

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

ROBERT L. EARLE,
Bar No. 013134

Respondent.

PDJ-2017-9091

**FINAL JUDGMENT AND
ORDER OF SUSPENSION**

[State Bar No. 16-4199]

FILED OCTOBER 24, 2017

The decision of the hearing panel was filed with the disciplinary clerk on September 29, 2017. The time for appeal has passed and no appeal has been filed.

Now Therefore,

IT IS ORDERED Respondent, **ROBERT L. EARLE, Bar No. 013134**, is suspended from the practice of law for six (6) months and one (1) day effective September 29, 2017.

IT IS FURTHER ORDERED Mr. Earle 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 upon reinstatement Mr. Earle shall be placed on intensive terms of probation for two (2) years with the State Bar's Member Assistance Program (MAP) and Law Office Management Assistance Program (LOMAP). Terms and conditions of probation shall include but no be limited to a

MAP evaluation and LOMAP assessment. Mr. Earle shall thereafter enter into a contract with MAP and LOMAP and comply with any recommendations.

IT IS FURTHER ORDERED Mr. Earle shall pay restitution totaling \$5.00, plus interest at the statutory rate to Bruce Kirkhorn.

IT IS FURTHER ORDERED Mr. Earle shall pay the State Bar's costs and Expenses in the amount of \$2,000.00 as ordered by the Presiding Disciplinary Judge. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge.

DATED this 24th day of October, 2017.

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

COPY of the foregoing e-mailed/mailed
this 24th day of October, 2017 to:

Robert L. Earle
P.O. Box 3870
Sedona, AZ 86340-3870
Emails: rle@earleandassociates.com
earleandassociate@gmail.com

Respondent

Craig D. Henley
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

ROBERT L. EARLE,
Bar No. 013134

Respondent.

PDJ 2017-9091

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar No. 16-4199]

FILED SEPTEMBER 29, 2017

An aggravation/mitigation proceeding was heard by the hearing panel pursuant to Rule 58(d), Ariz. R. Sup. Ct.,¹ on September 26, 2017, The Hearing Panel was composed of attorney member Lorie B. Patrick, volunteer public member Michael Snitz, and Presiding Disciplinary Judge, William J. O’Neil.

Craig Henley appeared on behalf of the State Bar of Arizona. Mr. Earle did not appear. Exhibits 1-13 were admitted. At the conclusion, the State Bar requested a six (6) month and one (1) day suspension.

I. PROCEDURAL HISTORY

On May 4, 2017, the Attorney Discipline Probable Cause Committee, after finding probable cause existed that Mr. Earle violated eight ethical rule violations,

¹ All Rule References are to the Ariz. R. Sup. Ct.

ordered him to pay restitution in the sum of \$3,800, pursuant to Rule 55(c)(1)(D). On May 16, 2017, Mr. Earle demanded formal proceedings be filed against him pursuant to Rule 55(c)(4)(B). As requested, the State Bar of Arizona (“SBA”) filed its complaint on July 13, 2017. On July 17, 2017, the complaint was served on Mr. Earle by certified delivery, restricted mail, and also by regular first-class mail, pursuant to Rules 47(c) and 58(a) (2).

The Presiding Disciplinary Judge (“PDJ”) was assigned to the matter on July 19, 2017. A notice of default properly issued on August 14, 2017. The default was effective on September 6, 2017. A notice of aggravation and mitigation hearing was sent to all parties, notifying them the hearing was scheduled for Tuesday, September 26, 2017 at 1:30 p.m. at the State Courts Building, located at 1501 West Washington, Phoenix, Arizona 85007-3231.

A respondent against whom a default has been entered may no longer litigate the merits of the factual allegations, but retains the right to appear and participate in the hearing that will determine the sanctions. Mr. Earle did not appear.²

II. FINDINGS OF FACT

The facts listed below are those set forth in the SBA’s complaint and were deemed admitted by Mr. Earle’s default pursuant to Rule 58(d). Although the

² Mr. Kirkhorn and a Trust Account evaluator with the State Bar were available to testify by phone, but were not needed due to the non-appearance of Mr. Earle.

allegations are deemed admitted by default, there has been an independent determination by the Hearing Panel which evaluated whether the State Bar had proven by clear and convincing evidence that Mr. Earle violated the ethical rules.

