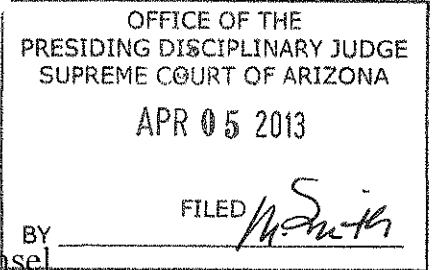


John S. Gleason  
James S. Sudler  
Independent Bar Counsel  
Colorado Supreme Court Office of Attorney Regulation Counsel  
1300 Broadway  
Suite 500  
Denver, CO 80203  
(303) 928-7811  
j.sudler@csc.state.co.us



Stephen M. Dichter, Bar No. \_\_\_\_\_  
Christian, Dichter & Sluga, P.C.  
2700 N. Central Avenue, Suite 1200  
Phoenix, AZ 85004  
(602) 792-1700  
sdichter@hcdslaw.com  
Respondent's counsel

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

In the Matter of a Member of the State  
Bar of Arizona,

**PETER S. SPAW,**

Bar No. 005336

Respondent.

PDJ-2012-9078

**AGREEMENT FOR  
DISCIPLINE  
BY CONSENT**

[State Bar File No. 11-3208]

The State Bar of Arizona, through Independent Bar Counsel, John S. Gleason and James S. Sudler, and Respondent Peter S. Spaw, who is represented in this matter by counsel, hereby submit this Tender of Admissions and Agreement for

Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. Respondent voluntarily waives the right to an adjudicatory hearing on the complaint, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Respondent conditionally admits that his conduct, as set forth below, violated ER 3.1, ER 1.1, ER 5.1(b), and ER 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: two-year probation with conditions. Maricopa County, on behalf of the Respondent, also agrees to pay all of the costs and expenses of the disciplinary proceeding, which are stipulated to be the total sum of \$17,059.55, which amount include the Supreme Court determined administrative fee of \$1,200 pursuant to Supreme Court Administrative Order No. 2011-17.

## **FACTS**

### **GENERAL ALLEGATIONS**

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona, having been first admitted to practice in Arizona on May 30, 1978.

2. Respondent has been employed with the Maricopa County Attorney's Office ("MCAO") since 2000. He is a Deputy County Attorney. At relevant times,

he headed MCAO's asset forfeiture unit. Beginning in December 2009, he participated with Maricopa County Attorney Andrew Thomas and Special Assistant County Attorney Rachel Alexander in the litigation of a racketeering action filed in federal district court, *Thomas and Arpaio v. Maricopa County Board of Supervisors, et al.*, No. 09CV2492-GMS (D. Ariz. filed Dec. 1, 2009) (the "RICO case").

3. Deliberate ethical misconduct related to the RICO case was one subject among many in the prosecution brought by Independent Bar Counsel, styled *In the Matter of Members of the State Bar of Arizona, Andrew P. Thomas, Bar No. 014069, Lisa M. Aubuchon, Bar No. 013141, and Rachel R. Alexander, Bar No. 020092*, No. PDJ-2011-9002 (Ariz. O.P.D.J. Apr. 10, 2012) (hereinafter referred to as "*Thomas, et al.*"). On April 10, 2012, the *Thomas, et al.* Hearing Panel released its Opinion and Order Imposing Sanctions ("Opinion"), disbaring Mr. Thomas and Ms. Aubuchon and suspending Ms. Alexander.

4. On December 1, 2009, Ms. Aubuchon filed the RICO case in Federal District Court for the District of Arizona. Mr. Thomas and Sheriff Arpaio were the plaintiffs. The defendants included the Maricopa County Board of Supervisors, each of the individual supervisors, County officials, Maricopa County Superior Court judges, private lawyers and a law firm.<sup>1</sup>

---

<sup>1</sup> Op. at 106, ¶¶ 191-93.

