

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

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

Respondent.

PDJ-2016-9102

ORDER OF INTERIM SUSPENSION

[State Bar No. 16-3354]

FILED DECEMBER 5, 2016

On October 12, 2016, the State Bar moved pursuant to Rule 61 for the interim suspension of Robert L. Earle from the practice of law.¹ Proof of service was filed on October 14, 2016. Mr. Earle filed a response on November 15, 2016. On November 18, 2016, pursuant to Rule 61, this court issued its order setting the evidentiary hearing for December 5, 2016. The hearing was conducted on that date. Senior Bar Counsel Craig D. Henley appeared on behalf of the State Bar of Arizona. Mr. Earle appeared pro per.

Under Rule 61(a), an interim suspension may be entered upon a showing of probable cause that a lawyer “is engaging in conduct that has caused or is likely to cause immediate and substantial harm to clients, the public, or the administration of justice.”

Rule 61(c)(2) sets forth the procedural grounds by which an interim suspension may be sought in those kinds of cases. “The state bar may file a motion for interim suspension with the presiding disciplinary judge. The motion shall be accompanied by verification or separate affidavit upon personal knowledge stating sufficient facts to

¹ Unless otherwise stated, all Rule references are to the Arizona Rules of the Supreme Court.

support the requested suspension, and shall include a copy of any related hearing panel report.” Rule 61(c)(2)(A) mandates that the motion be served upon the lawyer and requires a response to be filed. Robert L. Earle was properly served under Rule 61, and filed an untimely response.

Rule 61(c)(2)(B) sets forth the procedural method by which the presiding disciplinary judge shall conduct the hearing. “The state bar shall have the burden of establishing probable cause that the basis of the requested relief exists and that interim suspension is appropriate.” In conducting the hearing, “The presiding discipline judge is not bound by common law or rules of evidence or by technical or formal rules of procedure and may conduct the hearing in any manner that will achieve substantial justice.”

On December 1, 2014, an Order of Diversion was entered in **Bar Charge 13-1207** against Mr. Earle by the Attorney Discipline Probable Cause Committee. [Ex. 1.] Yvette F. Penar of the State Bar of Arizona emailed Mr. Earle multiple times beginning April 13, 2016, due to his failure to submit verification of his completion of his required six hours of CLE. [Ex. 2.] On October 7, 2016, Ms. Penar signed an affidavit attesting that Mr. Earle had not completed his required CLE. [Ex. 11.] On August 30, 2016, the State Bar wrote the attorney for Mr. Earle requiring a response to bar charge 16-2805. [Ex. 3.] In his response Mr. Earle certified all of these hours were completed. In the hearing, he stated half of the hours were completed.

On March 17, 2015, a final judgment of admonition was entered against Mr. Earle in PDJ 2015-3380 regarding **Bar Charge 13-3380**. [Ex. 4.] The judgment ordered Mr. Earle to pay to Kathryn Van Dyne, within thirty days of the judgment, Two Thousand, Nine Hundred and Twenty dollars. On July 28, 2016, Mr. Earle wrote the

State Bar asking for help regarding his stated inability to locate Ms. Van Dyne to refund monies to her. [Ex. 5.] On August 4, 2016, Senior Bar Counsel Craig Henley wrote Mr. Earle directing him to immediately remit those funds to the State Bar, payable to Ms. Van Dyne. [Ex. 6.] On August 10, 2016, Mr. Henley wrote the attorney for Mr. Earle requesting Mr. Earle immediately address the issue of the Van Dyne restitution. His attorney stated he would contact Mr. Earle. [Ex. 7.] On October 7, 2016, Ms. Penar signed an affidavit attesting that Mr. Earle had not paid his restitution to Ms. Van Dyne. [Ex. 11.] On October 14, 2016, Mr. Earle wrote Mr. Henley stating he would begin making partial payments to the State Bar payable to Ms. Van Dyne and included a check for \$200. [Ex. 10.]

On September 6, 2016, the State Bar wrote Mr. Earle requiring a response to **Bar Charge 16-2867**. [Ex. 8.] On October 6, 2016, Senior Bar Counsel wrote Mr. Earle, again reminding him to respond to that bar charge and demanding he comply within ten days. [Ex. 9.]

In **Bar Charge 16-0887**, on August 25, 2015, the Clerk of the Superior Court in Yavapai County issued a minute entry from a trial conducted by Superior Court Judge Joseph C. Butner III, reflecting judgment in favor of Avelino Peralta in the amount of \$106,000 and finding comparative fault of Mr. Peralta of 36%. [Ex. 12.] On March 23, 2016, Steve Little, Senior Bar Counsel, wrote Mr. Earle regarding bar charge 16-0887 requesting the fee agreement and the settlement breakdown sheet. Mr. Earle responded the following day writing the settlement breakdown. [Ex. 13.] On August 11, 2016, the State Bar wrote Mr. Earle requiring a response to bar charge 16-0887. [Ex. 14.] On September 9, 2016, Senior Bar Counsel wrote Mr. Earle, again reminding

him to respond to that bar charge and demanding he comply within ten days. [Ex. 15.]

