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State Bar Court of California Hearing Department San Francisco		kwiktag® 018 040 076 
Counsel For The State Bar Treva R. Stewart 180 Howard Street San Francisco, CA 94105 Bar # 239829	Case Number (s) 07-O-10961; 07-O-10755	(for Court's use) PUBLIC MATTER FILED <i>[Signature]</i> NOV 01 2010 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Mark Reichel 455 Capitol Mall, 3 rd Floor, Ste 350 Sacramento, CA 95814 Bar # 155034	Submitted to: Assigned Judge	
In the Matter Of: William Yankey Bar # 176413 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 8, 1995**.
- (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 **14** 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.

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- (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: **three 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 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. **Respondent improperly withheld unearned fees from two clients. Further, Sisemore had to pay Hahn and Offenbacher-Costa for appearances included in the flat fee paid to Respondent and an additional \$9,000 to new counsel to conclude his legal matter.**
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **Respondent has failed to acknowledge the impact and consequences of his behavior on his clients.**
- (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. **Respondent was admitted in 1995 and has no prior discipline.**
- (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, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

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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.
- (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 checked="" 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:**
- SEE STIPULATION ATTACHMENT**

(Do not write above this line.)

Attachment language (if any):
SEE STIPULATION ATTACHMENT

In the Matter of
William Yankey

Case number(s):
07-O-10961; 08-O-10755

A Member of the State Bar

Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Dawna Mitchell	3500	February 1, 2011
James Sisemore	2750	April 1, 2011

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than **June 1, 2011**.

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reproval), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

- b. Respondent has kept and maintained the following:
- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
- i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: William Yankey
CASE NUMBER(S): ET AL. 07-O-10961; 08-O-10755

FACTS AND CONCLUSIONS OF LAW.

Case No. 07-O-10961 - Mitchell

Facts

On January 18, 2005, Earl Lee Mitchell (hereinafter, "Mitchell") hired respondent to represent him in his pending criminal matter, *People v. Mitchell*, case no. 05F00013, filed in Superior Court, County of Sacramento. Mitchell was accused of selling fake drugs ("bunk") in violation of Health and Safety Code, section 11355. Mitchell's wife, Dawna Mitchell, paid respondent the sum of \$12,000 toward a flat fee of \$20,000 for representation through the disposition of the case. Both Dawna Mitchell and Mitchell signed the fee agreement. On January 19, 2005, respondent appeared in Court on Mitchell's behalf, and successfully argued for a reduction of bail.

On May 18, 2005, while out on bail, Mitchell was arrested and charged for another drug related offense, in violation of Health and Safety Code, section 11355, *People v. Mitchell*, case no. 05F04457. Shortly after Mitchell's second arrest, respondent became aware of the second offense. Respondent agreed to represent Mitchell for the second matter as well.

On June 1, 2005, respondent appeared at a status conference in both of the criminal matters on behalf of Mitchell. Respondent advised the court, and the court so noted, that respondent was retained on both matters. The court reset the matter for June 10, 2005. Respondent was present in court and aware of the court's orders. However, respondent failed to appear at the scheduled court appearance on June 10, 2005. Respondent also failed to appear at a subsequently scheduled conference on June 24, 2005.

On June 30, 2005, respondent wrote and mailed a letter to Mitchell. In the letter, respondent advised Mitchell that he owed money according to the fee agreement. The letter did not specify that

respondent was withdrawing from the case. Thereafter, respondent took no action on Mitchell's behalf. Respondent did not contact Mitchell, and respondent did not appear at the subsequently scheduled court conferences on July 8, 2005, July 22, 2005, July 28, 2005, or August 16, 2005. When respondent withdrew from employment, he failed to seek or obtain permission from the Court.

On August 16, 2005, the court appointed the public defender to represent Mitchell.

On September 26, 2005, with the assistance of a public defender, Mitchell entered a plea to case no. 05F04457. Case no. 05F00013 was dismissed pursuant to the plea agreement.

Respondent, in effect, withdrew from employment after June 24, 2005, after notifying Mitchell of his failure to make payment according to the fee agreement. Respondent did not conclude the representation, and therefore failed to earn the \$12,000 fees paid on behalf of Mitchell. Respondent did not refund any of the \$12,000 fees paid on behalf of Mitchell.

Conclusions of Law

By failing to appear on July 8, 2005; July 22, 2005; July 28, 2005; and August 16, 2005, on Mitchell's behalf, respondent failed to perform, in willful, reckless, and repeated violation of Rules of Professional Conduct, rule 3-110(A).

By withdrawing from representing Mitchell on or about June 24, 2005, without notifying or seeking permission from the Court, respondent willfully violated Rules of Professional Conduct, rule 3-700(A)(1).

By failing to refund any portion of the \$12,000 to Mitchell, respondent failed, upon termination of his services, to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

Case No. 08-O-10755 - Sisemore

Facts

On March 1, 2006, James Sisemore (hereinafter "Sisemore") hired respondent to represent him in his pending criminal matters, *People v. Sisemore*, case no. CR02 and later CR99 4799, filed in Superior Court, County of Yolo. These cases were probation violations.

