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State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		
Counsel For The State Bar Treva R. Stewart Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2452 Bar # 239829	Case Number(s): 12-O-11143-PEM 12-O-11144	For Court use only <div style="text-align: center; font-size: 1.2em; font-weight: bold;">PUBLIC MATTER</div> <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 1.2em; font-weight: bold;">AUG 13 2013</div> STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Thomas Melvin Swihart P.O. Box 1655 Middletown, CA 95461 (510) 843-2750 Bar # 98564	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: THOMAS MELVIN SWIHART Bar # 98564 A 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 12, 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 13 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."



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- (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):
 - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: three billing cycles following the effective date of the Supreme Court order. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are 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.
- (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 "Additional Facts Re Aggravating Circumstances", attachment page 11.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (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. See "Additional Facts Re Mitigating Circumstances", attachment page 11.

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- (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:

See page 10.

D. Discipline:

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

(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of six months.
- 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: See "Satisfaction of Sanction Order", at page 6 under "Other Conditions".

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 the 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.
- (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: .

- (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:
 - Substance Abuse Conditions
 - Medical Conditions
 - Law Office Management Conditions
 - 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 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.

No MPRE recommended. Reason:

- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, 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 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, 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: AS AN ADDITIONAL CONDITION OF PROBATION:** Respondent must pay to the U.S. Treasury, or otherwise satisfy, the \$5,200 in sanctions imposed against him in case no. 10-41570 RN 13 and must provide satisfactory proof of payment or satisfaction to the Office of Probation. Respondent will remain actually suspended until he pays, resolves or otherwise satisfies the sanctions and provides satisfactory proof of payment or satisfaction to the Office of Probation.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF:

THOMAS MELVIN SWIHART

CASE NUMBERS:

12-O-11143; 12-O-11144

FACTS AND CONCLUSIONS OF LAW.

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.

Case No. 12-O-11143 (State Bar Investigation)

FACTS:

1. Shortly before August 21, 2009, Azad Amiri ("Amiri") hired Respondent to file a chapter 13 bankruptcy petition on his behalf.
2. On August 21, 2009, Respondent filed a chapter 13 bankruptcy petition on behalf of Amiri, case no. 09-47743 EDJ 13. Respondent did not file all of the required forms and schedules at the time of filing or at any time thereafter. On November 4, 2009, case no. 09-47743 EDJ 13 was dismissed.
3. On February 12, 2010, Respondent filed a second chapter 13 petition on behalf of Amiri, case no. 10-41570 RN 13. Respondent did not file all of the required forms and schedules at the time of filing or at any time thereafter.
4. Two gas stations were listed as Amiri's only property in case no. 09-47743 EDJ 13. A gas station different from the two listed in case no 09-47743 EDJ 13, was listed as Amiri's sole property in case no. 10-41570 RN 13.
5. The petitions filed by Respondent in case nos. 09-47743 EDJ 13 and 10-41570 RN 13 were skeleton petitions, filed for the sole purpose of avoiding pending foreclosure sales of properties Amiri claimed to own.
6. In filing each petition, Respondent certified to the court that he had performed a reasonable inquiry into the factual contentions included therein. This certification was false and Respondent was grossly negligent in not knowing that it was false at the time he made it.
7. In May 2010, it was determined that at the time Respondent filed the petition in case no. 10-41570 RN 13, Amiri was not the owner of the property listed in the schedule.
8. Respondent was grossly negligent in not knowing that Amiri was not the owner of the property listed in case no. 10-41570 RN 13 at the time he filed the petition.
9. On May 28, 2010, the chapter 13 trustee filed a Motion to Dismiss case no. 10-41570 RN 13 based on, inter alia, inconsistencies with information provided in case no. 09-47743 EDJ 13, omissions,

material misrepresentations of Amiri's financial situation and the impermissible filing of two petitions within six months.

10. On August 5, 2010, the court granted the chapter 13 trustee's Motion to Dismiss with prejudice, found that Respondent had presented to the court a petition for an improper purpose and ordered Respondent to pay sanctions of \$5, 200 to the United States Treasury by October 4, 2011.

11. The order was served on Respondent by mail on August 11, 2010. Respondent received the order shortly thereafter.

12. Respondent did not pay the sanctions by October 4, 2011, or at anytime thereafter. Nor did he seek any relief from the sanctions order. To date, the sanctions have not been paid.

