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State Bar Court of California  
Hearing Department  
Los Angeles



<p>Counsel For The State Bar</p> <p>Eli D. Morgenstern, DTC Office Of The Chief Trial Counsel 1149 South Hill Street Los Angeles CA 90015-2299 Tel:(213) 765-1486</p> <p>Bar # 190560</p>	<p>Case Number (s) 07-O-12398 08-O-10352</p>	<p>(for Court's use)</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b></p> <p>NOV 16 2010</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Steven L. Merker Merker &amp; McDonald 4725 Mercury Street, Suite 200 San Diego, CA 92111</p>	<p>Submitted to: <b>Assigned Judge</b></p>	
<p>Bar # 99069</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter Of: Raymond Michael Vecchio</p>	<p><b>REPROVAL</b></p>	
<p>Bar # 86657</p> <p>A Member of the State Bar of California (Respondent)</p>	<p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted May 31, 1979.
- (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 \_\_\_\_\_ pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

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- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- costs added to membership fee for calendar year following effective date of discipline (public reproof)
  - case ineligible for costs (private reproof)
  - costs to be paid in equal amounts for the following membership years: three (3) billing cycles following the effective date of discipline 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
- (9) The parties understand that:
- (a)  A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
  - (b)  A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
  - (c)  A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

**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."

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- (2)  **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4)  **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6)  **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (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. See page \_\_ for explanation re: 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. See page \_\_ for explanation re: Candor/Cooperation.
- (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

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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)  **Private reproof (check applicable conditions, if any, below)**
- (a)  Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b)  Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2)  **Public reproof (Check applicable conditions, if any, below)**

#### **E. Conditions Attached to Reproof:**

- (1)  Respondent must comply with the conditions attached to the reproof for a period of One (1) Year.
- (2)  During the condition period attached to the reproof, 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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent

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must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 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 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 conditions attached to the reproof.
- (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)  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 of the effective date of the reproof.
- No MPRE recommended. Reason:
- (11)  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:**

In the Matter of  
**RAYMOND MICHAEL VECCHIO**

Case number(s):  
**07-O-12398, 08-O-10352**

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

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

#### 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 reprobation), 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:                    RAYMOND MICHAEL VECCHIO

CASE NUMBERS:                    07-O-12398, 08-O-10352

**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 Rules of Professional Conduct.

**Case Number 07-O-12398**

**Facts**

1. On June 8, 2006, Thomas Willaredt (“Willaredt”) employed Respondent to represent him in several criminal matters.
2. In September 2006, Willaredt terminated Respondent’s employment and hired attorney James Pasto (“Pasto”) to represent him in his criminal matters.
3. On September 23, 2006, Pasto wrote Respondent a letter requesting that Respondent provide him with Willaredt’s file. Respondent received the letter. At no time did Respondent provide Willaredt or Pasto with Willaredt’s client file.

**Conclusions of Law**

By failing to provide Paso or Willaredt with Willaredt’s file, Respondent willfully violated rule 3-700(D)(1) of the Rules of Professional Conduct.

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**Case Number 08-O-10352**

**Facts**

1. On March 31, 2007, Respondent issued check number 2198 made payable to Carmen Manzo (“Manzo”), Respondent’s client, in the sum of \$2,500, which was drawn upon Respondent’s client trust account at US Bank, account number 1 651 00xx xxxx (“CTA”).<sup>1</sup> The check represented full and final payment of Manzo’s case.

2. Respondent did not maintain a written ledger for the funds that he received on behalf of Manzo and did not maintain a proper written journal for the CTA as required by rule 4-100(B)(3) of the Rules of Professional Conduct. On October 31, 2007, before Manzo presented check number 2198 for payment, Respondent issued a check from the CTA made payable to himself in the sum of \$3,000. Because Respondent did not maintain the proper CTA records, Respondent failed to determine that as of October 31, 2007, Manzo had not presented check number 2198 for payment.

3. On December 14, 2007, Manzo presented check number 2198 for payment. On that date, Respondent did not maintain sufficient funds in the CTA to cover the check. US Bank paid the check against insufficient funds resulting in a negative balance of \$862.18(-). On December 26, 2007, almost immediately after receiving notice of the deficiency, Respondent deposited funds into the CTA in order to reconcile the account.

**Conclusions of Law**

By failing to maintain a written client ledger and a written journal for the CTA, Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct.

By failing to maintain Manzo’s funds in trust, Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct.

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<sup>1</sup> The complete account number has been omitted due to privacy concerns.

## **PENDING PROCEEDINGS.**

The disclosure date referred to, on page 1, paragraph A(7), was October 13, 2010.

## **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed him that as of October 13, 2010, the prosecution costs in this matter are approximately \$3,330. The costs are to be paid in equal amounts prior to February 1 for the following three billing cycles following the effective date of the Supreme Court Order.

If Respondent fails to pay any installment within the time provided herein or as may be modified by the State Bar Court pursuant to section 6086.10, subdivision (c), the remaining balance of the costs is due and payable immediately and enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment unless relief has been granted under the Rules of Procedure of the State Bar of California. (Rules Proc. of State Bar, rule 286.)

