

**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-2016-9127**

**FINAL JUDGMENT AND  
ORDER OF DISBARMENT**

[State Bar Nos. 15-2336, 16-0887,  
16-1485, 16-2853, 16-2867]

**FILED SEPTEMBER 20, 2017**

This matter came for hearing before the Hearing Panel, which rendered its decision on March 23, 2017 and ordered that the immediate disbarment of Mr. Earle on that same date. The decision of the hearing panel is final under Rule 58(k), Ariz. R. Sup. Ct. A Notice of Appeal was filed on April 7, 2017 pursuant to Rule 59, Ariz. R. Sup. Ct., but no request for stay was filed.

Now therefore,

**IT IS ORDERED** Respondent, **ROBERT L. EARLE, Bar No. 013134**, is disbarred from the State Bar of Arizona and his name is stricken from the roll of lawyers, effective March 23, 2017, as set forth in the Decision and Order Imposing Sanctions. Mr. Earle is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the Court.

**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** Mr. Earle shall pay restitution to the following individuals in the following amounts:

Count Two: Avelino Peralta	\$14,472.86
Count Four: Joann DiBartolo	\$27,775.79
Count Five: Kathryn Van Dyne	\$ 2,923.00

**IT IS FURTHER ORDERED** Mr. Earle shall pay all costs and expenses of the State Bar of Arizona pursuant to Rule 60(b), Ariz. R. Sup. Ct. 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 20<sup>th</sup> day of September 2017.

*William J. O'Neil*

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

COPY of the foregoing e-mailed on September 20, 2017, and mailed September 21, 2017, to:

Craig Henley  
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A copy was transmitted to the Supreme Court Clerk on September 20, 2017.

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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IN THE MATTER OF A SUSPENDED<sup>1</sup>  
MEMBER OF THE STATE BAR OF  
ARIZONA,

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

Respondent.

**PDJ 2016-9127**

**DECISION AND ORDER  
IMPOSING SANCTIONS**

[State Bar Nos. 15-2336, 16-0887,  
16-1485, 16-2853, 16-2867]

**FILED MARCH 23, 2017**

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On March 1, 2017, the Hearing Panel, comprised of Scott Palumbo, attorney member, Ellen Kirschbaum, public member, and Presiding Disciplinary Judge (“PDJ”) William J. O’Neil, held an aggravation/mitigation hearing. Bradley F. Perry appeared on behalf of the State Bar of Arizona. Mr. Earle appeared representing himself. Mr. Earle argues he has had no time to prepare for this matter as his files have been stolen by the State Bar.

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<sup>1</sup> Mr. Earle was placed on interim suspension regarding State Bar No. 16-3354 effective December 5, 2016. [Exhibit 29.]

## **PROCEDURAL HISTORY**

On October 12, 2016, the State Bar of Arizona (“SBA”) moved pursuant to Rule 61 for the interim suspension of Robert L. Earle from the practice of law.<sup>2</sup> Proof of service was filed on October 14, 2016. Mr. Earle filed a response on November 15, 2016. On November 18, 2016 the PDJ set an evidentiary hearing for December 5, 2016 heard on that date. The PDJ found probable cause Mr. Earle engaged in conduct that had caused or was likely to cause immediate and substantial harm to clients, the public, or the administration of justice. In PDJ-2016-9102, under Rule 61, Mr. Earle was suspended from the practice of law effective immediately on an interim basis regarding State Bar Nos. 16-2867, 16-0887, 16-1485, and 16-2853. Under Rule 6(c)(2)(D), the SBA was directed to “expeditiously proceed” with the related disciplinary investigation and proceeding.

Under that rule, the SBA filed its complaint on December 16, 2016. On December 20, 2016, the complaint was served on Mr. Earle by certified, delivery restricted mail, and by regular first class mail, pursuant to Rules 47(c) and 58(a)(2).

On December 21, 2016, the PDJ was assigned to the matter. A notice of default was properly issued on January 18, 2017. *See* Rule 58(d). Mr. Earle filed no answer or otherwise defended against the complainant’s allegations and default was effective

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<sup>2</sup> Unless otherwise stated, all Rule references are to the Arizona Rules of the Supreme Court.

on February 7, 2017, at which time a notice of aggravation and mitigation hearing was sent to all parties notifying them the aggravation mitigating hearing was scheduled for March 1, 2017 at 1:30 p.m., at the State Courts Building, 1501 West Washington, Phoenix, Arizona 85007-3231.

On March 1, 2017, the Hearing Panel comprising of Scott I. Palumbo, attorney member, Ellen R. Kirschbaum, public member, and PDJ William J. O’Neil heard argument. Upon effective entry of default, the allegations within the complaint “shall be deemed admitted.” *See* Rule 58(d). Also see *Reed v. Frey*, 10 Ariz. App. 292, 458 P.2d 386 (1969). Although the allegations within the complaint are deemed admitted by default, there has also been an independent determination by the Hearing Panel that the State Bar has clear and convincing evidence that Mr. Earle violated the ethical rules. *See Daou v. Harris*, 139 Ariz. 353, 678 P.2d 934 (1984). The State Bar had witnesses available to testify telephonically and avowed their testimony follows the allegations in the complaint. Twenty-nine (29) exhibits were admitted to undergird the allegations. The allegations within the complaint deemed admitted are supported by clear and convincing evidence. Mr. Earle was given an opportunity to file objections to the 29 exhibits. On March 10, 2017, he filed an objection. All exhibits remain admitted over any objections.

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## **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. A respondent against whom an effective default has been entered may not litigate the merits of the factual allegations, but may participate by cross-examination and otherwise. Mr. Earle appeared and was afforded those rights.

1. Mr. Earle is a lawyer licensed to practice law in the State of Arizona having been first admitted on December 18, 2001.

### **COUNT ONE (File No. 15-2336/Trust Account)**

2. Mr. Earle maintained one Bank of America client trust account ending in 5503 ("trust account") governed by Arizona Rules of the Supreme Court. [Exhibit 4, Bates 015.]

3. Approximately \$47,449.84 of funds belonging to clients and/or third parties are missing or unaccounted for from the trust account. [Exhibit 3, Bates 014.]

4. While Mr. Earle has provided some of the client ledgers and related mandatory trust account documents, there are several other documents solely in Mr. Earle's possession, which he has failed to provide upon request, that make it impossible to determine if these funds have been misappropriated for personal reasons. [Complaint, pp.1-2]

5. The State Bar membership records report that Mr. Earle's 2008 annual dues form reported the trust account as closed. [Exhibit 3, Bates 014.]

6. In 2013, Mr. Earle reported to Membership Records that the same trust account was active. [Complaint, p.2.]

7. Despite his claim that the trust account was closed between 2008 and 2013, Mr. Earle's client ledgers report continuous activity in the trust account. [Complaint, p.2.]

8. Mr. Earle has failed to report all active trust accounts maintained by him and has failed to file a certificate certifying compliance with Rule 43 and Rule 42, Ariz. R. Sup. Ct., ER 1.15 for approximately eight (8) years. [Complaint, p.2.]

9. On September 4, 2015, trust account check number 2407 for \$4,432.22 and check number 2411 for \$11,951.11 were written against the account when the balance was \$2,302.00. [Exhibit 1, Bates 02 and 04.]

10. On September 9, 2015, checks numbered 2407 and 2411 were presented for payment a second time when the balance was \$2,302.00. The bank returned both items, and charged no overdraft fee leaving the account balance unchanged. [Exhibit 1, Bates 01.]

11. On September 14, 2015, the State Bar of Arizona (SBA) received an insufficient funds notice on Mr. Earle's trust account. [Complaint, p.2.]

12. Mr. Earle stated that he properly deposited a \$100,000.00 settlement check into the trust account in anticipation of the following disbursements: Attorney Fees - \$33,333.33; Attorney Costs \$3,535.58; Five (5) Medical Provider Liens: \$18,068.78; and Net to Client - \$45,062.31. [Complaint, p. 3.]

13. Mr. Earle stated the problem started when he attempted to disburse his attorney fees by way of a wire transfer from the trust account into his Wells Fargo operating account for \$33,333.33 and then wrote a check for the same amount. Mr. Earle “double disbursed” attorney fees to himself, causing an over disbursement of \$30,837.75 (representing a \$33,333.33 duplicate disbursement less \$2,495.58 attorney costs. [Complaint, p.3.]

14. Mr. Earle further stated:

“It seems like the easy fix was to simply put the excess, [sic] the more than \$33,000.00 back into the Trust account since some \$33,000.00 was improperly pulled by the Bank from one account (Trust) into the other (operating) account. Unfortunately, the error was not immediately apparent and Mr. Earle's bookkeeper paid a number of other bills from the operating account, so some of the monies were not available to be returned immediately. Mr. Earle is also reconciling the operating account while making certain the Trust account is properly maintained. This will take some time and Mr. Earle is having a forensic person reviewing all the deposits and expenditures from the operating account as well as addressing the first priority of making sure the Trust account is pristine and the identified checks are reimbursed”. [Complaint, p.3.]

15. Further investigation and review of the provided client ledgers revealed several recordkeeping deficiencies and the following missing funds:



- a. The trust account had a (\$14,212.09) deficit as of August 1, 2015, indicating that the balance held on deposit on that date should have been \$34,968.51, rather than \$20,756.42. The deficit resulted from an over disbursement of funds on behalf of six (6) clients (the earliest instance is dated January 29, 2015) and increased the trust account deficit to **at least** \$47,449.84. [Complaint, pp.3-4.]
- b. The Edison L.A. client ledger reflects a \$46,000.00 deposit on May 9, 2012, and check number 1947 disbursement to Mr. Earle on May 14, 2012, in the exact amount. While the disbursement entry reflects the following description: “**in error-will put back**”, there is no subsequent re-deposit entry reflected on behalf of the client. (*Emphasis added*) [Complaint, p.4.]
- c. The ABK client ledger reflects that on July 15, 2010, check number 1422 was disbursed to the client for \$56.75, when the unexpended client balance at the time was zero (0), resulting in a deficit of (\$56.75). The disbursement is described as an “unused retainer-error.” The subsequent entry reflects the deficit was offset on August 25, 2010, by way of a deposit in the exact disbursement amount. [Complaint, p.4.]
- d. The Edison Appeal client ledger reflects that on February 17, 2012, check number 1930 was disbursed to “[L.] Banks” for \$620.00, when

the unexpended client balance at the time was zero (0), resulting in a deficit of (\$620.00). No description is given, however, the subsequent entry reflects the deficit was offset on February 23, 2012, by a deposit for \$2,000.00. [Complaint, p.4.]