13. Respondent never reported to the State Bar, the imposition of judicial sanctions against him in case no. 10-41570 RN 13.

CONCLUSIONS OF LAW:

14. By filing skeleton petitions in case nos. 09-47743 EDJ13 and 10-41570 RN 13 for the sole purpose of avoiding foreclosures and by certifying to the court that the property listed in case no. 10-41570 RN 13 was owned by Amiri when that certification was false and Respondent was grossly negligent as to its falsity at the time he made it, Respondent committed acts involving moral turpitude, dishonesty or corruption in violation of B&P section 6106

15. By failing to pay the sanctions by October 4, 2011, or at anytime thereafter, or seek any relief therefrom, Respondent wilfully disobeyed or violated an order of the court requiring him to do or forbear an act connected with or in the course of Respondent's profession which he ought in good faith to do or forbear in violation of B&P section 6103.

16. By not reporting to the State Bar the court's August 5, 2010 order imposing sanctions against him, Respondent failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time he had knowledge of the imposition of any judicial sanctions against him, Respondent wilfully violated B&P section 6068(o)(3).

Case No. 12-O-11144 (State Bar Investigation)

FACTS:

17. Shortly before February 2, 2007, Carolyn Bell ("Bell") hired Respondent to file a chapter 13 bankruptcy petition on her behalf.

18. On February 2, 2007 and March 12, 2007, Respondent filed chapter 13 bankruptcy petitions on behalf of Bell, case numbers 07-40331 EDJ 13 and 07-40733 RN 13, respectively.

19. Respondent did not file all of the required forms and schedules at the time of filing the petitions in case nos. 07-40331 EDJ 13 and 07-40733 RN 13, or at any time thereafter.

20. The petitions filed by Respondent in case nos. 07-40331 EDJ 13 and 07-40733 RN 13 were "skeleton" petitions, filed for the sole purpose of avoiding pending foreclosure sales of Bell's properties.

A "skeleton" petition is a bare filing in that it does not include required forms and schedules, which, if not subsequently filed in a timely fashion will result in dismissal of the petition.

21. The petitions in case nos. 07-40331 EDJ 13 and 07-40733 RN 13 were dismissed on February 28, 2007 and March 20, 2007, respectively.

22. Between April 12, 2007 and December 8, 2008, Bell, acting in pro per, filed three additional chapter 13 bankruptcy petitions and one chapter 7 bankruptcy petition as follows: case numbers 07-41112 TCH 13 (filed April 12, 2007), 07-41487 EDJ 13 (filed May 16, 2007), 07-41802 EDJ 13 (filed June 13, 2007), and 08-47268 TCH 7 (filed December 8, 2008).

23. The petition filed by Bell on June 13, 2007 in case no. 07-41802 EDJ 13 was dismissed on August 20, 2007, on motion of the trustee. The court ordered Bell to be sanctioned \$5,000 if she filed another bankruptcy petition without prior permission of the court.

24. On April 14, 2009, Respondent filed a chapter 7 bankruptcy petition on behalf of Bell, case number 09-43072 EDJ 7. At the time Respondent filed case no. 09-43072 EDJ 7, Respondent knew that Bell had previously been barred from filing further petitions. Respondent was grossly negligent in not knowing that the court's permission was required prior to any further filings. Respondent did not obtain prior permission of the court to file case no. 09-43072 EDJ 7.

25. Respondent indicated on the petition in case no. 09-43072 EDJ 7 that no bankruptcies had been filed in the past eight years. In truth and in fact, six bankruptcies had previously been filed on behalf of Bell. At the time of filing the petition, Respondent knew that at least two petitions had been filed on behalf of Bell because he had filed them (07-40331 EDJ 13 and 07-40733 RN 13.) Respondent was grossly negligent in not knowing that another four petitions had been filed.

26. Included in the schedules filed by Respondent in case no. 09-43072 EDJ 7 was Schedule F – Creditors Holding Unsecured Nonpriority Claims. One of the creditors identified in Schedule F was Citi Residential Lending, with a claim of \$403,807.55 on foreclosed property known as 185 to 187 25th Street, San Pablo, California ("25th Street property").

