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State Bar Court of California		
Hearing Department <input checked="" type="checkbox"/> Los Angeles		<input type="checkbox"/> San Francisco
Counsel for the State Bar ELI D. MORGENSTERN DEPUTY TRIAL COUNSEL 1149 South Hill Street Los Angeles, CA 90015 Telephone: (213) 765-1334 Bar # 190560	Case number(s) 06-J-12565	(for Court's use) <b>PUBLIC MATTER</b>  <b>FILED</b> AUG 22 2006 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent Clayton Patrick 1030 SW Jefferson Street Suite 530 Portland, OR 97201-3467 Bar # 45735 (503) 227-6000	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge	
In the Matter of Clayton Patrick  Bar # 45735 A Member of the State Bar of California (Respondent)	<b>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND            DISPOSITION AND ORDER APPROVING</b>  <b>ACTUAL SUSPENSION</b> <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 January 15, 1970 (date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (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. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consist of 13 pages.
- (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) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) 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.

(Do not write above this line.)

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
- costs to be paid in equal amounts prior to February 1 for the following membership years:  
Costs to be paid in equal amounts prior to February 1 for the following billing-  
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure) cycles  
 costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs" following the  
 costs entirely waived effective date of the  
Disciplinary Order: 2007,  
2008, 2009.

**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 or a separate attachment entitled "Prior Discipline."

(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.

(Do not write above this line.)

- (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.

(Do not write above this line.)

- (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:**

**D. Discipline:**

(1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of One (1) year

- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following: \_\_\_\_\_

(b)  The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent must be placed on probation for a period of One (1) year  
which will commence upon the effective date of the Supreme Court order in this matter.  
(See rule 953, Calif. Rules of Ct.)

(Do not write above this line.)

(3)  **Actual Suspension:**

(a)  Respondent must be actually suspended from the practice of law in the State of California for a period of 30 days

i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii.  and until Respondent does the following: \_\_\_\_\_

**E. Additional Conditions of Probation:**

(1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

(2)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

(4)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

(5)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

(6)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

(7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.

(Do not write above this line.)

- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: See page 11
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10)  The following conditions are attached hereto and incorporated:
- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

**F. Other Conditions Negotiated by the Parties:**

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason: \_\_\_\_\_
- (2)  **Rule 955, California Rules of Court:** Respondent must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3)  **Conditional Rule 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: \_\_\_\_\_
- (5)  **Other Conditions:** See page 11, section entitled STATE BAR ETHICS SCHOOL EXCUSION

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

IN THE MATTER OF:       CLAYTON CORWIN PATRICK

CASE NUMBER(S):       06-J-12565

**FACTS AND CONCLUSIONS OF LAW.**

Respondent admits that the following facts are true and that he is culpable of violations of the specified Rules of Professional Conduct.

General Background

1. Respondent is, and at all relevant times herein, was a member of the Oregon State Bar. Respondent is, and at all relevant times herein, was a member of California and Washington State Bars, on voluntary inactive status.

2. Respondent and Michael Tandy (hereinafter, "Tandy") were close friends for several years. Prior to 1997, Tandy established the Tandy/Quan Trust, now known as the Clearspring Trust (hereinafter, "Trust"), with a business partner. One of the Trust's income producing ventures was to make loans to individuals.

3. In June 1991, Respondent began borrowing money from Tandy. All of these loans were eventually transferred to the Trust.

4. In 2003, Respondent filed for Chapter 7 Bankruptcy in the United States Bankruptcy Court for the District of Oregon. Among the debts that Respondent sought to discharge were funds borrowed from the Trust. Thereafter, Tandy, on behalf of the Trust, filed an adversary action in Respondent's Chapter 7 Bankruptcy.

5. In the Decision in the adversary action, which was filed on September 15, 2003, the Bankruptcy Court made factual findings relevant to the professional conduct of attorneys, and forwarded the Decision to the Oregon State Bar.

6. Thereafter, on January 6, 2006, the Oregon State Bar, Disciplinary Counsel's Office, filed an Amended Formal Complaint against Respondent.

7. On March 3, 2006, Respondent and an Assistant Disciplinary Counsel executed a Stipulation for Discipline in Case No. 05-20, pursuant to which Respondent was ordered actually suspended from the practice of law for 30 days. On March 13, 2006, the Order Approving Stipulation for Discipline in Case No. 05-20 (hereinafter, "Order") was filed with the Oregon Supreme Court. Pursuant to the Order, Respondent's 30 day actual suspension became effective on May 25, 2006. (Please see certified, true copy of Order Approving Stipulation for Discipline in Case No. 05-20, dated March 13, 2006, and certified, true copy of Stipulation for Discipline, Case No. 05-20, executed on March 3, 2006, collectively attached hereto as Exhibit 1.)