1. Mr. Earle was a lawyer licensed to practice law in Arizona on September 18, 1990.

COUNT ONE (File No. 16-4199/Kirkhorn)

2. On or about July 21, 2016, Bruce Kirkhorn (“Kirkhorn”) paid Mr. Earle \$3,005.00 to represent him and his company in a commercial lease dispute. [Ex. 1.]

3. Despite numerous attempts to contact Mr. Earle or his office concerning the status of the representation, Mr. Earle failed to respond or communicate with Kirkhorn.

4. Despite repeated requests, Kirkhorn was unable to obtain an accounting from Mr. Earle regarding the prepaid fees paid to him.

5. Because of the inaction of Mr. Earle, Kirkhorn was forced to close his store after learning that the property was recently leased to another company.

6. On January 20, 2017, pursuant to Rule 55(b), the State Bar mailed Mr. Earle a screening letter requesting a written response to the allegations and the client file within 20 days.

7. The screening letter also informed Mr. Earle that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline pursuant to Rule 54(d) and Rule 42, Ariz. R. Sup. Ct., ER 8.1(b).

8. Mr. Earle failed to provide the State Bar with a response to the January 20, 2017 screening letter.

9. On February 23, 2017, in compliance with Rule 55(b)(2)(B), the State Bar sent Mr. Earle a notice that the investigation was complete. It informed Mr. Earle of his right to submit a summary of his response to the charges. Attached to that letter was a copy of its investigative report being sent to the Attorney Discipline Probable Cause Committee. [Ex. 3.]

10. On March 9, 2017, Mr. Earle responded by email to the February 23, 2017, letter and investigative report of the State Bar. [Ex. 4.]

11. On May 4, 2017, the Attorney Discipline Probable Cause Committee ordered Mr. Earle to pay restitution. [Ex. 5.]

12. On May 16, 2017, Mr. Earle demanded formal proceedings be filed against him pursuant to Rule 55(c)(4)(B). [Ex. 8.]

13. Mr. Earle knew of the investigation and the probable cause order issued against him, as evidenced by the fact that he requested formal proceedings, even before he was served with actual notice of these proceedings.

III. CONCLUSIONS OF LAW

By engaging in the misconduct described above, Mr. Earle violated:

- a. Rule 42.:
 - i. ER 1.2 – Mr. Earle failed to abide by the client’s authority during the representation;
 - ii. ER 1.3 – Mr. Earle failed to act diligently during the representation;
 - iii. ER 1.4 – Mr. Earle failed to reasonably communicate with the client during the representation;
 - iv. ER 1.15 – Mr. Earle failed to account for client and third-party funds;
 - v. ER 1.16(d) – Mr. Earle failed to take the steps reasonably necessary to protect his client’s legal rights at the end of the representation;
 - vi. ER 8.1 – Mr. Earle knowingly failed to respond to a lawful demand for information from the disciplinary authority; and
- b. Rule 54(d) – Mr. Earle failed to furnish information or promptly respond to the requests of the State Bar.

Although requested, we decline to find a violation of ER 1.5 (fees). There is insufficient evidence to conclude that Mr. Earle charged and retained unreasonable fees.

IV. 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. Earle violated his duty to his client by violating Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3, 1.4, and 1.16. Mr. Earle also violated his duty owed as a professional by violating Rule 42, Ariz. R. Sup. Ct., ER 8.1 and Rule 54(d), Ariz. R. Sup. Ct.

Mental State and Injury:

Mr. Earle violated his duty to his client, implicating *Standard 4.4.*

Standard 4.42 states:

Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Mr. Earle knowingly failed to perform services for clients or engaged in a pattern of neglect regarding his client's matter causing serious injury to his client.

Therefore, *Standard 4.42* applies.

Mr. Earle also violated his duty owed as a professional, which implicates *Standard 7.0.*

Standard 7.2 states, “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.”

Mr. Earle failed to substantively respond to the SBA’s investigation. *Standard 7.2*, therefore, applies.

