

(Do not write above this line.)

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

Counsel For The State Bar  <b>Charles T. Calix</b> <b>Deputy Trial Counsel</b> <b>1149 S. Hill Street</b> <b>Los Angeles, CA 90015</b> <b>(213) 765-1255</b>  Bar # <b>146853</b>	Case Number (s) <b>05-O-04577</b>  <div align="center"><b>PUBLIC MATTER</b></div> <div align="center"><b>FILED</b></div> <div align="center"><b>JUL 20 2009</b></div> <div align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>	(for Court's use)
In Pro Per Respondent  <b>Scott Nunneley Cunningham</b> <b>Law Offices of Scott N. Cunningham</b> <b>211 E. 300 S. Suite 210</b> <b>Salt Lake City, UT 84111</b> <b>(801) 364-1663</b>  Bar # <b>145959</b>	Submitted to: <b>Assigned Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: <b>Scott Nunneley Cunningham</b>  Bar # <b>145959</b>  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 **March 26, 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 **12** 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):
- ☐ 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: **two (2) billing cycles following the effective date of the Supreme Court order.**  
(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.
- (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. **Respondent's failure to supervise his father/Legal Assistant, David Leon Cunningham ("Cunningham"), caused significant financial harm to the client, Carrie Nelson ("Nelson").**
- (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. **Respondent cooperated with Nelson in seeking to return the real property misappropriated by Cunningham, including the real property located in La Quinta and a Porsche Boxster. Respondent also cooperated with the State Bar in providing documents and information during the investigation and in entering into this stipulation.**
- (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. **The delay in this disciplinary proceeding from the filing of the complaint in September of 2005 has prejudiced Respondent by the death of his father and the erosion of Respondent's memory of the events.**
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

- (13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances**

**Respondent has no prior record of discipline since being admitted on March 26, 1990, and the misconduct did not begin until in or about March of 2004.**

**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 **three (3) 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 **ninety (90) 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.
- (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: **Respondent will attend a session of the Ethics School conducted by the Utah State Bar.**
- (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 ~~954~~ 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.

☐ No MPRE recommended. Reason:

- (2) ☒ **Rule ~~955~~ 9.20, California Rules of Court:** Respondent must comply with the requirements of rule ~~955~~ 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 ~~955~~ 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 ~~955~~ 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:** 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 conducted by the Utah State Bar, and passage of the test given at the end of the session.

**ATTACHMENT TO**

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

**IN THE MATTER OF:     SCOTT NUNNELEY CUNNINGHAM**

**CASE NUMBER:            05-O-04577**

Scott Nunneley Cunningham ("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.

**FACTS.**

1. On or about May 27, 1992, Respondent was admitted to the practice of law in the State of Utah, and has resided in Utah since in or about 1995.
2. Respondent is the son of David Leon Cunningham ("Cunningham").
3. On or about January 6, 1964, Cunningham was admitted to the practice of law in the State of California. On or about April 5, 2001, Cunningham's resignation with charges pending was accepted by the Supreme Court of California. Cunningham was never reinstated to the practice of law in California or any other State before his death on or about April 24, 2006.
4. Between in or about March of 2004 and in or about March of 2006, Respondent employed Cunningham as a "legal advisor."
5. At the time that Respondent employed Cunningham, Respondent knew that Cunningham had resigned with charges pending from the State Bar of California.
6. At no time did Respondent serve written notice of his employment of Cunningham on the State Bar.
7. In or about March of 2004, Carrie Nelson ("Nelson") met Cunningham in Palm Springs, California, to discuss legal problems that she was having in California and Utah. Cunningham told Nelson that he had retired from the practice of law but that he worked for his son, Respondent, who was admitted in California and Utah.
8. On or about March 25, 2004, Cunningham faxed a letter on Respondent's letterhead to Nelson enclosing a retainer agreement. The agreement stated that Nelson would pay \$250 per hour for Respondent's services and \$200 per hour for Cunningham's services as a "legal advisor." Nelson received the letter and retainer agreement.
9. On or about March 26, 2004, Nelson signed the retainer agreement employing Respondent to represent her. At or about that time, Nelson paid \$10,000 in advanced fees by personal check made payable to Cunningham. Nelson ultimately employed Respondent to represent her in four matters.

7

10. Although Respondent told Nelson that Cunningham was not a practicing attorney and could not represent her, Respondent never informed Nelson, orally or in writing, that Cunningham had resigned from the State Bar and could not perform specific activities that constituted the practice of law on her behalf.

11. Beginning in or about March of 2004, Respondent allowed Cunningham to establish offices for Respondent's law practice in La Quinta, California, and Sausalito, California, which were listed on Respondent's letterhead. The La Quinta office was located at a residential property owned by Nelson. The Sausalito office was located at a paralegal service. Other than Cunningham, Respondent did not employ any other staff in California.

