

(Do not write above this line.)

<p><b>State Bar Court of California</b>  <b>Hearing Department</b>  <b>Los Angeles</b></p>		<p>kwiktag® 035 131 740</p> 
<p>Counsel For The State Bar</p> <p><b>Timothy G. Byer, DTC</b>  <b>1149 So. Hill St.</b>  <b>Los Angeles, CA 90015</b></p> <p>Bar # <b>172472</b></p>	<p>Case Number (s)  <b>08-O-12620</b></p> <p style="text-align: center; font-size: 2em; opacity: 0.5;">PUBLIC MATTER</p>	<p>(for Court's use)</p> <p style="text-align: center; font-size: 1.5em;"><b>FILED</b></p> <p style="text-align: center;"><b>SEP 09 2010</b> </p> <p style="text-align: center;"><b>STATE BAR COURT</b>  <b>CLERK'S OFFICE</b>  <b>LOS ANGELES</b></p>
<p>Counsel For Respondent</p> <p><b>Arthur L. Margolis</b>  <b>2000 Riverside Drive</b>  <b>Los Angeles, CA 90039-3758</b></p> <p>Bar # <b>57703</b></p>	<p>Submitted to: <b>Settlement Judge</b></p>	
<p>In the Matter Of:  <b>Colin C. Swainston</b></p> <p>Bar # <b>150761</b></p> <p>A Member of the State Bar of California          (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND          DISPOSITION AND ORDER APPROVING</p> <p><b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

**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 **December 4, 1990**.
- (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 consists of **9** pages, not including 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) 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.

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

- costs added to membership fee for calendar year following effective date of discipline.
- costs to be paid in equal amounts prior to February 1 for the following membership years:  
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- costs entirely waived

**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. **See Attachment, Aggravating Circumstances."**
- (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. **See Attachment, "Aggravating Circumstances."**
- (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. **See Attachment, "Mitigating Circumstances."**
- (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**

**D. Discipline:**

- (1)  **Stayed Suspension:**
  - (a)  Respondent must be suspended from the practice of law for a period of **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:

The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent is placed on probation for a period of **2 years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

**E. Additional Conditions of Probation:**

- (1)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2)  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.
- (3)  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.
- (4)  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.

- (5)  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.
- (6)  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.

- 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.
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- (6)  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.)

- (7)  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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8)  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.
- (9)  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 within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2)  **Other Conditions:**

Attachment language (if any):

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

IN THE MATTER OF: COLIN C. SWAINSTON

CASE NUMBER: 08-O-12620

### **WAIVER OF RIGHT TO FILING OF NOTICE OF DISCIPLINARY CHARGES:**

The parties waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

#### **A. FACTS AND CONCLUSIONS OF LAW:**

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

#### Facts:

1. On November 1, 2005, Simon Chantharath employed Respondent to represent him in a dispute between Chantharath and his landlord over a commercial real estate lease. Respondent told Chantharath that he would first attempt to settle the dispute through arbitration, and failing that, would draft and file a complaint in civil court within two to three months.
2. After employing Respondent, Chantharath directed his landlord, Hacienda Partners, Inc., to contact Respondent to discuss the lease dispute with Respondent. Between November 1, 2005, and March 23, 2006, Chantharath forwarded to Respondent all correspondence Chantharath received from Hacienda Partners and/or the landlord's agents, which Respondent received, and requested Respondent contact Hacienda Partners and/or their agents to negotiate a resolution to the dispute. Respondent never conducted any negotiations with Hacienda Partners and/or their agents.
3. On March 23, 2006, Respondent met with Chantharath. Despite Respondent's representation to Chantharath that he would draft the complaint within two to three months of his employment, Respondent did not have a draft complaint at this meeting for Chantharath's review. Chantharath implored Respondent to begin working on his matter, as the failure to resolve the lease situation was impacting Chantharath's ability to make business decisions.
4. On June 10, 2007, Chantharath received notice from Hacienda Partners of another in a series of commercial rent increases. Chantharath called Respondent seeking a meeting, and Respondent agreed to meet with him at a local restaurant. When they met, Respondent again did not have a draft complaint at this meeting for Chantharath's review, which led Chantharath to believe that Respondent had still not begun to prepare Chantharath's complaint. Chantharath informed Respondent that he planned to accept the rental increase proposed by Hacienda Partners. Respondent never presented a draft complaint for Chantharath to review, nor filed any such complaint in court.

5. In his correspondence with a State Bar investigator, Respondent contended that he had indeed prepared a "draft complaint" (hereinafter "Backdated Complaint") on Chantharath's behalf, and attached to his correspondence what Respondent contended was a copy of that complaint, which Respondent contended he had presented to Chantharath in their March 23, 2006 meeting. The State Bar investigator noticed that it was printed on a Judicial Council form that was approved on January 1, 2007. The State Bar requested that Respondent submit a declaration swearing under penalty of perjury that he had prepared that draft complaint prior to March 23, 2006.

