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| State Bar Court of California Hearing Department Los Angeles DISBARMENT | | |
|---|---|---|
| Counsel For The State Bar Adriana M. Burger Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017 (213) 765-1229 Bar # 92534 | Case Number(s): 13-O-12811 | For Court use only FILED MAR 25 2014 <i>Yrc</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES PUBLIC MATTER |
| In Pro Per Respondent Benjamin Emil Herron 6501 Eastridge K15 Odessa, TX 79762 (619) 723-9073 Bar # 249172 | Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <input type="checkbox"/> PREVIOUS STIPULATION REJECTED | |
| In the Matter of: Benjamin Emil Herron Bar # 249172 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:

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- (1) Respondent is a member of the State Bar of California, admitted **June 1, 2007**.
- (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 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 to be awarded to the State Bar.
- ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
- ☐ Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) ☒ **Prior record of discipline**
- (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:
- Please see attachment page 8.**
- (2) ☐ **Dishonesty:** Respondent's misconduct was intentional, 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. **Please see attachment page 8.**

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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. **Please see attachment page 9.**
- (8) ☐ **Restitution:** Respondent failed to make restitution.
- (9) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. 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, the public, or the administration of justice.
- (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 with a good faith belief that was honestly held and reasonable.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (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 extraordinarily 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 subsequent rehabilitation.

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(13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

Please see attachment page 9.

D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **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.
- (2) ☐ **Restitution:** Respondent must make restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____. If the Client Security Fund has reimbursed _____ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than _____ days from the effective date of the Supreme Court order in this case.
- (3) ☐ **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: BENJAMIN EMIL HERRON

CASE NUMBER: 13-O-12811

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. 13-O-12811 (State Bar Investigation)

FACTS:

1. On June 14, 2012, Respondent entered into a Stipulation Re Facts, Conclusions of Law and Disposition ("Stipulation") with the State Bar of California in case no. 12-H-11015.
2. On July 3, 2012, the Hearing Department of the State Bar Court filed an Order Approving the Stipulation and recommending to the California Supreme Court the discipline set forth in the Stipulation.
3. On July 3, 2012, the Hearing Department's July 3, 2012, Order Approving the Stipulation was properly served by mail upon the Respondent. Respondent received the order.
4. On or about November 6, 2012, the California Supreme Court filed an Order in case no. S205056 (State Bar case no. 12-H-11015) imposing the recommended discipline and ordering that Respondent be suspended from the practice of law for two (2) years, that execution of the suspension be stayed, and that Respondent be placed on probation for two (2) years subject to the conditions of probation recommended by the Hearing Department of the State Bar Court in its July 3, 2012, Order regarding the Stipulation, including the condition that the Respondent be actually suspended for the first thirty (30) days of probation ("Disciplinary Order").
5. Pursuant to the Disciplinary Order, Respondent was ordered to comply with the following terms and conditions of probation, among others;;
 - A. To comply with all conditions including the Substance Abuse Conditions which required:
 - B. That Respondent timely submit monthly urine laboratory tests, no later than the 10th day of every calendar month.
 - C. That the required urine laboratory tests consist of "observed" testing of Respondent;
 - D. That Respondent provide the testing laboratory with a copy of the Stipulation and Office of Probation Laboratory Test Information sheet;

- E. That Respondent select a laboratory for blood tests and submit the name of the selected laboratory to the Office of Probation for their approval;
- F. That Respondent submit monthly blood laboratory test results to the Office of Probation no later than the 10th day of every calendar month; and,
- G. That Respondent submit proof of attendance at four Alcoholic Anonymous meetings per month.

6. On November 6, 2012, the Clerk of the California Supreme Court properly served upon Respondent a copy of the Disciplinary Order. Respondent received the Disciplinary Order.

7. The Disciplinary Order became effective 30 days after filing, on December 6, 2012.

8. On November 26, 2012, and March 21, 2013, a Probation Deputy of the Office of Probation ("Probation") of the State Bar of California sent courtesy reminder letters to Respondent. In the letters, the Probation Deputy reminded Respondent of the terms and conditions of his probation imposed pursuant to the Disciplinary Order. Enclosed with the November 26, 2012, and March 21, 2013, letters were, among other things, copies of the Disciplinary Order, the relevant portion of the Stipulation setting forth the conditions the Respondent's probation, Substance Abuse Conditions, Attendance Verification and Declaration Form, Office of Probation Laboratory Test Information Sheet, a Quarterly Report Instruction sheet, and a Quarterly Report form specially tailored for Respondent to use in submitting his quarterly reports. Respondent received the November 26, 2012, and March 21, 2013, letters.

