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STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

<p>In the Matter of:</p> <p>TIMOTHY J. EVANS, No. 42795,</p> <p>A Member of the State Bar.</p>	<p>) Case No. 08-C-12845; 08-C-12998-LMA</p> <p>)</p> <p>) PARTIES' STIPULATION TO CORRECT</p> <p>) TYPOGRAPHICAL ERROR CONTAINED</p> <p>) IN PREVIOUSLY FILED AND ORDERED</p> <p>) STIPULATION AS TO FACTS,</p> <p>) CONCLUSIONS OF LAW AND</p> <p>) DISPOSITION; REQUEST FOR</p> <p>) CORRECTION <i>NUNC PRO TUNC</i></p> <p>)</p> <p>) Rules of Procedure, rules 271 and 551</p>
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**I. INTRODUCTION**

In March, 2009, the State Bar, by and through Deputy Trial Counsel Tammy M. Albertsen-Murray (hereinafter, "DTC"), and *pro per* respondent Timothy Evans (hereinafter, "respondent") entered into a Stipulation Re Facts, Conclusions Of Law And Disposition (hereinafter, "the Stipulation") to resolve pending disciplinary matters. On March 25, 2009, Hon. Lucy Armendariz of the State Bar Court signed the order approving the disposition and the Stipulation was filed by the State Bar Court on March 26, 2009.

On or about April 20, 2009, it was brought to the attention of the DTC that the Stipulation contained a blank at section E.(1) on page 4 where information was to be inserted.

1 Specifically, the period for which respondent is required to comply with the conditions attached  
2 to the public reproof was inadvertently left blank.

3 The DTC conferred with respondent and with various State Bar employees to discern the  
4 ramifications of and methods to correct this error. The DTC and respondent agreed that the  
5 parties would submit the instant stipulation and request to insert the missing information.

## 6 II. LEGAL ARGUMENT

7 Pursuant to Rules of Procedure of the State Bar of California, this Court is permitted to  
8 modify and/or correct a condition of reproof, particularly where the parties have stipulated to  
9 the modification and/or correction.

10 The March, 2009 Stipulation at issue is a reproof with conditions, as set forth in Rules of  
11 Procedure, rule 271. Rule 271 specifically provides that conditions "effective for a reasonable  
12 time may be attached to reprovals."<sup>1</sup> As part of the Stipulation to resolve all issues, the parties  
13 agreed that the Stipulation would contain conditions compliance with which would remain in  
14 effect for two (2) years. The DTC personally typed the reproof form pages, including the  
15 attachment pages.

16 As indicated and as the Court's own records will reflect, this Court approved the  
17 Stipulation by signature on March 25. The State Bar Court thereafter filed the approved  
18 Stipulation on March 26.

19 Upon discovery of the missing information regarding the period of time with which  
20 respondent is to comply with the conditions attached to the reproof, the parties discussed the  
21 State Bar's previous and ongoing intention that the compliance period is to be two years.  
22 Therefore, the original Stipulation must be modified to correct the error by inclusion of the  
23 missing information.

24 Rule 551 specifically allows for modification and/or corrections of conditions and for the  
25 parties to stipulate thereto. By and through this stipulation, the parties have set forth "specific  
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27 <sup>1</sup> Rule 271 states as follows: "Conditions effective for a reasonable time may be attached to reprovals in  
28 the manner authorized by California Rules of Court, rule 9.19. Motions to modify conditions attached to  
reprovals shall be governed by rules 550-554 (modification or early termination of probation)."

1 facts demonstrating that the requested relief is appropriate” as is required by rule 551.<sup>2</sup> In the  
2 instant matter, this Court - which has retained jurisdiction per rule 551 - is permitted to correct  
3 the Stipulation by including the phrase “two (2) years” at section E.(1) on page 4 of the  
4 Stipulation.

5 It is clearly in the interests of justice to have a finite period of time during which  
6 respondent is ordered to comply with the conditions of the reprobation to which he previously  
7 stipulated. Likewise, it is also in the interests of justice that the total compliance time period not  
8 be elongated by reason of this error. This Court can and should issue its order *nunc pro tunc* so  
9 that the effective date and related compliance period will be calculated from the service date of  
10 the original order, March 26, 2009.

