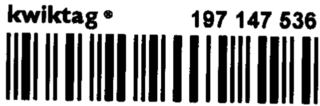
PUBLIC MATTER



FILED

OCT 26 2015

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case No.: **14-O-02890-WKM**
	)	
LEONARD JAY KLAIF,	)	**DECISION**
	)	
Member No. 140937,	)	
	)	
A Member of the State Bar.	)	

Introduction

In this contested proceeding, the State Bar's Office of the Chief Trial Counsel (OCTC) charges respondent **LEONARD JAY KLAIF** with four counts of professional misconduct involving a single client matter. Specifically, OCTC charges respondent with willfully violating (1) rule 3-310(F) of the State Bar Rules of Professional Conduct[1] (improperly accepting legal fees from a nonclient); (2) rule 3-110(A) (failing to competently perform legal services); (3) Business and Professions Code section 6106[2] (engaging in acts involving moral turpitude – misrepresentation); and (4) rule 3-700(A)(2) (improperly withdrawing from employment).

For the reasons set forth below, the court finds that respondent is culpable on only three of the four counts of charged misconduct and that the appropriate level of discipline is six

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[1] Unless otherwise indicated, all further references to rules are to the State Bar Rules of Professional Conduct.

[2] Unless otherwise indicated, all further statutory references are to the Business and Professions Code.

months' stayed suspension and two years' probation on conditions, including Ethics School, but no actual suspension.

Significant Procedural History

OCTC filed the notice of disciplinary charges (NDC) in this matter on March 24, 2015, and respondent filed his response to the NDC on April 13, 2015. On June 22, 2015, the court held an initial status conference, and on June 13, 2015, the court held the pretrial conference. On June 30, 2015, the parties filed a partial stipulation as to facts and conclusions of law and admission of documents.

A one-day trial was held on July 23, 2015. Following posttrial briefing, the court took the matter under submission for decision on July 28, 2015. OCTC was represented at trial by Deputy Trial Counsel Charles T. Calix. Respondent represented himself at trial.

Findings of Fact and Conclusions of Law

The following findings of fact are based on respondent's response to the NDC; the parties' June 30, 2015, partial stipulation of facts and conclusions of law and admission of documents; and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in the State of California on June 6, 1989, and has been a member of the State Bar of California since that time.

Case Number 14-O-02890 – Maya Matter

Facts

In June 2011, in the Ventura County Superior Court, Mr. Misael Maya, a non-citizen and legal immigrant, pleaded guilty and was convicted of (1) felony driving under the influence of alcohol with prior convictions (Veh. Code, §§ 23550, 23152, subd. (a)) and (2) felony possession of methamphetamine (Health& Saf. Code, § 11377, subd. (a)). In addition, Maya admitted that

he had served two prior terms in prison. Thereafter, in July 2011, the superior court sentenced Maya to a four-year and eight-month term in state prison. In that criminal proceeding, Maya was represented by an attorney, Matt Bromund.

Maya pleaded guilty and admitted his two prior prison terms, in part, because, as Maya claimed, Bromund advised him, both orally and in writing, that the convictions should not put his status as a lawful immigrant at risk. However, in November 2012, the United States Department of Homeland Security (DHS) began removal proceedings against Maya because of his June 2011 methamphetamine-possession conviction.

Sometime thereafter, Maya spoke with respondent about the removal proceedings. Based on what Maya told respondent, respondent believed that Bromund's advice to Maya regarding Maya's immigration status was erroneous and would support a claim for ineffective assistance of counsel. Moreover, respondent believed that Maya's guilty plea to and conviction on the methamphetamine-possession charge could be set aside in a habeas corpus proceeding based on a claim of ineffective assistance of counsel. Respondent told Maya that the fee to prepare and file such a writ was $1,000, and Maya told respondent that Maya's sister, Miriam Santana, would pay the $1,000.

