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State Bar Court of California Hearing Department San Francisco REPROVAL		
Counsel For The State Bar Sherrle B. McLetchie Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 638-2297 Bar # 85447	Case Number(s): 13-O-17506 - PEM NOT FOR PUBLICATION	For Court use only PUBLIC MATTER FILED APR 28 2015  STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Megan E. Zavieh 12460 Crabapple Rd Ste 202-272 Alpharetta GA 30004 (510) 936-1534 Bar # 206446	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PRIVATE REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: JOANN LEIGH PHEASANT, Bar # 248423 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted February 22, 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 entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 10 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."

(Effective January 1, 2014)



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☐ Costs are added to membership fee for calendar year following effective date of discipline (public reproof).
 - ☒ Case ineligible for costs (private reproof).
 - ☐ Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are entirely waived.
- (9) The parties understand that:
- (a) ☐ A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) ☒ A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) ☐ A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [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 or a separate attachment entitled "Prior Discipline."

(Effective January 1, 2014)

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- (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.
- (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. See Stipulation Attachment page 7.
- (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

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

Additional mitigating circumstances:

No Prior Discipline – See Stipulation Attachment page 7.

Pretrial Stipulation – See Stipulation Attachment page 7.

D. Discipline:

- (1) ☒ **Private reproval (check applicable conditions, if any, below)**
- (a) ☐ Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) ☒ Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) ☐ **Public reproval (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproval:

- (1) ☒ Respondent must comply with the conditions attached to the reproval for a period of one year.
- (2) ☒ During the condition period attached to the reproval, 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 condition period attached to the reproval. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproval during the preceding calendar quarter. Respondent must also state in each report whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 (thirty) days, that report must be submitted on the next following quarter date, and cover the extended period.

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

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the conditions attached to the reproval.
- (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) ☐ Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year of the effective date of the reproval.

☒ No MPRE recommended. Reason: *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891 fn 8 requires passage of a professional responsibility examination only for suspended attorneys.

- (11) ☐ 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:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JOANN LEIGH PHEASANT

CASE NUMBER: 13-O-17506 - PEM

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 13-O-17506 (Doglietto)

FACTS:

1. On September 15, 2011, Dean Doglietto, employed respondent to perform legal services, namely to represent Doglietto in *Dean A. Doglietto v. Trinity Protection Services, Inc.*, US District Court case no. 11-EV-0101-MCE-JFM.
2. Respondent did not appear at Doglietto's deposition on May 4, 2012, until contacted by Doglietto, did not file any opposition to defendant's motion to compel discovery, did not propound discovery on behalf of Doglietto, did not appear at a June 28, 2012 hearing on a motion to quash filed by respondent, and did not adequately respond to defendant's discovery such that respondent and Doglietto were sanctioned by the court.
3. On June 28, 2012, the court in *Dean A. Doglietto v. Trinity Protection Services, Inc.* ordered respondent to respond to the defendant's discovery requests within 30 days. She did not do so.
4. Respondent failed to notify Doglietto until January 11, 2013, that as the consequence of the court granting defendant's motion for summary judgment, Doglietto's case had been dismissed as of December 26, 2012.

CONCLUSIONS OF LAW:

5. By failing to appear at Doglietto's deposition on May 4, 2012, until contacted by Doglietto, failing to file any opposition to defendant's motion to compel discovery, failing to propound discovery on behalf of Doglietto, failing to appear at a June 28, 2012 hearing on a motion to quash filed by respondent, and failing to adequately respond to defendant's discovery such that respondent and Doglietto were sanctioned by the court, respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A).
6. By failing to respond to the defendant's discovery requests within 30 days as ordered by the court, respondent willfully disobeyed or violated an order of the court requiring her to do or forbear

an act connected with or in the course of her profession, which respondent ought in good faith to have done in willful violation of Business and Professions Code, section 6103.

7. By failing to notify Doglietto until January 11, 2013, that as the consequence of the court granting defendant's motion for summary judgment, Doglietto's case had been dismissed as of December 26, 2012, respondent failed to keep her client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m).

AGGRAVATING CIRCUMSTANCES.

Multiple acts of wrongdoing (Std. 1.5(b)): Here, the multiple acts include failing to appear at Doglietto's deposition on May 4, 2012, until contacted by Doglietto, failing to file any opposition to defendant's motion to compel discovery, failing to propound discovery on behalf of Doglietto, failing to appear at a June 28, 2012 hearing on a motion to quash filed by respondent, failing to adequately respond to defendant's discovery such that respondent and Doglietto were sanctioned by the court, failing to respond to the defendant's discovery requests within 30 days as ordered by the court, and failing to notify her client that his case had been dismissed for two weeks as a consequence of the granting of a motion for summary judgment. However, all of the misconduct occurred in one client matter.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent was admitted to the practice of law in the State Bar of California on February 22, 2007, and has no prior record of discipline. In addition, respondent was admitted to the practice of law in the State of Washington in 1997, and has no record of discipline in that jurisdiction. Thus, respondent is entitled to mitigative credit for a total of 14 years without discipline before the commencement of the misconduct in this matter. *In the Matter of Loftus* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 80, 88 [mitigative credit given for lack of discipline in jurisdiction where attorney was admitted prior to admission in California].

