

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

IN THE MATTER OF A SUSPENDED¹
MEMBER OF THE STATE BAR OF ARIZONA,

PAMELA J. EATON,
Bar No. 011203,

Respondent.

PDJ-2013-9011

[State Bar File Nos. 11-4052 and
12-1596]

**REPORT AND ORDER IMPOSING
SANCTIONS**

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on January 25, 2013. On January 28, 2013, the complaint was served on Ms. Eaton by certified, delivery restricted mail, as well as by regular first class mail, pursuant to Rules 47(c) and 58(a) (2), Ariz.R.Sup.Ct. The Presiding Disciplinary Judge ("PDJ") was assigned to the matter, along with lawyer panel member Noel A. Fidel, and public panel member Mark E. Salem. On February 25, 2013, the disciplinary clerk issued an entry of default and notice of default. Ms. Eaton did not file an answer or otherwise defend against the allegations and default was entered on March 18, 2013, at which time a notice of aggravation and mitigation hearing was sent to all parties notifying them the aggravation mitigating hearing was scheduled for April 8, 2013, at 9:00 a.m. at 1501 West Washington, Room 109, Phoenix, Arizona 85007-3231. On April 8, 2013, the Hearing Panel, duly empanelled, heard argument.

¹ Ms. Eaton was summarily suspended effective February 22, 2013, for failure to comply with mandatory continuing legal education requirements.

FINDINGS OF FACT

COUNT ONE (File No. 11-4052/Inzunza)

Ms. Eaton was appointed as Mr. Inzunza's post conviction relief attorney. Ms. Eaton never contacted him, never sent him his transcripts, and never informed him that she had filed his direct appeal. Mr. Inzunza found out about his appeal from his new attorney Ronald Debrigida. Ms. Eaton violated: ER 1.4 by failing to communicate with Mr. Inzunza; ER 1.16(d) by failing to provide Mr. Inzunza with his transcripts; and Ms. Eaton's conduct was prejudicial to the administration of justice and violated ER 8.4(d).

COUNT TWO (FILE NO. 12-1596/OLSEN)

Ms. Eaton was Mr. Olsen's post conviction relief attorney. She talked to Respondent only once and then she abandoned his criminal appeal. In a minute entry order from Judge McMurdie, Respondent was removed as post-conviction relief counsel. Due to her numerous failures to file timely pleadings in other matters and her failure to appear for order to show cause hearings, Judge McMurdie removed Ms. Eaton as counsel in all cases where she was appointed, and assigned the cases to other attorneys. Ms. Eaton violated ER 1.1 by failing to competently represent her clients; ER 1.2(a) by failing to provide services within the scope of the representation to her clients; ER 1.3 by failing to diligently represent her clients; ER 1.4 by failing to communicate with her clients; ER 8.4(d) by failing to properly represent her clients and causing the court to appoint substitute counsel in numerous cases; and Rule 54(c) by failing to comply with court orders.

CONCLUSIONS OF LAW

Ms. Eaton failed to file an answer or otherwise defend against the allegations in the SBA's complaint. Default was properly entered and the allegations are therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Ms. Eaton violated the following: Rule 42, Ariz.R.Sup.Ct., specifically ERs 1.1, 1.2, 1.3, 1.4, 1.16, 8.4(d), and Rule 54(c).

ABA STANDARDS ANALYSIS

After finding an ethics rule violation, the Court relies on the American Bar Association's Standards for Imposing Lawyer Sanctions (*Standards*) in determining an appropriate sanction. Rule 57(a)(2)(E), Ariz.R.Sup.Ct. 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.

Standards 4.42, and 7.2 are the appropriate *Standards* given the facts and circumstances of this matter². *Standard* 4.22³ provides that suspension is appropriate when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standard* 7.2⁴ provides that suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system.

The duty violated

As described above, Ms. Eaton's conduct violated her duty to her clients, the profession, and the legal system.

The lawyer's mental state

Ms. Eaton acted knowingly and her conduct was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

There was actual harm to her clients and the legal system.

Aggravation/Mitigation

The Panel determined that the presumptive sanction in this matter is suspension and found the following aggravating and mitigating factors present:

- (c) a pattern of misconduct; See *Matter of Levine*, 174 Ariz. 146, 172, 847 P.2d 1093, 1118 (1993)(a pattern has been found in the past under

²Count One violations: ERs 1.4, 1.16(d), and 8.4(d); Count Two violations: ERs 1.1, 1.2, 1.3, 1.4, 8.4(d), and Rule 54(c), Ariz.R.Sup.Ct.

³ERs 1.2, 1.3, 1.4

⁴ER 1.16

circumstances in which a respondent either has a prior disciplinary record involving the same or similar wrongdoing, or when a respondent's misconduct involves multiple clients). Two of Ms. Eaton's clients filed charges against her and the court removed Ms. Eaton from representing numerous other clients, thus establishing a pattern of misconduct.

(d) multiple offenses; See *In re Peasley*, 208 Ariz. 27, 38 90 P.3d 764, 775 (2004)(the aggravating factor of multiple offenses has been applied to a lawyer's misconduct that involved multiple clients or multiple matters. It has also been applied when a lawyer brought several frivolous claims against multiple defendants on behalf of one client). This matter involves multiple matters and multiple offenses.

(h) vulnerability of victim; See *Matter of Shannon*, 179 Ariz. 52, 69, 876 P.2d 548, 565 modified, 181 Ariz. 307, 890 P.2d 602 (1994)(A victim's vulnerability is determined by the situation, not by a person's educational background or work experience). All of Ms. Eaton's clients were vulnerable victims as they were all incarcerated and depended on Respondent to prepare and file their appeals.