On July 31, 2013, Santana retained respondent to prepare and file a petition for a writ of habeas corpus seeking to set aside Maya's guilty plea to the methamphetamine-possession charge based on ineffective assistance of counsel. Also, on July 31, 2013, respondent sent Maya a letter confirming (1) that Santana had retained him to prepare and file the petition for a writ of habeas corpus for Maya; (2) that Santana had paid respondent $500 of the $1,000 fee on July 31, 2013; and (3) that Santana had promised to pay respondent the remaining $500 in a few weeks. Thereafter, Santana paid respondent the remaining $500 as promised. Respondent

never obtained Maya's *informed written consent* to respondent's accepting the $1,000 from Santana.

With respondent's July 31, 2013, letter to Maya, respondent included a declaration in support of the petition for writ of habeas corpus for Maya to sign and to return to respondent for filing with the superior court. On August 4, 2013, Maya signed the supporting declaration and returned it to respondent. Soon thereafter, respondent received Maya's supporting declaration.

During this same time period, respondent also sent Bromund a declaration in support of the petition for writ of habeas corpus for Bromund to sign and return to respondent for filing with the superior court. Respondent prepared both Maya's and Bromund's supporting declarations based on respondent's discussions of the facts with Maya, the records from Maya's criminal proceeding, and other documents Maya made available to him.

Bromund, however, did not sign and return the supporting declaration that respondent prepared for him. Instead, Bromund sent respondent a declaration that he prepared and signed. Respondent received Bromund's prepared and signed declaration shortly after he received Maya's declaration.

The declaration Bromund signed and sent to respondent was significantly different from the declaration that respondent prepared and sent to him. In fact, Bromund's declaration was inconsistent with key statements/claims that Maya had made to respondent. Needless to say, Bromund's declaration detrimentally affected some key contentions in the petition for writ of habeas corpus that respondent had prepared. At that point, respondent could not decide how to best proceed and needed time to reevaluate the contentions in the draft petition.

Throughout all of 2013 and long before, respondent had been caring for both of his elderly parents, with whom he was very close. Beginning in about October 2013, the care needs of both of respondent's parents increased requiring additional attention from respondent. That

month, respondent's father became seriously ill and was hospitalized. His father had at least two operations. After the first operation, respondent's father developed an infection, which itself required the second operation. In late 2013, respondent also assisted his sister and her family by allowing them to move into respondent's home. Respondent's law office was in his home.

In mid-November 2013, Santana went to respondent's law office to obtain a status report on Maya's case. Respondent told Santana that he would file the writ by the end of the month. At the time he said that to Santana, respondent honestly and reasonably believed that, by the end of November 2013, he would be able to reevaluate and, if necessary, revise the contentions in his petition for writ of habeas corpus he had prepared. Respondent, however, could not and did not do so because he became overwhelmed with his work load; the stress of caring for his parents, his sister, and her family; and concern over his father's declining health.

Regrettably, respondent did not disclose his personal difficulties or his concerns over adverse effects of Bromund's declaration to his client. Instead, respondent attempted to gain additional time on November 27, 2013, by sending Maya a letter falsely stating that he had filed a petition for writ of habeas corpus for Maya. Enclosed with that letter was a copy of the petition that respondent had previously prepared. Attached to the petition was a copy of a proof of service signed by respondent in which respondent falsely stated that he had served the petition on the Office of the Attorney General in Ventura, California; the Litigation Coordinator for the Immigration Detention Center in El Centro, California; and the Office of the District Attorney in Ventura, California. Respondent did not thereafter file and serve the petition. Moreover, respondent did not take any action on behalf of Maya after November 27, 2013, until May 2014.

In February 2014, respondent's father, finally succumbing to the complications from his first surgery in October 2013, died. On March 13, 2014, Maya contacted the Ventura County Superior Court to determine the status of the petition for writ of habeas corpus that respondent

had allegedly filed. Maya was told by the superior court that no such petition had been filed on his behalf. Maya did not confront respondent. Instead, on March 19, 2014, Maya filed the copy of the petition that respondent sent him on November 27, 2013. On March 21, 2014, Maya filed a State Bar complaint against respondent. On March 24, 2014, the superior court filed an order both authorizing the filing of a copy of the petition in lieu of the original petition and denying the petition for the reasons set forth in the order.