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a stipulation with the Office of the Chief Trial Counsel prior to trial in the above referenced disciplinary matter, thereby saving the State Bar Court time and resources. (*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.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, respondent admits to committing three acts of professional misconduct. Standard 1.7(a) requires that where a respondent "commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed."

Respondent failed to perform competently, failed to respond to defendant's discovery request as ordered by the court, and failed to keep her client informed of significant events in a single client matter in violation of rule 3-110(A), Rules of Professional Conduct, and Business and Professions Code, sections 6068(m) and 6103.

The most severe sanction applicable to respondent's misconduct is standard 2.8(a) which provides that "Disbarment or actual suspension is appropriate for disobedience or violation of a court order related to the member's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions section 6068(a)-(h)." Standard 2.8(a) applies to respondent's violation of section 6103. However, given that the gravamen of respondent's conduct was the incompetent handling of one client's case, and that the court order violated was a discovery order, deviation from standard 1.7(a) and consideration of discipline under standard 2.5(c) is appropriate. Standard 2.5(c) provides that "Reproval is appropriate for failing to perform legal services or properly communicate in a single client matter." Standard 2.5(c) applies to both respondents' violation of rule 3-310(A) and section 6068(m).

Case law provides guidance as to the appropriate level of discipline under standard 2.5(c). In *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 the Review Department recommended a six-month stayed suspension for an attorney who violated rule 3-110(A) by abandoning the appeal of a Death Row inmate, section 6103 by violating numerous California Supreme Court orders, and section 6068(o)(3) by failing to report the Supreme Court's sanction to the State Bar. The Review Department found that Riordan's misconduct had harmed the administration of justice, but that Riordan's 17 years of discipline-free practice was mitigating. Here, respondent did not completely abandon her client, did not harm the administration of justice, has 14 years of discipline-free practice before committing any misconduct, and has cooperated with the State Bar by entering into this stipulation. Respondent's misconduct is much less egregious than Riordan's, and warrants a much lower degree of discipline than a stayed suspension.

This private reproval -- which will be public information because it is stipulated to after the filing of the Notice of Disciplinary Charges -- is adequate discipline for respondent's misconduct of failing to provide competent legal services, failing to keep the client advised of a significant development in his

provide competent legal services, failing to keep the client advised of a significant development in his case, and violation of a discovery order. This public private reproof puts the public, courts, and legal profession on notice that respondent has committed misconduct, and the required attendance at Ethics School provides respondent with an opportunity to review her ethical responsibilities.

As stated above, the primary purposes of discipline are "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." After consideration of the primary purposes of discipline, and balancing the aggravating circumstance of multiple acts against the mitigation of no discipline over 14 years in practice prior to the commencement of the misconduct, and respondent's cooperation with the State Bar in entering into a pretrial stipulation, the type of misconduct at issue, whether the client, public, legal system or profession was harmed, the member's willingness and ability to conform to ethical responsibilities in the future, a private reproof conditioned on attendance at Ethics School is adequate to protect the public and maintain confidence in the legal profession.

EXCLUSION FROM MCLE CREDIT

Respondent may not receive Minimum Continuing Legal Education credit for completion of State Bar Ethics School ordered as a condition of this reproof. (Rules Proc. of State Bar, rule 3201.)



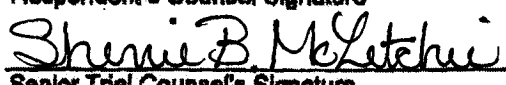
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In the Matter of:
JOANN LEIGH PHEASANT

Case number(s):
13-O-17506 - PEM

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>3/20/2015</u>		Joann Leigh Pheasant
Date	Respondent's Signature	Print Name
<u>3/24/2015</u>		Megan E. Zavich
Date	Respondent's Counsel Signature	Print Name
<u>4/10/15</u>		Sherrie B. McLetchie
Date	Senior Trial Counsel's Signature	Print Name

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In the Matter of: JOANN LEIGH PHEASANT	Case Number(s): 13-O-17506 - PEM
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REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- ☒ All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) Otherwise the stipulation shall be effective 15 days after service of this order.

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

April 28, 2015
Date


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 April 28, 2015, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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

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

MEGAN E. ZAVIEH
12460 CRABAPPLE RD STE 202-272
ALPHARETTA, GA 30004
- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:
- ☐ by overnight mail at , California, addressed as follows:
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.
- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:
- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Sherrie B. McLetchie, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 28, 2015.


George Hue
Case Administrator
State Bar Court