- e. The Fazekas client ledger reflects that on March 17, 2014, \$115.31 was disbursed as part of check number 2015, when the unexpended client balance at the time was zero (0), resulting in a deficit of (\$115.31). The subsequent entry reflects a deposit for \$116.31 dated April 16, 2014, described as “**corrected deposit.**” (*Emphasis added*) [Complaint, pp.4-5.]
- f. The Fillet client ledger reflects that on October 29, 2013, \$500.00 was disbursed as part of check number 2009, when the unexpended client balance at the time was zero (0), resulting in a deficit of (\$500.00). The subsequent entry reflects a deposit for \$1,827.50 dated November 1, 2013. [Complaint, p.5.]
- g. The Gilbert client ledger reflects that on July 1, 2009, the client held a negative (\$0.03) balance described as an “Account Opening Balance” Although this trust account was reported by Mr. Earle as opened in 2008. The origin of the negative balance is unclear. The subsequent entry

reflects that on December 30, 2009, the deficit balance was offset by a “Funds Transfer” deposit in that exact amount. [Complaint, p.5.]

- h. The Nez client ledger reflects that on July 20, 2010, a deposit for \$75,000.00 was received on behalf of the client. The subsequent entries reflect four (4) disbursements totaling \$65,402.00, transacted between July 30, 2010, and October 28, 2010. The unexpended balance as of October 28, 2010, was \$9,598.00. Yet, on November 5, 2010, check number 1435 is recorded as disbursed to Mr. Earle, described as “payment.” Resulting in a negative unexpended balance of (\$402.00). The ledger reflects a deposit in that exact amount on December 4, 2010, described as “**correct error-dep.**” (*Emphasis added*) [Complaint, pp.5-6.]
- i. The Reeder client ledger reflects that on July 26, 2013, check number 1999 was disbursed to the client for \$1,090.22, described as a disbursement of “unused retainer.” However, the ledger reflects that as of that date \$2,410.08 had been disbursed to Mr. Earle by way of three (3) checks, while a single deposit had been received for \$3,500.00. Therefore, the unexpended balance on July 26, 2013, was \$1,089.92, resulting in a negative unexpended balance of (\$0.30) after check number 1999 was disbursed. The following entry comprises a “general

journal” entry dated July 31, 2013, reflecting an offsetting deposit to zero (0) the unexpended balance. The entry is described as “**to correct chck1991b.**” Coincidentally, a preceding entry dated May 12, 2013, reflects \$438.49 was disbursed as part of check number 1991. It is unclear if the item was over or under disbursed by \$0.30. It is evident the discrepancy went unnoticed or ignored for approximately eighty (80) days. [Complaint, p.6.]

- j. The “Trust-Reconcile” ledger reflects that on September 30, 2009, a “General Journal” entry was recorded to reflect the deduction of \$61.00 for a “check order” charge when no funds were held on deposit. Resulting in a negative unexpended balance of (\$61.00). The subsequent entry dated November 30, 2009, reflects a \$33.00 deposit described as a “refund from check print,” partially offsetting the deficit. The unexpended balance after the deposit was negative (\$28.00). The following entry reflects the deficit was fully offset on December 30, 2009, by a \$61.00 deposit described as originating “from PC printing.” The unexpended balance after the deposit was \$33.00. The ledger further reflects that the unexpended balance was disbursed to Mr. Earle by way of check number 1404, disbursed on March 12, 2010, described as a disbursement for “check printing.” This brought the unexpended

balance to zero (0). On October 6, 2011, the ledger reflects check number 1405 was disbursed to Bank of America for \$61.00, described as a disbursement for a “check order fee” resulting in a negative unexpended client balance of (\$61.00). The ledger reflects the deficit was offset by a deposit in that exact amount dated December 3, 2011, described as “check printing.” [Complaint, pp.6-7.]

- k. The Van Dyne client ledger reflects that as of May 16, 2013, \$46,495.00 had been received and deposited in the trust account while (\$42,911.97) had been disbursed. Therefore, the unexpended balance was \$88.03 as of May 16, 2013. The subsequent entry is dated June 6, 2013, and reflects a \$3,495.00 deposit followed by the disbursement of check number 1994 to Mr. Earle for \$3,583.23, when the balance at the time was \$3,583.03, resulting in a negative unexpended balance of (\$0.20). The deficit appears to have been carried in each subsequent entry and was further increased on March 17, 2014. On that day \$1,686.65 is reflected as disbursed as part of check number 2015, however, as of that date \$146,495.00 had been received and deposited in the trust account on behalf of the client, while (\$145,683.01) had been disbursed. Therefore, the unexpended balance was \$811.99, resulting in a negative unexpended client balance of (\$874.66) after the disbursement of check

number 2015. The deficit was offset on April 16, 2014, by way of a deposit in that exact amount described as “**corrected deposit.**” (*Emphasis added*) [Complaint, p.7-8.]

1. The Wood client ledger reflects that as of August 1, 2012, \$5,115.58 had been received and deposited in the trust account, while (\$3,408.08) had been disbursed. The unexpended balance was \$1,707.50 as of August 1, 2012. Yet, the client ledger reflects that on August 8, 2012 checks numbered 1955 for \$1,462.50 and 1956 for \$245.50 were both disbursed to the client for a total disbursement of \$1,708.00, resulting in a negative unexpended client balance of (\$0.50). The deficit is reflected as corrected on 07/31/2013. However, the entry on July 31, 2013, corresponds to a “General Journal” entry adjustment described as “to reconcile.” [Complaint, p.8.]
- m. The Zellner client ledger reflects that on October 25, 2010, check number 1433 was disbursed to a third-party for \$55.33, when the balance at the time was zero (0). As of that date \$104,590.97 was received and deposited on behalf of the client by way of four (4) transactions, while the same amount was disbursed by way of twelve (12) disbursements. Hence, check number 1433 resulted in a negative unexpended client balance of (\$55.33). The deficit was offset on

November 8, 2010 by way of a deposit for \$34,353.86. [Complaint, pp.8-9.]

- n. The Zenovitch client ledger reflects that as of September 19, 2014, \$6,259.76 had been received and deposited in the Trust Account, while (\$4,671.94) had been disbursed. Therefore, the unexpended balance was \$1,587.82 as of September 19, 2014. Yet, the client ledger reflects that on October 9, 2014, a transfer for \$3,087.82 was transacted from the trust account to Mr. Earle, resulting in a negative unexpended client balance of (\$1,500.00). The deficit was offset on October 14, 2014, by way of a deposit in that exact amount. [Complaint, p.9.]

8. During his review of the trust account records, the following violations were noted:

- a. The Bannick client ledger reflects that on September 2, 2014, a deposit was made for \$800.00. The subsequent entry comprises a journal entry deduction for \$400.00 dated the same. The entry is described as “**took from Bennick [sic] cash.**” (*Emphasis added*) [Complaint, p.9.]
- b. The Paraskevas client ledger reflects that on September 19, 2014, a deposit was made for \$500.00. The subsequent entry comprises a journal entry deduction for \$499.97 dated the same. The entry is described as “**from paraskevs.**” (*Emphasis added*) [Complaint, p.10.]

- c. Another ledger reflects a journal entry deduction of \$38.00 on June 30, 2011, when no funds were held on deposit, resulting in a negative unexpended ledger balance of (\$38.00). The journal entry does not specify the purpose of the deduction. Coincidentally, on August 15, 2011, an additional journal entry reflects an offsetting deposit in the same amount. Again no description is reflected for the adjustment.  
[Complaint, p.10.]
- d. Another journal entry reflects a \$455.89 deposit on July 25, 2014, described as “need to be transferred to PC.” The subsequent entry comprises an additional journal entry reflecting the deduction of the funds as “**correcting sebing.**” The corresponding Sebing client ledger reflects \$500.00 was received on August 23, 2013, and subsequently disbursed to Mr. Earle by way of check number 2033 on August 15, 2014. No further activity is reflected on behalf of the client.  
[Complaint, p.10.]
- e. The “Trusts-Other” ledger reflects a \$300.00 deposit on August 5, 2011, as “bank posted to wrong account.” Yet, the funds are reflected as remaining in the trust account until October 4, 2011. On that day the funds are reflected as disbursed to Mr. Earle by way of check number 1906 and described as “**putting back to pc-deposited wr...[end of**



**sentence]**” indicating Mr. Earle comingled personal funds in the trust account for approximately two (2) months. (*Emphasis added*)  
[Complaint, pp.10-11.]

f. The Van Dyne client ledger reflects a \$3,495.00 deposit on June 6, 2013, described as “Deposit-corrected chck1990.” The preceding entry dated April 29, 2013, reflects the disbursement of check number 1990 to Mr. Earle in that exact amount for an unspecified reason. Mr. Earle comingled client funds in his personal account for approximately thirty-eight (38) days. Also, a \$10,000.00 deposit is reflected on November 1, 2013, as “deposited wrongly to pc on 10/17...” Mr. Earle comingled client funds in his operating account for approximately fifteen (15) days.  
[Complaint, p.11`]

g. The Zenovitch client ledger reflects a \$676.45 deposit on July 25, 2014, described as “**correct from pc to trust.**” (*Emphasis added*)  
[Complaint, p.11.]

9. While Mr. Earle’s counsel informed the examiner that Mr. Earle anticipated obtaining a forensic accounting of the trust account, Mr. Earle’s counsel explained the following on June 28, 2016:

“I apologize for being so late getting back to you. I called yesterday as an e-mail seems inadequate after you have been so patient. I do not have the forensic report-not sure why that did not happen, but it may not have been

needed. This was a clear error and the correction was obvious. The ship has been righted but the bank and possible FMC a lien holder is still being paid or arrangements to be paid are being made by Bob. He has accepted full responsibility and no individual client is jeopardized. However, he still has to pay back money. He has in place a method of this not happening again-but there are still outstanding action to correct the original problem. I wish I had a more clear and focused answer-tell me what you need and I will do my best to get it to you.” [Complaint, p.11.]

10. As of June 28, 2016, third-party lien holder FMC remained uncompensated and Mr. Earle had misappropriated the following client funds for an excess of one (1) year and five (5) months:

<b>Date</b>	<b>Amount</b>	<b>Client</b>
08/10/15	(\$2,400.00)	Cash to identify
07/21/15	(\$9,000.00)	Client 2
06/17/15	(\$270.00)	Client 4
04/15/15	(\$4,042.05)	Henson
07/13/15	(\$500.00)	Sani
04/23/15	(\$400.00)	Werner
08/12/15	(\$30,837.75)	West
01/29/15	(\$0.04)	Zenovitch
<b>Total</b>	<b>(\$47,449.84)</b>	

[Complaint, p.12.]

