

**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 2015-9018

FINAL JUDGMENT AND ORDER

[State Bar No. 13-3380]

FILED MARCH 17, 2015

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Amended Agreement for Discipline by Consent filed on March 9, 2015, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED Respondent, **Robert L. Earle**, is hereby Admonished 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 Respondent shall pay restitution of Two Thousand Nine Hundred Twenty Three Dollars (\$2923.00) to the Complainant, Kathryn Van Dyne, within 30 days from the date of this Order.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing 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 30 days to determine whether a term 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.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00, within 30 days from the date of the date 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 17th day of March, 2015.

William J. O'Neil

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

Copies of the foregoing mailed/emailed
this 17th day of March, 2015.

Robert Brewster Van Wyck
Goldman & Zwillinger PLLC
7047 East Greenway Parkway, Suite 150
Scottsdale, Arizona 85254-8109
Email: rvanwyck@gzlawoffice.com
Respondent's Counsel

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

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

by: JAlbright

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

ROBERT L. EARLE,
Bar No. 013134

Respondent.

No. PDJ-2015-9018

**DECISION AND ORDER
ACCEPTING DISCIPLINE BY
CONSENT**

[State Bar File No. 13-3380]

FILED MARCH 17, 2015

An Amended Agreement for Discipline by Consent (Agreement) was filed on March 9, 2015, and submitted under Rule 57(a)(3), of the Rules of the Arizona Supreme Court. The Agreement was reached before the authorization to file a formal complaint. An Order of Probable Cause was filed on December 1, 2014. Upon filing such Agreement, the presiding disciplinary judge, "shall accept, reject or recommend modification of the agreement as appropriate".

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.

Under Rule 53(b)(3), notice of this Agreement was provided to the complainants by phone. Complainants were notified of the opportunity to file a

written objection to the Agreement with the State Bar within five days of bar counsel's notice. No objection was filed.

The Agreement details a factual basis for the admissions to the charge in the Agreement. Mr. Earle conditionally admits he violated ER 1.15(d) (safekeeping client property). The parties stipulate to a sanction of admonition, restitution and the payment of costs and expenses of the disciplinary proceeding in the amount of \$1,200.00. The parties further stipulate to aggravating factor 9.22(i) (substantial experience in the practice of law) and mitigating factor 9.32(a) (absence of prior disciplinary offenses).

As conditionally admitted in the Agreement, after Mr. Earle's client terminated the representation, Mr. Earle failed to return collected fees in the amount of \$2923.00, for 13.7 hours of unauthorized legal services.

The parties agree that *Standard* 4.14 of the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* is most applicable under the circumstances of this matter. The Presiding Disciplinary Judge finds the proposed sanctions of admonition and restitution meet the objectives of attorney discipline. The Agreement is therefore accepted.

IT IS ORDERED incorporating by this reference the Agreement and any supporting documents by this reference. The agreed upon sanctions are: admonition, restitution in the amount of \$2923.00, and the payment of costs and expenses of the disciplinary proceeding in the amount of \$1,200.00. Restitution and costs are to be paid within 30 days from the date of this Decision and Order.

IT IS FURTHER ORDERED the Agreement is accepted. Costs as submitted are approved for \$1,200.00. Now therefore, a final judgment and order is signed this date. Mr. Earle is admonished and restitution and costs imposed.

DATED this 17th day of March, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 17th day of March, 2015.

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

Robert Brewster Van Wyck
Goldman & Zwillinger, PLLC
7047 East Greenway Parkway, Suite 150
Scottsdale, AZ 85254-8109
Email: rvanwyck@gzlawoffice.com
Respondent's Counsel

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: lro@staff.azbar.org

by: JAlbright

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

Robert Brewster Van Wyck, Bar No. 007800
Goldman & Zwillinger, PLLC
7047 East Greenway Parkway, Suite 150
Scottsdale, Arizona 85254-8109
Telephone (480) 626-8483
Email: rvanwyck@gzlawoffice.com
Respondent's Counsel

**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 2015-9018

State Bar File No. **13-3380**

**AMENDED AGREEMENT FOR
DISCIPLINE BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Robert L. Earle, who is represented in this matter by counsel, Robert Brewster Van Wyck, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on December 01, 2014 and Respondent appealed the order pursuant to Rule 55(c)(4)(B), Ariz. R. Sup. Ct. 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 complainant(s) by telephone on November 26, 2014 and again on January 21, 2015. 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.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, Ariz. R. Sup. Ct., ER 1.15(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Admonition. Respondent also agrees to pay restitution and the costs and expenses of the disciplinary proceeding, within 30 days from the date of the Court's final judgment and order, and if costs are not paid within the 30 days, interest will begin to accrue at the legal rate.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on September, 18, 1990.

