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**FEB 27 2008**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**State Bar Court of California**  
Hearing Department  
Los Angeles**PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE OR MENTAL HEALTH ISSUES**

Counsel For The State Bar

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1149 S. Hill Street  
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Tel: (213)765-1247Case Number (s)  
04-O-11994

(for Court's use)

**FILED**

SEP 30 2010

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

Bar # 213039

Counsel For Respondent

Phillip Feldman, Esq.  
15250 Ventura Blvd., #610  
Sherman Oaks, CA 91403-3287  
Tel: (818) 986-9890**PUBLIC MATTER**Submitted to: **Program Judge**

Bar # 40792

In the Matter Of:  
**MARC STEVEN COLEN****STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

Bar # 108275

☐ PREVIOUS STIPULATION REJECTEDA Member of the State Bar of California  
(Respondent)

**Note:** All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **June 3, 1983**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **8** pages, excluding the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".



- (6) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1) ☐ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☐ State Bar Court case # of prior case
- (b) ☐ Date prior discipline effective
- (c) ☐ Rules of Professional Conduct/ State Bar Act violations:
- (d) ☐ Degree of prior discipline
- (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below:
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☒ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**Respondent has no prior record of discipline since his admission to the practice of law in California on June 3, 1983.**

**Respondent cooperated with the State Bar during disciplinary investigation and proceedings.**

**ATTACHMENT TO**  
**STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

IN THE MATTER OF:        MARC STEVEN COLEN

CASE NUMBER:            04-O-11994

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violating the specified statutes and the California Rules of Professional Conduct, which constitute cause for discipline in these matters.

**I. Facts.**

1. Respondent Marc Steven Colen (Respondent) was admitted to the practice of law in the State of California on June 3, 1983, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.
2. At all relevant times, Douglas Markham, D.C. (Markham) was a provider of health, dietary, and chiropractic products and services. In order to create a national market for his products and services, Markham developed the "Total Health Project " (Project). As part of the Project, Markham authored a book entitled "Beyond Atkins" (Book).
3. Throughout the development of the Project, Respondent provided various legal services to Markham.
4. Markham also employed Matt Russell (Russell) and his public relations firm Russell Public Affairs Group (RPAG) to promote the Project and Book.
5. In 2003, Markham's Book and Project began gaining prominent national attention. As a result of the increased demands for his products and services, Markham and the Project required extensive additional legal representation from Respondent.
6. On October 30, 2003, Markham employed Respondent to provide all necessary legal representation on behalf of Markham and the Project. As compensation for Respondent's legal services, Respondent was to receive ten percent (10%) of all revenue received by the Project, after subtracting the Book's actual printing costs.

7. Respondent contends that the scope of his legal services was limited by and as set forth in a "Retainer Agreement" executed by him and Markham.
8. In the Spring of 2004, the Project and Book's popularity and demand began to decline substantially.
9. On April 12, 2004, Markham terminated the services of Russell and RPAG.
10. On April 21, 2004, Markham terminated Respondent's employment.
11. In January 2004, Markham discovered that he had inadvertently neglected to give proper credit to other authors of material that Markham had included in his Book. Markham discussed it with Respondent immediately upon discovering this oversight. Respondent told Markham that they would correct the oversight in the next printing of the Book.
12. ~~Respondent contends that it was Markham who told Respondent that he would correct the oversight in the next printing of the Book.~~ Respondent further contends that Markham's oversight was not inadvertent and that such oversight could not be remedied by way of footnotes in subsequent printings of the Book.
13. On April 22, 2004, the day after Markham terminated his employment, Respondent sent an e-mail to sixteen of Markham's business contacts indicating that Respondent had terminated his business relationship with Markham for reasons that he was unable to disclose. In this e-mail, Respondent also stated that he did not want to be "associated with [Markham], his work, or his [B]ook in any manner whatsoever." Respondent then asked the recipients of his e-mail to log on to two different web sites and to compare the contents of the web sites with the contents of page 7 and pages 50-52 of Markham's Book. Pages 7 and pages 50 to 52 of Markham's Book contained the material that Markham had inadvertently neglected to give proper credit to its authors. Respondent then stated that he was "appalled and greatly embarrassed to have been associated in any manner with such actions."
14. At no time did Markham waive the attorney-client privilege or otherwise authorize Respondent to disclose any information or other information regarding the neglect to give proper credit to authors of material that Markham had included in his Book.
15. By disclosing that Markham had neglected to give proper credit to authors of material that Markham had included in the Book, Respondent subjected Markham to embarrassment.
16. On May 7, 2004, the State Bar opened an investigation, case number 04-O-11994, based on a complaint filed by Markham against Respondent.

