

ORIGINAL

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State Bar Court of California  
Hearing Department  
Los Angeles  
ACTUAL SUSPENSION

<p>Counsel For The State Bar</p> <p>Charles A. Murray 1149 South Hill Street Los Angeles, CA 90015-2299 (213) 765-1276</p> <p>Bar # 146069</p>	<p>Case Number(s):</p> <p>11-O-12848</p>	<p>For Court use only</p> <p><b>FILED</b></p> <p>MAY 01 2012 <i>VA</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p><b>PUBLIC MATTER</b></p>
<p>In Pro Per Respondent</p> <p>Philip Deitch 2633 Lincoln Blvd., Ste. 818 Santa Monica, CA 90405 (310) 899-9600</p> <p>Bar # 29164</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: Philip Deitch</p> <p>Bar # 29164</p> <p>A Member of the State Bar of California (Respondent)</p>	<p><b>ACTUAL SUSPENSION</b></p> <p><input checked="" 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 January 14, 1959.
- (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):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: 2013, 2014, and 2015. (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.

**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 95-O-17148
  - (b)  Date prior discipline effective September 27, 1998
  - (c)  Rules of Professional Conduct/ State Bar Act violations: Rules of Professional Conduct, rules 3-110(A) and 3-700(D)(1).
  - (d)  Degree of prior discipline One year stayed suspension, with one year probation.
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.

State Bar Court case no. : 90-O-11668  
Discipline effective: September 15, 1994  
Violations: Rules of Professional Conduct, rules 3-110(A), 3-700(A)(2), and 4-100(B)(4).  
Business and Professions Code section 6103, and 6068(m).  
Degree of prior discipline: 90 days stayed suspension, with two years probation

State Bar Court case no. : 80-O-245  
Discipline effective: June 18, 1982  
Violations: Rules of Professional Conduct, rules 3-110(A) (former rule 6-101).  
Degree of prior discipline: Private Repeal

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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:**

None.

**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.
- (2)  **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted in good faith.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.

- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**NO HARM TO A CLIENT:**

At the time Respondent wrote the checks from his CTA, he had no client funds in the account. All of the funds in the account, which he should have moved to business or personal account, belonged to him. Thus, Respondent did not harm any client by his improper use of the CTA. (see *In re Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr 416, 442-43.)

**CANDOR/COOPERATION (Entering into a Stipulation):**

Respondent's stipulation herein to the facts, his culpability, and his discipline at this early stage is a mitigating circumstance. (*In re Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 96, 106, fn. 13.)

**REMORSE/RECOGNITION/REMEDIAL ACTION:**

Respondent demonstrated remorse and recognition of his misconduct, including changing office procedures to make sure funds are routed to the proper account, instructing his staff to deliver the trust account statements to him directly, and he now reviews those monthly statements personally. (*Sternlieb v. State Bar* (1990) 52 Cal. 3d 317, 333. Remorse and steps taken to establish office procedures which will avoid the practices that contributed to the violation; and see, *In re Sternberg* (Review Dept. 1997) 2008 Calif. Op. LEXIS 5, 22.)

**RESPONDENT'S PHYSICAL/MEDICAL ISSUES:**

At the time Respondent committed the misconduct herein, he was suffering from giant cell arteritis, which causes cognitive impairment. In January 2010 Respondent was diagnosed with giant cell arteritis, which causes daily flu like symptoms and placed him at a high risk of blindness. Respondent was treated with steroids, which caused sleeping problems. Respondent's disease and it's treatment further distracted him from his duty to oversee his client trust account.

**RESPONDENT'S WIFE'S PHYSICAL/MEDICAL ISSUES:**

At the time Respondent committed the misconduct herein, his wife was suffering from serious illness. She had surgery some time ago for a pancreatic tumor. Most of her pancreas was surgically removed, and all of her spleen. Consequently, among other things, she is a very severe diabetic and is insulin dependent. She is unable to work because of the daily symptoms of her condition and the medication that she takes for her condition. Respondent's focus on his wife's care distracted him from the duty of properly administering his client trust account.

**D. Discipline:**

(1)  **Stayed Suspension:**

- (a)  Respondent must be suspended from the practice of law for a period of two (2) years.
  - i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
  - ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
  - iii.  and until Respondent does the following:
- (b)  The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent must be placed on probation for a period of three (3) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3)  **Actual Suspension:**

- (a)  Respondent must be actually suspended from the practice of law in the State of California for a period of ninety (90) days.
  - i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
  - ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
  - iii.  and until Respondent does the following:

**E. Additional Conditions of Probation:**

- (1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2)  During the probation period, 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.

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- (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 period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (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 to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (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 probation conditions.
- (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)  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 type="checkbox"/> Financial Conditions             |

#### F. Other Conditions Negotiated by the Parties:

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason: \_\_\_\_\_
- (2)  **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and

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perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5)  **Other Conditions:**

#### 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 attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passing of the test given at the end of that session.

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF:                    **PHILIP DEITCH - #29164**

CASE NUMBER(S):                    11-O-12848

**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/or Rules of Professional Conduct.

Case No. 11-O-12848 (State Bar Investigation)

**FACTS:**

1. At all times relevant to these charges, Respondent maintained a client trust account at Bank of the West, account number 652-01XXXX (the "CTA") (the account number is partially obscured for privacy purposes).