11. Mr. Earle violated Rule 42, *Ariz. R. Sup. Ct.*:

a. ER 1.15(a) – Mr. Earle failed to safekeep client property by misappropriating and converting client and third-party funds;

b. ER 1.15(d) – Mr. Earle failed to promptly deliver to the client/third person any funds or other property that the client/third person is entitled to receive and failing to promptly render a full accounting regarding such property;

c. ER 1.15(e) - Mr. Earle possessed property in which two or more persons (one of whom may be the lawyer) claim interests, but failing to keep the property separate;

12. By engaging in the above referenced misconduct, Mr. Earle also violated the following ethical rules (also referred to as the “Trust Account Rules”):

a. Rule 43(a), *Ariz. R. Sup. Ct.* by failing to keep funds belonging in whole or in part to a client/third person for a representation separate and apart from the lawyer’s personal and business accounts;

b. Rule 43(b)(1)(A), *Ariz. R. Sup. Ct.* by failing to exercise due professional care in the performance of the lawyer’s duties;

c. Rule 43(b)(1)(B), *Ariz. R. Sup. Ct.* by failing to properly train employees and others assisting the attorney in the performance of his duties related to the trust account and failing to properly supervise employees and others assisting the attorney in performance of said duties;

d. Rule 43(b)(1)(C), *Ariz. R. Sup. Ct.* by failing to maintain adequate internal controls under the circumstances to safeguard funds or other property held in trust;

e. Rule 54(d)(2), *Ariz. R. Sup. Ct.* by failing to furnish information to or respond promptly to any inquiry or request from the State Bar;

f. Rule 54(d)(2)(A), *Ariz. R. Sup. Ct.* by failing to furnish in writing, or orally as requested, a full and complete response to inquiries and questions;

g. Rule 43(b)(2)(A), *Ariz. R. Sup. Ct.* by failing to maintain on a current basis, complete records of the handling, maintenance, and disposition of all funds, securities, and other property belonging in whole or in part to a client/third person in connection with a representation including, but not limited to, the records required by ER 1.15 and cover the entire time from receipt to the time of final disposition by the lawyer of all such funds, securities, and other property;

- h. Rule 43(b)(2)(B), *Ariz. R. Sup. Ct.* by failing to maintain or cause to be maintained an account ledger or the equivalent for each client, person, or entity for which funds have been received in trust, showing: (i) the date, amount, and payor of each receipt of funds; (ii) the date, amount, and payee of each disbursement; and (iii) any unexpended balance;
- i. Rule 43(b)(2)(C), *Ariz. R. Sup. Ct.* by failing to make or cause to be made a monthly three-way reconciliation of the client ledgers, trust account general ledger or register, and the trust account bank statement;
- j. Rule 43(b)(2)(D), *Ariz. R. Sup. Ct.* by failing to retain, under this rule, duplicate deposit slips or the equivalent (which shall be sufficiently detailed to identify each item), and a trust account general ledger or register;
- k. Rule 43(b)(5), *Ariz. R. Sup. Ct.* by disbursing funds without using a pre-numbered check or by electronic transfer and maintained no record of such disbursements in accordance with the requirements of this rule and failing to identify all instruments of disbursement as a disbursement from the trust account;
- l. Rule 43(b)(5), *Ariz. R. Sup. Ct.* by disbursing \$37,333.33 by way of unauthorized cash withdrawals from the IOLTA;
- m. Rule 43(c), *Ariz. R. Sup. Ct.* by failing to file an accurate certificate certifying compliance with this rule and ER 1.15 of the *Arizona Rules of Professional Conduct*;
- n. Rule 43(f)(7), *Ariz. R. Sup. Ct.* by failing to provide information requested by the State Bar on the annual dues statement regarding all client trust accounts they maintain; and
- o. Rule 43(d)(3), *Ariz. R. Sup. Ct.* by implicating the rebuttable presumption that by failing to maintain trust account records required by this rule and ER 1.15, or failing to provide trust account records to the State Bar upon request that the lawyer failed to properly safeguard client/third person's funds or property, as required by this rule and ER 1.15.

**COUNT TWO (File No. 16-0887/Peralta)**

16. On August 25, 2015, Mr. Earle obtained a jury verdict in favor of Avelino Peralta (“Peralta”) and a jury award of \$106,000.00 with varying degrees of fault by various defendants. [Exhibit 7, Bates 89.]

17. On November 2, 2015, Mr. Earle received a settlement check for \$33,800.00 from some of the defendants towards satisfaction of the jury verdict. [Exhibit 7, Bates 90.]

18. On November 10, 2015, Mr. Earle deposited the \$33,800.00 settlement check in his trust account. [Complaint, p. 14.]

19. On November 13, 2015, Mr. Earle made an \$33,800.00 cash withdrawal from the trust account in violation of the trust account rules in Rule 43 (b)(5), *Ariz. R. Sup. Ct.* [Complaint, p. 15.]

20. In an email dated March 24, 2016, to the State Bar, Mr. Earle indicated that he disbursed thirteen thousand five hundred twenty dollars (\$13,520.00) to his firm representing forty percent of the total settlement amount and a one-third percentage of the costs (\$2,000.00) purportedly advanced by Mr. Earle. [Exhibit 7, Bates 70.]

21. Mr. Earle also stated that he disbursed the full costs (\$5,807.14) purportedly advanced by Mr. Earle. [Complaint, p. 15.]

22. Mr. Earle claimed to maintain the remaining balance of \$14,472.86 in his trust account pending negotiation of two outstanding medical liens. However, due to Mr. Earle's withdrawal on November 13, 2015, this balance was not maintained in his trust account. [Complaint, p. 15.]

23. In mid-2016, Mr. Earle informed Peralta that his firm had taken the remaining balance of \$14,472.86 in his trust account for fees purportedly incurred by the firm. [Complaint, p. 15.]

24. On August 11, 2016, the State Bar mailed Mr. Earle an initial screening letter requesting a written response to the allegations he violated several ethical rules related to failing to properly account for and/or pay funds related to his receipt of \$33,800.00. The initial screening letter also informed Mr. Earle that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline under Rule 54(d) and Rule 42, *Ariz. R. Sup. Ct.*, ER 8.1(b). [Complaint, pp. 15-16.]

25. On September 9, 2016, the State Bar mailed Mr. Earle a second screening letter requesting a written response within 10 days. The second 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). [Complaint, p. 16.]

26. As of the date of this complaint, Mr. Earle has not provided the State Bar or his client with a written response to the screening letters or a full accounting of the \$33,800.00. [Complaint, p. 16.]

27. By engaging in the above-referenced misconduct, Mr. Earle violated Rule 42, *Ariz. R. Sup. Ct.*:

1. ER 1.2 – Mr. Earle failed to abide by the client’s authority during the representation;
2. ER 1.3 – Mr. Earle failed to act diligently during the representation;
3. ER 1.4 – Mr. Earle failed to reasonably communicate with the client during the representation;
4. ER 1.5 – Mr. Earle charged and retained unreasonable fees;
5. ER 1.15(a) – Mr. Earle failed to safekeep client property by misappropriating and converting client and third-party funds;
6. ER 1.15(d) – Mr. Earle failed to promptly deliver to the client/third person any funds or other property that the client/third person is entitled to receive and failed to promptly render a full accounting regarding such property;
7. ER 1.15(e) – Mr. Earle possessed property in which two or more persons (one of whom may be the lawyer) claim interests, but failing to keep the property separate;
8. ER 1.16(d) – Mr. Earle failed to take the steps reasonably necessary to protect the client’s legal rights and interests including, but not limited to, failing to promptly return property belonging to the client;
9. ER 8.1 – Mr. Earle knowingly failed to respond to a lawful demand for information from the disciplinary authority;

10. ER 8.4(b) – Mr. Earle engaged in a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

11. ER 8.4(c) – Mr. Earle engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; and

12. ER 8.4(d) – Mr. Earle engaged in conduct prejudicial to the administration of justice.

28. By engaging in the above referenced misconduct, Mr. Earle also violated Rule 43(b)(5), *Ariz. R. Sup. Ct.* by disbursing \$33,800.00 by way of unauthorized cash withdrawals from the trust account to himself.

29. By engaging in the above referenced misconduct, Mr. Earle also violated Rule 54(d), *Ariz. R. Sup. Ct.* by failing to furnish information or promptly respond to the requests of the State Bar.

### **COUNT THREE (File No. 16-1485/Preston)**

30. Mr. Earle was attorney of record for Blair Preston (“Preston”) in Yavapai County Superior Court cause, *CLA v. Preston* (and related counterclaims and cross claims), CV201580106. Throughout the representation, Mr. Earle frequently failed to communicate with Preston and over-billed Preston. [Exhibit 12, Bates 119.]

31. On March 22, 2016, Judge Jeffrey G. Paupore (the assigned judge) ordered the parties to personally appear at a settlement conference on April 19, 2016, before Judge Michael R. Bluff. [Complaint, p. 17.]



32. On April 13, 2016, Mr. Earle's legal secretary notified Preston of the Settlement Conference for the first time and Preston immediately responded by asking "They gave 4 days notice??? When was this initially issued?" then stating "This is a serious problem for me on such short notice. I will be calling the court tomorrow to see why this could not have been set up in an agreeable time for both parties." [Exhibit 12, Bates 119.]

33. On April 14, 2016, Mr. Earle met with Preston and Don Kirchner (a mutual friend) ("Kirchner") regarding Preston's inability to appear at the settlement conference. [Id.]

34. Based upon his recommendation that Kirchner appear on Preston's behalf, Mr. Earle prepared a declaration for the settlement conference which would allow Kirchner (a non-party to the lawsuit) to attend the settlement conference on Preston's behalf. [Id.]

35. Kirchner was not allowed to appear on Preston's behalf and the Court scheduled an Order to Show Cause hearing for April 28, 2016. [Id.]

36. Immediately before the April 28, 2016, hearing, Mr. Earle informed Preston that Mr. Earle planned on telling the Court that Preston would have lost his job if he missed work on April 14, 2016. [Exhibit 12, Bates 120.]

37. Despite Preston explaining to Mr. Earle he had been working at the company for several years and would not have lost his job, Mr. Earle informed the Court that Preston would have lost his job if he missed work on April 14, 2016. [Id.]

38. The Court found Preston in contempt of court for his failure to personally appear at the settlement conference as ordered and imposed a monetary sanction of \$1,211.00. [Id.]

39. On May 5, 2016, Mr. Earle moved for Reconsideration regarding the Court's findings and sanctions, but the Court summarily denied the motion. [Exhibit 15, Bates 130-131.]

40. On June 3, 2016, Mr. Earle also filed an untimely objection to the Plaintiff's form of judgment claiming, among other things, that the form of judgment inaccurately recited the Court's findings. [Exhibit 12, Bates 120.]

41. On June 20, 2016, the Court overruled the objection as moot and finding that: a) the objection was not filed timely pursuant to Rule 58(d), Ariz. R. Civ. Pro. and b) the Court modified Plaintiff's form of judgment. [Id.]

