

# PUBLIC MATTER

FILED

MAR 28 2013

STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

## STATE BAR COURT OF CALIFORNIA

### HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case Nos.: 10-O-10808 (11-O-11767)
	)	12-O-13203 (Cons.)
HAL ERWIN WRIGHT,	)	DECISION
	)	
Member No. 157814,	)	
	)	
A Member of the State Bar.	)	

#### Introduction and Significant Procedural History<sup>1</sup>

In this disciplinary proceeding, respondent Hal Erwin Wright stipulated to misconduct stemming from two separate client matters. Respondent and the Office of the Chief Trial Counsel of the State Bar of California (State Bar) entered into a stipulation of facts and conclusions of law, which the State Bar Court approved on January 4, 2012. That stipulation, however, was subsequently returned by the California Supreme Court for further consideration of the recommended discipline in light of the applicable attorney discipline standards. (Supreme Court order no. S200326, filed June 21, 2012.)<sup>2</sup> While the parties remained bound by the facts and conclusions of law contained within the stipulation, they were permitted to add evidence at trial supplementing mitigating and aggravating factors that both parties contemplated when they executed the stipulation.

<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

<sup>2</sup> The Stipulation Re Facts, Conclusions of Law and Disposition filed on January 4, 2012, is hereby converted to a stipulation as to facts and conclusions of law only, and State Bar Court staff is directed to remove the Stipulation Re Facts, Conclusions of Law and Disposition filed on January 4, 2012, from the State Bar's website.



On December 3, 2012, case no. 12-O-13203 was consolidated with the stipulated matter. In case no. 12-O-13203 respondent was charged with reporting to the State Bar that he was in full compliance with the requirement of 25 hours of Minimum Continuing Legal Education (MCLE) during the period commencing on February 1, 2008 and ending on January 31, 2011 (the compliance period) when respondent knew or was grossly negligent in not knowing that he had not completed the MCLE during the compliance period.

The consolidated matters were tried and submitted for decision on January 8, 2013. On that same date, the parties submitted a stipulation as to facts and admission of documents in case no. 12-O-13203 which the court approves.

The State Bar was represented by Robin Brune in the cases returned by the Supreme Court and by Christine Souhrada in the other matter. Respondent represented himself.

The court finds respondent culpable on all the stipulated instances of misconduct and of being grossly negligent in not knowing that he had not completed the MCLE during the compliance period as required. Based on the nature and extent of culpability, as well as the mitigating and aggravating circumstances, the court recommends, among other things, that respondent be suspended for 18 months and until he makes restitution as set forth below.

#### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on April 7, 1992, and has been a member of the State Bar of California at all times since that date.

#### **Case No. 10-O-10808 – The Brooks Matter**

##### **Facts**

On November 7, 2007, Patrick Brooks employed respondent sue Sacramento County, alleging that the Sacramento County Sheriff's Department executed a questionable search

warrant on his home. On the same day, they executed a written fee agreement and Brooks paid him \$4,000 as advanced fees for his services.

Respondent neither sued Sacramento County nor advised Brooks that he recommended no action be filed and explained his reasons. Instead, he misled Brooks into believing that the case was progressing.

In a reply to Brooks' February 2, 2009, email requesting a status update on his lawsuit, respondent told Brooks that depositions would be held in April and May. However, no depositions were set as no suit had been filed.

From February 2009 through June 2010, respondent made similar representations to Brooks, leading Brooks to believe that discovery was proceeding and settlement discussions were taking place while Brooks emailed repeatedly asking for updates and for a resolution before his terminally-ill spouse died.<sup>3</sup>

Respondent never filed a lawsuit or otherwise perform any legal services for Brooks. He did not earn the \$4,000 Brooks paid him. In an April 9, 2011, email, Brooks requested a refund of these funds. Respondent has not refunded any of the funds.

### **Conclusions**

#### ***Count 1 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])***

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

Respondent willfully violated rule 3-11(A). He intentionally, recklessly or repeatedly did not perform legal services with competence by not filing a lawsuit for Brooks or notifying him why a lawsuit should not be filed and the reasons therefor.

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<sup>3</sup> Brooks' wife was diagnosed with Lou Gehrig's disease. Brooks was traveling to Germany with her to explore stem cell treatment. Respondent was aware of the situation.

***Count 2 - (§ 6106 [Moral Turpitude])***

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

“Honesty is one of the most fundamental rules of ethics for attorneys. [Citation.] Indeed, an attorney who intentionally deceives his client is culpable of an act of moral turpitude. [Citation.]” (*Gold v. State Bar* (1989) 49 Cal.3d 908, 914.)

