

ORIGINAL

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State Bar Court of California Hearing Department Los Angeles REPROVAL		
PUBLIC MATTER		
Counsel For The State Bar Sue Hong Deputy Trial Counsel Office of Chief Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1161 Bar # 285852	Case Number(s): 15-J-12016	For Court use only <div style="text-align: center;"> NOT FOR PUBLICATION </div> <div style="text-align: center;"> FILED APR 05 2016 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
In Pro Per Respondent Nathan W. Drage Nathan W. Drage PC, Inc. 1465 S 700 W Salt Lake City, UT 84104 (801) 326-0441 Bar # 130448	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
In the Matter of: NATHAN W. DRAGE Bar # 130448 A Member of the State Bar of California (Respondent)	PRIVATE REPROVAL <input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **December 11, 1987**.
- (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 (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(h) & 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

(Do not write above this line.)

- (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.
- (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 page 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. **See Attachment at page 8.**
- (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.

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- (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.
- (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:

D. Discipline:

- (1) **Private reproof (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 reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproof:

- (1) Respondent must comply with the conditions attached to the reproof for a period of **one year**.
- (2) During the condition period attached to the reproof, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.

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- (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.
- (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 reprobation. 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 reprobation 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 reprobation.
- (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 reprobation.

No MPRE recommended. Reason:

- (11) The following conditions are attached hereto and incorporated:

Substance Abuse Conditions

Law Office Management Conditions

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Medical Conditions

Financial Conditions

F. Other Conditions Negotiated by the Parties:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: NATHAN W. DRAGE

CASE NUMBER: 15-J-12016

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. 15-J-12016 (Discipline in Other Jurisdiction)

PROCEDURAL BACKGROUND IN OTHER JURISDICTION:

1. On May 3, 1988, Respondent was admitted to the practice law in the State of Utah.

2. On October 12, 2010, Respondent entered into the Discipline by Consent and Settlement Agreement with the Utah State Bar in Civil Case No. 100901669, admitting that Respondent had committed violations of Rules 1.4(b) (Communication), 1.7(a)(2) (Conflict of Interest: Current Clients), 1.8(a)(1) (Conflict of Interest: Current Clients: Specific Rules), 1.8(a)(2) (Conflict of Interest: Current Clients: Specific Rules), 1.15(a) (Safekeeping Property), 1.15(b) (Safekeeping Property), and 8.4(a) (Misconduct) of the Utah Rules of Professional Conduct.

3. On October 13, 2010, the Honorable Denise P. Lindberg, Third District Court, entered an Order of Discipline: 2 years of probation with the possibility of a one year suspension if any other bar complaint is filed against Respondent where the Screening Panel of Ethics and Disciplinary Committee finds probable cause for filing a formal complaint against Respondent, for violations of Rules 1.4(b) (Communication), 1.7(a)(2) (Conflict of Interest: Current Clients), 1.8(a)(1) (Conflict of Interest: Current Clients: Specific Rules), 1.8(a)(2) (Conflict of Interest: Current Clients: Specific Rules), 1.15(a) (Safekeeping Property), 1.15(b) (Safekeeping Property), and 8.4(a) (Misconduct) of the Utah Rules of Professional Conduct. Thereafter, that order became final.

4. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

5. Respondent and an individual, Mr. R., have had an attorney-client relationship in previous legal matters. Respondent and Mr. R. also have had business dealings in the past where there was no attorney-client relationship.

6. On March 19, 2008, Mr. R. was served with a complaint from a credit card company. Respondent agreed to represent Mr. R. in the credit card matter.

7. Respondent decided the best strategy would be to let a default judgment enter against Mr. R., without informing Mr. R. of his decision, or explaining the basis of his strategy to Mr. R.

8. Respondent also represented Mr. R. in connection with a corporate merger. Mr. R. was promised 15,000 shares of stock from the merger. Mr. R. received 10,000 shares, and hired Respondent to sue for the remaining 5,000 shares.

9. The suit for the remaining 5,000 shares could not be handled by Respondent because Respondent had prior business dealings with the principals of the other party involved in the merger, which would have substantially affected the member's representation, unless Respondent fully informed Mr. R. of Respondent's prior business relationship with the principals of the other party involved in the merger.

10. Despite the potential conflict, Respondent did not provide Mr. R. with written disclosure before representing Mr. R. in connection with the merger.

CONCLUSIONS OF LAW:

11. As a matter of law, Respondent's culpability of professional misconduct determined in the proceeding in Utah warrants the imposition of discipline under the laws and rules binding upon Respondent in the State of California at the time Respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a). Respondent's misconduct in the other jurisdiction, had it occurred in California, would have violated rule 3-310(B)(2)[Conflict of Interest-Relationship with a Party] of the Rules of Professional Conduct, and section 6068(m)[Failure to Inform Client of Significant Development] of the Business and Professions Code.