42. The Court also ordered Mr. Earle to return Preston's client file to him no later than June 30, 2016. [Id.]

43. After Preston filed the bar charge against Mr. Earle, Mr. Earle provided Preston with a final bill for \$7,682.28 including, but not limited to, \$280.00 for

preparing the “partial response” and “partial writeup” to the bar charge. [Exhibit 14, Bates 128-129.]

44. Despite Preston’s requests and the Court’s June 20, 2016, order, Mr. Earle failed to return the client file. [Exhibit 12, Bates 120.]

45. On August 10, 2016, the Court ordered Mr. Earle to appear at an Order to Show Cause hearing on August 31, 2016, and show cause why he should not be held in contempt for failing to comply with the Court’s June 20, 2016, order. [Exhibit 15, Bates 132-133]

46. Mr. Earle failed to appear at the August 31, 2016, Order to Show Cause hearing. [Id.]

47. To date, Preston has not received the client file or a full and accurate accounting. [Id.]

48. On November 15, 2016, Mr. Earle filed a pleading in the case of *In the Matter of Robert L. Earle*, PDJ 2016-9102 stating that he appeared at the Order to Show Cause hearing and was relieved by the Court of his duty to provide the client with the client file. [[Complaint, p. 20.]

49. By email dated December 7, 2016, Judge Paupore confirmed that Mr. Earle did not appear at the August 31, 2016, Order to Show Cause as ordered and that the Court did not relieve Mr. Earle of his duty to return the client file. The Judge also

confirmed that Mr. Earle failed to appear at the next scheduled hearing on November 30, 2016. [Complaint, p. 20.]

50. By engaging in the above-referenced misconduct, Mr. Earle violated Rule 42, *Ariz. R. Sup. Ct.*:

- a. ER 1.2 – Mr. Earle failed to abide by his client’s authority during the representation;
- b. ER 1.3 – Mr. Earle failed to act diligently during the representation;
- c. ER 1.4 – Mr. Earle failed to reasonably inform the client regarding the representation;
- d. ER 1.5 – Mr. Earle charged his client unreasonable fees for the representation;
- e. ER 1.16 – Mr. Earle failed to promptly return the client file;
- f. ER 3.1 – Mr. Earle asserted a frivolous issue in the lawsuit without a good faith basis in law and fact;
- g. ER 3.3(a)(1) – Mr. Earle knowingly made a false statement to the Court;
- h. ER 3.4(b) – Mr. Earle falsified evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- i. ER 8.1(a) – Mr. Earle knowingly made a false statement of material fact in connection with a discipline proceeding;
- j. ER 8.4(c) – Mr. Earle engaged in conduct involving dishonesty, fraud, deceit or misrepresentations; and
- k. ER 8.4(d) – Mr. Earle engaged in conduct which was prejudicial to the administration of justice.

51. By engaging in the above-referenced misconduct, Mr. Earle also violated Rule 54(c), *Ariz. R. Sup. Ct.* by knowingly violating a rule or order of the Court.

**COUNT FOUR (File No. 16-2853/DiBartolo)**

52. On or before April 23, 2015, Joann DiBartolo (“DiBartolo”) hired Mr. Earle to represent her regarding personal injury claims resulting from a car accident she was involved in on March 11, 2015. [Exhibit 16 Bates 16.]

53. On June 16, 2016, Mr. Earle received a settlement check from Geico totaling \$15,000.00 on behalf of DiBartolo. [Exhibit 17, Bates 136, 139.]

54. Shortly thereafter, Camille Sully, Mr. Earle’s former paralegal, informed DiBartolo she should call the medical providers to request a reduction in her medical bills. [Exhibit 17, Bates 136.]

55. Days later, Mr. Earle instructed DiBartolo not to contact the medical providers and that Mr. Earle would take care of them. [Id.]

56. On July 13, 2016, Mr. Earle received a settlement check from Farmer’s totaling \$25,000.00 on DiBartolo’s behalf. [Exhibit 17, Bates 141.]

57. In or around late July 2016, DiBartolo was told by Nancy Earle, Mr. Earle’s daughter-in-law/receptionist, that DiBartolo had some unknown lien by Xerox which had to be resolved prior to Mr. Earle’s disbursement of any funds to DiBartolo. [Exhibit 17, Bates 136, Exhibit 18, Bates 143.]

58. Mr. Earle delayed paying DiBartolo any portion of the settlement funds and has not provided an accounting regarding the settlement funds. [Exhibit 17, Bates 136.]

59. On November 10, 2016, Mr. Earle provided the State Bar with a letter claiming that he paid all of the previously unpaid medical providers in the DiBartolo case. [Complaint, p. 22.]

60. On November 15, 2016, Mr. Earle filed a pleading in the case of *In the Matter of Robert L. Earle*, PDJ 2016-9102 reiterating his claim he paid all of the previously unpaid medical providers in the DiBartolo case and attaching the November 10, 2016, letter as Exhibit E to the pleading. [Complaint, p. 22.]

61. On December 2, 2016, Mr. Earle indicated to Doctor Moseng, one of DiBartolo's treating physicians, that his office mailed full payment to Moseng and that he should receive it shortly. [Complaint, p. 22.]

62. During a December 5, 2016, hearing in the case of *In the Matter of Robert L. Earle*, PDJ 2016-9102, Mr. Earle admitted that he had not paid the medical providers in the DiBartolo case. [Complaint, p. 22.]

63. On December 12, 2016, Doctor Moseng confirmed that Mr. Earle has failed to pay for the medical services provided to DiBartolo. [Complaint, p. 22.]

64. As of the date of this complaint, Mr. Earle has not provided the State Bar or his client with an accounting for the \$40,000.00 he received on her behalf.

[Complaint, p. 22.]

65. By engaging in the above-referenced misconduct, Mr. Earle violated Rule 42, *Ariz. R. Sup. Ct.*:

- a. ER 1.2 – Mr. Earle failed to abide by the client’s authority during the representation;
- b. ER 1.3 – Mr. Earle failed to act diligently during the representation;
- c. ER 1.4 – Mr. Earle failed to reasonably communicate with the client during the representation;
- d. ER 1.5 – Mr. Earle charged and retained unreasonable fees;
- e. ER 1.15(a) – Mr. Earle failed to safekeep client property by misappropriating and converting client and third-party funds;
- f. ER 1.15(d) – Mr. Earle failed to promptly deliver to the client/third person any funds or other property that the client/third person is entitled to receive and failed to promptly render a full accounting regarding such property;
- g. ER 1.15(e) – Mr. Earle possessed property in which two or more persons (one of whom may be the lawyer) claim interests, but failing to keep the property separate;
- h. ER 1.16(d) – Mr. Earle failed to take the steps reasonably necessary to protect the client’s legal rights and interests including, but not limited to, failing to promptly return property belonging to the client;
- i. ER 3.3 (a)(1) – Mr. Earle made a false statement of fact or law to the tribunal;

j. ER 3.3(a)(3) – Mr. Earle offered evidence that the Mr. Earle knew to be false;

k. ER 4.1(a) – Mr. Earle knowingly made a false statement of material fact or law to a third person;

l. ER 8.1(a) – Mr. Earle knowingly failed to respond to a lawful demand for information from the disciplinary authority and knowingly made a false statement of fact in connection with a disciplinary proceeding;

m. ER 8.4(b) – Mr. Earle engaged in a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

n. ER 8.4(c) – Mr. Earle engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; and

o. ER 8.4(d) – Mr. Earle engaged in conduct prejudicial to the administration of justice.

66. By engaging in the above-referenced misconduct, Mr. Earle also violated Rule 54(d), *Ariz. R. Sup. Ct.* by failing to furnish information or promptly respond to the requests of the State Bar.

#### **COUNT FIVE (File No. 16-2867/Admonition)**

67. On March 17, 2015, Mr. Earle was admonished for misconduct in the discipline case of *In re Robert L. Earle*, PDJ 2015-9018. [Exhibit 26 and 27.]

68. The March 17, 2015, order required Mr. Earle to pay restitution of \$2,923.00 to Complainant Kathyryne Van Dyne within 30 days of the Order. [Exhibit 27, Bates 174.]



69. On July 28, 2016, Mr. Earle mailed the State Bar a letter stating that “we have determined that the address that we have had for her in Sedona, is not valid...I would appreciate your advice as to what to do about this.” [Exhibit 20, Bates 148.]

70. On August 4, 2016, the State Bar sent Mr. Earle’s then-attorney a letter identifying Mr. Earle’s violation of the disciplinary order and stating “please be advised that I am willing to accept the immediate payment of the full amount of restitution by money order or certified funds made payable to Ms. Van Dyne. Upon receipt, my office will forward it to Ms. Van Dyne.” [Exhibit 19, Bates 144.]

71. On August 9, 2016, Mr. Earle’s then-attorney confirmed that he forwarded the request to Mr. Earle. Shortly thereafter, Mr. Earle’s then-attorney withdrew from representing Mr. Earle in all of the pending discipline cases. The State Bar nor Ms. Van Dyne ever received the full restitution amount as ordered. [Complaint, pp. 24-25.]

72. On September 6, 2016, the State Bar mailed Mr. Earle an initial screening letter requesting a written response to the allegations he failed to comply with the PDJ’s March 17, 2015, order within 20 days. The initial 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). [Exhibit 21, Bates 150-151.]

73. On October 6, 2016, the State Bar mailed Mr. Earle a second screening letter requesting a written response to the allegations he failed to comply with the PDJ's March 17, 2015, order within 10 days. The second 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). [Exhibit 22, Bates 152-153.]

74. To date, Mr. Earle has not provided the State Bar with a written response to the screening letters. [Complaint, p. 25.]

75. By engaging in the above-referenced misconduct, Mr. Earle violated Rule 42, *Ariz. R. Sup. Ct.*:

- a. ER 8.1 – Mr. Earle knowingly failed to respond to a lawful demand for information from the disciplinary authority; and
- b. ER 8.4(d) – Mr. Earle engaged in misconduct that was prejudicial to the administration of justice.

76. By engaging in the above-referenced misconduct, Mr. Earle also violated Rule 54(c), *Ariz. R. Sup. Ct.* by knowingly violating a rule or order of the Court.

77. By engaging in the above-referenced misconduct, Mr. Earle also violated Rule 54(d), *Ariz. R. Sup. Ct.* by failing to furnish information or promptly respond to the requests of the State Bar.

## **CONCLUSIONS OF LAW**

Mr. Earle 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 and an independent review, the Hearing Panel finds by clear and convincing evidence that Mr. Earle violated the Supreme Court ethical rules in each count listed above.