### 11 III. STIPULATION

12 Whereas, the parties hereto desire and request this Court rectify the error in the originally  
13 filed stipulation to include a specific period of time for the reprobation conditions to continue;

14 Whereas, the parties stipulate and agree that the negotiated time period for the reprobation  
15 conditions to continue was and continues to be two (2) years;

16 Whereas, the parties hereby stipulate and agree and respectfully request that this Court  
17 correct the typographical error resulting from the blank space left at section E.(1) of the  
18 Stipulation originally filed and served on March 26, 2009, by inserting the period of two (2)  
19 years into the blank space at section E.(1) on page 4; and

20 Whereas, the parties specifically stipulate and ask this Court to enter an order making  
21 said correction *nunc pro tunc* to the date of March 26, 2009, which is the date the order was  
22 originally served by this Court. The parties specially request this retroactive order because the  
23 parties agree and stipulate that this correction is not intended by them to alter or modify or  
24 otherwise change any other term or condition of the reprobation, including the original date from  
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26 <sup>2</sup> Rule 551 states as follows: “The parties may stipulate to a modification or correction of conditions of  
27 probation, as permitted by rule 9.10(c) of the California Rules of Court, or to early termination of  
28 probation. The stipulation must state specific facts demonstrating that the requested relief is appropriate  
and serves the objectives of probation. The stipulation shall be reviewed by the Court, which retains the  
discretion to reject the stipulation in the interest of justice.”

1 which compliance is calculated.

2 Attached hereto as Exhibit 'A' for the convenience of the Court is page 4 from the  
3 original Stipulation corrected to include the appropriate information inserted into the blank at  
4 section E.(1). The parties respectfully submit that, should it please this Court, the Court may  
5 order that the attached, corrected page 4 be exchanged and inserted in place of the original  
6 incorrect page 4.

7  
8 Respectfully submitted,

9 THE STATE BAR OF CALIFORNIA  
10 OFFICE OF THE CHIEF TRIAL COUNSEL

11  
12 DATED: May 19, 2009

13 By: 

14 Tammy M. Albertsen-Murray  
15 Deputy Trial Counsel

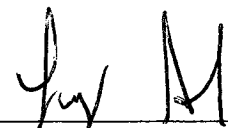
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17 DATED: May 15, 2009

18 By: 

19 Timothy J. Evans  
20 Respondent

21 **GOOD CAUSE APPEARING THEREFORE**, the Court finds that it is in the interests  
22 of justice to grant the request set forth herein. As a result, the parties' Stipulation To Correct  
23 Typographical Error Contained In Previously Filed And Ordered Stipulation is accepted and  
24 approved.

25 **SO ORDERED.**

26   
27 Hon. Lucy Armendariz  
28 Judge of the State Bar Court

(Do not write above this line.)

- (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 stipulated to the imposition of discipline, thus obviating the additional expenditure of trial.**

**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 Reproval:**

- (1) ☒ Respondent must comply with the conditions attached to the reproof for a period of **two (2) years**.
- (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 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.

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## 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 May 20, 2009, I deposited a true copy of the following document(s):

**PARTIES' STIPULATION TO CORRECT TYPOGRAPHICAL ERROR  
CONTAINED IN PREVIOUSLY FILED AND ORDERED STIPULATION AS TO  
FACTS, CONCLUSIONS OF LAW AND DISPOSITION; REQUEST FOR  
CORRECTION NUNC PRO TUNC**

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:

**TIMOTHY J. EVANS  
TIMOTHY J EVANS ATTORNEY AT LAW  
527 J ST  
MARYSVILLE, CA 95901**

- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- ☐ by overnight mail at , California, addressed as follows:
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.
- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**TAMMY ALBERTSEN-MURRAY**, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on May 20, 2009.



Bernadette C.O. Molina  
Case Administrator  
State Bar Court