27. On August 26, 2009, in case no. 09-43072 EDJ 7, Bell's petition was granted and her debt successfully discharged, including the claim of Citi Residential Lending.

28. On November 9, 2009, Respondent filed a chapter 7 petition, case no. 09-70696 EDJ 7, and a chapter 13 petition, case no. 09-70695 RN 13, on behalf of Bell. The petitions were filed for the sole purpose of disrupting the pending sale of the 25th Street property. Respondent did not obtain prior permission of the court to file case no. 09-70696 EDJ 7 or case no. 09-70695 RN 13.

29. On November 19, 2009, case no. 09-70696 EDJ 7 was dismissed by the court.

30. On May 19, 2010, the chapter 13 trustee filed a Motion for Sanctions in case no. 09-70695 RN 13, alleging that Respondent "filed a bankruptcy case in direct violation of a court order prohibiting the debtor from filing any further bankruptcy cases." Respondent was served with, and received, the motion shortly after it was filed.

31. On June 10, 2010, the court granted the Motion for Sanctions and ordered Respondent to disgorge a \$2,200 fee he received from Bell and also pay \$2,000 to the U.S. Bankruptcy Court by no

later than July 10, 2010. Respondent was present in court when the motion was granted and sanction order issued.

32. The June 10, 2010 order was served on Respondent by mail on June 18, 2010. Respondent received the order shortly thereafter. Thereafter, Respondent timely paid the sanctions.

33. Respondent never reported to the State Bar the imposition of judicial sanctions against him in case no. 09-70695 RN 13.

CONCLUSIONS OF LAW:

34. By filing skeleton petitions in case nos. 07-40331 EDJ 13 and 07-40733 RN 13 for the sole purpose of avoiding foreclosure sales of Bell's properties; by misrepresenting Bell's prior filings to the court in case no. 09-43072 EDJ 7; and by filing case nos. 09-70696 EDJ 7 and 09-70695 RN 13 for the sole purpose of disrupting the sale of the 25th Street property, Respondent committed acts involving moral turpitude, dishonesty or corruption in violation of Business & Professions Code section 6106.

35. By not reporting the court's June 10, 2010 order imposing sanctions against him to the State Bar, Respondent failed to report to the agency charged with attorney discipline, in writing, within 30 days of the time he had knowledge of the imposition of any judicial sanctions against him, in willful violation of B&P section 6068(o)(3).

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Harm (Std. 1.2(b)(iv)): Respondent filed numerous improper bankruptcy petitions, which wasted judicial resources, required the court to issue sanctions, which Respondent has yet to pay, and caused significant harm to the administration of justice.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

No Prior Discipline (Std. 1.2(e)(i)): Respondent has no prior record of discipline in over 27 years of practice, although the present misconduct is deemed serious. See *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49.

Pre-Trial Stipulation: Respondent is entitled to mitigation for entering into this stipulation of discipline, thereby preserving State Bar resources and demonstrating recognition of wrongdoing. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [mitigation credit given for entering into a stipulation as to facts and culpability].)

Good Character (Std. 1.2(e)(vi)): Respondent has provided 21 letters from a wide range of references. They include four judges, four attorneys, a grand jury foreman, a courtroom clerk, an architect, the owner of a biomedical research laboratory, four friends, three former clients, a business owner, and a real estate broker. Many of the references have known Respondent in excess of 20 years. All of the references acknowledge being made aware of the State Bar's allegations of misconduct, and despite that knowledge, they consistently described Respondent as competent, honest, and ethical. Further, Respondent is credited by one former client with providing extensive pro bono services.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a “process of fixing discipline” pursuant to a set of written principles to “better discharge the purposes of attorney discipline as announced by the Supreme Court.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are “the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.” (*In re Morse* (1995) 11 Cal.4th 184, 205; std. 1.3.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Respondent admits to committing five acts of professional misconduct. Standard 1.6 (a) requires that where a Respondent acknowledges two or more acts of misconduct, and different sanctions are prescribed by the standards that apply to those acts, the sanction imposed shall be the more or most severe prescribed in the applicable standards.

The most severe sanction applicable to Respondent’s misconduct is found in standard 2.3, which applies to Respondent’s filing of skeleton petitions for an improper purpose and making misrepresentations and false certifications in Bell and Amiri’s matters, in violation of B&P section 6106.