On May 1, 2014, OCTC sent a letter to respondent concerning Maya's State Bar complaint. On May 15, 2014, respondent sent OCTC a letter admitting that he sent the petition for writ of habeas corpus to Maya without filing it or serving it, stating that he was distracted and exhausted from caring for his elderly parents and his father's final illnesses and that he somehow thought that sending the petition to Maya "would buy [him] some time to figure out the best way to proceed."

Additionally, on May 15, 2014, respondent sent a letter to Maya stating that he did not think that it would be appropriate for him to continue to represent Maya in court. With that letter, respondent included four copies of a revised petition for writ of habeas corpus that respondent prepared for Maya after the superior court denied the first petition. Respondent prepared the revised petition, and he sent it to Maya so that Maya could file it in the Court of Appeal in propria persona. In this May 15, 2014, letter, respondent included detailed instructions for Maya on how to sign, file, and serve the revised petition using four preaddressed and postage paid envelopes that respondent also sent Maya. Finally, On May 15, 2014, respondent also sent Maya and Santana a letter apologizing for not filing the petition for writ of habeas corpus as he had promised and refunding the $1,000 fee to Santana.

Conclusions

Count One – Rule 3-310(F) (Accepting Compensation from Nonclient)

Rule 3-310(F) provides:

> A member shall not accept compensation for representing a client from one other than the client unless:
>
> (1) There is no interference with the member's independence of professional judgment or with the client-lawyer relationship; and
>
> (2) Information relating to representation of the client is protected as required by Business and Professions Code section 6068, subdivision (e); and
>
> (3) The member obtains the client's informed written consent....

In count one, OCTC charges that respondent willfully violated rule 3-310(F) by accepting $1,000 from Santana as compensation for representing Maya without obtaining Maya's informed written consent to receive such compensation from his sister. The record clearly establishes that respondent willfully violated rule 3-310(F) as charged. Respondent stipulated that he accepted the $1,000 compensation from Santana without obtaining Maya's written consent.

OCTC has not alleged, and nothing in the record suggests, that there was any attempt by anyone to interfere with respondent's independent professional judgment or with respondent's attorney-client relationship with Maya or that respondent failed to properly protect Maya's confidential information or secrets in accordance with section 6068, subdivision (e). Furthermore, Maya knew that Santana was going to pay respondent's $1,000 fee and informed respondent of that fact in advance. In sum, respondent's rule 3-310(F) violation was minor in nature.

Count Two - Rule 3-110(A) (Failure to Perform Legal Services with Competence)

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence. In count two, OCTC charges that respondent willfully violated rule 3-110(A) by failing to file the petition for writ of habeas corpus for Maya over the 10-month period from mid-July 2013 through mid-May 2014. The record clearly

establishes that respondent repeatedly failed to competently perform legal services in willful violation of rule 3-110(A) by failing to file the petition for the seven-month period from September 2013 through late March 2014, when Maya filed the copy of the petition that respondent prepared and sent to him.

Count Three – Section 6106 (Moral Turpitude)

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. In count three, OCTC charges that respondent willfully violated section 6106 on about November 27, 2013, when he sent the letter to Maya in which he falsely stated that he had filed a petition for writ of habeas corpus and with which he enclosed a copy of the petition with a copy of a certificate of service attached signed by respondent falsely representing that he had served the petition on the Attorney General's Office, the Immigration Detention Center, and the District Attorney's Office. The record clearly establishes the charged violation of section 6106, as an attorney's misrepresentation regarding the status of a matter to a client involves moral turpitude in violation of section 6106 (*Stevens v. State Bar* (1990) 51 Cal.3d 283, 289).

Count Four – Rule 3-700(A)(2) (Improper Withdrawal from Employment)

Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until the attorney has taken reasonable steps to avoid reasonably foreseeable prejudice to the client's rights, including giving due notice to the client, allowing time for the employment of other counsel, and complying with rule 3-700(D) and other applicable rules and laws.

In count four, OCTC purports to charge that respondent willfully violated rule 3-700(A)(2) in a single, convoluted sentence, which fails to provide respondent with adequate notice of the charge against him. At best, OCTC charges that respondent constructively withdrew from employment based on the same acts of misconduct that it charged, and that this

court relied on, to find respondent culpable of willfully violating rule 3-110(A) and section 6106 under counts two and three, respectively, and that respondent failed to inform Maya that he was *constructively* withdrawing from employment.