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 (File no. 13-3380/ Van Dyne)

2. On or about June 11, 2012, Respondent was hired to represent Complainant in the extensively litigated Pima County Superior Court domestic relations case of *Gibson v. Van Dyne*, D20122047.

3. As a result of the Court's ruling precluding the use of a certain joint funds to pay for the lawsuit, Complainant indicated to Respondent that she wanted to settle the case.

4. After Complainant felt that Respondent became upset and making "some sort of (angry) denial", Complainant provided Respondent with a written termination of the representation on October 4, 2013.

5. On October 15, 2013, Respondent filed a motion to withdraw. The Court granted the motion on October 22, 2013.

6. On October 16, 2013, Respondent appeared telephonically for a previously scheduled deposition of Complainant in order to make a record that Complainant terminated his law firm and specifically requested that Respondent not appear at the deposition. Complainant confirmed Respondent's statements on the record.

7. Following the termination of the representation, the parties entered a decree of dissolution on November 1, 2013, resulting in an settlement of all claims for a cash settlement of Five Hundred Thousand Dollars (\$500,000.00).

8. A review of the billing records reveals that Respondent's law firm billed Complainant Two Thousand Nine Hundred Twenty Three Dollars (\$2923.00) for 13.7 hours for, among other things, the following unauthorized services after the representation was terminated by the client and the Court:

a. October 23, 2013: Review multiple docs filed with court. Review Motion for Telephonic Appearance of husbands expert witness and forward to client. Review/analyze Petitioner's responses to our Special Rogs - send to client. Review/analyze husbands Motion to Compel Discovery. Discuss whether depo notice to regarding 10/22 actually required appearance and status of Motion to Withdraw.

b. October 24, 2013: Revise, finalize and discuss final billing. Initial review/analysis of Petitioner's Financial Affidavit, Pretrial Statement and Property inventory. Letter to client regarding same and recommend she review. Discuss with staff. Correspondence to LB re response re sanctions claims.

c. October 28, 2013: Review document re attorney's fees; Note to Bob regarding standing to object.

d. October 30, 2013: Discussion with RLE and to ensure all costs have been entered and hearing time.

e. November 4, 2013: Review/Analyze previous court orders a Notice of Deposition review husband's pretrial brief and prepare to defend portions regarding sanctions; Call to Libby to prepare response re sanctions request. Calls to client. Review husband's request to sign tax returns. Letter to client re same to obtain services of tax expert and send 2012 tax return forms. Review four appraisals of Sedona property and transmit to client together with pretrial brief. (ltr)

- f. November 5, 2013: conference regarding closing documents (settlement & decree) and records Plan to obtain and further review
- g. November 5, 2013: discussion regarding closing documents and records; make arrangements to get copies
- h. November 5, 2013: Review attorney's fees document filed by opposing counsel; Review court docket; Email to RLE re same.
- i. November 5, 2013: Conference re further docs and closing papers and settlement.
- j. November 5, 2013: Review/Revise/Finalize letter to client re tax returns.
- k. November 7, 2013: Review corrections and discussion re October billing.
- l. November 27, 2013: Review closing documents and steps to obtain and discuss.

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 his conduct violated Rule 42, Ariz. R. Sup. Ct., ER 1.15(d).

RESTITUTION

Respondent agrees to pay restitution in the amount of Two Thousand Nine Hundred Twenty Three Dollars (\$2923.00) to Complainant no later than _____ days from the date of the Court's final judgment and order.

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:

**Admonition and Order of Restitution in the amount of
Two Thousand Nine Hundred Twenty Three Dollars
(\$2923.00)**

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

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 *Standard* 4.14 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 4.14:

Admonition is generally appropriate when a lawyer is negligent in dealing with client property, and causes little injury or no actual or potential injury to a client.