12. On or about March 9, 2004, Respondent gave attorney David E. Osterloh ("Osterloh") written authorization to make special appearances for Respondent at the instruction, and under the supervision, of Cunningham. Respondent instructed Osterloh to make the special appearances in the presence of Cunningham whenever possible.

13. In or about August of 2004, Cunningham gave legal advice to Nelson that she should transfer her assets to him to protect those assets from her creditors in the matters in which Respondent was representing her. At his direction, Nelson transferred, *inter alia*, the following assets to Cunningham and/or trusts that Cunningham controlled: (a) real property located in La Quinta, California; (b) a Porsche Boxster; and (c) funds exceeding \$187,000.

14. On or about September 2, 2004, Respondent authorized Cunningham to send a letter on behalf of a client on Respondent's letterhead demanding that the opposing party settle a dispute concerning a promissory note. The letter states that "we are business attorneys as well as fierce litigators" and fails to indicate that Cunningham was not an attorney.

15. Between in or about December of 2004 and in or about January of 2005, Cunningham held himself out as admitted to practice law in communications with opposing counsel in one of the four matters in which Respondent represented Nelson.

16. Between in or about March of 2004 and in or about January of 2005, Respondent repeatedly permitted Cunningham to practice law in California on behalf of Respondent, including but not limited to: (a) permitting Cunningham on or about March 25, 2004 to receive a check for \$10,000 for advanced attorneys fees from Nelson that was made payable to Cunningham; (b) permitting Cunningham to hold himself out as admitted to practice law in correspondence and communications with opposing counsel; (c) authorizing Cunningham to prepare, sign, and mail a letters to an opposing party that should not have been prepared or signed by a non-attorney; (d) permitting Cunningham to give instructions to an attorney who was hired to specially appear for Respondent; and (f) permitting Cunningham to supervise an attorney who was hired to specially appear for Respondent.

17. In or about October of 2004, Respondent learned that Cunningham had given legal advice to Nelson that she should transfer her assets to him to protect them from her creditors in the matters in which Respondent was representing her. Thereafter, Respondent took no action to provide legal advice to Nelson regarding the transfer of assets to Cunningham or to prevent Cunningham from taking additional assets from Nelson, and/or material action or effort to cause Cunningham to return the assets to Nelson.



18. In or about March of 2006, Respondent terminated Cunningham from Respondent's employment, instructed Cunningham to destroy all of Respondent's unused letterhead in Cunningham's possession, and instructed Cunningham to refrain from indicating that he had any professional relationship with Respondent.

19. Respondent did not serve written notice on the State Bar that he had terminated Cunningham's employment.

#### **CONCLUSIONS OF LAW.**

20. By failing to serve on the State Bar written notice of his employment of Cunningham in or about March of 2004, Respondent failed to serve upon the State Bar written notice of employment, prior to or at the time of employment, of a person whom Respondent knew or reasonably should have known was a resigned member in willful violation of Rules of Professional Conduct, rule 1-311(D).

21. By failing to inform Nelson in writing that Cunningham had resigned from the State Bar and could not perform specific activities that constituted the practice of law on her behalf, Respondent failed to serve written notice of employment of a person who had resigned from the State Bar upon each client on whose specific matter such person will work which included notice that the person could not perform specific activities that constituted the practice of law in willful violation of Rules of Professional Conduct, rule 1-311(D).

22. By failing to serve written notice on the State Bar that he had terminated Cunningham's employment, Respondent failed to serve upon the State Bar written notice of the termination employment of a person who had resigned in willful violation of Rules of Professional Conduct, rule 1-311(E).

23. By failing to supervise Cunningham, and authorizing and permitting Cunningham to: operate offices for Respondent in California without supervision; receive advanced attorneys fees; prepare, sign, and mail a demand letter; prepare, sign, and mail correspondence that implied that Cunningham was an attorney; hold himself out as admitted to practice law in California; give instructions to an attorney; supervise an attorney; and give legal advice to Nelson about her matters, including but not limited to protecting her assets from judgment, Respondent aided a person or entity in the unauthorized practice of law in willful violation of Rules of Professional Conduct, rule 1-300(A).

24. By failing to take any action after he learned that Nelson had transferred the assets to Cunningham to provide legal advice to Nelson regarding the transfer of assets, to prevent Cunningham from taking additional assets from Nelson, and/or to cause Cunningham to return the assets to Nelson, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence by failing to supervise Cunningham in willful violation of Rules of Professional Conduct, rule 3-110(A).

#### **PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(6), was June 22, 2009.

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

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of June 22, 2009, the prosecution costs in this matter are approximately \$1,983. Respondent

9

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.