5. During the preceding months, Respondent had been involved in preliminary discussions about the possible filing of a racketeering action. The discussions included Maricopa County Chief Deputy Sheriff David Hendershott and lawyers from a private law firm. In those discussions, the lawyers, including Respondent, agreed that any such lawsuit had an almost certain chance of failing, and that sanctions for a frivolous lawsuit would likely be imposed. The lawyers, including Respondent, believed that the conception of a racketeering action had been deflected by virtue of their combined advisories.<sup>2</sup>

6. Respondent did not become meaningfully involved in the RICO case until after it was filed on December 1, 2009 and only learned of its existence the same morning as the Thomas press conference at which it was announced. Similarly, the senior executive staff of the MCAO also did not learn of the filing until that morning. Mr. Thomas and Ms. Aubuchon had kept secret the plan to file the RICO case. On December 11, 2009, Mr. Thomas transferred the RICO case to Ms. Alexander. This was ostensible done so that there would be an institutional separation between the criminal case that had been filed against Judge Donahoe by Direct Complaint and the week-old RICO case.<sup>3</sup> After Mr. Thomas first tried to move Ms. Alexander to be under the supervision of the Executive Division as a way

---

<sup>2</sup> Op. at 107, ¶ 194.

<sup>3</sup> Op. at 110, ¶ 206.

of accomplishing the separation and being told that doing so would be ineffective, Mr. Thomas, as was his absolute right to do, reassigned Ms. Alexander to the asset forfeiture bureau, of which Respondent was the head. As a result, Respondent became Ms. Alexander's supervisor.<sup>4</sup> However, Respondent had strongly advised against bringing a racketeering case and stated that he did not want to be involved in the case once he learned it had been brought. According to Respondent, he tried to walk a fine line between accepting and engaging in the administrative "management" of Ms. Alexander and actually fulfilling the role of being in "supervision" of her. Respondent admits that he was mistaken and, therefore, negligent in believing that this was a meaningful distinction and that, having been assigned to "supervise" Ms. Alexander, he could refuse to actually do so.

7. The Complaint filed by Ms. Aubuchon in the RICO case was devoid of any factual or legal basis.<sup>5</sup> Respondent recognized the weakness of the factual allegations Ms. Aubuchon had pled. As Ms. Alexander's supervisor, Respondent urged her strongly and upon several occasions to locate evidence supporting those allegations, which he (mistakenly, as it turned out) assumed had been collected by MCAO before filing the Complaint.<sup>6</sup>

---

<sup>4</sup> Op. at 110-11, ¶210.

<sup>5</sup> Op. at 112-117, ¶¶ 216-233.

<sup>6</sup> Op. at 117, ¶234.

8. By way of example, in a December 21, 2009 e-mail to Ms. Alexander, Respondent expressed his concerns with the RICO Complaint in light of a then-recent U.S. Supreme Court case law requiring increased specificity in pleading factual allegations. Respondent characterized the RICO Complaint as “dead on arrival” and suggested that Ms. Alexander raise with Mr. Thomas and Sheriff Arpaio the possibility of drafting an entirely new complaint.<sup>7</sup>

9. In a December 28, 2009 e-mail, Respondent again urged Ms. Alexander to immediately locate and review the investigations that served as the basis for the allegations of the RICO Complaint. Respondent concluded by saying: “As soon as you can, please get a sense of how it is requested that this file review be conducted and let me know.”<sup>8</sup>

10. Shortly thereafter, Respondent again e-mailed Ms. Alexander, cautioning her that the response to the motion to dismiss the judges as parties required not more legal research but “a precise and detailed presentation of the evidentiary facts upon which the allegations against the judges are based.”<sup>9</sup> Again, Respondent strongly urged Ms. Alexander to obtain access to the files of the underlying investigation, concluding that “without access to the detailed facts

---

<sup>7</sup>See *Thomas, et al.* Hr’g Ex. 173, TRIAL EXB 01936-37.

<sup>8</sup>See *Thomas, et al.* Hr’g Ex. 180, TRIAL EXB 01983.

<sup>9</sup>See the December 31, 2009 e-mail from Respondent to Ms. Alexander, *Thomas, et al.* Hr’g Ex. 182, TRIAL EXB 01986.

supporting this suit, all other efforts are tantamount to simply rearranging the deck chairs on the Titanic.”<sup>10</sup>

11. On January 6, 2010, Respondent sent an e-mail to Ms. Alexander in which he suggested that the basis to amend the Complaint might be “the use of the mail to trigger the conflict and to justify the failure to appoint a special prosecutor.”<sup>11</sup> Respondent asked about Ms. Alexander’s status in preparing a timeline and gathering supporting documents.<sup>12</sup>

12. Ms. Alexander never located an investigative file for the RICO lawsuit because, as Ms. Aubuchon later admitted in a deposition, there actually never was an investigative file. She has admitted that, after the MCAO was disqualified from continuing its prior criminal investigation of members of the Board of Supervisors, the only investigative predicate supporting the eventual RICO suit were the collected pleadings filed over the months preceding the RICO suit in various battles ongoing between the MCAO and the Board of Supervisors and the original bald and never confirmed allegations that if a certain law firm was not hired to space plan the new proposed Court Tower structure, the Board would not approve its construction. No investigation had ever been performed by anyone to discover whether there was any

---

<sup>10</sup>*Id.*

<sup>11</sup>*See Thomas, et al.* Hr’g Ex. 445, TRIAL EXB 08539.

