



ORIGINAL

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State Bar Court of California
Hearing Department
San Francisco
STAYED SUSPENSION

<p>Counsel For The State Bar</p> <p>Catherine Taylor Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2537</p> <p>Bar # 210540</p>	<p>Case Number(s): 14-H-05648-PEM</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>AUG 10 2015</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Emile Adlai Davis The Dolan Law Firm 1438 Market Street San Francisco, CA 92399 (415) 421-2800</p> <p>Bar # 208394</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: EMILE ADLAI DAVIS</p> <p>Bar # 208394</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 **October 9, 2000**.
- (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):
 - Costs are added to membership fee for calendar year following effective date of discipline.
 - 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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
 - (a) State Bar Court case # of prior case 12-O-14702. See Attachment at p. 8.
 - (b) Date prior discipline effective **May 28, 2014**
 - (c) Rules of Professional Conduct/ State Bar Act violations: **Bus. & Prof. Code section 6103**
 - (d) Degree of prior discipline **private reproof**
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
- (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
- (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
- (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7) **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..

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- (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See Attachment at p. 8.
- (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13) **Restitution:** Respondent failed to make restitution.
- (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances

C. Mitigating Circumstances [see standards 1.2(i) & 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 likely to recur.
- (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 or to the State Bar during disciplinary investigations and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 objectively 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.

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- (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

Family problems: see Attachment at p. 8.
Pre-trial Stipulation: see Attachment at p. 8.

D. Discipline:

- (1) **Stayed Suspension:**
- (a) Respondent must be suspended from the practice of law for a period of **one year**.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), 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:

The above-referenced suspension is stayed.

- (2) **Probation:**
- Respondent is placed on probation for a period of **two years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) 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.
- (3) 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.

- (4) 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.

- (5) 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.
- (6) 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.

- (7) 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 State Bar Ethics School, and passage of the test given at the end of that session.

No Ethics School recommended. Reason:

- (8) 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.
- (9) 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 within one year. **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) **Other Conditions:**

Respondent will be required to provide to the Office of Probation satisfactory proof of attendance at a session of State Bar Ethics School, and passage of the test given at the end of that session.

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If respondent attends Ethics School and passes the test given at the end of the session prior to the effective date of discipline in this matter, respondent will receive credit for completion of Ethics School upon his provision to the Office of Probation of satisfactory proof of attendance of the course and passage of the test given at the completion of the course.

Respondent will be required to complete and pass the MPRE and to provide to the Office of Probation satisfactory proof of completion with a passing score. If respondent completes and passes the MPRE prior to the effective date of discipline in this matter, respondent will receive credit for the MPRE upon his provision to the Office of Probation of satisfactory proof of attendance of the course and a passing score.

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: EMILE ADLAI DAVIS

CASE NUMBER: 14-H-05648-PEM

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. 14-H-05648-PEM (State Bar Investigation)

FACTS:

1. On April 8, 2014, respondent entered into a Stipulation Re Facts, Conclusions of Law and Disposition (“Stipulation”) with the State Bar of California in Case No. 12-O-14702.
2. On May 7, 2014, the Hearing Department of the State Bar Court filed an Order approving the Stipulation for private reproof with conditions attached for a period of one year (“Reproof Order”).
3. On May 7, 2014, the Hearing Department’s Reproof Order was properly served by mail to respondent’s membership records address.
4. The Reproof Order became effective on May 28, 2014. Pursuant to the Reproof Order, respondent was ordered to comply with the terms and conditions of reproof, which he failed to do.
5. Respondent did not contact the Office of Probation to schedule a meeting with his probation deputy, which was due on June 27, 2014.
6. Respondent did not timely submit his Quarterly Reports which were due on October 10, 2014; January 10, 2015; and April 10, 2015.
7. Respondent did not timely submit his Final Report, which was due May 28, 2015.
8. Respondent did not submit timely proof of payment of restitution, which was due on September 25, 2014. Respondent submitted proof of payment on January 7, 2015.
9. Respondent failed to pass the MPRE on or before May 28, 2015.
10. Respondent failed to complete and show proof of passage of State Bar Ethics School by May 28, 2015.

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CONCLUSIONS OF LAW:

11. By failing to timely contact the Office of Probation to schedule a meeting and meet with his probation deputy, failing to timely submit quarterly reports due on October 10, 2014; January 10, 2015; April 10, 2015; and a Final Report due May 28, 2015, failing to submit timely proof of payment of restitution, and failing to complete and pass the MPRE and State Bar Ethics School by May 28, 2015, respondent has failed to comply with all the conditions attached to his disciplinary probation and engaged in willful violation of rule 1-110 of the Rules of Professional Conduct.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has one prior record of discipline, Case no. 12-O-14702, which resulted in a private reproof for failure to pay sanctions, in violation of Bus. & Prof. Code section 6103.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent has violated four conditions of his reproof.

MITIGATING CIRCUMSTANCES.

Family problems: Respondent provided documentation of his wife's health problems, which involve an auto-immune disorder, likely Lupus, among other problems. The nature of her disorder, combined with her prescribed medications, causes her to have good days and bad days—without warning—rendering her essentially bed-ridden on bad days which can last up to a week. During the disease's flare-ups, respondent is the sole caretaker of his wife and their two teenaged children—one of whom also has special needs and is unable to attend regular school. He completes his schoolwork from home through the district's "home and hospital" program. Until recently, respondent was a solo practitioner but barely able to support his family due to the variability of his wife's health and the need for him to care for her and their children. He has since been hired with a law firm in San Francisco, which offers steady workflow and flexibility in where and when he completes his work.

