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State Bar Court of California Hearing Department San Francisco REPROVAL		
Counsel For The State Bar Donald R. Steedman 180 Howard Street San Francisco, CA 94105 (415) 538-2345 Bar # 104927	Case Number(s): 08-O-12957	For Court use only PUBLIC MATTER FILED  JUL 18 2011 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Jerome Fishkin 1111 Civic Drive, Ste. 215 Walnut Creek, CA 94596 (925) 944-5600 Bar # 47798	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: Bruce H. Atwater III Bar # 199011 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 December 10, 1998.
- (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 11 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- Costs are added to membership fee for calendar year following effective date of discipline (public reproof).
- Case ineligible for costs (private reproof).
- Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
- Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
- Costs are entirely waived.

- (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."

(Effective January 1, 2011)

Reproof

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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. Respondent has been a member of the Bar for twelve years.
- (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 has been cooperative with the State Bar in these disciplinary 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

(Effective January 1, 2011)

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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 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

(Effective January 1, 2011)

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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 reprobation.
- (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 took the course in December, 2010, as a condition of his agreement in lieu of discipline.
- (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 reprobation.
- No MPRE recommended. Reason:
- (11) The following conditions are attached hereto and incorporated:
- | | |
|--|---|
| <input checked="" type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input checked="" type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

Attachment language (if any):

FACTS AND CONCLUSIONS OF LAW

COUNT ONE

Case No. 08-O-12957

Business and Professions Code, section 6068(l)

[Failure to Comply with Agreement in Lieu of Discipline]

1. Respondent wilfully violated Business and Professions Code, section 6068(l), by failing to keep all agreements made in lieu of disciplinary prosecution with the agency charged with attorney discipline, as follows:
2. At all times mentioned, the State Bar of California was the agency charged with attorney discipline.
3. On or about January 11, 2010, respondent signed an agreement in lieu of discipline (ALD) with the State Bar in which respondent agreed to comply with duties specified in the agreement for a period of three years.
4. The agreement became effective on or about January 13, 2010 and at all times thereafter has remained in full force and effect.
5. **LAWYERS ASSISTANCE PROGRAM CONDITION.**

(a) One of the conditions of the ALD provided as follows:

“Respondent shall comply with all provisions and conditions of his participation plan with the State Bar Lawyer’s Assistance Program (“LAP”) and all modifications thereto, until such time as he graduates from LAP or until the expiration of this ALD, whichever is sooner. Within 14 calendar days from the effective date of this ALD, respondent shall sign a waiver with LAP that authorizes LAP to provide Probation with information regarding his compliance with LAP, and respondent shall provide the Office of Probation with a copy of the waiver. Revocation of this written waiver would be a violation of this ALD. In addition, with each quarterly report and before the due date of his final report, respondent shall request and obtain from LAP written proof of his compliance with LAP, and provide the original of the LAP compliance report to the Office of Probation with his written report. The written LAP compliance report shall be dated not sooner than 10 calendar days prior to the date respondent submits his required reports to the Office of Probation.”

(b) At all times mentioned, respondent’s participation plan with the Lawyer’s Assistance Program required him to participate in group counseling meetings, to appear for laboratory drug testing as directed by LAP, and to refrain from the use of alcohol and illegal drugs (hereinafter jointly referred to as unauthorized substances).

(c) Respondent violated the ALD condition by repeatedly failing to appear for required testing as directed by LAP, failing to appear for a required group counseling meeting, and using unauthorized substances on at least two occasions, as follows:

Date	Event
4-15-2010	Respondent failed to appear for group counseling meeting.
8-1-2010	Respondent ingested an unauthorized substance.
8-23-2010	Respondent failed to appear for required laboratory drug testing.
10-8-2010	Respondent failed to appear for required laboratory drug testing.
10-8-2010	Respondent ingested an unauthorized substance.
2-22-2011	Respondent failed to appear for required laboratory drug testing.
3-4-2011	Respondent failed to appear for required laboratory drug testing.
3-17-2011	Respondent failed to appear for required laboratory drug testing.

(d) On or about May 20, 2011, respondent was terminated from the LAP program.

6. RESTITUTION CONDITION.

(a) One of the conditions of the ALD provided as follows:

“...Respondent hereby agrees to write to Steve Pontiflet within ninety (90) days from the date he signs this ALD, and therein offer to initiate and participate in fee arbitration upon Mr. Pontiflet’s request regarding Pontiflet’s outstanding dispute with respondent regarding the fees Pontiflet paid to respondent. Respondent further agrees to initiate and participate in fee arbitration upon Mr. Pontiflet’s request, and to abide by the final order if any there be. Respondent understands and agrees that his failure to write the letter, or to initiate or participate in fee arbitration upon Mr. Pontiflet’s request, to abide by the final order, if any, may constitute a violation of this ALD. Respondent also agrees to submit proof in writing to the Probation Department of his compliance with this condition, including a copy of his initial letter to Pontiflet, any response from Pontiflet, and documentation of the arbitration proceedings, if any.”