On March 2, 2006, Sisemore's prior counsel, Roger Hahn (hereinafter, "Hahn"), prepared a substitution of attorney to substitute in respondent as the attorney of record. On March 9, 2006,

respondent entered an appearance on behalf of Sisemore. On April 27, 2006, Hahn appeared in Court on behalf of Sisemore, at the request of respondent. Hahn charged Sisemore three hours to prepare for the April 27, 2006 hearing and one hour to attend it, at the rate of \$250 per hour, with a \$50 charge for follow up information from Hahn to respondent after the hearing. On May 21, 2006, Sisemore signed a written contract for a flat fee for professional services. Sisemore agreed to pay respondent \$11,000 for representation in the "criminal action". On July 15, 2006, Sisemore paid respondent \$5,500 toward his fee. (Sisemore had previously paid respondent \$17,900 for his representation).

At the same time that the probation violation matters were pending, Sisemore also had related matters in family court. Sisemore's family law attorney was Thea Offenbacher-Costa (hereinafter, "Offenbacher-Costa"). On August 4, 2006, respondent and Sisemore appeared in court for the hearing on the probation violation. Offenbacher-Costa also appeared in court for Sisemore's family law motion that was before the same Judge. A request for continuance in the criminal matter sought by respondent and/or Offenbacher-Costa, was denied by the court. During the course of the hearing on August 4, 2006, at respondent's insistence, Offenbacher-Costa reluctantly conducted the cross-examination of the complaining witness. Offenbacher-Costa had no prior experience in criminal law matters and had not had any opportunity to prepare for the cross examination. Offenbacher-Costa charged Sisemore seven hours of work on August 4, 2006, at the rate of \$225 an hour, for her services representing Sisemore at the probation revocation hearing.

On August 14, 2006, a non-attorney, Mary Ann Carmazzi, filed a declaration with the court, stating that respondent was unable to attend court on Monday, August 15, 2006 due to an accident.

On August 26, 2006, Sisemore terminated respondent and hired another counsel. Sisemore verbally requested a refund from respondent for the last payment of \$5,500 made on or about July 19, 2006, because respondent failed to represent him at the probation revocation hearing, requiring Sisemore to use Offenbacher-Costa, and later, hire new counsel. Respondent did not earn the \$11,000 flat fee. Respondent failed to fully perform the services as he was retained to do. Respondent failed to refund any fees to Sisemore. At least one-half of the fee of \$5,500, was not earned and should have been refunded.

Conclusions of Law

By failing to attend court on behalf of Sisemore on April 27, 2006, resulting in a direct charge from Hahn to Sisemore for the preparation and court appearance; and by failing to perform at the August 4, 2006 hearing, requiring Offenbacher-Costa to assume the examination of the witness and the completion of the hearing, with resultant charges to Sisemore, respondent failed to perform, in willful, reckless, and repeated violation of Rules of Professional Conduct, rule 3-110(A).

By failing to refund the \$5,500 requested by Sisemore, respondent failed, upon termination of his services, to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

PENDING PROCEEDINGS.

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

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of September 17, 2010, the prosecution costs in this matter are approximately \$5,100. 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.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.4(b)

Harris v. State Bar (1990) 51 Cal.3d 1082

Stuart v. State Bar (1985) 40 Cal.3d 838

Van Slotten v. State Bar (1989) 48 Cal.3d 921

AGGRAVATING CIRCUMSTANCES.

See Stipulation Form.

MITIGATING CIRCUMSTANCES.

See Stipulation Form.

STATE BAR ETHICS SCHOOL.

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

FINANCIAL CONDITIONS.

RESTITUTION. See attached Financial Conditions.

(Do not write above this line.)

In the Matter of William Yankey	Case number(s): 07-O-10961; 08-O-10755
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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.

<u>9/29/10</u> Date	<u>William Yankey</u> Respondent's Signature	<u>William Yankey</u> Print Name
<u>9/29/10</u> Date	<u>Mark Reichel</u> Respondent's Counsel Signature	<u>Mark Reichel</u> Print Name
<u>9/30/10</u> Date	<u>Treva R. Stewart</u> Deputy Trial Counsel's Signature	<u>Treva R. Stewart</u> Print Name

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In the Matter Of William Yankey	Case Number(s): 07-O-10961; 08-O-10755
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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:

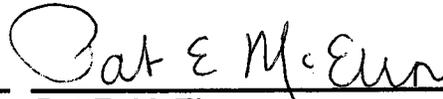
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

1. On page 1, the case no. is 08-O-10755
2. Pages 7-14 are numbered.
3. On page 7, to be clear the restitution is "\$3,500 and \$2,750."

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.)**

November 1, 2010

Date


Pat E. McElroy
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 San Francisco, on November 1, 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 San Francisco, California, addressed as follows:

**MARK J. REICHEL
ATTORNEY AT LAW
455 CAPITOL MALL STE 350
3RD FL
SACRAMENTO, CA 95814**

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

TREVA R. STEWART, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 1, 2010.



Bernadette C.O. Molina
Case Administrator
State Bar Court