Aggravating and Mitigating Factors:

A. Aggravating Factors

- *Standard 9.22(a)* – Prior Disciplinary Offenses
 - i. PDJ 2016-9127 (2017): Disbarment for multiple violations including, but not limited to, Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3, 1.4, 1.5, 1.15, 1.16, 3.1, 3.3(a)(1) and (3), 3.4(b), 4.1(a), 8.1, 8.4(b), 8.4(c), 8.4(d), Rule 43, Ariz. R. Sup. Ct., Rule 54(d), Ariz. R. Sup. Ct.;³ (On appeal but not stayed). [Ex. 13.]
 - ii. PDJ 2015-9018 (2015): Admonition and Probation for violation of Rule 42, Ariz. R. Sup. Ct., ER 1.15; [Ex. 10, 11.]
 - iii. SB 08-0860, 08-1630, 08-1631 (2010): Probation for violations of Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.7(a)(2), 4.4 and 8.4(d). [Ex. 9.]
- *Standard 9.22(b)* – Dishonest or Selfish Motive
- *Standard 9.22(e)* – Bad Faith Obstruction of the Disciplinary Proceedings by Intentionally Failing to Comply with Rules or Orders of the Disciplinary Agency
- *Standard 9.22(i)* – Substantial Experience in the Practice of Law

B. Mitigating Factors

There are no mitigating factors present.

³ Effective, but currently on appeal.

V. 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)). It is also the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). It is also a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

Considering the past history of Mr. Earle, the Hearing Panel gave serious consideration to disbarment. We give no credence to the statements of Mr. Earle in Exhibit 4 that he did any work for Mr. Kirkhorn. His refusal to respond to Mr. Kirkhorn are clear evidence of his disregard for his duties to clients. But for the interim suspension issued against him and the freezing of his trust account, [Ex. 12], Mr. Kirkhorn probably would not have received any restitution.

Notwithstanding, the Hearing Panel defers to the request of the State Bar for suspension, rather than disbarment. The Hearing Panel finds the appropriate sanction using the facts deemed admitted, application of the *Standards*, including the aggravating factors and lack of mitigating factors, the request of the State Bar, and the goals of the attorney discipline system. The Hearing Panel orders:

1. Mr. Earle shall be suspended for six (6) months and one (1) day, effective immediately; and
2. Mr. Earle shall pay all costs and expenses incurred by the SBA. There are no costs incurred by Office of the Presiding Disciplinary Judge in this proceeding.
3. Mr. Earle shall pay restitution of \$5.00 to Mr. Kirkhorn. (Senior Bar Counsel advised that the Superior Court authorized all but \$5.00 of the monies paid by him to Mr. Earle).
4. If reinstated, Mr. Earle shall be placed on intensive terms of probation for two (2) years, with the State Bar's Member Assistance Program (MAP) and Law Office Management Assistance Program (LOMAP). Terms and conditions of probation shall include but not be limited to a MAP evaluation and LOMAP assessment. Mr. Earle shall thereafter enter into a contract with MAP and LOMAP and comply with any recommendations.

A final judgment and order will follow.

DATED this 29th day of September, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Lorie B. Patrick

Lorie B. Patrick, Volunteer Attorney Member

Michael Snitz

Michael Snitz, Volunteer Public Member

Copy of the foregoing mailed/e-mailed
this 29th day of September, 2017, to:

Robert L. Earle
P.O. Box 3870
Sedona, AZ 86340-3870
Emails: rle@earleandassociates.com &
earleandassociate@gmail.com
Respondent

Craig D. Henley
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

by: AMcQueen

Craig D. Henley, Bar No. 018801
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602) 340-7272
Email: LRO@staff.azbar.org

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

JUL 13 2017

FILED

BY



BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**ROBERT L. EARLE,
Bar No. 013134,**

Respondent.

PDJ 2017-9091

COMPLAINT

[State Bar No. 16-4199]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona beginning September 18, 1990.

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COUNT ONE (File No. 16-4199/Kirkhorn)

2. On or about July 21, 2016, Bruce Kirkhorn (hereinafter referred to "Kirkhorn") paid Respondent \$3800.00 to represent him and his company in a commercial lease dispute.

3. Despite numerous attempts to contact Respondent or his office concerning the status of the representation, Respondent failed to respond or communicate with Kirkhorn .