### Facts

#### The Holman Loan

8. In January 1997, Respondent suggested to Tandy that the Trust loan Timothy and Kimberly Holman (hereinafter, the "Holmans") money to operate and expand their business. The Holmans were also long time friends of Respondent. Tandy agreed on behalf of the Trust.

9. Respondent actively facilitated the loan transaction by performing legal services for the both the Holmans and Tandy/the Trust. At no time did Respondent obtain the informed written consent of either Tandy or the Holmans as defined by as defined by rule 3-310(C)(2) of the Rules of Professional Conduct.

10. Respondent negotiated and facilitated the loan on behalf of the Holmans. He also signed the promissory note as a guarantor for the Holmans. Respondent's professional judgment on behalf of the Holmans was or could reasonably have been affected by his own financial, business, property, or personal interests as a guarantor for their loan. Respondent did not immediately recognize the conflict created by his role as guarantor for the Holmans and failed to describe the terms of the financial arrangement in writing in a manner which should have been reasonably understood by them, failed to advise them in writing that they may seek the advise of independent counsel, and thereafter failed to obtain their written consent to Respondent's role as guarantor for the loan.

### Conclusions of Law

By serving as a guarantor for the Holmans' loan, Respondent engaged in a transaction with a client without complying with the requirements that the transaction and its terms were fair and reasonable to the client; that the transaction and its terms were fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; that the client was advised in writing that the client may seek the advice of an independent lawyer of the client's choice; that the client was given a reasonable opportunity to

seek that advice; and that the client thereafter consented in writing to the terms of the transaction, Respondent wilfully violated rule 3-300 of the Rules of Professional Conduct.

By representing both the Trust and the Holmans, whose objective interests as lender and borrowers respectively, were adverse, without their informed written consent, Respondent wilfully violated rule 3-310(C)(2) of the Rules of Professional Conduct.

### Facts

#### The Schultz Loan

11. In June 1997, Respondent referred another client, Thomas Schultz (hereinafter, "Schultz") to Tandy for a loan.

12. Respondent represented Schultz in negotiating the loan from the Trust.

13. Respondent also performed legal services for Tandy. Specifically, Tandy sent draft documents to Respondent for review and Respondent was aware that Tandy was looking to him to ensure that the Trust's interests were protected in the transaction. At no time did Respondent obtain the informed written consent of either Tandy or Schultz as defined by as defined by rule 3-310(C)(2) of the Rules of Professional Conduct.

### Conclusions of Law

By representing both Tandy/Trust and Schultz, whose objective interests as lender and borrowers respectively, were adverse, without their informed written consent, Respondent wilfully violated rule 3-310(C)(2) of the Rules of Professional Conduct.

### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page one, paragraph A.(7), was July 12, 2006.

### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed him that as of July 12, 2006, the estimated prosecution costs in this matter are approximately \$1,983. Respondent acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

**AGREEMENTS AND WAIVERS PURSUANT TO BUSINESS AND PROFESSIONS  
CODE SECTION 6049.1.**

1. Respondent's culpability determined in the disciplinary proceeding in the Oregon Supreme Court would warrant the imposition of discipline in the State of California under the laws or rules in effect in this State at the time the misconduct was committed; and
2. The proceeding in the above jurisdiction provided Respondent with fundamental constitutional protection.

**AUTHORITIES SUPPORTING DISCIPLINE.**

**Standards**

Standard 2.8 of the Standards For Attorney Sanctions For Professional Misconduct, Title IV of the Rules of Procedure ("Standards") provides that culpability of a member of a wilful violation of rule 3-300 shall result in suspension unless the extent of the member's misconduct and the harm to the client are minimal, in which case, the degree of discipline shall be a reproof.

**Case Law**

In *In the Matter of Aguiluz* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 41, the attorney undertook the concurrent representation of clients with potentially conflicting interests (a driver and his passenger in a personal injury matter arising out of an automobile accident); continued that representation when an actual conflict of interest arose without seeking the required written consent to the continued representation; and failed to handle competently the suit he filed for his clients, resulting in its dismissal. When one of the clients (the driver) died, the attorney failed to inform the surviving client that the case had been dismissed; he later unilaterally withdrew from employment of this client without client notice or consent. Because of the attorney's inadequate supervision of staff and inadequate attention to his professional duties, his office sought damages from the insurer of the since deceased, former client, for the client as to whom he had already withdrawn from employment. Later, his staff filed a "first amended complaint" in the already dismissed suit in which the former client purported to sue the deceased client. (*In the Matter of Aguiluz, supra*, 3 Cal. State Bar Ct. Rptr. at 45-46.)