Contingent fees are subject to the reasonableness standard of E.R. 1.5(a). The sub-sections to that rule outline the factors to be considered in determining the reasonableness of a fee. Here, repeatedly, Mr. Earle claimed as fees unsubstantiated costs and additional attorney fees to avoid the shortfall in his trust account due to his double payment to himself. Those actions are unreasonable and made the attorney fee he collected as unreasonable. Those fees were not under the fee agreement or were unsubstantiated costs, each of which were paid to Mr. Earle.

## **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 clients, the public and the profession by violating the Supreme Court ethical rules in the count listed above.

**Mental State and Injury:**

A. Mr. Earle Violated His Duty To His Clients

Mr. Earle violated his duty to his clients, implicating several sections of *Standard 4.0. Standard 4.11* states:

Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potentially injury to a client.

*Standard 4.41* states:

Disbarment is generally appropriate when: (b) a lawyer knowingly fails to perform services for a client and causes serious injury or potentially injury to a client; or (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious injury or potentially serious injury to a client.

*Standard 4.61* states:

Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potentially serious injury to a client.

Mr. Earle repeatedly misappropriated client funds during several years. As set forth in the above listed counts, Mr. Earle knowingly took client settlement funds but

failed to pay medical bills out of settlement funds, failed to pay the clients' their portion of settlements funds, and misrepresented the status of the clients' funds and cases.

Therefore, *Standards* 4.11, 4.41 and 4.61 apply and require that Mr. Earle be disbarred.

#### B. Mr. Earle Violated His Duty To The Public

Mr. Earle also violated his duty to the public. *Standard* 5.11 states:

Disbarment is generally appropriate when: (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Mr. Earle repeatedly misappropriated client funds during several years and misrepresented the status of payments to the clients and other members of the public including, but not limited to, various medical providers.

#### C. Mr. Earle Violated His Duty To The Profession

Mr. Earle also violated his duty to the profession. *Standard* 7.1 provides:

Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

Mr. Earle repeatedly misappropriated client funds during several years for his personal benefit and misrepresented the status of payments to the clients and other members of the public including, but not limited to, various medical providers.

### **AGGRAVATING AND MITIGATING FACTORS**

The Hearing Panel finds the following aggravating factors are present in this matter:

- *Standard 9.22(a) – Prior Disciplinary Offenses:*
  - i. PDJ 2015-9018 (2015): Admonition and Probation for violation of Rule 42, Ariz. R. Sup. Ct., ERs 1.15.
  - ii. 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).
- *Standard 9.22(b) – Dishonest or Selfish Motive.*
- *Standard 9.22(c) – Pattern of Misconduct.*
- *Standard 9.22(d) – Multiple Offenses.*
- *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.*
- *Standard 9.22(j) – Indifference to Making Restitution.*

The Panel finds one factor present in mitigation. Mr. Earle offered testimony that his wife passed on January 24, 2014.

## 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).

The Hearing Panel has made the above findings of fact and conclusions of law and determined the sanction using the facts deemed admitted, application of the *Standards* including the aggravating and mitigating factors, and the goals of the attorney discipline system.

The Hearing Panel orders:

1. Mr. Earle shall be disbarred from the practice of law, effective immediately;
2. Mr. Earle shall pay the following in restitution:
  - a. **Count Two:** \$14,472.86 to Avelino Peralta; [Exhibit 7.]
  - b. **Count Four:** \$27,775.79 to Joann DiBartolo; [Exhibit 17.]

c. **Count Five:** \$2,923.00 to Kathryn Van Dyne. Although Mr. Earle send a check to the State Bar for \$200.00 in 2016, it was determined by the State Bar that the check was not viable and remains with the State Bar.

3. Mr. Earle shall pay all costs and expenses incurred by the SBA. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in this proceeding.

A Final Judgment and Order shall follow.

**DATED** this 23rd day of March 2017.

*William J. O'Neil*

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

*Scott I. Palumbo*

**Scott I. Palumbo, Volunteer Attorney Member**

*Ellen R. Kirschbaum*

**Ellen R. Kirschbaum, Volunteer Public Member**

Copy of the foregoing emailed/mailed  
this 23<sup>rd</sup> day of March, 2017, to:

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DEC 16 2016

FILED

BY

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**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

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

PDJ 2016-9127

**COMPLAINT**

[State Bar Nos. 15-2336, 16-0887,  
16-1485, 16-2853, 16-2867]

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 on September 18, 1990.

**COUNT ONE (File No. 15-2336/Trust Account)**

1. Respondent maintained one Bank of America client trust account ending in 5503 (hereinafter referred to as "trust account") governed by Arizona Rules of the Supreme Court (hereinafter referred to as "Ariz. R. Sup. Ct.").

2. Approximately \$47,449.84 of funds belonging to clients and/or third parties are currently missing or unaccounted for from the trust account.

3. While Respondent has provided some of the client ledgers and related mandatory trust account documents, there are a number of other documents solely

in Respondent's possession, which he has failed to provide upon request, that make it is impossible to determine if these funds have been misappropriated for personal reasons.

4. The State Bar membership records report that Respondent's 2008 annual dues form reported the trust account as being closed.

5. In 2013, Respondent reported to Membership Records that the same trust account was active.

6. Despite his claim that the trust account was closed between 2008 and 2013, Respondent's client ledgers report continuous activity in the trust account during this time frame.

7. Accordingly, Respondent has failed to report all active trust accounts maintained by him and has failed to file a certificate certifying compliance with the provisions of Rule 43 and Rule 42, Ariz. R. Sup. Ct., ER 1.15 for approximately eight (8) years.

8. On September 4, 2015, trust account check number 2407 in the amount of \$4,432.22 and check number 2411 in the amount of \$11,951.11 attempted to pay against the account when the balance was \$2,302.00.

9. On September 9, 2015, checks numbered 2407 and 2411 were presented for payment a second time when the balance was \$2,302.00. The bank returned both items, and did not charge an overdraft fee leaving the account balance unchanged.

10. On September 14, 2015, the State Bar of Arizona (SBA) received an insufficient funds notice on Respondent's trust account.

11. Respondent stated that he properly deposited a \$100,000.00 settlement check into the trust account in anticipation of the following disbursements: Attorney Fees - \$33,333.33; Attorney Costs \$3,535.58; Five (5) Medical Provider Liens: \$18,068.78; and Net to Client - \$45,062.31

12. Respondent stated that the problem started when he attempted to disburse his attorney fees by way of a wire transfer from the trust account into his Wells Fargo operating account but "double disbursed" attorney fees of \$33,333.33 thereby causing an over disbursement of \$30,837.75 (representing a \$33,333.33 duplicate disbursement less \$2,495.58 attorney costs.

13. Respondent further stated the following:

"It seems like the easy fix was to simply put the excess, [sic] the more than \$33,000.00 back into the Trust account since some \$33,000.00 was improperly pulled by the Bank from one account (Trust) into the other (operating) account. Unfortunately, the error was not immediately apparent and Mr. Earle's bookkeeper paid a number of other bills from the operating account, so some of the monies were not available to be returned immediately. Mr. Earle is also reconciling the operating account while making certain the Trust account is properly maintained. This will take some time and Mr. Earle is having a forensic person reviewing all the deposits and expenditures from the operating account as well as addressing the first priority of making sure the Trust account is pristine and the identified checks are reimbursed".

14. Further investigation and review of the provided client ledgers revealed a number of recordkeeping deficiencies and, more importantly, the following missing funds:

- a. The trust account had a (\$14,212.09) deficit as of August 1, 2015, thereby indicating that the balance held on deposit on that date should have been \$34,968.51, rather than \$20,756.42. The deficit resulted from an over disbursement of funds on behalf of six (6) clients (the

earliest instance is dated January 29, 2015) and increased the trust account deficit to **at least** \$47,449.84.

- b. The Edison L.A. client ledger reflects a \$46,000.00 deposit on May 9, 2012, and check number 1947 disbursement to Respondent on May 14, 2012, in the exact amount. While the disbursement entry reflects the following description: "**in error-will put back**", there is no subsequent re-deposit entry reflected on behalf of the client.  
*(Emphasis added)*
- c. The ABK client ledger reflects that on July 15, 2010, check number 1422 was disbursed to the client in the amount of \$56.75, when the unexpended client balance at the time was zero (0), resulting in a deficit of (\$56.75). The disbursement is described as an "unused retainer-error." The subsequent entry reflects the deficit was offset on August 25, 2010, by way of a deposit in the exact disbursement amount.
- d. The Edison Appeal client ledger reflects that on February 17, 2012, check number 1930 was disbursed to "[L.] Banks" in the amount of \$620.00, when the unexpended client balance at the time was zero (0), resulting in a deficit of (\$620.00). No description is given, however, the subsequent entry reflects the deficit was offset on February 23, 2012, by a deposit in the amount of \$2,000.00.
- e. The Fazekas client ledger reflects that on March 17, 2014, \$115.31 was disbursed as part of check number 2015, when the unexpended

client balance at the time was zero (0), resulting in a deficit of (\$115.31). The subsequent entry reflects a deposit in the amount of \$116.31 dated April 16, 2014, described as "**corrected deposit.**" (*Emphasis added*)

- f. The Fillet client ledger reflects that on October 29, 2013, \$500.00 was disbursed as part of check number 2009, when the unexpended client balance at the time was zero (0), resulting in a deficit of (\$500.00). The subsequent entry reflects a deposit in the amount of \$1,827.50 dated November 1, 2013.
- g. The Gilbert client ledger reflects that on July 1, 2009, the client held a negative (\$0.03) balance described as an "Account Opening Balance" Although this trust account was reported by Respondent as opened in 2008. The origin of the negative balance is unclear. Nonetheless, the subsequent entry reflects that on December 30, 2009, the deficit balance was offset by a "Funds Transfer" deposit in that exact amount.
- h. The Nez client ledger reflects that on July 20, 2010, a deposit in the amount of \$75,000.00 was received on behalf of the client. The subsequent entries reflect four (4) disbursements totaling \$65,402.00, transacted between July 30, 2010, and October 28, 2010. Accordingly, the unexpended balance as of October 28, 2010, was \$9,598.00. Yet, on November 5, 2010, check number 1435 is recorded as being disbursed to Respondent, described as "payment." Resulting in a negative unexpended balance of (\$402.00). The ledger reflects a

deposit in that exact amount on December 4, 2010, described as **"correct error-dep."** (*Emphasis added*)