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

Standard 1.3 of the "Standards for Attorney Sanctions for Professional Misconduct" ("Standard") provides guidance as to the imposition of discipline and interpretation of specific Standards. It states that the primary purpose of discipline is the protection of the public, the courts and the legal profession.

Standard 2.10 provides that culpability of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

In *In re Morse* (1995) 11 Cal.4<sup>th</sup> 184, 206, the Supreme Court stated the purpose of disciplinary proceedings 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 *In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615, a respondent was found culpable of aiding and abetting the unauthorized practice of law by non-lawyers, sharing legal fees with a non-lawyer, engaging in moral turpitude, and violating the prohibition against failing to perform with competence concerning a matter in which it was established that the respondent permitted a non-attorney to operate a high volume plaintiff personal injury practice in four offices using the respondent's name and license. The non-attorney and/or his staff employed by the non-attorney accepted the clients, evaluated their cases, mailed demand letters, negotiated settlements, prepared distribution sheets, distributed settlement proceeds, and communicated with client without supervision from Respondent or any other attorney. The Review Department suspended respondent for two years stayed, on the condition that he be placed on probation for two years with a one year actual suspension.

In *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 178, a respondent was found culpable of forming a partnership with a non-lawyer, sharing legal fees with the non-lawyer, using the non-lawyer as a "runner" and a "capper," failing to refund unearned fees, and moral turpitude in pervasive capping and illegal payments to third parties. The Review Department suspended respondent for two years stayed, on the condition that he be placed on probation for two years with a six-month actual suspension.

Respondent admits that he failed to supervise Cunningham, which allowed Cunningham to engage in the unauthorized practice of law and cause financial injury to Nelson by causing her to transfer assets to him to allegedly protect them from her creditors. A principle factor in Respondent's misconduct was the fact that Cunningham was Respondent's father, and Respondent did not wish to embarrass or humiliate him by inquiring why he resigned from the State Bar or exercising close supervision over him. Although Nelson transferred assets to Cunningham, Respondent was not involved in advocating the transfers and did not know about them until after the assets had been transferred. After Cunningham's death, Respondent did what he could to restore the assets to Nelson, and transferred the real property located in La Quinta, California and Porsche Boxster to Nelson. The problematic family relationship that caused or significantly contributed to the misconduct has been eliminated by as the Cunningham's death. Consequently, a 90 day actual suspension is appropriate to protect the public, courts, and profession.

10



(Do not write above this line.)

In the Matter Of <b>Scott Nunneley Cunningham</b>	Case Number(s): <b>05-O-04577</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.

Paragraph A (3) is amended to reach "11 pages,  
not including the order."

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.)**

July 16, 2009  
Date

  
Judge of the State Bar Court  
**DONALD F. MILES**

1                   DECLARATION OF SERVICE BY REGULAR MAIL

2  
3                   CASE NUMBER(s): **05-O-04577**

4                   I, the undersigned, over the age of eighteen (18) years, whose business  
5                   address and place of employment is the State Bar of California, 1149 South Hill  
6                   Street, Los Angeles, California 90015, declare that I am not a party to the within  
7                   action; that I am readily familiar with the State Bar of California's practice for collection  
8                   and processing of correspondence for mailing with the United States Postal Service;  
9                   that in the ordinary course of the State Bar of California's practice, correspondence  
10                  collected and processed by the State Bar of California would be deposited with the  
11                  United States Postal Service that same day; that I am aware that on motion of party  
12                  served, service is presumed invalid if postal cancellation date or postage meter date  
13                  on the envelope or package is more than one day after date of deposit for mailing  
14                  contained in the affidavit; and that in accordance with the practice of the State Bar of  
15                  California for collection and processing of mail, I deposited or placed for collection  
16                  and mailing in the City and County of Los Angeles, on the date shown below, a true  
17                  copy of the within

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

20                  in a sealed envelope placed for collection and mailing at Los Angeles, on the date  
21                  shown below, addressed to:

22                                   By United States Mail

23                                   Courtesy Copy By United States Mail

24                                   SCOTT N. CUNNINGHAM  
25                                   211 E. 300 S. SUITE 210  
26                                   SALT LAKE CITY, UTAH 84111

27                  in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

28                                   N/A

29                  I declare under penalty of perjury under the laws of the State of California that the foregoing is  
30                  true and correct. Executed at Los Angeles, California, on the date shown below.

31                  DATED: July 2, 2009

32                  SIGNED: 

33                                   BERNARD PIMENTEL  
34                                   Declarant

## 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 July 20, 2009, 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:

SCOTT N. CUNNINGHAM  
LAW OFFICE OF SCOTT N. CUNNINGHAM  
211 E 300 S STE 210  
SALT LAKE CITY, UT 84111

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

CHARLES CALIX, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 20, 2009.



Rose Luthi  
Case Administrator  
State Bar Court