The attorney had been disciplined on one prior occasion, and was ordered suspended for one year, execution of the suspension was stayed, and the attorney was placed on probation for two years. (*In the Matter of Aguiluz, supra*, 3 Cal. State Bar Ct. Rptr. at 47.)

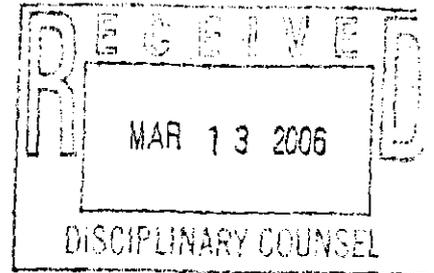
In *Aguiluz*, the Review Department recommended that the attorney be suspended for one year, execution of the suspension was stayed, and he was placed on probation for two years with conditions including 90 days actual suspension. (*In the Matter of Aguiluz, supra*, 3 Cal. State Bar Ct. Rptr. at 51.)

Respondent is deserving of less discipline than that received by Aguiluz in that Respondent was admitted to the California State Bar in 1970, the Washington State Bar in 1972, and the Oregon State Bar in 1977, and has no prior record of discipline. Respondent's misconduct was less egregious than that committed by attorney Aguiluz, Respondent was cooperative in these disciplinary proceedings, as well as those conducted in Oregon, and unlike Aguiluz stated remorse for his misconduct. (*In the Matter of Aguiluz, supra*, 3 Cal. State Bar Ct. Rptr. at 50.)

### **STATE BAR ETHICS SCHOOL EXCLUSION**

Respondent resides outside of California and is unable to attend State Bar Ethics School. As an alternative to State Bar Ethics School, the parties agree that within one year of the effective date of discipline, Respondent must provide sufficient proof to the Office of Probation of six (6) hours of Continuing Legal Education in General Legal Ethics.

1 IN THE SUPREME COURT  
2 OF THE STATE OF OREGON

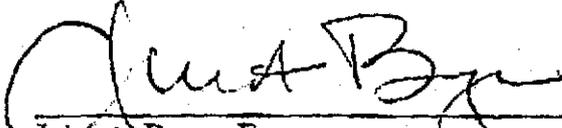


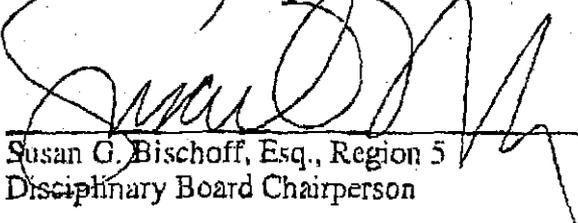
3 In re: )  
4 Complaint as to the Conduct of ) Case No. 05-20  
5 CLAYTON C. PATRICK, ) ORDER APPROVING STIPULATION  
6 Accused. ) FOR DISCIPLINE  
7 \_\_\_\_\_ )

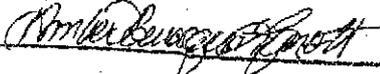
8 This matter having been heard upon the Stipulation for Discipline entered into by the  
9 Accused and the Oregon State Bar, and good cause appearing,

10 IT IS HEREBY ORDERED that the stipulation between the parties is approved and the  
11 Accused is suspended for a period of thirty (30) days, effective May 25, 2006, for violations of  
12 DR 5-101(A) and DR 5-105(E) (2 counts)..

13  
14 DATED this 13 day of March, 2006.

15  
16   
17 John A. Berge, Esq.  
18 State Disciplinary Board Chairperson

19   
20 Susan G. Bischoff, Esq., Region 5  
21 Disciplinary Board Chairperson

22  
23  
24 CERTIFIED TRUE COPY  
25 

*Clayton Patrick*

IN THE SUPREME COURT  
OF THE STATE OF OREGON

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4  
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6  
7

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 05-20
	)	
CLAYTON C. PATRICK,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
_____	)	

8 Clayton Patrick, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar  
9 (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar  
10 Rule of Procedure 3.6(c).