- i. The Reeder client ledger reflects that on July 26, 2013, check number 1999 was disbursed to the client in the amount of \$1,090.22, described as a disbursement of "unused retainer." However, the ledger reflects that as of that date a total of \$2,410.08 had been disbursed to Respondent by way of three (3) checks, while a single deposit had been received in the amount of \$3,500.00. Therefore, the unexpended balance on July 26, 2013, was \$1,089.92, resulting in a negative unexpended balance in the amount of (\$0.30) after check number 1999 was disbursed. The following entry consists of a "general journal" entry dated July 31, 2013, reflecting an offsetting deposit to zero (0) the unexpended balance. The entry is described as **"to correct chck1991b."** Coincidentally, a preceding entry dated May 12, 2013, reflects \$438.49 was disbursed as part of check number 1991. It is unclear if the item was over or under disbursed by \$0.30. Nonetheless, it is evident the discrepancy went unnoticed for approximately eighty (80) days.
- j. The "Trust-Reconcile" ledger reflects that on September 30, 2009, a "General Journal" entry was recorded to reflect the deduction of \$61.00 for a "check order" charge when no funds were held on deposit. Resulting in a negative unexpended balance of (\$61.00). The subsequent entry dated November 30, 2009, reflects a \$33.00 deposit

described as a "refund from check print," thereby, partially offsetting the deficit. The unexpended balance after the deposit was negative (\$28.00). The following entry reflects the deficit was fully offset on December 30, 2009, by a \$61.00 deposit described as originating "from PC printing." Accordingly, the unexpended balance after the deposit was \$33.00. The ledger further reflects that the unexpended balance was disbursed to Respondent by way of check number 1404, disbursed on March 12, 2010, described as a disbursement for "check printing." Thus, bringing the unexpended balance to zero (0). Nonetheless, on October 6, 2011, the ledger reflects check number 1405 was disbursed to Bank of America in the amount of \$61.00, described as a disbursement for a "check order fee" resulting in a negative unexpended client balance of (\$61.00). The ledger reflects the deficit was offset by a deposit in that exact amount dated December 3, 2011, described as "check printing."

- k. The Van Dyne client ledger reflects that as of May 16, 2013, a total of \$46,495.00 had been received and deposited in the trust account while a total of (\$42,911.97) had been disbursed. Therefore, the unexpended balance was \$88.03 as of May 16, 2013. The subsequent entry is dated June 6, 2013, and reflects a \$3,495.00 deposit followed by the disbursement of check number 1994 to Respondent in the amount of \$3,583.23, when the balance at the time was \$3,583.03, resulting in a negative unexpended balance in the amount of (\$0.20).

The deficit appears to have been carried in each subsequent entry and was further increased on March 17, 2014. On that day \$1,686.65 is reflected as being disbursed as part of check number 2015, however, as of that date a total of \$146,495.00 had been received and deposited in the trust account on behalf of the client, while a total of (\$145,683.01) had been disbursed. Therefore, the unexpended balance was \$811.99, resulting in a negative unexpended client balance of (\$874.66) after the disbursement of check number 2015. The deficit was offset on April 16, 2014, by way of a deposit in that exact amount described as "**corrected deposit.**" (*Emphasis added*)

- l. The Wood client ledger reflects that as of August 1, 2012, a total of \$5,115.58 had been received and deposited in the trust account, while a total of (\$3,408.08) had been disbursed. The unexpended balance was \$1,707.50 as of August 1, 2012. Yet, the client ledger reflects that on August 8, 2012 checks numbered 1955 in the amount of \$1,462.50 and 1956 in the amount of \$245.50 were both disbursed to the client for a total disbursement of \$1,708.00, thereby resulting in a negative unexpended client balance of (\$0.50). The deficit is reflected as being corrected on 07/31/2013. However, the entry on July 31, 2013, corresponds to a "General Journal" entry adjustment described as "to reconcile."
- m. The Zellner client ledger reflects that on October 25, 2010, check number 1433 was disbursed to a third-party in the amount of \$55.33,



when the balance at the time was zero (0). As of that date a total of \$104,590.97 was received and deposited on behalf of the client by way of four (4) transactions, while the same amount was disbursed by way of twelve (12) disbursements. Hence, check number 1433 resulted in a negative unexpended client balance in the amount of (\$55.33). The deficit was offset on November 8, 2010 by way of a deposit in the amount of \$34,353.86.

n. The Zenovitch client ledger reflects that as of September 19, 2014, a total of \$6,259.76 had been received and deposited in the Trust Account, while a total of (\$4,671.94) had been disbursed. Therefore, the unexpended balance was \$1,587.82 as of September 19, 2014. Yet, the client ledger reflects that on October 9, 2014, a transfer in the amount of \$3,087.82 was transacted from the trust account to Respondent, resulting in a negative unexpended client balance of (\$1,500.00). The deficit was offset on October 14, 2014, by way of a deposit in that exact amount.

8. During his review of the trust account records, the following violations were noted:

a. The Bannick client ledger reflects that on September 2, 2014, a deposit was made in the amount of \$800.00. The subsequent entry consists of a journal entry deduction in the amount of \$400.00 dated the same. The entry is described as **"took from Bennick [sic] cash."** (*Emphasis added*)

- b. The Paraskevas client ledger reflects that on September 19, 2014, a deposit was made in the amount of \$500.00. The subsequent entry consists of a journal entry deduction in the amount of \$499.97 dated the same. The entry is described as "**from paraskevs.**" (*Emphasis added*)
- c. Another ledger reflects a journal entry deduction of \$38.00 on June 30, 2011, when no funds were held on deposit, resulting in a negative unexpended ledger balance of (\$38.00). The journal entry does not specify the purpose of the deduction. Coincidentally, on August 15, 2011, an additional journal entry reflects an offsetting deposit in the same amount. Again no description is reflected for the adjustment.
- d. Another journal entry reflects a \$455.89 deposit on July 25, 2014, described as "need to be transferred to PC." The subsequent entry consists of an additional journal entry reflecting the deduction of said funds as "**correcting sebing.**" The corresponding Sebing client ledger reflects \$500.00 was received on August 23, 2013, and subsequently disbursed to Respondent by way of check number 2033 on August 15, 2014. No further activity is reflected on behalf of the client.
- e. The "Trusts-Other" ledger reflects a \$300.00 deposit on August 5, 2011, as "bank posted to wrong account." Yet, the funds are reflected as remaining in the trust account until October 4, 2011. On that day the funds are reflected as being disbursed to Respondent by way of check number 1906 and described as "**putting back to pc-deposited**

**wr...[end of sentence]**" thereby indicating Respondent comingled personal funds in the trust account for approximately two (2) months.

*(Emphasis added)*

- f. The Van Dyne client ledger reflects a \$3,495.00 deposit on June 6, 2013, described as "Deposit-corrected chck1990." The preceding entry dated April 29, 2013, reflects the disbursement of check number 1990 to Respondent in that exact amount for an unspecified reason. Respondent comingled client funds in his personal account for approximately thirty-eight (38) days. Also, a \$10,000.00 deposit is reflected on November 1, 2013, as "deposited wrongly to pc on 10/17..." Respondent comingled client funds in his operating account for approximately fifteen (15) days.
- g. The Zenovitch client ledger reflects a \$676.45 deposit on July 25, 2014, described as "**correct from pc to trust.**" *(Emphasis added)*

9. While Respondent's counsel informed the examiner that Respondent anticipated obtaining a forensic accounting of the trust account, Respondent's counsel explained the following on June 28, 2016:

"I apologize for being so late getting back to you. I called yesterday as an e-mail seems inadequate after you have been so patient. I do not have the forensic report-not sure why that did not happen, but it may not have been needed. This was a clear error and the correction was obvious. The ship has been righted but the bank and possible FMC a lien holder is still being paid or arrangements to be paid are being made by Bob. He has accepted full responsibility and no individual client is jeopardized. However, he still has to pay back money. He has in place a method of this not happening again-but there are still outstanding action to correct the original problem. I wish I had a more clear and focused answer-tell me what you need and I will do my best to get it to you."

10. As of June 28, 2016, third-party lien holder FMC remained uncompensated and Respondent had misappropriated the following client funds for an excess of one (1) year and five (5) months:

Date	Amount	Client
08/10/15	(\$2,400.00)	Cash to identify
07/21/15	(\$9,000.00)	Client 2
06/17/15	(\$270.00)	Client 4
04/15/15	(\$4,042.05)	Henson
07/13/15	(\$500.00)	Sani
04/23/15	(\$400.00)	Werner
08/12/15	(\$30,837.75)	West
01/29/15	(\$0.04)	Zenovitch
<b>Total</b>	<b>(\$47,449.84)</b>	

11. Based upon the foregoing, Respondent violated Rule 42, *Ariz. R. Sup.*

*Ct.:*

a. ER 1.15(a) – Respondent failed to safekeep client property by, among other things, misappropriating and converting client and third-party funds;

b. ER 1.15(d) – Respondent failed to promptly deliver to the client/third person any funds or other property that the client/third person is entitled to receive and failing to promptly render a full accounting regarding such property;

c. ER 1.15(e) - Respondent possessed property in which two or more persons (one of whom may be the lawyer) claim interests, but failing to keep the property separate;

12. By engaging in the above referenced misconduct, Respondent also violated the following ethical rules (also referred to as the "Trust Account Rules"):

a. Rule 43(a), *Ariz. R. Sup. Ct.* by, among other things, failing to keep funds belonging in whole or in part to a client/third person in connection with a representation separate and apart from the lawyer's personal and business accounts;

b. Rule 43(b)(1)(A), *Ariz. R. Sup. Ct.* by, among other things, failing to exercise due professional care in the performance of the lawyer's duties;