9. Respondent failed to comply with conditions attached to Respondent's disciplinary probation in State Bar case no. 12-H-11015, in that he:

- A. Failed to timely submit monthly urine laboratory test results by the due dates of January 10, 2013, and May 10, 2013. Respondent submitted the results late on or about February 10, 2013, and on or about May 14, 2013, respectively;
- B. Failed to provide the urine testing laboratory with a copy of the Stipulation and Office of Probation Laboratory Test Information sheet;
- C. Failed to select a laboratory for blood tests;
- D. Failed to submit any monthly blood laboratory test results;
- E. Failed to submit proof of attendance at four Alcoholic Anonymous meetings per month. Specifically, Respondent failed to submit proof of monthly attendance for one meeting in June 2013, two meetings in July 2013, and four meetings in September 2013. Respondent failed to timely submit the proof of monthly Alcoholics Anonymous attendance by the 10th day of each month starting January 2013 and instead belatedly submitted the incomplete proof on October 11, 2013;
- F. Failed to submit monthly urine laboratory test results which were due on February 10, 2013, March 10, 2013, September 10, 2013, October 10, 2013, November 10, 2013, December 10, 2013, and January 10, 2014;

G. Failed to timely submit monthly urine laboratory test results for January or May 2013. Respondent submitted these results late on or about October 11, 2013; and,

H. Failed to undergo observed urine testing. None of the urine test results submitted by Respondent were observed.

CONCLUSIONS OF LAW:

10. By failing to comply with the conditions attached to his Disciplinary Order that Respondent submit to the Office of Probation blood laboratory tests, observed urine laboratory tests; proof of attendance at four Alcoholic Anonymous meetings per month; and, provide the testing laboratory with a copy of the Test Information Sheet in accordance with the Disciplinary Order, Respondent failed to comply with all conditions attached to any disciplinary probation, in violation of Business and Professions Code, section 6068(k).

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has two prior records of California State Bar discipline:

In case no. **12-H-11015**, Respondent stipulated that he violated probation conditions in his Agreement in Lieu of Discipline arising from case no. 10-O-09304. The Agreement in Lieu of Discipline required that beginning on April 10, 2011, Respondent submit quarterly reports to the Office of Probation; quarterly reports regarding Respondent's obligations in the Lawyer's Assistance Program; and reports of compliance with all the conditions of probation imposed in his underlying criminal case. The Lawyer's Assistance Program condition also required that if Respondent failed to complete his obligations in the prescribed programs he would be out of compliance and required to report the non-compliance incident to the Office of Probation within five (5) days after the non-compliance.

Respondent failed to comply with conditions of his probation by failing to submit to the Office of Probation three (3) quarterly reports and five (5) periodic progress reports from Lawyer's Assistance Program that required Respondent provide to them verification of attendance at self-help groups and quarterly therapy sessions. By not complying with the verification requirements, Respondent was required to notify the Office of Probation within five (5) days of the violation, which he did not do. On September 27, 2011 the Lawyer's Assistance Program notified the Office of Probation that Respondent had unilaterally withdrawn from the Lawyer's Assistance Program. Respondent did not seek leave of the court to amend the terms of the court order before terminating the program. By failing to comply with the conditions of the public reproof ordered by the court, Respondent violated rule 1-110 of the Rules of Professional Conduct. Respondent received 30 days of actual suspension, 2 years of stayed suspension, and 2 years of probation. The order of suspension became effective on December 6, 2012.

In case no. **10-O-09304**, Respondent failed to comply with all the conditions in a Stipulation as to Facts and Agreement in Lieu of Discipline Pursuant to Business and Professions Code Sections 6068(1) and 6092.5(i) with the State Bar of California. The Agreement in Lieu of Discipline was based upon a criminal misdemeanor conviction in 2009 for violating Vehicle Code section 23102(A) (Driving a motor vehicle while under the influence of alcohol) in 2008 with two prior convictions of the same violation. The Agreement in Lieu of Discipline became effective on April 27, 2010. Respondent failed

to file a quarterly report, provide the Office of Probation with a copy of a written waiver, continually participate and comply with all provisions and conditions of either his Participation Plan During Evaluation or his Participation Agreement Plan with Lawyer's Assistance Program, and timely comply with certain conditions of his criminal probation. By failing to comply with the conditions of the Agreement in Lieu of Discipline, Respondent willfully violated California Business and Professions Code section 6068(l). Respondent received a public reproof that became effective on December 12, 2010.