4. Despite repeated requests, Kirkhorn has been unable to obtain an accounting regarding the prepaid fees from Respondent.

5. Kirkhorn closed his store and learned that the property was recently leased to another company.

6. On January 20, 2017, the State Bar mailed Respondent a screening letter requesting a written response to the allegations and the client file within 20 days.

7. The screening letter also informed Respondent that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline pursuant to Rule 54(d) and Rule 42, *Ariz. R. Sup. Ct.*, ER 8.1(b).

8. Respondent failed to provide the State Bar with a response to the January 20, 2017 screening letter.

9. As a result of Respondent's misconduct, Kirkhorn was financially injured as defined by Rule 60, Ariz. R. Sup. Ct.

10. By engaging in the above-referenced misconduct, Respondent violated the following ethical rules:

a. Rule 42, Ariz. R. Sup. Ct.:

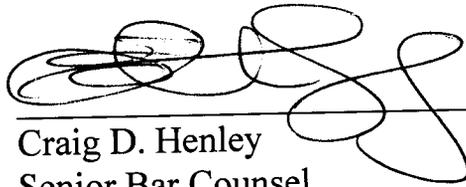
- i. ER 1.2 – Respondent failed to abide by the client's authority during the representation;
- ii. ER 1.3 – Respondent failed to act diligently during the representation;
- iii. ER 1.4 – Respondent failed to reasonably communicate with the client during the representation;
- iv. ER 1.5 – Respondent charged and retained unreasonable fees;
- v. ER 1.15 – Respondent failed to account for client and third party funds;
- vi. ER 1.16(d) – Respondent failed to take the steps reasonably necessary to protect his client's legal rights at the end of the representation;
- vii. ER 8.1 – Respondent knowingly failed to respond to a lawful demand for information from the disciplinary authority;

b. Rule 54(d) – Respondent failed to furnish information or promptly respond to the requests of the State Bar.

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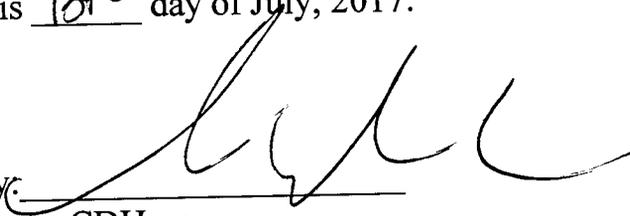
DATED this 13th day of July, 2017.

STATE BAR OF ARIZONA



Craig D. Henley
Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 13th day of July, 2017.

by: 

CDH:nr

MAY 24 2017

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

By C. Ramo

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

ROBERT L. EARLE
Bar No. 013134

Respondent

No. 16-4199

ORDER VACATING RESTITUTION

On May 3, 2017, the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") issued an Order of Restitution to the above-named Respondent for violations of Rule 42, ER 1.2, Rule 42, ER 1.3, Rule 42, ER 1.4, Rule 42, ER 1.5, Rule 42, ER 1.15, Rule 42, ER 1.16(d), Rule 42, ER 8.1, and Rule 54(d), Ariz. R. Sup. Ct.

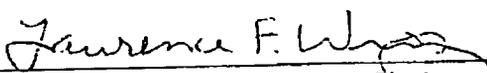
PURSUANT TO Rule 55(c)(4)(B), Ariz. R. Sup. Ct. the Respondent filed a Demand for Formal Proceeding and Issuance of Order to Vacate Order of Restitution (the "Demand"). This Demand was filed in a timely manner.

IT IS THEREFORE ORDERED, pursuant to Rule 55, vacating the aforementioned Order of Restitution.

IT IS FURTHER ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup.

Ct. the State Bar shall prepare and file a complaint against the Respondent with the Disciplinary Clerk in File No. 16-4199.

DATED this 24 day of May, 2017.



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

Original filed this 24 day
of May, 2017, with:

Attorney Discipline Probable Cause Committee
Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007

Copy mailed this 24 day
of May, 2017, to:

Robert L. Earle
Earle & Associates
PO Box 3870
Sedona, AZ 86340-3870
Respondent

Bruce Kirkhorn
2555 Metate Drive
Sedona, AZ 86336
Complainant

Lawyer Regulation Records Department
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6288

Craig Henley
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6288

by: C. Ramo