(i) substantial experience in the practice of law; See *In re Peasley*, 208 Ariz. at 36-37, 90 P.3d at 773-74(2004)(When there is a nexus between a lawyer's experience and the misconduct, substantial experience should be considered a relevant aggravating factor). Ms. Eaton was admitted in 1987 and was experienced enough to be awarded a contract to represent criminal defendants in post conviction relief matters.

9.32 Mitigating factors include:

(a) absence of a prior disciplinary record; See *Matter of Shannon*, 179 Ariz. at 68, 876 P.2d at 564 (Respondent's discipline free record can be used to offset the aggravating factor of substantial experience in the practice of law).

(c) personal or emotional problems; See Respondent's undated letter that was mailed to the State Bar on February 11, 2013, [Exhibit A] and her doctor's August 3, 2012 letter⁵ [Exhibit B]. Ms. Eaton however, failed to provide additional information to substantiate her health problems. On July 9, 2012, a bar staff investigator interviewed Ms. Eaton. In response to questions about her health Ms. Eaton said she was not well and that her condition was something she would probably have for the rest of her life. Ms. Eaton said that she would provide documentation of her medical condition and that she was currently under the care of a primary care physician (PCP), whom she visits once per month, and a cardiologist, whom she visits every six months. Ms. Eaton also said that she was currently prescribed several medications and that these are sometimes changed to see what works and what does not. Ms. Eaton indicated that she would request a letter from her PCP at her next appointment, which was the week of July 13, 2012.

While it might seem harsh to suspend Ms. Eaton in light of what may be a serious health condition, we are reminded that the protection of the public is the

⁵ The Panel notes that no order of protection was sought by the State Bar because Ms. Eaton previously waived confidentiality when she attached this same letter to a Motion to Quash Civil Warrant and Motion to Appear Telephonically and Notice of Mailing Files that was filed in CR 2008-138081-001, Maricopa County Superior Court on August 31, 2012.

Panel's first and foremost concern. Since Ms. Eaton was unable to participate in the formal proceedings before the bar, and she was removed from representing numerous clients because of her failure to provide timely or diligent representation, the Panel determined that the best way to protect the public and further the objectives of the discipline process is to impose a sanction that will require that Ms. Eaton prove her ability to practice before returning to an active membership status.

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*, 208 Ariz. at 64, 90 P.3d at 778. In view of the facts deemed admitted by default, conclusions of law, the applicable *Standards*, the aggravating factors and mitigating factors, and the purposes of the attorney discipline system, the Hearing Panel orders as follows:

IT IS ORDERED:

1. Ms. Eaton is suspended from the practice of law for six (6) months and one (1) day effective immediately. Ms. Eaton shall comply with provisions of Rule 72 Ariz.R.Sup.Ct.
2. Upon reinstatement, Ms. Eaton shall be placed on probation for a period of two (2) years with specific terms and conditions to be determined at the time of reinstatement.
3. Ms. Eaton shall pay all costs and expenses incurred in this proceeding.

4. A Final Judgment and Order will follow.

DATED this 11 day of April, 2013.



Honorable William J. O'Neil
Presiding Disciplinary Judge



Mark E. Salem
Volunteer Public Member



Judge Noel A. Fidel (Retired)
Volunteer Lawyer Member

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 11 day of April, 2013.

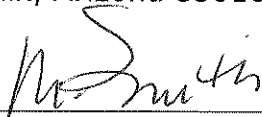
Original plus copies filed this 11 day
of April, 2013, with:

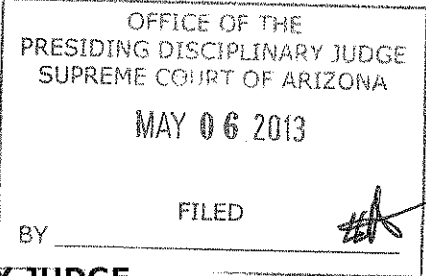
Copies of the foregoing mailed/emailed
this 11 day of April, 2013, to:

Pamela J. Eaton
4158 W. Beryl Ave
Phoenix, AZ 85051-1061
Email: pam753@q.com
Respondent

Shauna R Miller
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Ste. 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

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

by: 



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

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

PAMELA J. EATON,
Bar No. 011203

Respondent.

PDJ-2013-9011

[State Bar File Nos. 11-4052 and
12-1596]

FINAL JUDGMENT AND ORDER

This matter having come on for hearing before the Hearing Panel of the Supreme Court of Arizona, it having duly rendered its decision; and no appeal having been filed and the time for appeal having passed, accordingly,

IT IS HEREBY ORDERED that Respondent, **Pamela J. Eaton**, is hereby suspended for six (6) months and one (1) day for her conduct in violation of the Arizona Rules of Professional Conduct, effective immediately.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent, **Pamela J. Eaton** shall be placed on probation for a period of two (2) years. The specific terms and conditions shall 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 granting Judgment to the State Bar of Arizona for costs in the amount of \$2,016.95 with interest as provided by law.

IT IS FURTHER ORDERED that Respondent, **Pamela J. Eaton** pay those costs and expenses awarded to the State Bar of Arizona in the amount of \$2,016.95

within thirty (30) days from the date of service of this Order. 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 6th day of May, 2013.



The Honorable 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 6th day of May, 2013.

Copies of the foregoing mailed/emailed
this 6th day of May, 2013, to:

Pamela J. Eaton
4158 W. Beryl Ave
Phoenix, AZ 85051-1061
Email: pam753@q.com
Respondent

Shauna R Miller
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 200
Phoenix, Arizona 85016-6288

by: 