<sup>12</sup>*Id.*

actual evidence that supported the allegations in the RICO Complaint.<sup>13</sup> Respondent never received from Ms. Alexander any such evidence nor otherwise located any such evidence.<sup>14</sup>

13. The evidence indicates that, when his repeated requests for the production of the evidentiary bases for the RICO Complaint went unanswered, Respondent should have concluded and understood no such evidence existed and that, as a supervisor, his duties included more than simply making suggestions to Ms. Alexander as to how she should proceed.<sup>15</sup> Moreover, even had an investigative file existed, the RICO action as pled both in the Complaint and then the First Amended Complaint was meritless and frivolous.

14. Respondent alerted Mr. Thomas to the dearth of evidence supporting allegations of racketeering related to the building of the Court Tower.<sup>16</sup> Respondent expressed to Mr. Thomas at length Respondent's "deep and abiding" concerns with

---

<sup>13</sup> Opinion at 118, ¶237.

<sup>14</sup> Opinion at 118, ¶238.

<sup>15</sup> See the March 4, 2010 e-mail from Respondent to Barbara Marshall and Lisa Aubuchon, in which he states, "For a reason that completely escapes me [and is beginning to concern me deeply], the attorney working the racketeering case has been completely isolated off of the investigation which should have served as the basis for the numerous allegations . . . ." Hr'g Ex. 478, TRIAL EXB 008591.

<sup>16</sup> Op. at 120, ¶241.

the case.<sup>17</sup> Respondent recognized that his continued association with the RICO case could result in disciplinary consequences for him.<sup>18</sup>

15. Notwithstanding his concerns, Respondent aided in maintaining the RICO case. In particular, after the defendants filed motions to dismiss, Respondent helped draft the portion of the Response related to the plaintiffs' standing.<sup>19</sup> Respondent coordinated the inclusion of Mr. Thomas' revisions.<sup>20</sup> Respondent reviewed Ms. Alexander's progress on her portions of the draft Response and

---

<sup>17</sup>See *Thomas, et al.* Hr'g Ex. 189, TRIAL EXB 02187, a January 15, 2010 e-mail from Respondent to Mr. Thomas.

<sup>18</sup>*Id.* at TRIAL EXB 02188 ("[I]t has the potential for serious professional consequences for me personally.").

<sup>19</sup>See the January 17, 2010 e-mail from Respondent to Ms. Alexander, attaching his draft of a partial Response to the motions to dismiss, regarding standing. Hr'g Ex. 402, TRIAL EXB 08127-33. See also the January 22, 2010 e-mail from Respondent to Mr. Thomas, attaching for his review a draft of Plaintiffs' Partial Response to Defendants' Motions to Dismiss Regarding Sufficiency of Complaint and Standing of Plaintiffs to Bring Action, Hr'g Ex. 398, TRIAL EXB 09096, in which Respondent among other things describes his review of Ms. Alexander's work on the issues assigned to her. See also the transcript of Respondent's testimony at the *Thomas* hearing on October 18, 2011, p. 138, ln. 13 – p. 139, ln. 18.

<sup>20</sup>See the January 23, 2010 e-mail from Mr. Thomas to Respondent, *Thomas, et al.* Hr'g Ex. 397, TRIAL EXB 08093-95, enclosing Mr. Thomas' revisions and comments on the Response. See also the January 25, 2010 e-mail from Respondent to Ms. Alexander, Hr'g Ex. 396, TRIAL EXB 08092, stating that Respondent will compose Mr. Thomas's requested revisions to the Response and directing Ms. Alexander to send her drafted portions of the Response to Respondent for inclusion in the final draft, which will be jointly reviewed by Mr. Thomas, Respondent and Ms. Alexander.

incorporated these into the final draft of the Response.<sup>21</sup> Respondent physically filed the Response, mistakenly believing that Ms. Alexander did not have a Federal Court ECF log-in and password. .<sup>22</sup>

16. Respondent also contributed to drafting and revising the First Amended Complaint. Respondent provided Mr. Thomas with what Respondent called a “template,” which was an additional count for a proposed amended complaint. This template included wording and concepts that were included in the First Amended Complaint that was lodged in the court but never accepted for filing. The First Amended Complaint incorporated wholesale the groundless allegations of the original RICO Complaint.<sup>23</sup> By mid-January, Respondent had presented to Mr.