11 1.

12 The Bar was created and exists by virtue of the laws of the State of Oregon and is, and at  
13 all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9, relating  
14 to the discipline of attorneys.

15 2.

16 The Accused was admitted by the Oregon Supreme Court to the practice of law in  
17 Oregon on September 26, 1977, and has been a member of the Oregon State Bar continuously  
18 since that time, having his office and place of business in Multnomah County, Oregon.

19 3.

20 The Accused enters into this Stipulation for Discipline freely and voluntarily. This  
21 Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

22 4.

23 On January 6, 2006, an Amended Formal Complaint was filed against the Accused  
24 pursuant to the authorization of the State Professional Responsibility Board (hereinafter,  
25 "SPRB"), alleging violations of DR 5-101(A) [personal interest conflict] and DR 5-DS(E)

1 [current client conflict of interest] (2 counts). The parties intend that this Stipulation for  
2 Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final  
3 disposition of the proceeding.

4  
5 **General Facts**

6 5.

7 Michael Tandy (hereinafter "Tandy") and the Accused were close friends for several  
8 years. Prior to 1997, Tandy established the Tandy/Quan Trust n/k/a Clearspring Trust  
9 (hereinafter "Trust") with a business partner. One of the Trust's income producing ventures was  
10 to make loans to individuals.

11  
12 **The Holman Loan**

13 **Facts**

14 6.

15 In January 1997, the Accused suggested to Tandy that the Trust loan Timothy and  
16 Kimberly Holman (hereinafter the "Holmans") money to operate and expand their business. The  
17 Holmans were also long-time friends of the Accused. Tandy agreed on behalf of the Trust. The  
18 Accused, who viewed the loan as a benefit to both the Holmans and the Trust, actively facilitated  
19 the loan transaction by performing legal services for both the Holmans and Tandy/the Trust.

20 7.

21 The Accused negotiated and secured the loan on behalf of the Holmans. He also signed  
22 the promissory note as a guarantor for the Holmans. The Accused's professional judgment on  
23 behalf of the Holmans was or could reasonably have been affected by his own financial,  
24 business, property, or personal interests as a guarantor for their loan. The Accused did not

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1 immediately recognize this personal-interest conflict and therefore he failed to obtain the  
2 Holmans' consent to the continued representation, after full disclosure.

3 8.

4 The Accused obtained a special power of attorney from Tandy that allowed him to  
5 conduct business with the title company on Tandy's behalf, including allowing the Accused to  
6 close the transaction in Tandy's absence.

7  
8 **Violations**

9 9.

10 The Accused acknowledges that, as lender and borrowers, the objective interests of the  
11 Trust and the Holmans were adverse. Accordingly, the Accused's representation of both the  
12 Trust and the Holmans in the loan transaction resulted in an actual conflict of interest in violation  
13 of DR 5-105(E). Furthermore, the Accused now recognizes that, in guaranteeing the loan for the  
14 Holmans, without consent following full disclosure, the Accused violated DR 5-101(A).

15  
16 **The Schultz Loan**

17 **Facts**

18 10.

19 In June 1997, the Accused referred another client, Thomas Schultz (hereinafter  
20 "Schultz") to Tandy for a loan. The Accused represented Schultz in negotiating, securing and  
21 facilitating the loan from the Trust. However, Tandy also sent draft documents to the Accused  
22 for review and the Accused was aware that Tandy was looking to him to ensure that the Trust's  
23 interests were protected in the transaction.

24 ///

25 ///

PAGE 3 – STIPULATION FOR DISCIPLINE – CLAYTON PATRICK

1 Violation

2 11.

3 The Accused acknowledges that, as lender and borrower, the objective interests of the  
4 Trust and Schultz were adverse. Accordingly, the Accused's representation of both the Trust and  
5 Schultz in the loan transaction resulted in an actual conflict of interest in violation of DR 5-  
6 105(E).

7  
8 Sanction

9 12.

10 The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the  
11 Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions*  
12 (hereinafter, "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by  
13 considering the following factors: (1) the ethical duty violated; (2) the attorney's mental state;  
14 (3) the actual or potential injury; and (4) the existence of aggravating and mitigating  
15 circumstances.

16 a. **Duty Violated.** The Accused violated his duty to his clients to avoid conflicts of  
17 interest. *Standards* § 4.3.