- c. Rule 43(b)(1)(B), *Ariz. R. Sup. Ct.* by, among other things, failing to properly train employees and others assisting the attorney in the performance of his duties related to the trust account and failing to properly supervise employees and others assisting the attorney in performance of said duties;
- d. Rule 43(b)(1)(C), *Ariz. R. Sup. Ct.* by, among other things, failing to maintain adequate internal controls under the circumstances to safeguard funds or other property held in trust;
- e. Rule 54(d)(2), *Ariz. R. Sup.Ct.* by, among other things, failing to furnish information to or respond promptly to any inquiry or request from the State Bar;
- f. Rule 54(d)(2)(A), *Ariz. R. Sup. Ct.* by, among other things, failing to furnish in writing, or orally as requested, a full and complete response to inquiries and questions;
- g. Rule 43(b)(2)(A), *Ariz. R. Sup. Ct.* by, among other things, failing to maintain on a current basis, complete records of the handling, maintenance, and disposition of all funds, securities, and other property belonging in whole or in part to a client/third person in connection with a representation including, but not limited to, the records required by ER 1.15 and cover the entire time from receipt to the time of final disposition by the lawyer of all such funds, securities, and other property;
- h. Rule 43(b)(2)(B), *Ariz. R. Sup. Ct.* by, among other things, failing to maintain or cause to be maintained an account ledger or the equivalent for each client, person, or entity for which funds have been received in trust, showing: (i) the date, amount, and payor of each receipt of funds; (ii) the date, amount, and payee of each disbursement; and (iii) any unexpended balance;
- i. Rule 43(b)(2)(C), *Ariz. R. Sup. Ct.* by, among other things, failing to make or cause to be made a monthly three-way reconciliation of the client ledgers, trust account general ledger or register, and the trust account bank statement;
- j. Rule 43(b)(2)(D), *Ariz. R. Sup. Ct.* by, among other things, failing to retain, in accordance with this rule, duplicate deposit slips or the equivalent (which shall be sufficiently detailed to identify each item), and a trust account general ledger or register;

k. Rule 43(b)(5), *Ariz. R. Sup. Ct.* by, among other things, disbursing funds without using a pre-numbered check or by electronic transfer and did not maintain a record of such disbursements in accordance with the requirements of this rule and failing to identify all instruments of disbursement as a disbursement from the trust account;

l. Rule 43(b)(5), *Ariz. R. Sup. Ct.* by, among other things, disbursing a total of \$37,333.33 by way of unauthorized cash withdrawals from the IOLTA;

m. Rule 43(c), *Ariz. R. Sup. Ct.* by, among other things, failing to file an accurate certificate certifying compliance with the provisions of this rule and ER 1.15 of the *Arizona Rules of Professional Conduct*;

n. Rule 43(f)(7), *Ariz. R. Sup. Ct.* by, among other things, failing to provide information requested by the State Bar on the annual dues statement regarding any and all client trust accounts they maintain; and

o. Rule 43(d)(3), *Ariz. R. Sup. Ct.* by, among other things, implicating the rebuttable presumption that by failing to maintain trust account records required by this rule and ER 1.15, or failing to provide trust account records to the State Bar upon request that the lawyer failed to properly safeguard client/third person's funds or property, as required by this rule and ER 1.15.

### **COUNT TWO (File No. 16-0887/Peralta)**

2. On August 25, 2015, Respondent obtained a jury verdict in favor of Avelino Peralta (hereinafter referred to as "Peralta") and a jury award of \$106,000.00 with varying degrees of fault by various defendants.

3. On November 2, 2015, Respondent received a settlement check in the amount of \$33,800.00 from some of the defendants towards satisfaction of the jury verdict.

4. On November 10, 2015, Respondent deposited the \$33,800.00 settlement check in his trust account.

5. On November 13, 2015, Respondent made an \$33,800.00 cash withdrawal from the trust account in violation of the trust account rules as set forth in Rule 43 (b)(5), *Ariz. R. Sup. Ct.*

6. In an email dated March 24, 2016, to the State Bar, Respondent indicated that he disbursed thirteen thousand five hundred twenty dollars (\$13,520.00) to his firm representing forty percent of the total settlement amount and a one-third percentage of the costs (\$2,000.00) purportedly advanced by Respondent.

7. Respondent also stated that he disbursed the full amount of the costs (\$5,807.14) purportedly advanced by Respondent.

8. Respondent claimed to maintain the remaining balance of \$14,472.86 in his trust account pending negotiation of two outstanding medical liens. However, due to Respondent's withdrawal on November 13, 2015, this balance was not maintained in his trust account.

9. In mid-2016, Respondent informed Peralta that his firm had taken the remaining balance of \$14,472.86 in his trust account for fees purportedly incurred by the firm.

10. On August 11, 2016, the State Bar mailed Respondent an initial screening letter requesting a written response to the allegations that he violated a number of ethical rules related, among other things, to failing to properly account for and/or pay funds related to his receipt of \$33,800.00. The initial 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).

11. On September 9, 2016, the State Bar mailed Respondent a second screening letter requesting a written response within 10 days. The second 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).

12. As of the date of this complaint, Respondent has not provided the State Bar or his client with a written response to the screening letters or a full accounting of the \$33,800.00.

13. By engaging in the above-referenced misconduct, Respondent violated Rule 42, *Ariz. R. Sup. Ct.*:

- a. ER 1.2 – Respondent failed to abide by the client’s authority during the representation;
- b. ER 1.3 – Respondent failed to act diligently during the representation;
- c. ER 1.4 – Respondent failed to reasonably communicate with the client during the representation;
- d. ER 1.5 – Respondent charged and retained unreasonable fees;
- e. ER 1.15(a) – Respondent failed to safekeep client property by, among other things, misappropriating and converting client and third-party funds;
- f. ER 1.15(d) – Respondent failed to promptly deliver to the client/third person any funds or other property that the client/third person is entitled to receive and failed to promptly render a full accounting regarding such property;
- g. ER 1.15(e) – Respondent possessed property in which two or more persons (one of whom may be the lawyer) claim interests, but failing to keep the property separate;



h. ER 1.16(d) – Respondent failed to take the steps reasonably necessary to protect the client’s legal rights and interests including, but not limited to, failing to promptly return property belonging to the client;

i. ER 8.1 – Respondent knowingly failed to respond to a lawful demand for information from the disciplinary authority;

j. ER 8.4(b) – Respondent engaged in a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

k. ER 8.4(c) – Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; and

l. ER 8.4(d) – Respondent engaged in conduct prejudicial to the administration of justice.

14. By engaging in the above referenced misconduct, Respondent also violated Rule 43(b)(5), *Ariz. R. Sup. Ct.* by disbursing a total of \$33,800.00 by way of unauthorized cash withdrawals from the trust account.

15. By engaging in the above referenced misconduct, Respondent also violated Rule 54(d), *Ariz. R. Sup. Ct.* by failing to furnish information or promptly respond to the requests of the State Bar.

**COUNT THREE (File No. 16-1485/Preston)**

16. Respondent was attorney of record for Blair Preston (hereinafter referred to as “Preston”) in the Yavapai County Superior Court case of *CLA v. Preston* (and related counterclaims and cross claims), CV201580106. Throughout the representation, Respondent frequently failed to communicate with Preston and over-billed Preston.

17. On March 22, 2016, Judge Jeffrey G. Paupore (the assigned judge) ordered the parties to personally appear at a settlement conference on April 19, 2016, before Judge Michael R. Bluff.

18. On April 13, 2016, Respondent's legal secretary notified Preston of the Settlement Conference for the first time and Preston immediately responded by asking "They gave 4 days notice??? When was this initially issued?" then stating "This is a serious problem for me on such short notice. I will be calling the court tomorrow to see why this could not have been set up in an agreeable time for both parties."

19. On April 14, 2016, Respondent met with Preston and Don Kirchner (a mutual friend) (hereinafter referred to as "Kirchner") regarding Preston's inability to appear at the settlement conference.

20. Based upon his recommendation that Kirchner appear on Preston's behalf, Respondent prepared a declaration for the settlement conference which would allow Kirchner (a non-party to the lawsuit) to attend the settlement conference on Preston's behalf.

21. Kirchner was not allowed to appear on Preston's behalf and the Court scheduled an Order to Show Cause hearing for April 28, 2016.

22. Immediately before the April 28, 2016, hearing, Respondent informed Preston that Respondent planned on telling the Court that Preston would have lost his job if he missed work on April 14, 2016.

23. Despite Preston explaining to Respondent that he had been working at the company for several years and would not have lost his job, Respondent informed the Court that Preston would have lost his job if he missed work on April 14, 2016.

24. The Court found Preston in contempt of court for his failure to personally appear at the settlement conference as ordered and imposed a monetary sanction of \$1,211.00.

25. On May 5, 2016, Respondent filed a Motion for Reconsideration regarding the Court's findings and sanctions, but the Court summarily denied the motion.

26. On June 3, 2016, Respondent also filed an untimely objection to the Plaintiff's form of judgment claiming, among other things, that the form of judgment inaccurately recited the Court's findings.

27. On June 20, 2016, the Court overruled the objection as moot and finding, in pertinent part, that: a) the objection was not filed timely pursuant to Rule 58(d), Ariz. R. Civ. Pro. and b) the Court modified Plaintiff's form of judgment.

28. The Court also ordered Respondent to return Preston's client file to him no later than June 30, 2016.

29. After Preston filed the bar charge against Respondent, Respondent provided Preston with a final bill for \$7,682.28 including, but not limited to, \$280.00 for preparing the "partial response" and "partial writeup" to the bar charge.

30. Despite Preston's requests and the Court's June 20, 2016, order, Respondent failed to return the client file.

31. On August 10, 2016, the Court ordered Respondent to appear at an Order to Show Cause hearing on August 31, 2016, and show cause why he should not be held in contempt for failing to comply with the Court's June 20, 2016, order.

32. Respondent failed to appear at the August 31, 2016, Order to Show Cause hearing.

33. To date, Preston has not received the client file or a full and accurate accounting.

34. On November 15, 2016, Respondent filed a pleading in the case of *In the Matter of Robert L. Earle*, PDJ 2016-9102 stating that he appeared at the Order to Show Cause hearing and was relieved by the Court of his duty to provide the client with the client file.

35. By email dated December 7, 2016, Judge Paupore confirmed that Respondent did not appear at the August 31, 2016, Order to Show Cause as ordered and that the Court did not relieve Respondent of his duty to return the client file. The Judge also confirmed that Respondent failed to appear at the next scheduled hearing on November 30, 2016.

36. By engaging in the above-referenced misconduct, Respondent violated Rule 42, *Ariz. R. Sup. Ct.*:

- a. ER 1.2 – Respondent failed to abide by his client’s authority during the representation;
- b. ER 1.3 – Respondent failed to act diligently during the representation;
- c. ER 1.4 – Respondent failed to reasonably inform the client regarding the representation;
- d. ER 1.5 – Respondent charged his client unreasonable fees for the representation;
- e. ER 1.16 – Respondent failed to promptly return the client file;
- f. ER 3.1 – Respondent asserted a frivolous issue in the lawsuit without a good faith basis in law and fact;

- g. ER 3.3(a)(1) – Respondent knowingly made a false statement to the Court;
- h. ER 3.4(b) – Respondent falsified evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- i. ER 8.1(a) – Respondent knowingly made a false statement of material fact in connection with a discipline proceeding;
- j. ER 8.4(c) – Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentations; and
- k. ER 8.4(d) – Respondent engaged in conduct which was prejudicial to the administration of justice.

37. By engaging in the above-referenced misconduct, Respondent also violated Rule 54(c), *Ariz. R. Sup. Ct.* by knowingly violating a rule or order of the Court.

**COUNT FOUR (File No. 16-2853/DiBartolo)**

38. On or before April 23, 2015, Joann DiBartolo (hereinafter referred to as “DiBartolo”) hired Respondent to represent her with regard to personal injury claims resulting from a car accident she was involved in on March 11, 2015.

