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ORIGINAL

State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION

PUBLIC MATTER

<p>Counsel For The State Bar</p> <p>Adriana M. Burger Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1229</p> <p>Bar # 92534</p>	<p>Case Number(s): 13-O-10762</p>	<p>For Court use only</p> <p>FILED</p> <p>JAN 08 2014 P.B.</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>John Edward Moran 1155 Lindero Canyon Rd. Suite F2 Westlake Village, CA 91362 No Telephone Number Available</p> <p>Bar # 94179</p>	<p>Submitted to: Assigned Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: JOHN EDWARD MORAN</p> <p>Bar # 94179</p> <p>A Member of the State Bar of California (Respondent)</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 December 16, 1980.
- (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.

(Effective January 1, 2011)



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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: (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
 - (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.
- (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.

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- (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.
- (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.

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- (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:

Prefiling Stipulation and No Prior Discipline - See Attachment pages 7-8.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of one (1) year.
- 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 one (1) year, 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 thirty (30) 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.

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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 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.**

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- 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 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:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JOHN EDWARD MORAN

CASE NUMBER: 13-O-10762

FACTS AND CONCLUSIONS OF LAW

Respondent admits that the following facts are true and that he is culpable of violations of the specified statute.

Case No. 13-O-10762 (State Bar Investigation)

FACTS:

1. In order to remain as an active member of the State Bar, Respondent was required to complete 25 hours of minimum continuing legal education ("MCLE") during the period of February 1, 2009 through January 31, 2012 (the "compliance period").

2. On April 2, 2012, Respondent reported to the State Bar that he was in compliance with the MCLE requirements and, in particular, that he had completed his MCLE during the compliance period.

3. In fact, Respondent had not completed any MCLE courses within the compliance period.

4. When Respondent reported to the State Bar that he was in compliance with the MCLE requirements, Respondent knew that he had not completed the MCLE during the compliance period as required.

5. Respondent took the requisite MCLE courses after his compliance period after being contacted by Membership Services regarding an audit of MCLE compliance. Respondent timely complied with the audit.

CONCLUSION OF LAW:

6. By reporting to the State Bar that he was in compliance with the MCLE requirements when he knew that he was not in compliance with the MCLE requirements, Respondent intentionally committed an act involving moral turpitude and dishonesty, in wilful violation of Business and Professions Code, section 6106.

MITIGATING CIRCUMSTANCES

Pre-filing Stipulation: Respondent is entitled to mitigation for entering into a full stipulation with the Office of the Chief Trial Counsel prior to the filing of disciplinary charges and prior to trial, thereby saving the Office of the Chief Trial Counsel and the State Bar Court time and resources. (*Silva-Vidor v*

State Bar (1989) 49 Cal.3d 1071, 1079 [where mitigation credit was given to the attorney for entering into a stipulation as to facts and culpability.]

No prior discipline: At the time of the misconduct herein, Respondent had practiced law for 26 years with no prior discipline. Although Respondent's misconduct is serious, Respondent is entitled to mitigation credit for his many years of practice without any State Bar discipline. (*In the Matter of Stamper*) (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106 fn. 13; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal State Bar Ct. Rptr. 41, 49.)

AUTHORITIES SUPPORTING DISCIPLINE

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession." (*In re Morse* (1995) 11 Cal.4th 184, 205; std 1.3.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Here, the applicable standard is found in standard 2.3, which provides:

[c]ulpability of a member 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 shall result in actual suspension or disbarment 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 member's acts within the practice of law.

Respondent's false statement to the State Bar regarding MCLE compliance is serious and constitutes an act of dishonesty directly relating to the practice of law. The California Supreme Court has stated that the MCLE program is "a consumer protection measure intended to enhance the competency of attorneys practicing law in this state." (*Warden v. State Bar* (1999) 21 Cal.4th 628, 634 (quoting *People v. Ngo* (1996) 14 Cal.4th 30, 36).) The State Legislature established the MCLE program upon "find[ing] and declar[ing] that it is in the public interest to continue the mandatory continuing legal education requirements for attorneys licensed to practice law." (Bus. & Prof. Code § 6070.)

Although there is no California case addressing an attorney's misrepresentations concerning MCLE compliance, we can look to other states for guidance. *In the Matter of Diggs* (S.C. 2001) 544 S.E.2d

628 emphasizes the importance of continuing legal education and of attorneys' honesty in reporting their MCLE compliance as follows:

Truthful representations on CLE compliance reports are essential to the successful operation of South Carolina's CLE program. Our CLE program operates on an honor system. The Commission does not check the accuracy of every attorney's CLE compliance report... 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.* at pp. 631-632.)