(b) Respondent violated the condition by failing to write Steve Pontiflet prior to the expiration of the 90 day deadline, i.e., prior to on or about April 11, 2010. Respondent failed to send the required letter until on or about May 18, 2010.

(c) On or about July 22, 2010, and September 30, 2010, respondent received letters from Steve Pontiflet. In these letters, Pontiflet stated that he wished to have a fee arbitration proceeding conducted. Thereafter, respondent failed to promptly initiate fee arbitration proceedings, thereby committing an additional violation of the above-quoted restitution condition. Respondent did not initiate fee arbitration proceedings until on or about October 25, 2010. In or about late November, 2010, respondent entered in a settlement with Pontiflet and paid Pontiflet as agreed in the settlement.

8. By violating the restitution and LAP conditions, respondent failed to keep all agreements made in lieu of disciplinary prosecution with the agency charged with attorney discipline.

COUNT TWO

In or a Case No. 08-O-12957
Rules of Professional Conduct, rule 3-700(D)(2)
[Failure to Refund Unearned Fees]

9. Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2), by failing to refund promptly any part of a fee paid in advance that has not been earned, as follows:

10. In or about December, 2006, Steven Pontiflet employed respondent to represent him in his criminal law matter, *People v. Steven L. Pontiflet*, case no. 398129, filed in Superior Court, County of Alameda.

11. At the time he employed respondent, Pontiflet paid respondent \$2,740 in advance for attorney fees.

12. In or about December, 2007, Pontiflet terminated respondent's services and employed new counsel to complete the matter. As of that date, respondent had not earned any substantial part of the attorney fees he had received from Pontiflet.

13. Respondent failed to repay any part of the unearned fee until November, 2010.

14. By failing to repay the unearned attorney fee for nearly three years after termination of his employment, respondent failed to refund promptly any part of a fee paid in advance that has not been earned.

DISCLOSURE OF PENDING INVESTIGATIONS

The disclosure mentioned in paragraph A(7) of this stipulation was June 7, 2011.

SUPPORTING AUTHORITY

The parties agree that a public reproof is appropriate given respondent's lack of prior discipline (Standard 1.2(e)(i)) and respondent's cooperation and willingness to settle this matter at an early stage (Standard 1.2(e)(v)).

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In the Matter of: Bruce H. Atwater III	Case Number(s): 08-O-12957
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Medical Conditions

a. Unless Respondent has been terminated from the Lawyer Assistance Program ("LAP") prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.

b. Respondent must obtain psychiatric *or Marriage + Family Therapist D.D.* or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of 4 times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for ~~days or months or~~ *(P.R.S.)* ~~years or~~ the period of probation or until a motion to modify this condition is granted and that ruling becomes final. *BA AF*

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 5.300 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

c. Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

PD *BA AF*

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In the Matter of: Bruce H. Atwater III	Case Number(s): 08-O-12957
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Substance Abuse Conditions

- a. Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
- b. Respondent must attend at least four (total) meetings per month of:
- Alcoholics Anonymous
 - Narcotics Anonymous
 - The Other Bar
 - Other program approved in advance by the Office of Probation.

As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period.

- c. Respondent must select a license medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.
- d. Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any call from the Office of Probation concerning testing of Respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report.
- e. Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.

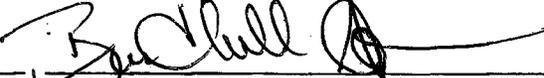
Other:

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In the Matter of: Bruce H. Atwater III	Case number(s): 08-O-12957
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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 Facts, Conclusions of Law, and Disposition.

6/15/2011		Bruce H. Atwater III
Date	Respondent's Signature	Print Name
6/15/11		Jerome Fishkin
Date	Respondent's Counsel Signature	Print Name
6/30/2011		Donald R. Steedman
Date	Deputy Trial Counsel's Signature	Print Name

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In the Matter of: Bruce H. Atwater III	Case Number(s): 08-O-12957
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REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

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

Date

July 18, 2011

Judge of the State Bar Court

Pat E. McElroy

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on July 18, 2011, 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:

JEROME FISHKIN
FISHKIN & SLATTER LLP
1111 CIVIC DR STE 215
WALNUT CREEK, CA 94596

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:

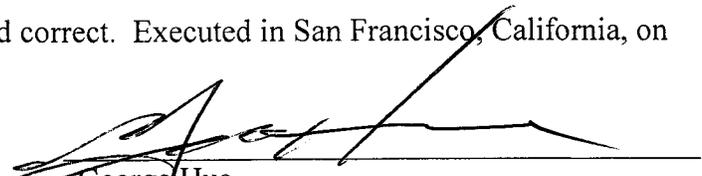
by fax transmission, at fax number . No error was reported by the fax machine that I used.

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:

Donald Steedman, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 18, 2011.


George Hue
Case Administrator
State Bar Court