By lying to Brooks for over two years about filing a lawsuit and the status of his case, respondent committed acts of moral turpitude, dishonesty and corruption in willful violation of section 6106.

***Count 3 - (§ 6068, subd. (m) [Failure to Communicate])***

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

This count is duplicative of count 2 as it is based on the same facts. Accordingly, this charge is dismissed with prejudice. It is generally inappropriate to find redundant charged allegations. The appropriate level of discipline for an act of misconduct does not depend on how many rules of professional conduct or statutes proscribe the misconduct. “There is ‘little, if any, purpose served by duplicative allegations of misconduct.’” (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) Accordingly, this charge is dismissed with prejudice.

***Count 4 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])***

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

Respondent has not earned or refunded any of \$4,000 to Brooks. By not refunding \$4,000 to Brooks, respondent did not refund promptly any part of the a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

**Case No. 11-O-11767 -- The Glazier Matter**

**Facts**

On January 25, 2011, Jeffrey A. Glazier contacted respondent by email in response to his Craigslist advertisement offering legal services. Glazier wanted respondent to file a complaint in federal court (Eastern District of California, Sacramento) against defendants Sylvia Massy-Shivy, dba Radiostar Studios, Greg Shivy, dba Radiostar Studios & Radiostar Studios, LLC. The complaint was prepared by Glazier's former attorney. Respondent agreed to review the complaint before he was retained.

On January 27, 2011, respondent reviewed Glazier's complaint and informed him it was "good to go as is." On January 30, 2011, they executed a fee agreement for respondent to file and serve the complaint on the defendants. Glazier paid respondent \$1,000 in advanced fees for the filing fee and service on defendants. Respondent instructed Glazier to transfer the funds into his Bank of America account. Glazier transferred \$1,410 into respondent's account as instructed. Respondent did not file the complaint.

On February 10, 2011, Glazier sent and respondent received an email asking that the filing and service of the complaint occur that day. Respondent did not respond.

In an email sent the next day, respondent told Glazier that he was waiting for an electronic case filing (ECF) confirmation, meaning that he had filed the complaint. In fact, respondent was unable to access the Public Access to Court Electronic Records (PACER) system to file the complaint electronically due to problems with his password. Accordingly, respondent's statement to Glazier was false because he had been unable to file.

Glazier checked the PACER system himself and learned that no case had been filed. Glazier also contacted the clerk at the Eastern District of California in Sacramento and was informed that no filing had been submitted.

Between February 15 and 16, 2011, Glazier sent and respondent received several emails, but he did not respond.

On February 22, 2011, respondent first informed Glazier that he had been unable to log onto PACER. Respondent then suggested to Glazier that instead of filing the complaint, he would contact the defendants to see if they would settle the case before the need to file suit.

On that same date, Glazier terminated respondent and requested a full refund of money paid to him. Respondent confirmed receipt of Glazier's email requesting a full refund. Glazier sent several follow-up requests, which respondent received but did not provide Glazier with an accounting and a refund of his money.

Respondent's fees were not earned. He provided no services of value to Glazier.

## **Conclusions**

### ***Count 5 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])***

By not filing or serving Glazier's complaint or performing any legal services for him, respondent intentionally, recklessly and repeatedly failed to perform legal services with competence in willful violation of rule 3-110(A).

### ***Count 6 - (§ 6106 [Moral Turpitude])***

By falsely telling Glazier that he filed the complaint and that he was waiting for ECF confirmation when the complaint was never filed, respondent committed acts involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

***Count 7 - (§ 6068, subd. (m) [Failure to Communicate])***

This is duplicative of count two as it is based on the same facts. Accordingly, this charge is dismissed with prejudice.

***Count 8 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])***

By not refunding Glazier's \$1,410 after his services were terminated, respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of rule 3-700(D)(2).

**Case No. 12-O-13203 - The MCLE matter**

As a member of the State Bar, respondent was required to complete 25 hours of Minimum Continuing Legal Education (MCLE) credits between February 1, 2008 and January 31, 2011 (the compliance period).

In February 2011, without reviewing any of his MCLE records, respondent reported to the State Bar that he was fully compliant with the MCLE requirements and that he had completed the requirements during the compliance period.