---

<sup>21</sup>See *Thomas, et al.* Hr’g Ex. 396, TRIAL EXB 08092; Hr’g Ex. 458, TRIAL EXB 08558-59; Hr’g Ex. 461, TRIAL EXB 08563-64.

<sup>22</sup>See *Thomas, et al.* Hr’g Ex. 364, TRIAL EXB 07770, Docket Entry 31.

<sup>23</sup>See *Thomas, et al.* Hr’g Ex. 447, TRIAL EXB 08541 (a January 7, 2010 e-mail to Mr. Thomas attaching a “very rough draft” of a second count to an amended complaint); Hr’g Ex. 448, TRIAL EXB 08543-44 (a January 7, 2010 e-mail to Ms. Alexander, attaching a “very rough draft” of an amended count); Hr’g Ex. 403, TRIAL EXB 08137-38, a January 14, 2010 e-mail from Respondent to Ms. Alexander, which starts: “I have reviewed your very good suggested changes and incorporated many of them into the final product.”; Hr’g Ex. 452, TRIAL EXB 08550, a January 19, 2010 e-mail from Mr. Thomas to Respondent, “confirming you feel professionally and ethically able to continue with these responsibilities” of supervising the preparation of the Response to the motions to dismiss and the First Amended Complaint”; and Hr’g Ex. 404, TRIAL EXB 08139-71, a January 31, 2010 e-mail from Respondent to Mr. Thomas, responding to revisions requested by Mr. Thomas and attaching “a copy of the First Amended Complaint that I anticipate getting filed.”

Thomas a final draft of the First Amended Complaint.<sup>24</sup> He also offered Mr. Thomas a tactical analysis regarding the timing of filing the First Amended Complaint.<sup>25</sup> Respondent finalized the First Amended Complaint and filed it.<sup>26</sup>

### **CLAIM ONE**

#### **ER 8.4(a)**

#### **Assisting another to violate the Rules of Professional Conduct**

17. Independent Bar Counsel is moving to dismiss this claim as a part of this agreement.

### **CLAIM TWO**

#### **ER 3.1**

#### **Meritorious Claims and Contentions**

18. ER 3.1 provides in relevant part that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is not frivolous, which may include a good faith and nonfrivolous argument for an extension, modification or reversal of existing law.

---

<sup>24</sup>*Thomas, et al.* Hr'g Ex. 407, TRIAL EXB 08178-08208.

<sup>25</sup>*Id.* at TRIAL EXB 08178.

<sup>26</sup>*See Thomas, et al.* Hr'g Ex. 406, TRIAL EXB 08176-77, a January 11, 2010 e-mail stream in which Respondent responds to a drafting suggestion from Ms. Alexander; Hr'g Ex. 449, a January 13, 2010 e-mail stream regarding Mr. Thomas's final revisions; Hr'g Ex. 364, TRIAL EXB 07769, Docket Entry 25.

19. Respondent participated in and assisted in prosecuting and defending the RICO proceeding and in asserting or controverting issues in it. In so doing Respondent violated ER 3.1.

20. By participating in drafting the First Amended Complaint, which he should have known had no good faith basis in law or fact (because he had never actually seen any factual or legal basis for it), and in assisting with the lodging of the First Amended complaint, Respondent negligently violated ER 3.1.

21. Similarly, by participating in drafting the Response to the Motions to Dismiss Respondent negligently violated ER 3.1.

**CLAIM THREE**  
**ER 1.1**  
**Competence**

22. ER 1.1 provides that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

23. Respondent had no background in filing or prosecuting Federal civil RICO lawsuits. Respondent, however, recognized the legal and factual weakness of the allegations in the RICO complaint filed by Aubuchon. Respondent did tell Thomas at certain times that the case was not viable. However, Respondent gave incompetent representation to his clients, Thomas and Arpaio, by assisting in moving the case forward.