18 b. **Mental State.** The evidence suggests that the Accused was negligent with respect  
19 to the personal interest conflict. "Negligence" is the failure of a lawyer to heed a  
20 substantial risk that circumstances exist or that a result will follow, which failure  
21 is a deviation from the standard of care that a reasonable lawyer would exercise in  
22 the situation. *Standards* at 5. However, the Accused discussed his conflict with  
23 Tandy on at least one occasion which demonstrates that the Accused had some  
24 knowledge of the multiple client conflicts. "Knowledge" is the conscious

1 awareness of the nature or attendant circumstances of the conduct but without the  
2 conscious objective or purpose to accomplish a particular result. *Id.*

3 c. **Injury.** Injury can be actual or potential. The Accused caused potential injury to  
4 the Holmans in failing to recognize or disclose his personal interest conflict in  
5 guaranteeing their loan transaction. In addition, in facilitating transactions  
6 between Tandy and the Holmans and Tandy and Schultz, the Accused had a duty  
7 to obtain terms most favorable to each party. This caused potential injury to the  
8 Holmans, Schultz and Tandy, in the form of divided loyalties and less than  
9 objective advice.

10 d. **Aggravating Factors.** Aggravating factors include:

- 11 1. There are multiple offenses. *Standards* § 9.22(d); and
- 12 2. The Accused has substantial experience in the practice of law, having been  
13 admitted in California in 1970, in Washington in 1972 and in Oregon in  
14 1977. *Standards* § 9.22(i).

15 e. **Mitigating Factors.** Mitigating factors include:

- 16 1. The Accused has no prior record of discipline. *Standards* § 9.32(a);
- 17 2. The Accused did not act dishonestly. *Standards* § 9.32(b);
- 18 3. The Accused has been cooperative in these proceedings. *Standards* §  
19 9.32(e); and
- 20 4. The Accused has stated remorse for his conduct. *Standards* § 9.32(i).

21 13.

22 The *Standards* indicate that a suspension is generally appropriate when a lawyer  
23 knowingly engages in a conflict of interest, causing injury or potential injury to a client.  
24 *Standards* § 4.32. A reprimand is generally appropriate when a lawyer is negligent in  
25 determining whether the representation of a client may be materially affected by the lawyer's

PAGE 5 – STIPULATION FOR DISCIPLINE – CLAYTON PATRICK

1 own interests and causes injury or potential injury to a client. *Standards* § 4.33. Given that the  
2 applicable mitigating factors outweigh those in aggravation, the *Standards* suggest that a short  
3 suspension would be appropriate for the Accused's misconduct.

4 14.

5 Oregon case law is in accord for actual or obvious multiple-client conflicts of interests.  
6 *See, e.g., In re Hockett*, 303 Or 150, 164, 734 P2d 877 (1987) (single violation of DR 5-105, by  
7 itself, justifies a 30-day suspension); *In re Wyllie*, 331 Or 606, 19 P3d 338 (2001) (4-month  
8 suspension for failure to disclose conflict and fee issues); *In re Robertson*, 290 Or 639, 624 P2d  
9 603 (1981) (30-day suspension for representing buyers and sellers in transaction).

10 Oregon cases have also held that a suspension is appropriate for personal interest  
11 conflicts. *See e.g., In re Wittemyer*, 328 Or 448, 980 P2d 148 (1999) (4-month suspension for  
12 violation of conflict rules where attorney had attorney-client relationship with individual  
13 regarding loan transaction and loan collection in which he had an interest); *In re Gildea*, 325 Or  
14 281, 936 P2d 975 (1997) (120-day suspension for violations of DR 5-101(A) and others, for  
15 failing to obtain consent from client after full disclosure for transfer of title to client's vehicle to  
16 the attorney's professional corporation).

17 15.

18 Consistent with the *Standards* and Oregon case law, the parties agree that the Accused  
19 shall be suspended for 30 days for violations of DR 5-101(A) and DR 5-105(E) (2 counts), the  
20 sanction to be effective May 25, 2006.

21 ///

22 ///

23 ///

24 ///

25 ///

PAGE 6 – STIPULATION FOR DISCIPLINE – CLAYTON PATRICK

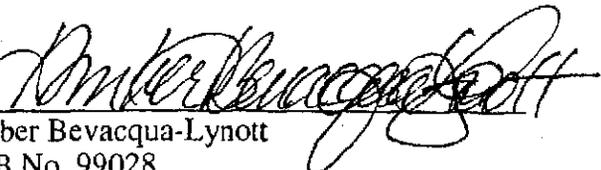
This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the State Professional Responsibility Board (SPRB). If approved by the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 3rd day of March, 2006.

