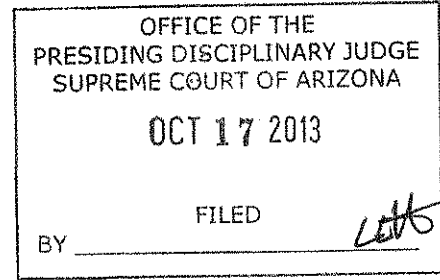


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Respondent

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

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

**William M. Spence,  
Bar No. 002728,**

Respondent.

**PDJ-2013-9052**

**AMENDED AGREEMENT FOR  
DISCIPLINE BY CONSENT**

State Bar Nos. 11-0641 and 11-1923

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent William M. Spence, who has chosen not to seek the assistance of counsel, hereby submit their Amended Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct., and the Presiding Disciplinary Judge's order dated September 19, 2013. 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 Rule 41(g). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand. Respondent further agrees to change his status with the State Bar from active to retired upon approval of this Agreement by the Presiding Disciplinary Judge (PDJ), as evidenced by Exhibit "A." Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.<sup>1</sup> The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "B."

## **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 April 3, 1971.

#### **COUNT ONE (File no. 11-0641/Larche)**

1. On or about April 5, 2007, Kristen Larche (Ms. Larche) hired Respondent to represent her in a child custody case in which she was seeking, among other things, to secure an order requiring her child's father, Michael Albee (Father), to pay child support.

2. Ms. Larch was accompanied by her parents, David and Sheila Larche (the Larches), at her initial meeting with Respondent. If this matter went to

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<sup>1</sup> Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

hearing, the Larches would testify that during that meeting, Respondent made crude and sexually explicit comments about women and young mothers.

3. Respondent admits that while his choice of language may have been coarse, he did not intend to offend Ms. Larche or the Larches. Respondent offers this as an explanation for his conduct, but not as an excuse for same.

**COUNT TWO (File no. 11-19323/Youngman)**

4. On September 22, 2010, Elizabeth Youngman (Ms. Youngman) retained Respondent to file a petition for dissolution of marriage, which he caused to be filed on October 1, 2010, with the Maricopa County Superior Court, FC2010-094147.

5. During the course of the representation, Respondent accompanied Ms. Youngman to an unrelated family court hearing at which Ms. Youngman was to testify and Kodi Youngman (Husband) was present. If this matter went to hearing, Ms. Youngman would testify that Respondent touched her inappropriately during the hearing. Respondent admits that he touched Ms. Youngman when he leaned in to talk with her about her testimony. Respondent did not intend to offend Ms. Youngman when he did so.

6. If this matter went to hearing, Ms. Youngman would also testify that during the representation, Respondent made crude and sexually explicit comments about women and young mothers.

7. Respondent admits that while his choice of language may have been coarse, he did not intend to offend Ms. Youngman. Respondent offers this as an explanation for his conduct, but not as an excuse for same.

## **CONDITIONAL ADMISSIONS**

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

Respondent conditionally admits that his conduct violated Rule 41(g), Ariz. R. Sup. Ct. as he engaged in unprofessional conduct that offended the honor or reputation of his clients. If this matter went to hearing, Respondent would testify that he never intended to impugn either client.

## **RESTITUTION**

Restitution is not an issue in this matter. This matter addresses the manner in which Respondent communicated with his clients and not the fees charged for the services provided to them.

## **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: Reprimand. Respondent also agrees to change his status with the State Bar of Arizona to "retired," as evidenced by the attached notice. See Ex. "A." In the event that Respondent wishes to change his status back to "active," he agrees to undergo a fitness to practice evaluation, at his expense, in addition to complying with all other applicable rules. In addition, should Respondent seek to return to active status, Respondent agrees that he must follow the reinstatement requirements of Supreme Court Rules 64 and 65 as though a suspension of more than six months had been imposed.

## LEGAL GROUNDS IN SUPPORT OF SANCTION

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

In determining an appropriate sanction consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard 3.0*.

The parties agree that *Standard 7.0* is the appropriate *Standard* given the facts and circumstances of this matter. *Standard 7.2* provides that suspension is generally appropriate when a lawyer knowingly 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.

### **The duty violated**

As described above, Respondent's conduct violated his duty to his clients, the profession, the legal system and the public.

### **The lawyer's mental state**

For purposes of this agreement the parties agree that Respondent's actions were done knowingly. Respondent asserts that he did not intend to offend the honor or reputation of his clients, nor to violate any rules. However, he acknowledges that he knowingly committed the actions.

### **The extent of the actual or potential injury**

For purposes of this agreement, the parties agree that there was, at a minimum, the potential of emotional harm to the clients. In addition, there was harm to the legal profession in general.

### **Aggravating and mitigating circumstances**

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

#### **In aggravation:**

*Standard 9.22(a)* – prior disciplinary offenses. In SBA Case Nos. 03-1378; 03-1665; 03-1172, Respondent was suspended for thirty (30) days for violations of ERs 1.7, 3.4(c), 8.4, 41(g) and 51(e). Respondent made inappropriate, sexually suggestive statements to two domestic-relations clients, which resulted in the foregoing ethical violations.

