the result of money laundering and had issued a favorable report, and that the funds would be deposited into his account on February 6, 2012. Respondent informed Complainant that he had received a second call from Laura on February 7, 2012, stating that they had to reconfirm the transaction to comply with Bank protocol; that he confirmed with Laura that the funds were in the amount of \$45 million and that the deposit into his account would be completed within 72 hours. According to Respondent, Wady also assured Respondent that he had contacted the bank in Hong Kong directly and that it would respond to the reconfirmation request immediately.

47. No funds were deposited into Respondent's trust account and Respondent thereafter determined that there was no person named Laura working at the bank and that there was no such pending transaction. Respondent then realized that the whole transaction had been a sham, and admitted that "(h)aving acknowledged the receipt of \$48,000 from Danforth, it is my duty to see that Danforth and Dream are made whole. I am working toward that goal at the present time. I, together with others, are presently engage (sic) in what may best be described as cash transactions for the same kind of trading. I expect one of the other, or both of these transaction (sic) to be successful, at least to the extent that I can see that Danforth and Dream are paid what each contributed."

48. Respondent informed Complainant that he was involved in a deal in Texas that would yield funds by which he might make DCA whole.

49. Over the next two months he and Respondent had some contact that Complainant characterizes as "false statements, half-truths and numerous attempts to delay our enforcement of remedies." In the letters Respondent accepted responsibility to reimburse Complainant's client for the \$48,000 deposited into Respondent's trust account and make them whole.

50. Complainant and Mr. Cooper made numerous attempts by email to obtain their \$48,000 back from Respondent. In a letter to Mr. Cooper, dated May 22, 2010 at the top, but March 22, 2012, on subsequent pages, Respondent recounted some of his history with Wady, including the fact that years before Respondent agreed to become involved in the transactions for which DCA invested, Wady had legal issues for which Respondent referred him to other counsel. Respondent also stated in that letter, and later confirmed in sworn deposition

testimony, that Wady was trying to raise money because he anticipated having to make substantial restitution payments "arising out of the transaction which got him into trouble." If this matter proceeding to hearing, Respondent would testify that he had demanded that Wady be "totally fair and honest" but that Wady had violated that promise.

CONDITIONAL ADMISSIONS, COUNT THREE

Respondent conditionally admits that his conduct in Count Three violated the following rules:

Rule 42, ER 1.15. Safeguarding property. Respondent, as escrow agent, permitted the deposit of funds into his client trust account by Complainant's client for use in a financial transaction with Wady, and under specific circumstances about how and when the money could be withdrawn and used. Respondent did not adequately safeguard those funds resulting in their premature withdrawal by Wady and harm to Complainant's client.

Rule 42, ER 4.3. Respondent maintained a client trust account for use by Wady after he learned that Wady was facing criminal charges for fraud, and after Wady compromised the trust account by accessing it without Respondent's permission. Respondent failed to advise Complainant that he was not disinterested in the transaction but instead had represented Wady for many years.

Rule 42, ER 8.4(c). Respondent was knowingly deceptive in his conversations with Complainant after he, Respondent, realized that Wady's investments were scams.

CONDITIONAL DISMISSALS

No counts or allegations are being dismissed.

RESTITUTION

Respondent shall comply with any civil judgment relating to the events set forth in this consent agreement.

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 sanction is appropriate:

Suspension for six months and one day; two years of probation upon reinstatement with the terms and conditions to be determined upon reinstatement.

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.

The parties agree that *Standards* 5.12 and 7.2 are most applicable to the facts and circumstances in this matter. Those *Standards* recommend suspension for knowing conduct involving misrepresentation, and by which the lawyer knowingly engaging in conduct that is a violation of the lawyer's duty as a professional, causing injury or potential injury to a client, the public or the legal system.

The duty violated

As described above, Respondent's conduct violated his duty to the public and the legal system. Respondent, although acting as an escrow agent by virtue of his representation of his client Wady, had duties to those from whom Wady obtained funds. Respondent, although cognizant of Wady's criminal conduct continued to believe in the validity of the international business transactions, was blind to Wady's fraudulent nature, and thus allowed Wady to use Respondent's firm name, bank accounts and premises.

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent was grossly negligent in his handling of funds in his trust account or trusted to his care as escrow agent, and knowingly failed to advise third-party investors that he was not disinterested but represented Wady, and that he knowingly was deceptive in his conversations with Mr. Bartolozzi after he, Respondent, realized that Wady's investments were scams 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 actual, harm to the profession and to the complainants, or those they represent.

Aggravating and mitigating circumstances

The presumptive sanction in this matter is suspension. The parties conditionally agree that the following aggravating and mitigating factors should be considered, but that they are considered in connection with the appropriate length of suspension and not as to whether a lesser sanction is appropriate.

In aggravation:

Standard 9.22(a) Prior disciplinary offenses. In 2008, Respondent received an informal reprimand (now admonition) for violations of ER 1.3 and 3.4(d) after he failed to timely file a disclosure statement and a motion to amend and failed to make a reasonably diligent effort to comply with the proper discovery request of opposing counsel.

Standard 9.22(c) Pattern of misconduct. Respondent's conduct in the three counts contained in this complaint were part of a pattern of conduct and continual blindness about the conduct of his client relating to use of Respondent's firm name, bank accounts and premises.

Standard 9.22(d) Multiple offenses.

Standard 9.22(i) Substantial experience in the practice of law. Respondent has been an attorney authorized to practice in Arizona since 1965. Although that in itself is not determinative of whether this factor applies, Respondent was experienced enough to have avoided the misconduct in this matter, particularly given the information he had and gained during his representation of Wady.