Respondent does not possess and has been unable to obtain any evidence that he completed any of the required hours of MCLE during the compliance period, including credit card statements, cancelled checks or any other evidence that he paid for such courses. Moreover, he has been unable to identify any MCLE provider through which he completed any courses during the compliance period or to produce any witness who has personal knowledge that he completed any MCLE courses during that time.

Prior to February 2012, respondent had never before used the MCLE provider "MCLEZ.com."

Respondent testified that he believed he was in compliance with the MCLE requirements.

From 2007 until the present, he has been nearly homeless on at least four occasions. On the day he testified in these proceedings, he had just been served with a three-day notice to pay rent or quit. From at least 2007, respondent has worked out of his home. When he moves, he puts all his possessions in storage. Among his possessions were proof that he had completed MCLE courses. In November 2010, he could no longer pay for storage so the storage facility took control of his possessions and destroyed them.

The court believes that respondent believes he was in compliance with the MCLE requirements. Whether respondent actually was in compliance is another issue. It does not appear that he was. He had a lot going on in his life and it is doubtful that he took MCLE classes. Also, he lied so easily to his clients in the other matters it is hard to believe he is telling the truth now. Moreover, he could have produced some shred of evidence that he was in compliance but did not. At minimum, he was grossly negligent in reporting to the State Bar.

### **Conclusions**

#### ***Count 1 - (§ 6106 [Moral Turpitude])***

By reporting to the State Bar that he was in full compliance with the MCLE requirements when he was grossly negligent in knowing that he was not in compliance with the MCLE requirements, respondent, by gross negligence, committed an act involving moral turpitude, dishonesty and corruption.

#### **Aggravation<sup>4</sup>**

##### **Prior Record of Discipline (Std. 1.2(b)(i).)**

A private reproof was imposed effective December 4, 2003 for misconduct including violations of rules 3-110(A), 3-700(D)(2) and 4-100(B)(3) in one client matter. (State Bar Court

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<sup>4</sup> All references to standards (std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

case no. 01-O-02009, filed November 13, 2003.)<sup>5</sup> One of the reproof conditions was to make restitution to the client for retention of fees unearned because of nonperformance. The court notes the similarity between the misconduct found in the present and prior disciplinary cases.

**Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)**

Respondent has been found culpable of multiple acts of misconduct.

**Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)**

Brooks' case was delayed over a long period of time when Brooks was experiencing a traumatic event of which respondent was aware, namely Brooks' wife's terminal diagnosis with Lou Gehrig's disease. This case left Brooks disillusioned with the legal system. Both Brooks and Glazier lost the use of the funds they paid respondent.

**Mitigation**

**Extreme Emotional/Physical Difficulties (Std. 1.2(e)(iv).)**

Respondent got caught in the middle of his daughter's family problems. His daughter was physically abused by the father of her children. The man also threatened him. In March 2008, he had to get a restraining order to protect the members of his household.

**Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)**

Respondent was candid and cooperative in the MCLE matter. In the other matters, he admitted charges in his answer to the notice of disciplinary charges and was also candid and cooperative. He entered into a stipulation at trial so that witnesses did not have to be called.

**Severe Financial Stress**

Respondent was evicted from his home in July 2011 and continues to suffer financial stress. He was facing eviction the day he testified at trial on this matter. The court believes he

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<sup>5</sup> The court takes judicial notice of the relevant State Bar Court records regarding this prior discipline, admits them into evidence and directs the clerk to include copies in the record of this case.

used the money to cover his household finances, therefore, the failure to refund unearned fees to the clients is due to severe financial stress.

### **Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).) Discipline is progressive. However, the standards do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.7(c).)

Standards 2.3, 2.4, 2.6 and 2.10 apply in this matter. The most severe sanction is prescribed by standard 2.3 which suggests actual suspension or disbarment for culpability of an act of moral turpitude, fraud or intentional dishonesty toward a court, client or another person or of concealment of a material fact to a court, client or another person, depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the attorney's acts within the practice of law.

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although

the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

This case involves two client matters and gross negligence in reporting MCLE compliance. The two client matters each involved violations of rules 3-110(A) and 3-700(D)(2) and sections 6106 and 6068, subdivision (m). In aggravation, the court considered a prior disciplinary record containing similar misconduct, harm and multiple acts of misconduct. Mitigating factors included emotional and financial difficulties and candor and cooperation.