Standard 2.3 provides that culpability of a member of an act of moral turpitude or intentional dishonesty toward a court 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.

Here, Respondent’s misconduct is serious and warrants actual suspension. However, his mitigation indicates that disbarment is not warranted. Respondent’s misconduct occurred over a 1-1/2 year period (two months in 2007 and 16 months in 2009). Two of respondent’s acts include violation of B&P section 6106. In the Bell matter, respondent filed three bankruptcy petitions in violation of a court order barring further filings without court permission. He also misrepresented Bell’s prior filings in one petition and failed to file all the required schedules and forms in each of the five petitions he filed for Bell, except one. In the Amiri matter, respondent filed schedules which included properties that were not actually owned by Amiri and made misrepresentations about Amiri’s financial situation. Respondent’s misconduct caused harm to the administration of justice and was directly related to the practice of law.

While there is only one aggravating factor present, Respondent’s misconduct is very serious. Respondent’s dishonesty and filing of improper petitions burdened the bankruptcy court and wasted resources, thereby causing significant harm to the administration of justice.

In mitigation, Respondent had 27 years of discipline free practice at the time the misconduct began. He has also provided evidence of good character supported by 21 letters and declarations.

Case law also supports a period of actual suspension for Respondent's violations of B&P section 6106.

In *Maltman v. State Bar* (1987) 43 Cal.3d 924 the respondent was found to have presented a knowingly false order to a judicial officer in order to obtain an advantage in the litigation. Respondent also wilfully and in bad-faith disobeyed court orders in violation of B&P section 6106. No mitigating circumstances were found. In aggravation, Maltaman demonstrated a lack of candor and provided disingenuous explanations for his conduct. Maltaman was suspended for five years, stayed, placed on probation for five years and actually suspended for one year.

Like the respondent in *Maltaman*, Respondent's misconduct involved dishonesty and was directly related to the practice of law. Further, Respondent, like Maltaman, engaged in more than one act constituting moral turpitude. But, the lack of candor and disingenuous explanation found in *Maltaman* are absent here.

Considering the extent of respondent's misconduct and the aggravating and mitigating factors, a level of discipline less than that imposed in *Maltaman* is appropriate. A six month suspension comports with the standards, and is adequate to achieve disciplinary goals as set forth in standard 1.6.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 15, 2013, the prosecution costs in this matter are approximately \$8,754.60. 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.

EXCLUSION FROM MCLE CREDIT

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School. (Rules Proc. of State Bar, rule 3201.)

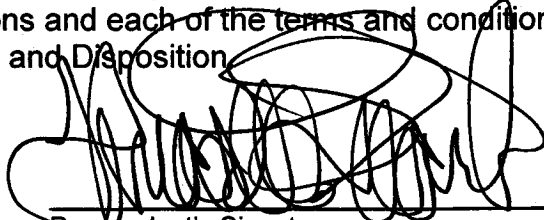
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In the Matter of THOMAS MELVIN SWIHART	Case number(s): 12-O-11143-PEM; 12-O-11144
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SIGNATURE OF THE PARTIES

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.


7/25/13
Date


Respondent's Signature

THOMAS MELVIN SWIHART
Print Name

8/2/13
Date

N/A
Respondent's Counsel Signature


Deputy Trial Counsel's Signature

N/A
Print Name

TREVA R. STEWART
Print Name

(Do not write above this line.)

In the Matter of:
THOMAS MELVIN SWIHART

Case Number(s):
12-O-11143-PEM; 12-O-11144

ACTUAL SUSPENSION ORDER

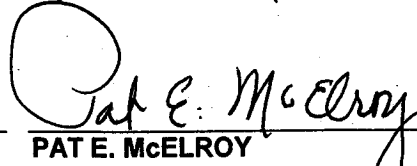
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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 5.58(E) & (F), 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.)**

Date

August 13, 2013


PAT E. McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 San Francisco, on August 13, 2013, 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:

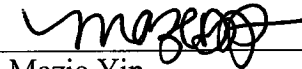
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

THOMAS MELVIN SWIHART
THOMAS M. SWIHART
PO BOX 1655
MIDDLETOWN, CA 95461

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

TREVA STEWART, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 13, 2013.



Mazie Yip
Case Administrator
State Bar Court