24. Respondent violated ER 1.1 by incorporating the original RICO Complaint wholesale into the First Amended Complaint, and drafting portions of the groundless First Amended Complaint.

25. By drafting and participating in the drafting of the response to the motions to dismiss, Respondent violated ER 1.1.

**CLAIM FOUR**  
**ER 5.1(b)**  
**Duties as a Supervisor**

26. ER 5.1(b) provides that a lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

27. Respondent became Alexander's supervisor, for purposes of the Rules of Professional Conduct, when she was transferred to his bureau. He continued to be her supervisor throughout the litigation of the RICO case. Respondent had the duty to make reasonable efforts to ensure that Alexander found evidence to support the allegations in the First Amended Complaint.

28. Although Respondent initially urged Alexander to locate the investigative file, he later discontinued his efforts and instead assisted Alexander in drafting the First Amended Complaint and Response to the Motions to Dismiss. Respondent also finalized the First Amended Complaint that incorporated wholesale the groundless allegations in the Complaint, and he allowed Alexander to sign it.

29. By failing to insist that Alexander first locate and review the underlying evidence before going forward, and by failing to demand its production to his own office when it appeared that Alexander's efforts had failed, Respondent did not make reasonable efforts to ensure that Alexander complied with her duty to comply with ER 3.1. By failing to do so Respondent violated ER 5.1(b).

30. Further, Respondent allowed Alexander to sign and file the Response to the Motions to Dismiss.

31. Respondent also had a duty to make reasonable efforts to see that Alexander complied with her obligations under ER 1.1, 4.4(a), 3.4(c) and 8.4(d). Respondent failed to do so and violated ER 5.1(b).

**CLAIM FIVE**  
**ER 5.1(c)**  
**Duties as a Supervisor**

32. Independent Bar Counsel is moving to dismiss this claim as a part of this agreement.

**CLAIM SIX**  
**ER 8.4(d)**  
**Conduct Prejudicial to the Administration of Justice**

33. ER 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

34. Some of the allegations in the RICO complaint and then the First Amended Complaint were made against judges based upon actions they likely took

in their judicial capacities, which would provide those judges with immunity from civil suit.

35. By incorporating the allegations of the Complaint into the First Amended Complaint, and assisting in maintaining the RICO matter, Respondent violated ER 8.4(d) because he was participating and assisting in suing judges for actions they likely took in their judicial capacities.

**CLAIM SEVEN**  
**ER 3.4(c)**  
**Violation of a Rule of a Tribunal**

36. Independent Bar Counsel is moving to dismiss this claim as a part of this agreement.

**CONDITIONAL ADMISSIONS**

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ER 3.1, ER 1.1, ER 5.1(b), and ER 8.4(d).

Independent Bar Counsel has conditionally agreed to dismiss claims One, Five, and Seven of the Complaint as part of this agreement. Independent Bar Counsel believes that the purposes of this agreement are met by Respondent's admissions to the other Claims.

## **RESTITUTION**

Restitution is not an issue in this matter.

## **SANCTION**

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: two-year probation with terms and conditions.

### **Probation Terms**

Respondent shall attend a one-day Ethics Enhancement Program (“EEP”). Respondent must contact the EEP Program Coordinator, State Bar of Arizona, (602) 340-7241, within 20 days from the date of the final judgment and order. Respondent shall be responsible for the cost of attending the program.

For two years from the date of this order, Respondent shall not engage in any conduct which results in any of the following:

1. The imposition of any form of discipline as provided in Ariz. R. Sup. Ct. 60, or
2. An order of interim suspension as provided in Ariz. R. Sup. Ct. 61.

### **Non-Compliance**

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona,

Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

### **Legal Grounds in Support of Sanction**

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("ABA Standards") pursuant to Rule 57(a)(2)(E). The ABA *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. ABA *Standards* 1.3, Commentary. The ABA *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770, 772 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the

misconduct and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *ABA Standard 3.0*.

The parties agree that *ABA Standard 7.3* is the appropriate *ABA Standard* given the facts and circumstances of this matter. *ABA Standard 7.3* states, “[r]eprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.” In light of the mitigating factors listed below, probation, not reprimand, is the appropriate sanction in this case.

**The duty violated**

As described above, Respondent’s conduct violated his duty to the legal system and the profession, as well as the clients in the RICO case and the public.