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Multiple Acts (Std. 1.5(b)): Respondent has failed to inform his client of a significant development and properly disclose his current conflict of interest to his client.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

No Prior Discipline (Std. 1.6(a)): Respondent was admitted to practice on December 11, 1987. Respondent practiced without discipline until 2008, when he began engaging in misconduct. Respondent has no prior discipline in 21 years of practice, which suggests the current misconduct is aberrant and is not likely to recur. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 242 [20 years in the practice of law without discipline is afforded highly significant weight in mitigation].)

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 was found culpable of professional misconduct in Utah, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law. Specifically, Respondent’s misconduct in the other jurisdiction, had it occurred in California, demonstrates violations of rule 3-310(B)(2)[Conflict of Interest-Relationship with a Party] of the Rules of Professional Conduct, and section 6068(m)[Failure to Inform Client of Significant Development] of the Business and Professions Code.

Standard 1.7(a) states that, “[i]f 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.” Here, Standard 2.19 prescribes the most severe sanction, suspension not exceeding three years or a reproof for the 3-310(B)(1), which is a violation of a provision of the Rules of Professional Conduct not specified in the Standards.

Considering respondent’s 21 years of discipline free practice and respondent’s successful completion of his probationary term in the underlying Utah disciplinary matter 3 years ago, the misconduct described above was aberrational. Therefore, discipline at the lower end prescribed by Standard 2.19 is warranted. As such, a private reproof is appropriate and will protect the public, the courts and the legal profession, help maintain high professional standards by attorneys, and preserve public confidence in the legal profession.

DISMISSALS.

In this streamlined disciplinary proceeding, none of respondent’s violations of the Utah Rules of Professional Conduct establish respondent’s culpability for violating California Business and Professions Code section 6106 (moral turpitude-Issuance of NSF checks) because respondent was not found culpable of violating either Utah Rules of Professional Conduct, rule 8.4(b) or Utah Rules of Professional Conduct, rule 8.4(c), which provide, respectively, that it is professional misconduct for an

attorney “to commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects” or “to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” Accordingly, the State Bar moves to dismiss the alleged violation of California Business and Professions Code section 6106.

Even though respondent’s culpability for violating Utah Rules of Professional conduct, rule 1.15(a) (safekeeping property); Utah Rules of Professional Conduct, rule 1.15(b) (safekeeping property); and Utah Rules of Professional Conduct, rule 8.4(a) establish respondent’s culpability of violating California Rules of Professional Conduct, rule 4-100(A) (commingling), the factual basis of respondent’s culpability for violating the Utah Rules of Professional conduct was effectively established by the entry of respondent’s default in Utah and respondent has established in this streamline California proceeding that he did not engage in commingling in Utah. Accordingly, the State Bar moves to dismiss the charged violation of California Rules of Professional Conduct, rule 4-100(A) (commingling). (Cf. *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 318 [in a default proceeding, when the evidence negates an allegation in the notice of disciplinary charges that has been deemed admitted by the entry of default, the evidence and no the allegation control]; see also *In the Matter of Mapps* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 1, 7-8 & fn. 7; *In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 55.)

EXCLUSION FROM MCLE CREDIT


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

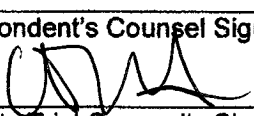
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In the Matter of: NATHAN W. DRAGE	Case number(s): 15-J-12016
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SIGNATURE OF THE PARTIES

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.

3/15/2016  NATHAN W. DRAGE
Date Respondent's Signature Print Name

3/22/16  SUE HONG
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of: NATHAN W. DRAGE	Case Number(s): 15-J-12016
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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 5, 2016
Date

W. Kearse McGill
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 April 5, 2016, I deposited a true copy of the following document(s):

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

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

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

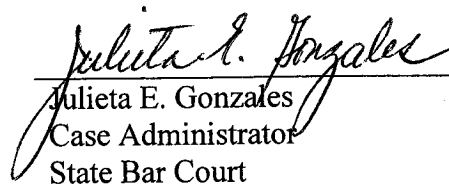
NATHAN W. DRAGE
NATHAN W. DRAGE PC, INC.
1465 S 700 W
SALT LAKE CITY, UT 84104

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

Sue K. Hong, Enforcement, Los Angeles

Terrie Goldade, Office of Probation, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 5, 2016.



Julieta E. Gonzales
Case Administrator
State Bar Court