Discussion

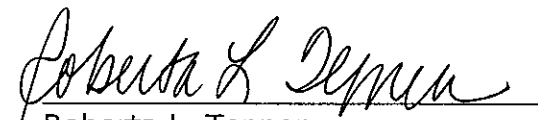
The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is 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 suspension of six months and one day and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

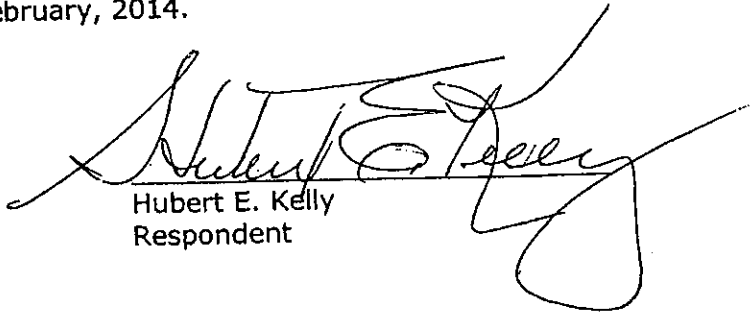
DATED this 6th day of February, 2014.

STATE BAR OF ARIZONA


Roberta L. Tepper
Senior Bar Counsel

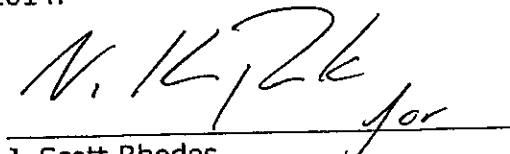
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. [I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.]

DATED this 5th day of February, 2014.



Hubert E. Kelly
Respondent

DATED this 5th day of February, 2014.



J. Scott Rhodes
Counsel for Respondent

Approved as to form and content



Maret Vessella
Chief Bar Counsel

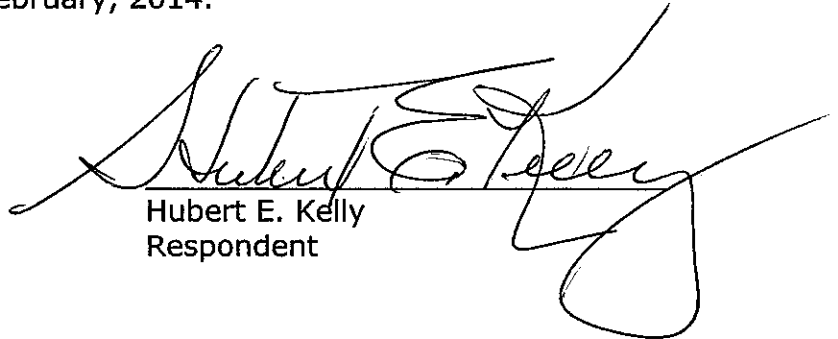
Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this 20th day of February, 2014.

Copies of the foregoing mailed/emailed
this 6th day of February, 2014, to:

J. Scott Rhodes
Jennings Strouss & Salmon PLC
One E Washington St Ste 1900
Phoenix, AZ 85004-2554
Email: SRhodes@jsslaw.com
Respondent's Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. [I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.]

DATED this 5th day of February, 2014.



Hubert E. Kelly
Respondent

DATED this _____ day of February, 2014.

J. Scott Rhodes
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
this _____ day of February, 2014.

Copies of the foregoing mailed/emailed
this _____ day of February, 2014, to:

J. Scott Rhodes
Jennings Strouss & Salmon PLC
One E Washington St Ste 1900
Phoenix, AZ 85004-2554
Email: SRhodes@jsslaw.com
Respondent's Counsel

Copy of the foregoing emailed
this 26th day of February, 2014, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
Email: officepdj@courts.az.gov
lhopkins@courts.az.gov

Copy of the foregoing hand-delivered
this 26th day of February, 2014, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

By: *Rodney T. Brue*
RLT:rtb

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

FILED

SEP 17 2013

STATE BAR OF ARIZONA

BY

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

**HUBERT E. KELLY,
Bar No. 001725**

Respondent.

Nos. 11-1078, 12-0655 and 12-1415

PROBABLE CAUSE ORDER

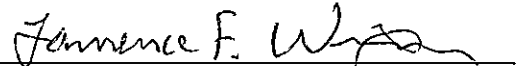
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on September 13, 2013, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File Nos. 11-1078, 12-0655 and 12-1415.

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 17 day of September, 2013.



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

Original filed this 17th day
of September, 2013, with:

Lawyer Regulation Records Department
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Copy mailed this 19TH day
of September, 2013, to:

J. Scott Rhodes
Jennings Strouss & Salmon PLC
One East Washington Street,
Suite 1900
Phoenix, Arizona 85004-2554
Respondent's Counsel

Copy emailed this 19TH day
of September, 2013, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: Robert T. Biv

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**HUBERT E. KELLY,
Bar No. 001725**

Respondent.

PDJ-2014-9012

FINAL JUDGMENT AND ORDER

State Bar No. 11-1078, 12-0655
and 12-1415

FILED FEBRUARY 20, 2014

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on February 6, 2014, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Hubert E. Kelly**, is hereby suspended for six (6) months and one (1) day for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from this Order.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be placed on probation for a period of two (2) years with terms and conditions to be determined at the time of reinstatement.

IT IS FURTHER ORDERED that, pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ 1,844.22. 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 20TH day of February, 2014.

William J. O'Neil

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 20TH day of February, 2014.

Copies of the foregoing mailed/emailed
this 20TH day of February, 2014, to:

J. Scott Rhodes
Jennings Strouss & Salmon PLC
One East Washington Street,
Suite 1900
Phoenix, Arizona 85004-2554
Email: SRhodes@jsslaw.com
Respondent's Counsel

Roberta L. Tepper
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: lro@staff.azbar.org

Sandra Montoya
Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: MSmith