Indifference (Std. 1.5(g)): Respondent's current unwillingness or inability to comply with probationary terms in a timely manner indicates that Respondent has failed to take the necessary steps to rehabilitate himself. In the Agreement in Lieu of Discipline arising from case no. 10-O-09304, Respondent was provided an opportunity to participate in the Lawyer's Assistance Program in order to resolve his alcohol related issues with the goal towards his rehabilitation. However, Respondent resigned from the program. Respondent also failed to comply with many of the other reporting requirements that resulted in the second discipline in case no. 12-H-11015. The second matter is the underlying matter for this present discipline and, with ameliorated conditions, that required Respondent to provide proof of blood and observed urine laboratory tests; proof of attendance at four Alcoholic Anonymous meetings per month; and, proof that he provide the testing laboratory with a copy of the Test Information Sheet. Despite prior opportunities to reform his conduct, Respondent failed again to demonstrate his rehabilitation. Respondent has had the involvement of State Bar personnel attempting to assist him in complying with the terms of probation, but he still has been unable to do so. His actions demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. Respondent's failure to undertake the necessary rehabilitative steps of probation places repeated burdens on the resources of the State Bar Court and the disciplinary system. (*In the Matter of Pierce* (Review Dept. 1997) 2 Cal. State Bar Ct. Rptr. 382.)

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent's present misconduct includes the failure to timely select a urine lab, submit monthly urine lab test results, provide the address and phone for the urine lab, and the failure to provide the lab with a copy of the Stipulation and of the Office of Probation Lab Test Information Sheet, to select a lab for blood test, submit proof of monthly AA attendance, submit monthly blood lab test results, and submit monthly urine lab test results. Respondent engaged in multiple acts of misconduct by violating these conditions of his probation.

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: Respondent admitted to the misconduct and entered into this stipulation fully resolving this matter prior to the trial of the disciplinary charges. Respondent's cooperation at this stage will save the State Bar significant resources and time. Respondent's cooperation in this regard is a mitigating factor in this resolution. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.)

The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

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.)

Standard 1.8(b) states that 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, disbarment is appropriate where actual suspension was ordered in any one of the prior disciplinary matters; the prior disciplinary matters coupled with the current record demonstrate a pattern of misconduct; or the prior disciplinary matters coupled with the current record demonstrate the member's unwillingness or inability to conform to ethical responsibilities. Here, the recent prior discipline involves actual suspension and demonstrates an inability to conform to his responsibilities, especially where the priors contain very similar misconduct. Based on his two prior records of discipline and the multiplicity of violations in this matter, Standard 1.8(b) mandates disbarment as there are no compelling mitigating circumstances that clearly predominate this matter.

Respondent has demonstrated an extensive inattention to State Bar disciplinary proceedings and indifference to the terms underlying his probation. Respondent failed to comply with the terms of probation in his first matter that arose from his ALD. Subsequently, Respondent received a private reproof and again failed to comply with the probation conditions thereof. As a result, Respondent was actually suspended and was given a third opportunity to comply with probation, which he failed to do. Now, in the present matter, Respondent failed to comply with the terms and conditions of his probation by failing to comply with nine conditions on multiple dates which include selecting a laboratory to complete his blood testing, timely submitting to the Office of Probation a laboratory to complete his urine testing; submitting and submitting timely monthly urine laboratory test results, provide the address and phone number for the blood testing laboratory, provide the address and phone number for the observed urine testing laboratory, provide the testing laboratory with a copy of the Stipulation and of the Office of Probation Lab Test Information Sheet, submit proof of monthly Alcoholic Anonymous meeting proof of attendance, submit monthly blood laboratory test results, and submit monthly urine laboratory test results.

Considering Respondent's prior discipline record and strong evidence that he is unable or unwilling to comply with probation conditions and disciplinary orders, together with the Standards, and aggravating factors, disbarment is necessary to fulfill the goals of discipline under Standard 1.1.


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| In the Matter of: BENJAMIN EMIL HERRON | Case number(s): 13-O-12811 |
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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>3/12/14</u> | <u></u> | <u>BENJAMIN EMIL HERRON</u> |
| Date | Respondent's Signature | Print Name |

| | | |
|-----------------------|--|--------------------------|
| <u>March 17, 2014</u> | <u></u> | <u>ADRIANA M. BURGER</u> |
| Date | Deputy Trial Counsel's Signature | Print Name |

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| In the Matter of: BENJAMIN EMIL HERRON | Case Number(s): 13-O-12811 |
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DISBARMENT 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.)**

Respondent Benjamin Emil Herron is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

MARCH 24, 2014
Date


GEORGE E. SCOTT, JUDGE PRO TEM

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 March 25, 2014, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE
ENROLLMENT – DISBARMENT**

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:

**BENJAMIN E. HERRON
6501 Eastridge K15
Odessa, TX 79762**

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

ADRIANA BURGER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 25, 2014.



Tammy Cleaver
Case Administrator
State Bar Court