The State Bar recommends disbarment in the MCLE case and actual suspension for two years and until respondent makes restitution in the other matters.<sup>6</sup>

This proceeding centers on respondent's lack of performance and dishonesty toward his clients and gross negligence in reporting his MCLE to the State Bar. Misconduct involving deceit "is inimical to both the high ethical standards of honesty and integrity required of members of the legal profession and to promoting confidence in the trustworthiness of members of the profession. [Citations.]" (*Stanley v. State Bar* (1990) 50 Cal.3d 555, 567.)

Moreover, the court is concerned about respondent's grossly negligent conduct undermining the values promulgated by the MCLE requirements for lawyers. As aptly noted in *In the Matter of Diggs* (2001) 344 S.C. 397, 403, 544 S.E.2d 628, "Truthful representations on CLE compliance reports are essential to the successful operation of the South Carolina CLE program" as it operates on an honor system. "In order for the CLE program to be successful, and provide the public with competent, educated attorneys, South Carolina attorneys must complete the required number of CLE hours." (*Id.*) The same rationale applies in California.

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<sup>6</sup> The disbarment recommendation appears to be based on the State Bar's view that the MCLE matter is a third disciplinary case. However, the misconduct in all the matters took place mostly during the same time period and so will be addressed as one matter.

The court found instructive *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631. In *Bach*, discipline was imposed consisting of actual suspension for nine months and until respondent completed restitution, among other things. In two client matters, respondent was found culpable of not performing, communicating, returning unearned fees or cooperating in the disciplinary investigation and of improperly withdrawing from representation. Aggravating factors included one prior disciplinary matter, multiple acts of misconduct, client harm and indifference/no insight. Pro bono work and community service were considered as mitigating factors. The present case merits greater discipline considering the dishonesty toward the two clients and gross negligence in reporting his MCLE compliance to the State Bar.

Having considered the facts and law, the court recommends, among other things, actual suspension for 18 months and until respondent makes restitution to Brooks and Glazier. He will remain actually suspended until he completes restitution and, in order to regain the right to practice again, if respondent is suspended for two years or more, he will have to successfully undertake a standard 1.4(c)(ii) proceeding in this court to establish his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated.

### **Recommendations**

It is recommended that respondent Hal Erwin Wright, State Bar Number 157814, be suspended from the practice of law in California for two years, that execution of that period of suspension be stayed, and that respondent be placed on probation<sup>7</sup> for a period of two years subject to the following conditions:

1. Respondent Hal Erwin Wright is suspended from the practice of law for a minimum of 18 months and will remain suspended until the following requirements are satisfied:

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<sup>7</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

i. He makes restitution to Patrick Brooks in the amount of \$4,000 plus 10 percent interest per year from January 7, 2007 (or reimburse the Client Security Fund to the extent of any payment from the fund to Patrick Brooks, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof to the State Bar's Office of Probation in Los Angeles. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d); and

ii. He makes restitution to Jeffrey A. Glazier in the amount of \$1,410 plus 10 percent interest per year from January 31, 2011 (or reimburse the Client Security Fund to the extent of any payment from the fund to Jeffrey A. Glazier, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof to the State Bar's Office of Probation in Los Angeles. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

2. If respondent remains suspended for two years or more as a result of not satisfying the preceding requirement(s), he must also provide proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before his suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
3. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
4. Within 30 days after 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. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
6. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final

report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.

7. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.
8. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)
9. At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

#### **Multistate Professional Responsibility Examination**

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of respondent's suspension, whichever is longer and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

#### **California Rules of Court, Rule 9.20**

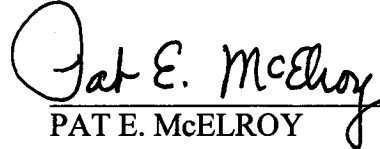
It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

#### **Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business

and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: March 28, 2013

  
PAT E. McELROY  
Judge of the State Bar Court

## 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 March 28, 2013, I deposited a true copy of the following document(s):

### DECISION

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

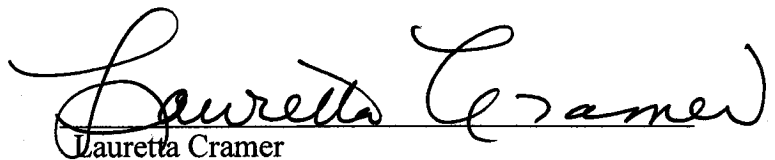
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

HAL E. WRIGHT  
216 F ST # 116  
DAVIS, CA 95616

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

Robin B. Brune, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 28, 2013.



Lauretta Cramer  
Case Administrator  
State Bar Court