California's MCLE program also operates on an honor system. The State Bar relies on an attorney's word when reporting MCLE compliance and therefore truthful reporting is essential. When an attorney lies and takes advantage of the honor system, as Respondent did in this case, it undermines public confidence in the legal profession.

Because Respondent's misconduct is serious, is directly related to the practice of law, and undermines public confidence in the profession, actual suspension is appropriate. However, because there is no harm to a client, the matter involves only a single act of misconduct, and Respondent's misconduct is mitigated by the fact that he cooperated with the State Bar in entering into a full, pre-filing stipulation to resolve the matter, thereby saving time and resources, a level of discipline at the low end of the range of discipline suggested by standard 2.3 is consistent with the purposes of imposing sanctions for attorney misconduct.

Respondent's misconduct is analogous to the misconduct in *Drociak v. State Bar* (1991) 52 Cal.3d 1085. In *Drociak*, the attorney used his client's presigned verification to respond to discovery without first consulting with his client to ensure the veracity of assertions of fact in the discovery responses, thereby committing an act of moral turpitude and dishonesty in violation of Business and Professions Code section 6106 and seeking to mislead the court by an artifice or false statement of fact in violation of Business and Professions Code section 6068(d) and former rule 7-501(1) of the Rules of Professional Conduct. The attorney, who had no prior record of discipline in 25 years of practice, received a 30-day actual suspension. In imposing the 30-day actual suspension, the Supreme Court specifically cited to standard 2.3 and noted that while the attorney's prior clean record was commendable, it did not render the recommended 30-day actual suspension inappropriate. (*Id.* at 1090-1091.)

Although Respondent's misconduct does not involve a misrepresentation to a court, Respondent did commit an act of moral turpitude and dishonesty. Here, as in *Drociak*, Respondent made a misrepresentation in order to circumvent requirements imposed for important policy reasons. Further, like the attorney in *Drociak* who had practiced law for 25 years with no prior record of discipline, Respondent had practiced law for more than 26 years when he committed the misconduct herein. Accordingly, the same level of discipline as imposed in *Drociak* is appropriate in this case.

In light of the totality of the facts and circumstances surrounding Respondent's misconduct, including the mitigation afforded Respondent's many years in practice with no discipline and his cooperation in resolving this matter, and in light of standard 2.3, discipline consisting of a one-year suspension, stayed, and a one-year period of probation with conditions including a 30-day actual suspension from the practice of law is appropriate to protect the public, the courts and the legal profession, to maintain high professional standards by attorneys, and to preserve public confidence in the legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed him that as of November 12, 2013, the prosecution costs in this matter are \$2,865.00. 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.

EXCLUSION FROM MCLE CREDIT



Respondent will not receive MCLE credit for the completion of State Bar Ethics School taken in compliance with the conditions of probation herein. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: JOHN EDWARD MORAN	Case number(s): 13-O-10762
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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.

<u>12-13-13</u> Date	<u></u> Respondent's Signature	<u>JOHN EDWARD MORAN</u> Print Name
<u>Dec. 18, 2013</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>ADRIANA M. BURGER</u> Print Name

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In the Matter of: JOHN EDWARD MORAN	Case Number(s): 13-O-10762
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ACTUAL SUSPENSION ORDER

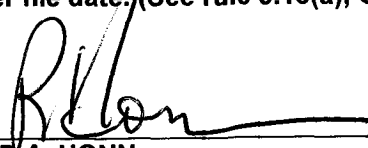
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- 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.

See attached modifications to stipulation.

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 1/8/14


RICHARD A. HONN
Judge of the State Bar Court

In the Matter of:
JOHN EDWARD MORAN

Case Number(s):
13-O-10762

MODIFICATIONS TO STIPULATION

1. On page 5 of the Stipulation, insert the following paragraph E.(3): “(3) Within ten (10 days) of any changes, Respondent must report to the Membership Records Office of the State Bar and 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.”
2. On page 8 of the Stipulation, under the heading “No prior discipline,” delete “26 years,” and in its place insert “31 years.” According to page 1, numbered paragraph (1), respondent was admitted on December 16, 1980.
3. On page 8 of the Stipulation, indented paragraph 5, delete “[c]ulpability,” and in its place insert “Culpability.”
4. On page 9 of the Stipulation, second to the last paragraph, 3rd sentence, delete “26 years” and in its place insert “31 years.” Page 7, numbered paragraph 2 states that respondent committed the misconduct on April 2, 2012.

-x-x-x

A handwritten signature in black ink, appearing to be 'R.H.', located in the lower right quadrant of the page.

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 January 8, 2014, 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:

**JOHN EDWARD MORAN
1155 LINDERO CANYON RD STE F2
WESTLAKE VILLAGE, CA 91362**

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

Adriana Margaret Burger, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on January 8, 2014.



Paul Barona
Case Administrator
State Bar Court