**The lawyer’s mental state**

For purposes of this agreement the parties agree that Respondent negligently participated and assisted in the RICO matter and that his conduct violated the Rules of the Supreme Court, including the Rules of Professional Conduct.

**The actual or potential injury**

For purposes of this agreement, the parties agree that there was actual or potential harm to the client, the profession, the legal system, and the public.

**Aggravating and mitigating circumstances**

The parties conditionally agree that the following aggravating and mitigating factors should be considered.

**In aggravation:**

There are no aggravating factors.

**In mitigation:**

*ABA Standard 9.32(a)* – absence of a prior disciplinary record.

*ABA Standard 9.32(b)* – absence of a dishonest or selfish motive.

*ABA Standard 9.32(e)* – full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

*ABA Standard 9.32(l)* – remorse.

**Discussion**

The parties have conditionally agreed that a greater or lesser sanction than probation would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following: A greater sanction is not appropriate because of the negligent nature of Respondent's misconduct and the above mitigating factors. Further, probation is appropriate because there is little likelihood Respondent will harm the public during the period of probation, and the conditions of probation can be adequately supervised. Ariz. R. Sup. Ct. 60(a)(5)(B). A lesser sanction is not appropriate because Respondent's misconduct warrants a period of

supervision and because probation is the least serious form of discipline under Rule 60, Ariz. R. Sup. Ct.

Based on the *ABA Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanctions and will serve the purposes of lawyer discipline.

### **CONCLUSION**

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra*, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of a two-year probation and the imposition of costs and expenses. A proposed form order is attached hereto as **Exhibit A**.

**DATED** this 4<sup>th</sup> day of April, 2013.

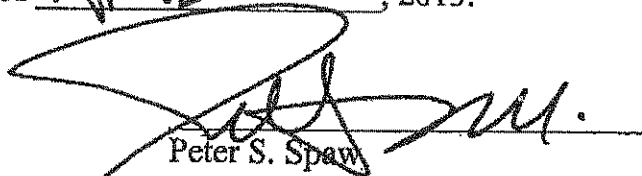
STATE BAR OF ARIZONA



John S. Gleason  
James S. Sudler  
Independent Bar Counsel

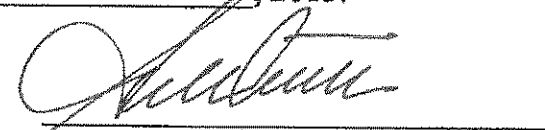
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.

DATED this 3<sup>RD</sup> day of APRIL, 2013.



Peter S. Spaw  
Respondent

DATED this 3<sup>rd</sup> day of April, 2013.



Counsel for Respondent

Approved as to form and content



James S. Sudler  
Independent Bar Counsel

**CERTIFICATE OF MAILING**

Original filed with the Disciplinary Clerk  
of the Office of the Presiding Disciplinary Judge  
this 4<sup>th</sup> day of April, 2013.

Copies of the foregoing mailed/emailed  
this 4<sup>th</sup> day of April, 2013, to:

Stephen M. Dichter  
Christian, Dichter & Sluga, P.C.  
2700 N. Central Avenue, Suite 1200  
Phoenix, AZ 85004  
sdichter@hcdslaw.com  
Respondent's counsel

Copy of the foregoing mailed  
this 4<sup>th</sup> day of April, 2013, to:

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

By: Nadine Cignoni

EXHIBIT "A"

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

In the Matter of a Member of the State Bar  
of Arizona,

**Peter S. Spaw**  
Bar No. 005336,

Respondent.

PDJ-2012-9078

**FINAL JUDGMENT AND  
ORDER**

[State Bar File No. 11-3208]

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

**IT IS HEREBY ORDERED** that Respondent, Peter S. Spaw, is hereby placed on probation for two years for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective on the date of this Order.

**IT IS FURTHER ORDERED** that Respondent fulfill/comply with the following during the period of probation.

Respondent shall attend a one-day Ethics Enhancement Program (EEP). Respondent must contact the EEP Program Coordinator, State Bar of Arizona, (602) 340-7241, within 20 days from the date of the final judgment and order. Respondent shall be responsible for the cost of attending the program.

For two years from the date of this order, Respondent shall not engage in any conduct which results in any of the following:

1. The imposition of any form of discipline as provided in Ariz. R. Sup. Ct. 60, or
2. An order of interim suspension as provided in Ariz. R. Sup. Ct. 61.