6. On December 22, 2008, Respondent prepared and submitted to a former employee ("Paralegal") a declaration for Paralegal's signature. In that declaration, which Paralegal then signed under the penalty of perjury, Paralegal swore that the Backdated Complaint, a copy of which was attached to his declaration, was drafted for Chantharath in February 2006 and presented to Respondent for Respondent's review at that time. At the time Respondent obtained Paralegal's signature on the declaration, Respondent intentionally concealed from him the fact that the Backdated Complaint was not the same document described in the declaration (being, as it was, on a Judicial Council form that was not approved until nearly a year later). Respondent forwarded Paralegal's declaration to the State Bar on December 22, 2008.

7. The State Bar had requested a declaration from Respondent that the Backdated Complaint had been prepared prior to the March 23, 2006 meeting; Respondent had, instead, forwarded a declaration from Paralegal. The State Bar requested that Respondent address the Backdated Complaint in his own declaration. On February 24, 2009, Respondent sent to the State Bar a declaration in which Respondent swore under the penalty of perjury that the Backdated Complaint was "in the form of" a draft complaint Respondent claimed to have presented to Chantharath for his review in March 2006. Respondent knew, or was grossly negligent in not knowing, that his statement that the Backdated Complaint was "in the form of" a draft complaint Paralegal had prepared for Chantharath's review in March 2006 was false at the time it was made, given that the Backdated Complaint was created after January 1, 2007. Respondent also knew, or was grossly negligent in not knowing, that his statement that a draft complaint had been presented to Chantharath for his review in March 2006 was false, given that he had never presented a draft complaint to Chantharath for his review.

#### Legal Conclusions:

8. By not conducting any negotiations with Hacienda Partners and/or their agents toward a resolution to Chantharath's dispute, and by not presenting to Chantharath a draft complaint for his review nor filing any complaint for Chantharath in court, Respondent intentionally, repeatedly, or recklessly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).

9. By preparing and submitting to Paralegal a declaration, under the penalty of perjury, that the Backdated Complaint was created in February 2006, while concealing from Paralegal the fact that the Backdated Complaint was not the same document described in the declaration, Respondent committed an act or acts involving moral turpitude, dishonesty, or corruption, in willful violation of Business & Professions Code, section 6106.

10. By intentionally misrepresenting to the State Bar, in his declaration dated February 24, 2009, that the Backdated Complaint was "in the form of" the declaration Paralegal had prepared for Chantharath's review

in March 2006, Respondent committed an act or acts involving moral turpitude, dishonesty, or corruption, in willful violation of Business & Professions Code, section 6106.

Aggravating Circumstances:

Harm: Respondent's inaction on the client's case against his lessor forced the client to acquiesce to the lessor's lease terms.

Multiple Acts of Misconduct: Respondent committed three separate acts of misconduct: one failure to perform with competence, and two separate acts of moral turpitude.

Mitigating Circumstances:

Although the misconduct is serious, Respondent has had no prior discipline in the 19 years he has practiced law.

**AUTHORITIES SUPPORTING RECOMMENDED DISCIPLINE:**

Standards:

Standard 2.3 provides that “[c]ulpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member’s acts within the practice of law.”

**COSTS:**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed him that, as of March 11, 2010, the costs in this matter are \$1,983.00. Respondent further 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.

(Do not write above this line.)

In the Matter of Colin C. Swainston	Case number(s): 08-O-12620
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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 Fact, Conclusions of Law and Disposition.

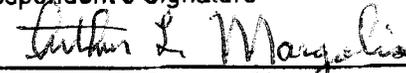
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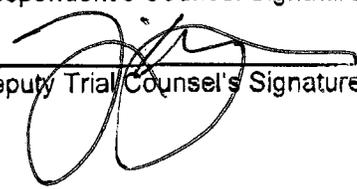
8.23.10  
Date

  
Respondent's Signature

Colin C. Swainston  
Print Name

  
Respondent's Counsel Signature

Arthur L. Margolis  
Print Name

  
Deputy Trial Counsel's Signature

Timothy G. Byer  
Print Name



(Do not write above this line.)

In the Matter Of <b>COLIN C. SWAINSTON</b>	Case Number(s): <b>08-O-12620</b>
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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 Stipulation has two pages numbered as page 4. Delete the second page 4, including the "and until" standard 1.4(c)(ii) condition in the Stayed Suspension, as it is unnecessary. (In the Matter of Luis (Review Dept. 2004) 4 Cal. State Bar Rptr. 737.)

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 9.18(a), California Rules of Court.)**

9-8-10  
Date

  
Richard A. Honn  
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 September 9, 2010, 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:

ARTHUR LEWIS MARGOLIS  
MARGOLIS & MARGOLIS LLP  
2000 RIVERSIDE DR  
LOS ANGELES, CA 90039

- by certified mail, No. \_\_\_\_\_, with return receipt requested, through the United States Postal Service at \_\_\_\_\_, California, addressed as follows:

- by overnight mail at \_\_\_\_\_, California, addressed as follows:

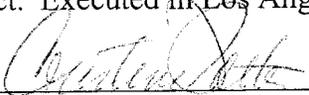
- by fax transmission, at fax number \_\_\_\_\_. No error was reported by the fax machine that I used.

- By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Timothy G. Byer, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 9, 2010.

  
\_\_\_\_\_  
Cristina Potter  
Case Administrator  
State Bar Court