39. On June 16, 2016, Respondent received a settlement check from Geico totaling \$15,000.00 on behalf of DiBartolo.

40. Shortly thereafter, Camille Sully, Respondent’s former paralegal, informed DiBartolo that she should call the various medical providers to request a reduction in her medical bills.

41. Days later, Respondent instructed DiBartolo not to contact the various medical providers and that Respondent would take care of them.

42. On July 13, 2016, Respondent received a settlement check from Farmer’s totaling \$25,000.00 on DiBartolo’s behalf.

43. In or around late July 2016, DiBartolo was told by Nancy Earle, Respondent's daughter-in-law/receptionist, that DiBartolo had some unknown lien by Xerox which had to be resolved prior to Respondent's disbursement of any funds to DiBartolo.

44. Respondent delayed paying DiBartolo any portion of the settlement funds and has not provided an accounting regarding the settlement funds.

45. On November 10, 2016, Respondent provided the State Bar with a letter claiming that he paid all of the previously unpaid medical providers in the DiBartolo case.

46. On November 15, 2016, Respondent filed a pleading in the case of *In the Matter of Robert L. Earle*, PDJ 2016-9102 reiterating his claim that he paid all of the previously unpaid medical providers in the DiBartolo case and attaching the November 10, 2016, letter as Exhibit E to the pleading.

47. On December 2, 2016, Respondent indicated to Doctor Moseng, one of DiBartolo's treating physicians, that his office mailed full payment to Moseng and that he should be receiving it shortly.

48. During a December 5, 2016, hearing in the case of *In the Matter of Robert L. Earle*, PDJ 2016-9102, Respondent admitted that he had not paid the medical providers in the DiBartolo case.

49. On December 12, 2016, Doctor Moseng confirmed that Respondent has failed to pay for the medical services provided to DiBartolo.

50. As of the date of this complaint, Respondent has not provided the State Bar or his client with an accounting for the \$40,000.00 he received on her behalf.

51. By engaging in the above-referenced misconduct, Respondent violated Rule 42, *Ariz. R. Sup. Ct.*:

- a. ER 1.2 – Respondent failed to abide by the client’s authority during the representation;
- b. ER 1.3 – Respondent failed to act diligently during the representation;
- c. ER 1.4 – Respondent failed to reasonably communicate with the client during the representation;
- d. ER 1.5 – Respondent charged and retained unreasonable fees;
- e. ER 1.15(a) – Respondent failed to safekeep client property by, among other things, misappropriating and converting client and third-party funds;
- f. ER 1.15(d) – Respondent failed to promptly deliver to the client/third person any funds or other property that the client/third person is entitled to receive and failed to promptly render a full accounting regarding such property;
- g. ER 1.15(e) – Respondent possessed property in which two or more persons (one of whom may be the lawyer) claim interests, but failing to keep the property separate;
- h. ER 1.16(d) – Respondent failed to take the steps reasonably necessary to protect the client’s legal rights and interests including, but not limited to, failing to promptly return property belonging to the client;
- i. ER 3.3 (a)(1) – Respondent made a false statement of fact or law to the tribunal;
- j. ER 3.3(a)(3) – Respondent offered evidence that the Respondent knew to be false;
- k. ER 4.1(a) – Respondent knowingly made a false statement of material fact or law to a third person;
- l. ER 8.1(a) – Respondent knowingly failed to respond to a lawful demand for information from the disciplinary authority and knowingly made a false statement of fact in connection with a disciplinary proceeding;

m. ER 8.4(b) – Respondent engaged in a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

n. ER 8.4(c) – Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; and

o. ER 8.4(d) – Respondent engaged in conduct prejudicial to the administration of justice.

52. By engaging in the above-referenced misconduct, Respondent also violated Rule 54(d), *Ariz. R. Sup. Ct.* by failing to furnish information or promptly respond to the requests of the State Bar.

**COUNT FIVE (File No. 16-2867/Admonition)**

53. On March 17, 2015, Respondent was admonished for misconduct occurring in the discipline case of *In re Robert L. Earle*, PDJ 2015-9018.

54. The March 17, 2015, order required Respondent to pay restitution of \$2,923.00 to Complainant Kathryn Van Dyne within 30 days of the Order.

55. On July 28, 2016, Respondent mailed the State Bar a letter stating that “we have determined that the address that we have had for her in Sedona, is not valid...I would appreciate your advice as to what to do about this.”

56. On August 4, 2016, the State Bar sent Respondent’s then-attorney a letter identifying Respondent’s violation of the disciplinary order and stating, in pertinent part, “please be advised that I am willing to accept the immediate payment of the full amount of restitution by money order or certified funds made payable to Ms Van Dyne. Upon receipt, my office will forward it to Ms. Van Dyne.”

57. On August 9, 2016, Respondent’s then-attorney confirmed that he forwarded the request to Respondent. Shortly thereafter, Respondent’s then-



attorney withdrew from representing Respondent in all of the pending discipline cases. The State Bar nor Ms. Van Dyne ever received the full restitution amount as ordered.

58. On September 6, 2016, the State Bar mailed Respondent an initial screening letter requesting a written response to the allegations that he failed to comply with the PDJ's March 17, 2015, order within 20 days. The initial 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).

59. On October 6, 2016, the State Bar mailed Respondent a second screening letter requesting a written response to the allegations that he failed to comply with the PDJ's March 17, 2015, order within 10 days. The second 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).

60. To date, Respondent has not provided the State Bar with a written response to the screening letters.

61. By engaging in the above-referenced misconduct, Respondent violated Rule 42, *Ariz. R. Sup. Ct.*:

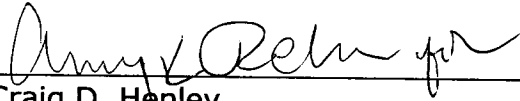
- a. ER 8.1 – Respondent knowingly failed to respond to a lawful demand for information from the disciplinary authority; and
- b. ER 8.4(d) – Respondent engaged in misconduct that was prejudicial to the administration of justice.

62. By engaging in the above-referenced misconduct, Respondent also violated Rule 54(c), *Ariz. R. Sup. Ct.* by knowingly violating a rule or order of the Court.

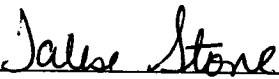
63. By engaging in the above-referenced misconduct, Respondent also violated Rule 54(d), *Ariz. R. Sup. Ct.* by failing to furnish information or promptly respond to the requests of the State Bar.

**DATED** this 16th day of December, 2016.

**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 16th day of December, 2016.

by:   
\_\_\_\_\_  
CDH/ts

**FILED**

DEC 09 2016

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

BY *D. Lebn*

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

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

Respondent.

No. 15-2336

**PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on December 9, 2016, 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 8-0-1<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 15-2336.

**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 9 day of December, 2016.

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

<sup>1</sup> Committee member Daisy Flores did not participate in this matter.

Original filed this 9<sup>th</sup> day  
of December, 2016, with:

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

Copy mailed this 13<sup>th</sup> day  
of December, 2016, to:

Robert L. Earle  
Earle & Associates  
P.O. Box 3870  
Sedona, Arizona 86340-3870  
Respondent

Copy emailed this 13<sup>th</sup> day  
of December, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 W. Washington Street, Suite 104  
Phoenix, Arizona 85007  
Email: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: Jalene Stone

**FILED**

DEC 09 2016

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

BY

*H. Lebrun*

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

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

Respondent.

No. 16-0887

**PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on December 9, 2016, 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 8-0-1<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-0887.

**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 9 day of December, 2016.

*Lawrence F. Winthrop*

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

<sup>1</sup> Committee member Daisy Flores did not participate in this matter.

Original filed this 9<sup>th</sup> day  
of December, 2016, with:

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

Copy mailed this 13<sup>th</sup> day  
of December, 2016, to:

Robert L. Earle  
Earle & Associates  
P.O. Box 3870  
Sedona, Arizona 86340-3870  
Respondent

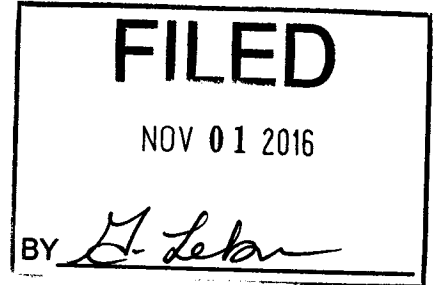
Copy emailed this 13<sup>th</sup> day  
of December, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 W. Washington Street, Suite 104  
Phoenix, Arizona 85007  
Email: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: Jalase Stone

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



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

No. 16-1485

ROBERT L. EARLE  
Bar No. 013134

PROBABLE CAUSE ORDER

Respondent.

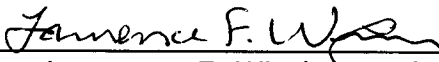
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 14, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-1485.

**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 28 day of October, 2016.

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

<sup>1</sup> Committee member Ella G. Johnson did not participate in this matter.

Original filed this 15<sup>th</sup> day  
of November, 2016, with:

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

Copy mailed this 2<sup>nd</sup> day  
of November, 2016, to:

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

Copy emailed this 2<sup>nd</sup> day  
of November, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 W. Washington Street, Suite 104  
Phoenix, Arizona 85007  
Email: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: Jake Stone



**FILED**

DEC 09 2016

BY



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

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

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

Respondent.

No. 16-2853

**PROBABLE CAUSE ORDER**

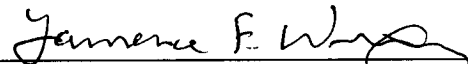
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on December 9, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-2853.

**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 9 day of December, 2016.



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

<sup>1</sup> Committee member Daisy Flores did not participate in this matter.

Original filed this 9<sup>th</sup> day  
of December, 2016, with:

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

Copy mailed this 13<sup>th</sup> day  
of December, 2016, to:

Robert L. Earle  
Earle & Associates  
P.O. Box 3870  
Sedona, Arizona 86340-3870  
Respondent

Copy emailed this 13<sup>th</sup> day  
of December, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 W. Washington Street, Suite 104  
Phoenix, Arizona 85007  
Email: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: Jalene Stone

**FILED**

DEC 09 2016

BY *G. Lebr*

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

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

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

Respondent.

No. 16-2867

**PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on December 9, 2016, 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 8-0-1<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-2867.

**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 9 day of December, 2016.

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

<sup>1</sup> Committee member Daisy Flores did not participate in this matter.

Original filed this 9<sup>th</sup> day  
of December, 2016, with:

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

Copy mailed this 13<sup>th</sup> day  
of December, 2016, to:

Robert L. Earle  
Earle & Associates  
P.O. Box 3870  
Sedona, Arizona 86340-3870  
Respondent

Copy emailed this 13<sup>th</sup> day  
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of the Supreme Court of Arizona  
1501 W. Washington Street, Suite 104  
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Lawyer Regulation Records Manager  
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4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: Jalene Stone