2. From January 18, 2011 to February 11, 2011, Respondent issued at least ten checks from his CTA for non-client related purposes:

Check Date	Payee	Amount	Note
1/18/11	Cash	\$500	
1/20/11	Carla Rogers	\$500	Ms. Rogers is Respondent's wife.
1/25/11	Carla Rogers	\$500	
1/25/11	Cornelius Albert	\$1,025	Mr. Albert is an employee in Respondent's office.
1/28/11	Cornelius Albert	\$600	
1/31/11	Cornelius Albert	\$600	Memo: Rent
2/2/11	Phillip Deitch	\$250	
2/2/11	U-Haul	\$1,254.50	
2/4/11	Internal Revenue Service	\$500	
2/4/11	Eleno	\$180	
2/11/11	Cash	\$400	

3. The funds in the CTA at the time Respondent issued the checks were not client funds. They were Respondent's funds that he should not have held in the CTA and that he should have withdrawn from the CTA before disbursing for non-client related purposes.

**CONCLUSIONS OF LAW:**

4. By using his CTA to pay non-client related expenses, Respondent deposited or commingled funds belonging to Respondent in a bank account labeled "Trust Account," "Client's Funds Account" or words of similar import in willful violation of Rules of Professional Conduct, rule 4-100(A).

**PENDING PROCEEDINGS.**

The disclosure date referred to, on page 2, paragraph A(7), was February 8, 2012.



## AUTHORITIES SUPPORTING DISCIPLINE.

Pursuant to Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct, the primary purposes of disciplinary proceedings and imposing sanctions for professional misconduct 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."

Pursuant to Standard 2.2 (b), culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the willful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

Pursuant to Standard 1.7(b), if a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of two prior impositions of discipline as defined by Standard 1.2(f), the degree of discipline in the current proceeding shall be disbarment unless the most compelling mitigating circumstances clearly predominate.

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 Naney* (1990) 51 Cal. 3d 186, 190; *see also In re Silvertown* (2005) 36 Cal. 4<sup>th</sup> 81, 91.) Further, although the Standards are not mandatory, it is well established that the Standards may be deviated from only when there is a compelling, well-defined reason to do so. (*See Aronin v. State Bar* (1990) 52 Cal. 3d 276, 291; *see also Bates v. State Bar* (1990) 52 Cal. 3d. 1056, 1060, fn. 2.)

Depositing personal funds in a client trust account and using that account for personal expenses constitutes commingling within the meaning of rule 4-100 of the Rules of Professional Conduct, even where there are no client funds in the trust account. (*In re Doran* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 871, 875-876.) The stipulated discipline herein falls within Standard 2.2(b).

Good cause exists to deviate from Standard 1.7(b). The nature of the Respondent's misconduct herein combined with the mitigating factors indicate that imposing the sanction set forth in standard 1.7(b) would not further the purpose of standard 1.3.

The court has declined to recommend disbarment in a case where the respondent had three prior impositions of discipline when the second and third discipline did not result in actual suspension and the three priors differed from the offense involved in the fourth. (*In re Bouyer* (1998) 3 Cal. State Bar Ct. Rptr. 888, 892 [90 days actual suspension, 18 mos. stayed suspension, and 2 years probation], *see also Arm v. State Bar* (1990) 50 Cal.3d 763, 780 [Court declined to disbar respondent who had been previously discipline on three occasions, because the prior discipline while inherently aggravating did not show such a pattern that the most severe discipline was called for on the record].) Here, none of Respondent's prior discipline has resulted in actual suspension. Respondent's prior discipline was for misconduct different from the misconduct in the present case. Therefore, there is no pattern of misconduct established that would justify imposing disbarment under standard 1.7(b), *see Arm, supra*.

The court has also found that prior discipline over twenty years old that was minimal in nature does not merit significant weight in aggravation. (*In re Hanson* (1994) 2 Cal. State Bar Ct. Rptr. 703, 713 [where respondent was disciplined given a private reproof 19 years earlier for misconduct involving acts other than those in the present matter, the prior misconduct did not merit significant weigh in aggravation], *see*

also *In re Shinn* (1992) 2 Cal. State Bar Ct. Rptr. 96, 105 [private reproof more than 20 years earlier for improperly stopping payment on a \$500 check to another law firm was too remote in time to merit "significant" weight on the issue of degree of discipline].) Here, Respondent's first prior, a private reproof, is almost thirty years old and merits little or no weight in aggravation.

Thus, the stipulated discipline of ninety (90) days actual suspension, two (2) years stayed suspension and three (3) years probation with conditions is appropriate given that the purposes of public discipline, namely public protection, are satisfied by the terms of this stipulation.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

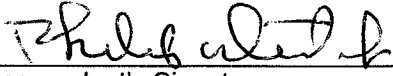
Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of December 5, 2011, the prosecution costs in this matter are \$2797.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

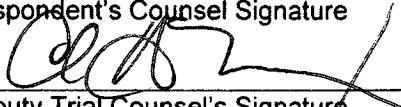
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In the Matter of: Philip Deitch - #29164	Case number(s): 11-O-12848
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**SIGNATURE OF THE PARTIES**

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.

4-5-12                                            Philip Deitch  
Date                              Respondent's Signature                              Print Name

4/20/2012                                            Charles A. Murray  
Date                              Deputy Trial Counsel's Signature                              Print Name

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In the Matter of:  
Philip Deitch - #29164

Case Number(s):  
11-O-12848

### ACTUAL SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

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

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.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

04-30-12

Judge of the State Bar Court

  
RICHARD A. PLATEL

**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 Los Angeles, on May 1, 2012, 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:

PHILIP DEITCH  
LAW OFC OF PHILIP DEITCH  
2633 LINCOLN BLVD., SUITE 818  
SANTA MONICA, CA 90405

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

CHARLES MURRAY, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on May 1, 2012.



Angela Carpenter  
Case Administrator  
State Bar Court