"Whether or not an attorney's ceasing to provide services amounts to an effective withdrawal depends on the surrounding circumstances. (Citation.)" (*In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 535.) The circumstances surrounding respondent's cessation of work on Maya's petition for writ of habeas corpus fail to establish that respondent constructively withdrew from employment by clear and convincing evidence.[3] For example, the record clearly establishes that respondent performed legal services for and communicated with Maya after November 27, 2013. In sum, count four is DISMISSED with prejudice.

Aggravation

OCTC must prove aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.5.)[4]

OCTC contends that it established that respondent's misconduct caused significant client harm, evidenced multiple acts of misconduct, and was accompanied by an additional act involving moral turpitude. The court finds only that respondent's misconduct evidences multiple acts (i.e., three) of misconduct. (Std. 1.5(b).)

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[3] The court rejects the parties' stipulated culpability on count four because it is not supported by the record. The State Bar Court has an independent and affirmative duty to ensure that it accepts only those stipulations as to culpability that are supported by the record. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 407, 409-410; see also *In the Matter of Sampson* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 119, 128 [even the review department must independently review stipulated conclusions of law].) Moreover, even if the court were to accept the parties' stipulated culpability on count four, that culpability would not affect the level of discipline because count four is duplicative of counts two and three.

[4] All further references to standards are to this source.

OCTC's claim regarding significant client harm should have been included in the charged violation of rule 3-110(A). Moreover, the superior court's order denying the petition for writ of habeas corpus establishes that the court ruled on the merits of the petition and found them insufficient to entitle Maya to habeas relief. Thus, OCTC's claim of significant client harm is meritless. Likewise, OCTC's claim regarding an additional act involving moral turpitude should have been included in the charged violation of section 6106. In this court's view, OCTC is required to include all known allegations of misconduct in the NDC. OCTC may not elect to withhold one or more such allegations and then assert them as aggravating circumstances.

Mitigation

Respondent is required to prove each mitigating circumstance by clear and convincing evidence. (std. 1.6.)

No Prior Record (Std. 1. 6(a).)

Respondent has no prior record of discipline. Respondent is entitled to significant mitigation for almost 24 years of misconduct free practice even though respondent's present misconduct is serious. (Std. 1.6(a); *In the Matter of Stamper* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn. 13 [noting that the Supreme Court has repeatedly applied former mitigation standard 1.2(e)(1) in cases involving serious misconduct and citing *Rodgers v. State Bar* (1989) 48 Cal.3d 300, 317 and *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029].)

Good Character (Std. 1. 6(f).)

Respondent presented exceptional and compelling testimony as to his good character. Specifically, respondent presented evidence from 19 individuals (one testified in person; eighteen submitted letters[5]). Each of his character witnesses, which included respondent's

[5] At least nine of the letters establish that the writer was fully aware of the charges against respondent.

former wife and former brother-in-law, an Assistant United States Attorney, and a city council member and former political opponent, was extremely credible.

Notably, respondent presented witnesses of very high repute. For example, both the Executive Director of the California Appellate Project/Los Angeles and the Assistant Director of the California Appellate Project/Los Angeles presented compelling, credible evidence as to respondent's good character and legal abilities.

Many of the individuals have witnessed respondent's daily mode of living. Collectively, the testimony of all respondent's witnesses and respondent's testimony clearly establish that respondent is an individual of exceptional good character, that he is a competent, hard-working attorney, and that he is dedicated to serving his clients[6] and his community.

Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)

Respondent is also entitled to extensive mitigation for his cooperation in filing a response to the NDC admitting culpability for the charged misconduct and for thereafter entering into an extensive partial stipulation as to facts and culpability. (See, e.g., *In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [*extensive mitigation* is afforded to respondent attorneys who both stipulate to facts and admit culpability].)

Recognition of Wrongdoing

Respondent is entitled to significant mitigation for his recognition of the wrongfulness of his actions. This recognition is very significant because it is strong evidence that respondent will not again engage in future misconduct and that he can and will conform his conduct to the strictures of the profession.