Respondent's inability to timely complete Ethics School and MPRE are directly related to respondent's wife's fluctuating health in that respondent was unable to schedule the classes without also making contingency arrangements for his wife's and children's care. Furthermore, because of his family's needs, respondent was not able to dedicate sufficient hours to afford to pay the sanctions by the deadline. (*In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332 [Hearing judge should not have entirely discounted respondent's testimony regarding family problems, on ground that no causal connection was established by expert testimony, between personal problems and misconduct. The Supreme Court has often considered lay testimony of emotional problems as mitigation].)

Pretrial Stipulation: Respondent agreed to settle the case by stipulation, thereby saving the State Bar 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].)

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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 Silverton* (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).)

Standard 1.8(a) requires that respondent’s discipline in this current proceeding must be greater than the previously imposed sanction unless the prior was so remote in time and the previous misconduct was not serious enough that imposing greater discipline would be manifestly unjust. Respondent’s prior discipline, effective May 28, 2014, included a private reproof with conditions to last one year. This prior discipline was not remote in time and the misconduct it addressed was serious. Accordingly, pursuant to Standard 1.8(a), the current discipline must be greater than private reproof.

Standard 2.14 states, “Actual suspension is the presumed sanction for failing to comply with a condition of discipline. The degree of sanction depends on the nature of the condition violated and the member’s unwillingness or inability to comply with disciplinary orders.” Though respondent was late in complying with the conditions of his reproof, he has taken steps to come into compliance, including payment of the restitution, re-registering for the MPRE and signing up for Ethics School, and submitting his Quarterly and Final Reports.

Conroy v. State Bar (1990) 51 Cal.3d 799 provides relevant precedent for this case. The attorney in *Conroy* had received a private reproof with conditions, one of which was that he was required to take and pass the Professional Responsibility Examination (hereinafter “PRE”) within one year of the effective date of the reproof. The attorney failed to timely take and pass the PRE. However, he brought himself into compliance by the time the discipline became effective. The attorney defaulted at the Hearing Department. The Supreme Court was troubled by the attorney’s failure to appreciate the seriousness of the charges and reproof conditions and ordered that the attorney be suspended for one

year, stayed, and that he be placed on probation for one year with conditions, including sixty days actual suspension.

Like the attorney in *Conroy*, respondent's performance while subject to reproof conditions might tend to indicate that he fails to appreciate the seriousness of his misconduct. However, respondent has now provided proof of his wife's medical condition which effectively thrusts respondent into the role of breadwinner and primary caretaker of his wife and their two children, one of whom has his own special needs. Respondent has belatedly complied with the reproof terms and has now re-registered for the MPRE and signed up to complete Ethics School. Due to his family's fluctuating needs, respondent has previously been remiss in making arrangements to complete the classes without also making contingency plans for his wife's care. Accordingly, while increased discipline is warranted as respondent has failed to comply with multiple reproof conditions, respondent's misconduct is less than that portrayed in *Conroy*.

In light of Standards 1.8(a) and 2.14 and balancing the aggravating and mitigating factors, a one-year suspension, stayed, and a two-year period of probation with conditions, is an appropriate level of discipline to ensure the protection of the public, courts and legal profession and reinforce respondent's obligations as an attorney.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of July 16, 2015, the prosecution costs in this matter are \$5,680. 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


Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of **State Bar Ethics School, and/or any other educational course(s) to be ordered as a condition of reproof or suspension.** (Rules Proc. of State Bar, rule 3201.)

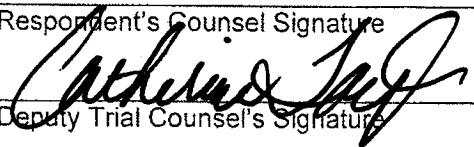
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In the Matter of: EMILE ADLAI DAVIS	14-H-05648-PEM
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SIGNATURE OF THE PARTIES

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.

July 28, 2015  Emile A. Davis
Date Respondent's Signature Print Name

7-28-15  Catherine Taylor
Date Deputy Trial Counsel's Signature Print Name

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In the Matter of: EMILE ADLAI DAVIS	Case Number(s): 14-H-05648-PEM
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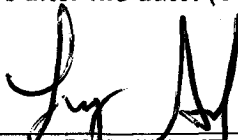
STAYED SUSPENSION ORDER

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.)**

Aug 19 2015
Date


LUCY ARMENDARIZ
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 August 10, 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:

EMILE A. DAVIS
THE DOLAN LAW FIRM
1438 MARKET ST
SAN FRANCISCO, CA 92399

- 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:

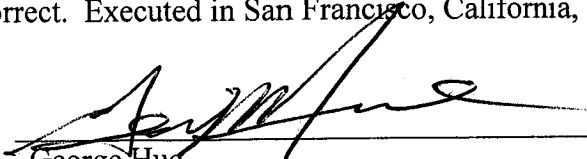
- by fax transmission, at fax number . No error was reported by the fax machine that I used.

- 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:

Catherine E. Taylor, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 10, 2015.


George Hue
Case Administrator
State Bar Court