17. On May 13, 2004, Markham filed a complaint in Los Angeles County Superior Court entitled *Markham v. Colen*, case number LC068452 (Markham action) for various causes of action including, but not limited to, malpractice, breach of contract, and interference with contract.

18. Respondent alleged that he also had a cause of action against Markham for breach of contract, but Respondent did not file a lawsuit against Markham or a cross-complaint to the Markham action.

19. In June 2004, Respondent and Markham settled the Markham action and all related causes of action for mutual releases of all claims without any monetary payment to any party. However, as a condition of that settlement, Respondent required that Markham withdraw his State Bar complaint against Respondent.

20. On June 29, 2004, Respondent wrote a letter to Markham's attorney confirming the terms of the settlement agreement and indicated that the "release must, of course, include the withdrawal of any complaint filed with the State [B]ar."

21. On July 8, 2004, Respondent and Markham signed the settlement agreement in the Markham action which required that Markham withdraw his State Bar complaint in writing within one day of the effective date of the settlement agreement.

22. On July 9, 2004, Markham sent a letter to an investigator for the State Bar, indicating that he was withdrawing his State Bar complaint against Respondent because he had settled the Markham action with Respondent.

## II. Conclusions of Law.

### Count One

By disclosing the fact that Markham had neglected to give proper credit to authors of material that Markham had included in the Book, Respondent breached his duty of confidentiality to Markham, in willful violation of California Business and Professions Code section 6068, subdivision (e).

### Count Two

By requiring that Markham withdraw his complaint with the State Bar, as a condition of settlement of the Markham action, Respondent entered into an agreement that a plaintiff shall withdraw a disciplinary complaint or shall not cooperate with the investigation or prosecution conducted by the disciplinary agency, in willful violation of California Business and Professions Code section 6090.5, subdivision (a)(2).

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A(6), was May 4, 2007.

**WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND  
STIPULATED FACTS AND CULPABILITY**

The parties hereby waive any variance between the Notice of Disciplinary Charges filed on May 25, 2006, and the facts and conclusions of law contained in this stipulation. In addition, the parties waive the issuance of an amended Notice of Disciplinary Charges relating to cases which are the subject matters of this stipulation.

(Do not write above this line.)

In the Matter of <b>MARC STEVEN COLEN</b>	Case number(s): <b>04-O-11994</b>
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### SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts and Conclusions of Law.

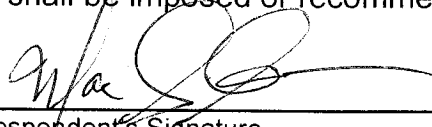
Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

28 June 07

Date

  
Respondent's Signature

Marc Steven Colen  
Print Name

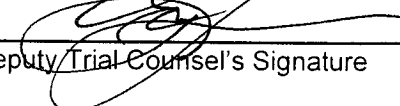
          
Date

          
Respondent's Counsel Signature

Phillip Feldman  
Print Name

JUNE 28, 2007

Date

  
Deputy Trial Counsel's Signature

Eric H. Hsu  
Print Name



(Do not write above this line.)

In the Matter Of  
**MARC STEVEN COLEN**

Case Number(s):  
**04-O-11994**

### ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public,  
IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without  
prejudice, and:

- ☒ The stipulation as to facts and conclusions of law is APPROVED.
- ☐ The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- ☐ All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(b), Rules of Procedure.)

Date

02/27/05

Judge of the State Bar Court

**RICHARD A. PLATEL**

**CERTIFICATE OF SERVICE**  
**[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]**

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on March 3, 2008, I deposited a true copy of the following document(s):

**CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR COURT'S  
ALTERNATIVE DISCIPLINE PROGRAM**

**CONFIDENTIAL STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDER AND  
STIPULATION RE FACTS AND CONCLUSIONS OF LAW**

in a sealed envelope for collection and mailing on that date as follows:

- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**MARC STEVEN COLEN  
20300 VENTURA BLVD #120  
WOODLAND HILLS, CA 91364**

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**MONIQUE MILLER , Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **March 3, 2008.**



**Johnnie Lee Smith**  
Case Administrator  
State Bar Court