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.

## **MITIGATING CIRCUMSTANCES.**

### **1. No Prior Record of Discipline**

Respondent has been a member of the State Bar since May 31, 1979, and has no prior record of discipline. This is a significant mitigating circumstance. (Std. 1.2(e)(i).)

### **2. Candor and Cooperation**

Respondent is entitled to mitigation for entering into this stipulation. (Std. 1.2(e)(v).)

## **AUTHORITIES SUPPORTING DISCIPLINE.**

Standard 1.3 of the Standards for Attorney Sanctions for Professional Conduct ("Standard(s)") provides that the primary purposes 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 Case Number 07-O-12398, Respondent violated rule 3-700(D)(1) of the Rules of Professional Conduct (“rule”)

There is no standard specifically applicable to a violation of rule 3-700(D)(1). Accordingly, the applicable standard is Standard 2.10 of the Standards For Attorney Sanctions for Professional Misconduct (“Standard(s)”). Standard 2.10 provides in pertinent part that, “[C]ulpability of a member . . . 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 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 Case Number 08-O-10352, Respondent violated rule 4-100(A) and rule 4-100(B)(3). Standard 2.2(b) provides that a violation of rule 4-100 that does not result in the wilful misappropriation of entrusted funds shall result in shall result in at least a three month actual suspension.

However, the “nature of the [trust] violation is very important to the propriety of suspension as opposed to reproof.” (*In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17, 30.) For instance, in *Dudugjian v. State Bar* (1951) 52 Cal.3d 1092, 1099-1100, two attorneys were found culpable of violating current rule 4-100(A) by depositing a settlement check into their general account instead of their trust account, and then refusing to honor their client’s demand for the funds in violation of current rule 4-100(B)(4). In ordering the attorneys publicly reproofed, the Supreme Court stated that the attorneys “honestly believed that the [clients] had given them permission to retain the settlement funds.” In addition, the Court stressed that the attorneys “are not likely to commit such misconduct in the future: they have generally exhibited good moral character; their failings here are aberrational.” (*Id.* at p. 1100.)

In *In the Matter of Respondent F, supra*, 2 Cal. State Bar Ct. Rptr. at p. 31, the Review Department found that a “technical misappropriation” resulting from the mishandling of two checks and

a failure to promptly refund unearned advanced fees, along with significant mitigation, warranted a private reproof.

Here, the purposes of attorney discipline are accomplished with a public reproof. Respondent has been a member of the State Bar for over three decades and has no prior record of discipline. Respondent fully acknowledges that he committed the misconduct described herein, and as demonstrated by his many years of discipline free practice, the misconduct appears to be aberrational.

Further, the condition attached to this reproof requiring that Respondent file with each quarterly report a certificate certifying that, among other things, he maintain the trust account records required by rule 4-100(B)(3), protects the public by addressing Respondent's prior lapse in the proper administration of his trust account.

#### **STATE BAR ETHICS AND TRUST ACCOUNT SCHOOLS.**

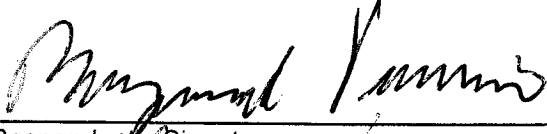

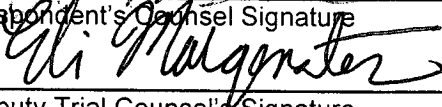
Because Respondent has agreed to attend the State Bar Ethics and Trust Account Schools as part of this stipulation, he may receive Minimum Continuing Legal Education credit upon the satisfactory completion of the courses.

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In the Matter of <b>RAYMOND MICHAEL VECCHIO</b>	Case number(s): <b>07-O-12398, 08-O-10352</b>
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### SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

<u>10/31/10</u> Date	 Respondent's Signature	<u>Raymond Michael Vecchio</u> Print Name
<u>11/2/10</u> Date	 Respondent's Counsel Signature	<u>Steven I. Merker</u> Print Name
<u>11/5/10</u> Date	 Deputy Trial Counsel's Signature	<u>Eli D. Morgenstern</u> Print Name

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In the Matter Of <b>RAYMOND MICHAEL VECCHIO</b>	Case Number(s): <b>07-O-12398, 08-O-10352</b>
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**ORDER**

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

The caption page is modified to note:  
a. A previous stipulation was rejected.  
b. The stipulation consists of 13 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 125(b), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

**Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.**

11/10/10  
Date

  
Judge of the State Bar Court

**DONALD F. MILES**

**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 November 16, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

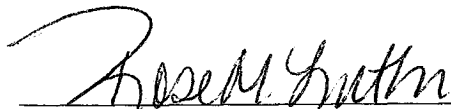
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

STEVEN LEE MERKER  
MERKER & MCDONALD  
4725 MERCURY ST STE 200  
SAN DIEGO, CA 92111

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

ELI MORGENSTERN, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 16, 2010.



Rose Luthi  
Case Administrator  
State Bar Court