The duty violated

As described above, Respondent's conduct violated his duty to his client.

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent negligently failed to promptly return collected fees for unauthorized legal services occurring after the representation was terminated. Respondent agrees 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 his client.

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22(i) substantial experience in the practice of law: 24 years.

In mitigation:

Standard 9.32(a) absence of a disciplinary record.

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 was based on the following: While Respondent failed to return fees for unauthorized legal services occurring after the representation was terminated by the client and the Court, Respondent has practiced for twenty four (24) years and has not received a disciplinary sanction during this time.

Accordingly, 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.

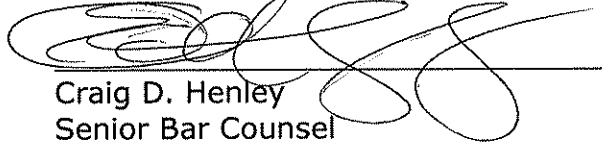
CONCLUSION

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 Admonition with an Order of Restitution along with the

imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

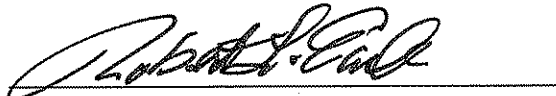
DATED this 9th day of ~~January~~ ^{March} 2015.

STATE BAR OF ARIZONA


Craig D. Henley
Senior Bar Counsel

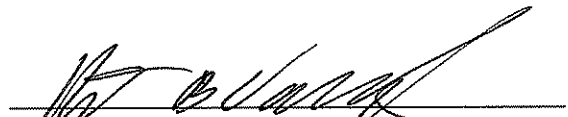
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this 9th day of ~~January~~ ^{March}, 2015.


Robert L. Earle
Respondent

DATED this 9th day of ~~January~~ ^{March}, 2015.

Goldman & Zwillinger PLLC


Robert Brewster Van Wyck
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 9th day of March 2015.

Copies of the foregoing mailed/emailed
this 9th day of March, 2015, to:

Robert Brewster Van Wyck
Goldman & Zwillinger PLLC
7047 East Greenway Parkway, Suite 150
Scottsdale, Arizona 85254-8109
rvanwyck@gzlawoffice.com
Respondent's Counsel

Copy of the foregoing emailed
this 9th day of March, 2015, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
Email: officepdj@courts.az.gov

Copy of the foregoing hand-delivered
this 9th day of March, 2015, to:

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

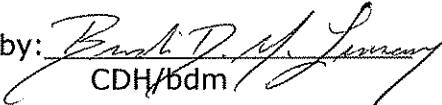
by: 
CDH/bdm

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Current Member of the State Bar of Arizona,
Robert L Earle, Bar No. 013134, Respondent

File No. 13-3380

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***

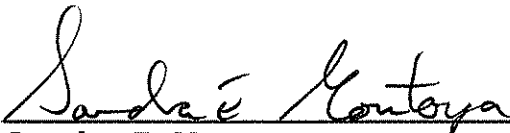
\$ 1,200.00

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

Total for staff investigator charges \$ 0.00

TOTAL COSTS AND EXPENSES INCURRED \$ 1,200.00



Sandra E. Montoya
Lawyer Regulation Records Manager

3-5-15

Date

EXHIBIT B

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,**

**Robert L. Earle,
Bar No. 013134,**

Respondent.

PDJ 2015-9018

FINAL JUDGMENT AND ORDER

[State Bar No. 13-3380]

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, **Robert L. Earle**, is hereby Admonished for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective immediately.

IT IS FURTHER ORDERED that Respondent shall pay restitution of Two Thousand Nine Hundred Twenty Three Dollars (\$2923.00) to the Complainant, Kathryn Van Dyne, no later than ____ days from the date of this order.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing 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 30 days to determine whether a term 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.

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

DATED this _____ day of March, 2015.

**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 March, 2015.

Copies of the foregoing mailed/mailed
this _____ day of March, 2015.

Robert Brewster Van Wyck
Goldman & Zwillinger PLLC
7047 East Greenway Parkway, Suite 150
Scottsdale, Arizona 85254-8109
Email: rvanwyck@gzlawoffice.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this _____ day of March, 2015, to:

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

Copy of the foregoing hand-delivered
this _____ day of March, 2015 to:

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

by: _____