In **Bar Charge 16-1485**, Blair Preston, the client of Mr. Earle and complainant signed an affidavit on September 19, 2016, alleging ethical violations by Mr. Earle. [Ex. 16.] On August 31, 2016, the Clerk of the Superior Court in Yavapai County issued a minute entry regarding an O.S.C. conducted by Superior Court Judge Jeffrey G. Paupore, in *CLA Property Management, LLC vs. Blair W. Preston et. al.*, finding Mr. Earle did not appear for an order to show cause regarding his failure to give the client file to his client, Mr. Blair W. Preston. [Ex. 17.]

In **Bar Charge 16-2853**, Joann Dibartolo, the client of Mr. Earle and complainant signed an affidavit on September 19, 2016, alleging ethical violations by Mr. Earle. [Ex. 18.] The allegations stated multiple providers were not paid by Mr. Earle. He told her and Senior Bar Counsel all the providers had been paid. At the conclusion of the hearing he acknowledged there were multiple providers not yet paid. There were two checks to settle her personal injury received by Mr. Earle. One for \$15,000 and the second for \$25,000. [Ex. 18-20.] Mr. Earle paid himself more than he was entitled to and retained the monies due to the medical providers.

Manuel Espinoza is a trust account examiner for the State Bar. On September 20, 2016, he attested to multiple trust accounting violations. These include Mr. Earle taking a fee in the West matter on August 12, 2015, for \$33,333.33, and then withdrawing the same amount again. Mr. Earle informed Mr. Espinoza that before he realized the mistake he had spent the monies. Equally troubling is the account reconciliations demonstrate multiple overdrafts from the IOLTA accounts of individual clients. [Ex. 24.] On September 11, 2015, the Bank of America reported to the State

Bar that Mr. Earle had attempted to overdraw his IOLTA account by \$14,081.33. [Ex. 23.] The ending balance of IOLTA funds each month are reported to the State Bar. That report demonstrates for a prolonged period no monies were moved through the IOLTA account. [Ex. 22.] To his credit, Mr. Earle does not deny this has occurred but argued his new accountant can help him determine precisely what he needs to repay. However, he also stated he intends to file for bankruptcy within a week.

The State Bar informed the court probable cause findings have been made by the Attorney Discipline Probable Cause Committee, more orders have been requested to issue on December 9, 2016, when the Committee next meets and that a formal complaint will soon be filed. The State Bar was reminded it must, consistent with Rule 61(c)(2)(D) "expeditiously proceed" with any related disciplinary proceeding. The orders entered shall continue in force until final disposition of all such pending disciplinary proceedings against Robert L. Earle unless vacated or modified by the PDJ. Nothing within this order precludes the parties from attempting to resolve this matter through a Rule 57 agreement for discipline by consent.

IT IS ORDERED finding probable cause Robert L. Earle has engaged in conduct that has caused or is likely to cause immediate and substantial harm to clients, the public, or the administration of justice.

IT IS FURTHER ORDERED under Rule 61, Ariz. R. Sup. Ct., **ROBERT L. EARLE, Bar No. 013134** is suspended from the practice of law effective immediately on an interim basis.

IT IS FURTHER ORDERED as provided in Rule 61(d), such suspension shall continue in force until final disposition of all pending disciplinary proceedings against Robert L. Earle, unless vacated or modified.

IT IS FURTHER ORDERED effective immediately Robert L. Earle shall not accept for representation any clients and is precluded from accepting funds for that purpose.

IT IS FURTHER ORDERED freezing any trust account and operating accounts of Robert L. Earle and restraining him from making a withdrawal of funds in any manner, from any trust account or operating account without the prior written approval of bar counsel or by order of the PDJ which shall be applied for by formal written motion.

IT IS FURTHER ORDERED under Supreme Court Rule 72(a) **ROBERT L. EARLE, Bar No. 013134**, shall notify all his clients of the terms of this order within ten (10) days from December 5, 2016 and shall timely file with the Disciplinary Clerk and the Court, notice of compliance with this Order as provided by Rule 72(e), Rules of the Supreme Court of Arizona.

IT IS FURTHER ORDERED setting the underlying matters for telephonic status review on January 24, 2017 at 10:00 a.m. This status review shall automatically be vacated without further order upon the filing by the State Bar of a complaint regarding this matter.

DATED this 5th day of December, 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/hand-delivered
this 5th day of December, 2016, and

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