[6] Testimony regarding an attorney's legal ability and dedication to clients is mitigating evidence. (*Rose v. State Bar* (1989) 49 Cal.3d 646, 667; *Hawk v. State* Bar (1988) 45 Cal.3d 589, 602.)

Extreme Emotional/Physical/Mental Difficulties (Std. 1.6(d).)

Respondent is also given some mitigation because, at the time of the misconduct, respondent was suffering from stress and anxiety caused by his father's illness and death and his caring for his elderly mother, all of which caused him to neglect Maya's petition.

Discussion

The purpose of State Bar Court disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Second, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

In short, "[t]he imposition of attorney discipline does not issue from a fixed formula but from a balanced consideration of all relevant factors, including aggravating and mitigating circumstances." (*Rodgers v. State Bar* (1989) 48 Cal.3d 300, 316.) Furthermore, it is well-established that even purported mandatory standards can be tempered by "considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-221; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994).

Standard 1.7(a) provides: "If a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed. The most severe of the applicable sanctions is set forth in standard 2.7, which provides: "Disbarment or actual suspension is appropriate for an act of moral turpitude, dishonesty, fraud,

corruption or concealment of a material fact. The degree of sanction depends on the magnitude of the misconduct and the extent to which the misconduct harmed or misled the victim and related to the member's practice of law."

The mitigating circumstances in the present case are not only significant, but are also "compelling" and justify a substantial downward departure from the actual suspension provided for in standard 2.7. In that regard, the court finds that *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211 is instructive on the issue of discipline.

In *Jeffers*, the attorney was placed on one year's stayed suspension and two years' probation on conditions, but no actual suspension. The attorney in that case violated sections 6106 (moral turpitude) and 6068, subdivisions (b) (maintain respect for courts) and (d) (employ means consistent with truth and never mislead judicial officers) and rule 5-200 (employ means consistent with truth and never mislead judicial officers). In one client matter, the attorney failed to appear as ordered at a mandatory settlement conference (MSC); failed to fully disclose information to the other party after representing to the MSC judge that he would do so; and intentionally misleading the MSC judge regarding the status of a defendant. The attorney in *Jeffers* had no prior discipline in more than 30 years of practice and offered evidence of good character through his many civic and professional pro bono activities.

On balance, the court finds that OCTC's recommended level of discipline is too harsh given the peculiar factual circumstances of this case. Instead, the appropriate level of discipline for the found misconduct in this proceeding is recommended to be six months' stayed suspension and two years' probation on conditions, but no actual suspension.

Recommendations

Discipline

The court recommends that respondent **LEONARD JAY KLAIF** be suspended from the practice of law in the State of California for six months, that execution of the six-month suspension be stayed, and that he be placed on probation for two years[7] on the following conditions:

1. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
2. Within 30 days after the effective date of the Supreme Court order in this matter, 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. Respondent must promptly meet with the probation deputy as directed and upon request.
3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.
5. Within one year after the effective date of the Supreme Court order in this proceeding, 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.
6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation

[7] The probation period will commence on the effective date of the Supreme Court order in this matter. (See Cal. Rules of Court, rule 9.18.)

monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.

7. At the expiration of the period of probation, if respondent has complied with all conditions of probation, the six-month stayed suspension will be satisfied and that suspension will be terminated.

Professional Responsibility Examination

The court further recommends that respondent be ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

Costs

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: October 26, 2015.

W. KEARSE McGILL
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 Los Angeles, on October 26, 2015, I deposited a true copy of the following document(s):

DECISION

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

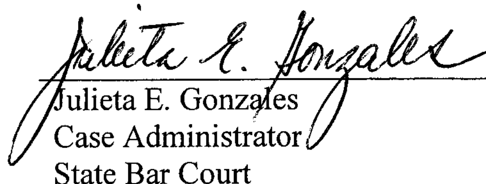
☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

LEONARD J. KLAIF
P O BOX 1657
OJAI, CA 93024 - 1657

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

Charles T. Calix, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 26, 2015.



Julieta E. Gonzales
Case Administrator
State Bar Court