

**ORIGINAL**

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**State Bar Court of California  
Hearing Department  
Los Angeles**

<p>Counsel For The State Bar</p> <p><b>ELINA KREDITOR DEPUTY TRIAL COUNSEL 1149 SOUTH HILL STREET, 5<sup>TH</sup> FL. LOS ANGELES, CA 90015-2299 TELEPHONE: (213) 765-1714 FAX: (213) 765-1319</b></p> <p>Bar # <b>250641</b></p>	<p>Case Number (s) <b>09-H-15878</b></p> <p align="center"><b>PUBLIC MATTER</b></p> <p align="center"><b>FILED</b></p> <p align="center">MAR 10 2010</p> <p align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>	<p>(for Court's use)</p>
<p>Counsel For Respondent</p> <p><b>SUSAN MARGOLIS MARGOLIS &amp; MARGOLIS 2000 Riverside Dr. Los Angeles, CA 90039 (323) 953-8996</b></p> <p>Bar # <b>104629</b></p>	<p>Submitted to: <b>Settlement Judge</b></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>	
<p>In the Matter Of: <b>MARK S. SIMONIAN</b></p> <p>Bar # <b>96969</b></p> <p>A Member of the State Bar of California (Respondent)</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 **January 22, 1981**.
- (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".

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- (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: **two billing cycles following the effective date of discipline.**  
(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 **02-O-15048**
  - (b)  Date prior discipline effective **July 9, 2008.**
  - (c)  Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code Section 6068(a); Business and Professions Code Section 6068(i)**
  - (d)  Degree of prior discipline **Private Repeal imposed following Respondent's completion of the State Bar Court's ADP program.**
  - (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.
- (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.

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- (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**

#### D. Discipline:

(1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of **one 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 **two 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,

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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.
- (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 TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF: MARK S. SIMONIAN

CASE NUMBER(S): 09-H-15878

**FACTS AND CONCLUSIONS OF LAW**

Mark S. Simonian ("Respondent") admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

**I. Facts**

1. On July 8, 2005, Respondent entered into a stipulation regarding facts, conclusions of law, and disposition in State Bar court case no. 02-O-15048.
2. On October 13, 2005, the State Bar court lodged its Confidential Statement of Alternative Dispositions and Orders setting forth the recommended discipline if Respondent successfully completed or was terminated from the court's ADP program. Thereafter, Respondent successfully completed the court's ADP program.
3. On June 3, 2008, the State Bar court issued its Decision and Discipline Order ("the Order") imposing upon Respondent a private reproof with conditions to be followed for a period of two years after the effective date of the reproof. The Order and the private reproof became effective on July 9, 2008.
4. The terms and conditions attached to the private reproof required the Respondent to provide proof of passage of the Multistate Professional Responsibility Examination (MPRE) to the Office of Probation ("Probation") within one year after the effective date of the reproof, or by July 9, 2009.
5. The terms and conditions attached to the private reproof required the Respondent to provide proof of attendance at a session of the Ethics School and passage of the test given at the end of that session to Probation within one year after the effective date of the reproof, or by July 9, 2009.
6. The terms and conditions attached to the private reproof required the Respondent to submit quarterly reports to Probation on each January 10, April 10, July 10 and October 10 of the reproof period, certifying under penalty of perjury whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter.
7. Respondent did not submit proof of passage of the MPRE to Probation by July 9, 2009.
8. Respondent did not submit proof of attendance of a session of the Ethics School and passage of the test given at the end of that session to Probation by July 9, 2009.

9. Respondent did not submit Quarterly Reports due by October 10, 2008; January 10, 2009; April 10, 2009; July 10, 2009; October 10, 2009; and January 10, 2010.

## **II. Conclusions of Law**

By not submitting proof of passage of the MPRE or of attendance at a session of Ethics School by July 9, 2009, and by not submitting quarterly reports by the due dates of October 10, 2008; January 10, 2009; April 10, 2009; July 10, 2009; October 10, 2009; and January 10, 2010, Respondent failed to comply with the conditions attached to a private reproof administered by the State Bar, in willful violation of rule 1-110 of the Rules of Professional Conduct.

### **PENDING PROCEEDINGS**

The disclosure date referred to, on page 2, paragraph A(7), was February 17, 2010.

### **COSTS OF DISCIPLINARY PROCEEDINGS**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 17, 2010, the costs in this matter are \$3,530.00. 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.

### **MPRE AND ETHICS SCHOOL CONDITIONS**

With respect to the Ethics School condition on page five (5) of this stipulation, Respondent's successful completion of Ethics School after execution of this stipulation, but prior to the effective date of the discipline herein, shall satisfy this condition.

With respect to the MPRE condition on page five (5) of this stipulation, Respondent's successful passage of the MPRE after execution of this stipulation, but prior to the effective date of the discipline herein, shall satisfy this condition.

### **AUTHORITIES SUPPORTING DISCIPLINE**

#### **A. Standards**

Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct ("Standard(s)") provides that the primary purpose of discipline is the protection of the public, the courts and legal profession; maintenance of high professional standards; and the preservation of public confidence in the legal profession.

Standard 2.9 provides that a willful violation of rule 1-110 of the Rules of Professional Conduct, shall result in suspension.

Standard 1.7(a) provides that where a member has previously been found culpable of any misconduct, the degree of discipline imposed shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it

was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

B. Case law

In *In re Silverton* (2005) 36 Cal. 4th 81, 92, the California Supreme Court held that the Standards for Attorney Sanctions for Professional Misconduct are entitled to “great weight” and the Court will “not reject a recommendation arising from the Standards unless [it has] grave doubts as to the propriety of the recommended discipline.” The Standards are not binding but “they promote the consistent and uniform application of disciplinary measures.” (Id.) The “presumptively appropriate level of discipline” for any misconduct is as set forth in the standards (See *Morgan v. State Bar* (1990) 51 Cal. 3d 598, 607).



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In the Matter of <b>MARK S. SIMONIAN</b>	Case number(s): <b>09-H-15878</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 Fact, Conclusions of Law and Disposition.

02-23-2010

Date

*Mark S. Simonian*

Respondent's Signature

MARK S. SIMONIAN

Print Name

2/23/10

Date

*Susan Margolis*

Respondent's Counsel Signature

SUSAN MARGOLIS

Print Name

2/24/10

Date

*Elina Kreditor*

Deputy Trial Counsel's Signature

ELINA Kreditor

Print Name

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In the Matter Of <b>MARK S. SIMONIAN</b>	Case Number(s): <b>09-H-15878</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 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.)**

3-9-10  
Date

  
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 10, 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:

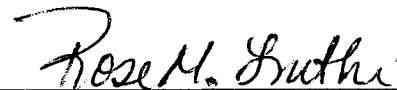
SUSAN LYNN MARGOLIS, ESQ.  
MARGOLIS & MARGOLIS LLP  
2000 RIVERSIDE DR  
LOS ANGELES, CA 90039

MARK SITRAK SIMONIAN, ESQ.  
500 S GRAND AVE 19TH FL  
LOS ANGELES, CA 90071

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

ELINA KREDITOR, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 10, 2010.



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Rose Luthi  
Case Administrator  
State Bar Court