*Standard 9.22(c)* – a pattern of misconduct.

*Standard 9.22(d)* – multiple offenses.

*Standard 9.22 (i)* – substantial experience in the practice of the law.

Respondent was admitted to practice law in Arizona on April 3, 1971.

**In mitigation:**

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

*Standard 9.32(l)* – remorse.

**Discussion**

The parties have conditionally agreed that a reprimand, under the conditions set forth herein, is appropriate under the facts and circumstances of this matter. This agreement was based on the following: The parties believe that the sanction of reprimand will serve the purposes of attorney discipline in this case. While the Respondent knowingly used inappropriate language, Respondent did not intend to offend the honor or reputation of his clients. He continued the representation of both clients, at their request, until the representation was terminated for other non-related reasons. Respondent closed his law practice by August 31, 2013, and upon the approval of this agreement for discipline, Respondent will submit the attached Exhibit "C" to the State Bar to change his status to retired. Additionally, Respondent has agreed that should he ever seek to change that status back to "active," he will undergo a fitness to practice assessment, at his own cost, in addition to complying with all other applicable rules. In addition, Respondent has agreed that he will go through the rigorous reinstatement process set forth in Rules 64 and 65, as if a long-term suspension had been imposed, prior to changing his status to active.


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

**CONCLUSION**

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of reprimand and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "C."

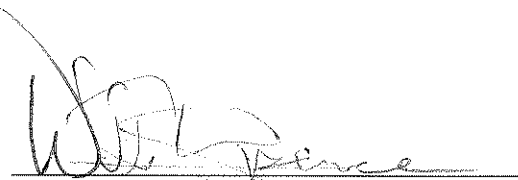
**DATED** this <sup>17<sup>th</sup></sup> 14<sup>th</sup> day of October, 2013.

**STATE BAR OF ARIZONA**

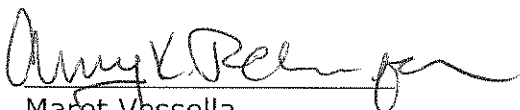
  
\_\_\_\_\_  
Stacy L. Shuman  
Staff Bar Counsel

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

**DATED** this 14<sup>th</sup> day of October, 2013.

  
\_\_\_\_\_  
William M. Spence  
Respondent

Approved as to form and content

  
\_\_\_\_\_  
Maret Vessella  
Chief Bar Counsel



Original filed with the Disciplinary Clerk  
of the Office of the Presiding Disciplinary Judge  
this 17<sup>th</sup> day of October, 2013.

Copies of the foregoing mailed/emailed  
this 17<sup>th</sup> day of October, 2013, to:

William M. Spence  
*WM Spence PLLC*  
813 West Elliot Road,  
Suite 9  
Chandler, Arizona 85225-1887  
Email: [wms@billspenceltd.com](mailto:wms@billspenceltd.com)  
Respondent

William M. Spence  
955 East Knox Road,  
Unit 105  
Chandler, Arizona 85225  
Respondent's Alternate Address

Copy of the foregoing emailed  
this 17<sup>th</sup> day of October, 2013, to:

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

Copy of the foregoing hand-delivered  
this 17<sup>th</sup> day of October, 2013, to:

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

By: *Rodney T. Brub*  
SLS/atb

IN THE  
**SUPREME COURT OF THE STATE OF ARIZONA**  
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE  
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**WILLIAM M. SPENCE,  
Bar No. 002728**

Respondent.

**PDJ-2013-9052**

**FINAL JUDGMENT AND ORDER**

State Bar Nos. 11-0641 and 11-1923

**FILED OCTOBER 22, 2013**

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on October 15, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

**IT IS HEREBY ORDERED** that Respondent, **William M. Spence**, is hereby Reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents effective immediately.

**IT IS FURTHER ORDERED** that within five (5) days from this Order, Respondent shall change his membership status with the State Bar from active to retired, and in the event that he seeks to return to active status, he shall undergo a fitness to practice assessment, at his own cost, in addition to completing the reinstatement process outlined in Rules 64 and 64, Ariz. R. S. Ct., as if he had been suspended for a period in excess of six (6) months.

**IT IS FURTHER ORDERED** that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ 1,200.00. 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 22<sup>nd</sup> day of October, 2013.

*/s/ William J. O'Neil*

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**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 22<sup>nd</sup> day of October, 2013.

Copies of the foregoing mailed/emailed  
this 22<sup>nd</sup> day of October, 2013, to:

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*WM Spence PLLC*  
813 West Elliot Road,  
Suite 9  
Chandler, Arizona 85225-1887  
Email: [wms@billspenceltd.com](mailto:wms@billspenceltd.com)  
Respondent

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Unit 105  
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Staff Bar Counsel  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [lro@staff.azbar.org](mailto:lro@staff.azbar.org)

Sandra Montoya  
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by: MSmith