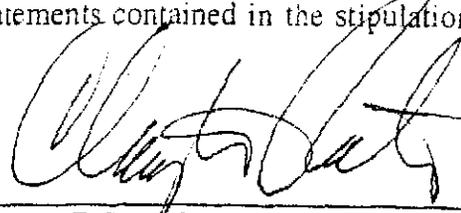
  
Clayton C. Patrick  
OSB No. 77298

EXECUTED this 3rd day of March, 2006.

OREGON STATE BAR

By:   
Amber Bevacqua-Lynott  
OSB No. 99028  
Assistant Disciplinary Counsel

1 I, Clayton C. Patrick, being first duly sworn, say that I am the Accused in the above-  
2 entitled proceeding and that I attest that the statements contained in the stipulation are true and  
3 correct as I verily believe.



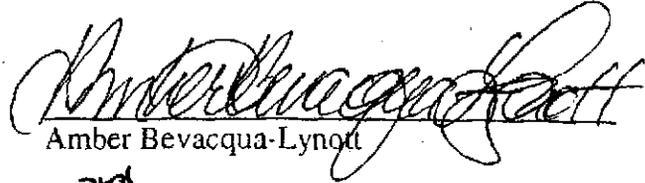
4 Clayton C. Patrick

5  
6 Subscribed and sworn to before me this 3<sup>rd</sup> day of March, 2006.



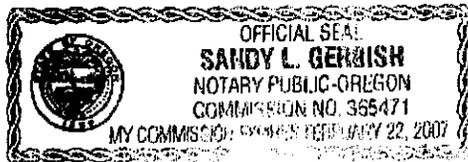
7  
8 Sandy L. Gerbish  
9 Notary Public for Oregon  
My commission expires: 2/22/07

10  
11 I, Amber Bevacqua-Lynott, being first duly sworn, say that I am Assistant Disciplinary  
12 Counsel for the Oregon State Bar and that I attest that I have reviewed the foregoing Stipulation  
13 for Discipline and that the sanction was approved by the SPRB for submission to the  
14 Disciplinary Board on the 19<sup>th</sup> day of November, 2005.



15 Amber Bevacqua-Lynott

16 Subscribed and sworn to before me this 3<sup>rd</sup> day of March, 2006.



17  
18 Sandy L. Gerbish  
19 Notary Public for Oregon  
My commission expires: 2/22/07

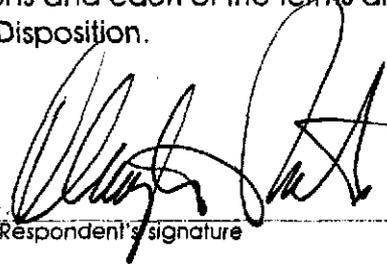
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In the Matter of CLAYTON PATRICK	Case number(s): 06-J-12565
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### SIGNATURE OF THE PARTIES

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, Conclusions of Law and Disposition.

8-3-06  
Date

  
Respondent's signature

CLAYTON PATRICK  
Print name

Date

Respondent's Counsel's signature

Print name

8-07-06  
Date

  
Deputy Trial Counsel's signature

ELI D. MORGENSTERN  
Print name

(Do not write above this line.)

In the Matter of  CLAYTON PATRICK	Case number(s):  06-J-12565
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## ORDER

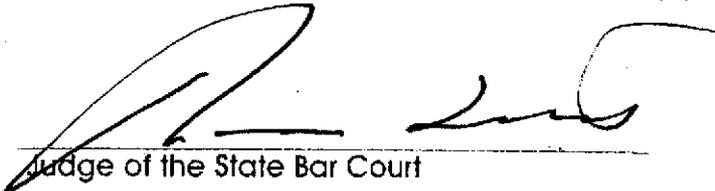
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates 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. (See rule 135(b), Rules of Procedure.) The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)

8-18-06

Date

  
Judge of the State Bar Court

**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 August 22, 2006, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION  
AND ORDER APPROVING**

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

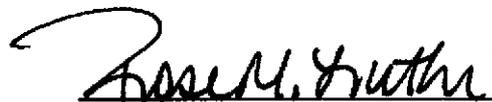
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**CLAYTON C. PATRICK, ESQ.**  
**1030 SW. JEFFERSON ST STE 530**  
**PORTLAND OR 97201-3467**

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

**ELI MORGENSTERN, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **August 22, 2006**.



\_\_\_\_\_  
**Rose M. Luthi**  
Case Administrator  
State Bar Court