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

**IT IS FURTHER ORDERED** that Respondent pay shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office (\$1,200.00) and the costs and expenses of the State Bar of Arizona in the amount of \$ 15,059.55. It is understood that the actual payment of this sum shall be made by Maricopa County.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
**The Honorable William J. O'Neil**  
**Presiding Disciplinary Judge**

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

Copies of the foregoing mailed/emailed  
this \_\_\_\_ day of \_\_\_\_\_, 2013, to:

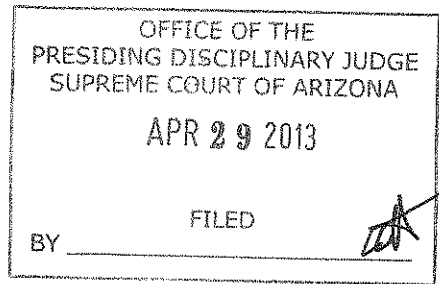
Stephen M. Dichter  
Christian, Dichter & Sluga, P.C.  
2700 N. Central Avenue, Suite 1200  
Phoenix, AZ 85004  
sdichter@hcdslaw.com  
Respondent's counsel

James S. Sudler  
Independent Bar Counsel  
Colorado Supreme Court Office of Attorney Regulation Counsel  
1300 Broadway, Suite 500  
Denver, CO 80202  
(303) 928-7781  
j.sudler@csc.state.co.us

Copy of the foregoing mailed  
this \_\_\_\_\_ day of \_\_\_\_\_, 2013, to:

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

By: \_\_\_\_\_



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

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

**PETER S. SPAW,**  
**Bar No. 005336**

Respondent.

**No. PDJ-2012-9078**

**FINAL JUDGMENT AND ORDER**

**[State Bar No. 11-3208]**

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent ("Agreement") filed on April 5, 2013, pursuant to Rule 57(a), Ariz.R.Sup.Ct., hereby accepts the parties' proposed Agreement. The PDJ notes however, that the State Bar of Arizona no longer offers the Ethics Enhancement Program ("EEP") as provided in the Agreement. Accordingly,

**IT IS HEREBY ORDERED** that Peter S. Spaw, shall be placed on probation for a period of two (2) years for his conduct in violation of the Rules of Professional Conduct, as outlined in the Agreement, effective the date of this Order.

**IT IS FURTHER ORDERED** that Respondent shall comply with the following terms and conditions during the period of probation:

1. Respondent shall complete an EEP equivalent continuing legal education program. Respondent shall contact the State Bar of Arizona within 20 days from the date of this Order to coordinate attendance with the current

equivalent ethics program. Respondent shall be responsible for costs associated with this term of probation.

**IT IS FURTHER ORDERED** that for two (2) years from the date of this Order, Respondent shall not engage in any conduct which results in the imposition of any form of discipline as provided in Rules 60 and 61, Ariz.R.Sup.Ct.

**NON-COMPLIANCE**

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

**IT IS FURTHER ORDERED** that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$15,059.55. 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 29<sup>TH</sup> day April, 2013.

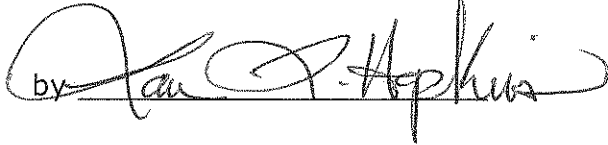
William J. O'Neil  
**William J. O'Neil**  
**Presiding Disciplinary Judge**

Original filed with the Disciplinary Clerk  
this 29<sup>th</sup> day of April, 2013.

COPY of the foregoing e-mailed/mailed  
this 29<sup>th</sup> day of April, 2013, to:

Jamie Sudler  
Independent Bar Counsel  
Colorado Supreme Court  
Office of Attorney Regulation Counsel  
1560 Broadway, Suite 1800  
Denver, CO 80202  
Email: [j.sudler@csc.state.co.us](mailto:j.sudler@csc.state.co.us)

Stephen M. Dichter  
Charles Callahan  
Christian Dichter & Sluga PC  
2700 N. Central Avenue, Suite 1200  
Phoenix, AZ 85004-001  
Email: [sdichter@hcdslaw.com](mailto:sdichter@hcdslaw.com)  
[ccallahan@hcdslaw.com](mailto:ccallahan@hcdslaw.com)  
[ycanez@hcdslaw.com](mailto:ycanez@hcdslaw.com)

by  Jan P. Hopkins