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State Bar Court of California Hearing Department San Francisco REPROVAL		
Counsel For The State Bar Robert A. Henderson 180 Howard St. San Francisco, CA 94105 (415) 538-2385 Bar # 173205	Case Number(s): 15-O-11817	For Court use only PUBLIC MATTER FILED JUN 21 2016 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Lawrence J. King 11 Western Ave. Petaluma, CA 94952 (707) 769-9791 Bar # 120805	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING REPROVAL <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: ROBERT VAUGHN COHUNE Bar # 43284 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 **January 9, 1969**.
- (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 **12** 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."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(Effective April 1, 2016)



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- (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: **three billing cycles following the effective date of the discipline.** (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
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."

(Do not write above this line.)

- (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 to Stipulation at p. 9.
- (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 investigation 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.

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- (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:

No prior record of discipline - See Attachment to Stipulation at p. 9.

Prefiling Stipulation - See Attachment to Stipulation at p. 9.

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 Reproval:

- (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 reprobation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the reprobation conditions period, 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 reprobation with the probation monitor to establish a manner and schedule of compliance. During the reprobation conditions period, 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

Medical Conditions

Financial Conditions

(Effective April 1, 2016)

Reprobation

(Do not write above this line.)

F. Other Conditions Negotiated by the Parties:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ROBERT VAUGHN COHUNE

CASE NUMBER: 15-O-11817

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-O-11817 (Complainant: Richard Langan)

FACTS:

1. On October 25, 2013, Richard Langan ("Langan") hired respondent to locate and contact Langan's landlord and thereafter attempt to obtain a new yearly lease for his residence.

2. There was no written contract between Langan and respondent for the legal services. Respondent and Langan agreed that respondent would receive \$750 for three hours work.

3. On October 25, 2013, Langan paid respondent \$750 as an advance fee.

4. On October 25, 2013, Langan purchased cashier's check no. 225622 made payable to the landlord, in the amount of \$4,200, which was provided to respondent to forward to the landlord when located. The cashier's check was for three months of rent [November 1, 2013 to January 31, 2014].

5. On October 26, 2013, respondent wrote the landlord at the landlord's correct address in San Francisco and enclosed the cashier's check.

6. On November 25, 2013, the letter was returned unclaimed.

7. On January 4, 2014, respondent wrote the landlord regarding the lease.

8. On January 22, 2014, Langan purchased cashier's check no. 227976 made payable to the landlord, in the amount of \$4,200, which represented the next three months of rent, which Langan provided to respondent. Respondent forwarded this check to Langan's landlord.

9. The cashier's checks were never received by the landlord and eventually Langan re-deposited the checks into his account.

10. On June 16, 2014, Langan obtained a counter check made payable to "Robert Cohune/Trust Account" in the amount of \$4,200. On the memo line is written "retainer."

11. Respondent and Langan disagreed about what the \$4,200 was for. Langan claimed the funds were to be held in trust for the benefit of the landlord. Respondent claimed the funds were a "true

retainer” for future legal services. However, respondent failed to document his understanding in a written fee agreement, as required by Business and Professions Code, section 6148. Accordingly, whatever respondent’s subjective understanding of the verbal agreement he may have had with Langan, he would only be entitled to *quantum meruit* for the services he rendered on Langan’s behalf. Effectively, then, the \$4,200 is rendered an advance against which fees could be charged and for which respondent would be required to provide an accounting.

12. Between July 1 and 3, 2014, respondent and Langan exchanged emails.

13. On August 11, 2014, respondent sent the landlord an email regarding the lease.

14. On September 8, 2014, Langan wrote a letter/memo to respondent and in part stated:

I currently owe Mr. H. \$16,800, which will cover my rent to 31 October 2014. I would like to rent the house for at least one more year, possibly more. I have incurred the following expenses because of Mr. H’s lack of correspondence as well as legal fees and costs. So far I have expended \$2,000 to clear the . . . Homeowner Association fees that were due on 28 February 2014. **Add to this legal and attorney fees have been paid to you in the total amount of \$4,950.** [Emphasis added.]

15. On September 10, 2014, Langan paid respondent \$1,000 for legal work that had been performed.

16. Langan eventually contacted the realtor that had sold the property to the landlord and sought the realtor’s assistance in obtaining a new lease. On January 21, 2015, Langan entered into a new lease with his landlord without the assistance of respondent.

17. On February 7, 2015, Langan requested a refund of the \$4,200. Respondent refused to provide a refund claiming the \$4,200 was a “true retainer.” In fact, as explained above, the \$4,200 was an advance against which fees could be charged and for which respondent would be required to provide an accounting.

18. On February 9, 2015, Langan requested an accounting of the fees paid. Respondent received the request shortly after it was made. Respondent did not provide an accounting.

19. Langan and respondent entered into a fee arbitration, at which the arbitrator found in favor of Langan in the amount of \$4,100. The arbitrator found that respondent had earned \$1,850.

20. After the arbitration respondent filed suit for trial *de novo*. The matter is still pending.

21. On May 4, 2016, respondent refunded \$4,200 to Langan.

CONCLUSIONS OF LAW:

22. By failing to promptly provide an accounting for the funds received as requested by Langan on February 9, 2015, respondent wilfully violated Rules of Professional Conduct, rule 4-100(B)(3).

23. By failing to promptly refund the unearned fees as requested by Langan on February 7, 2015, until May 4, 2016, respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent has committed two violations of the Rules of Professional Conduct, which constitute multiple acts under the Standard.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent has no prior record of discipline in his 47 years of practice, but the current misconduct is serious. Accordingly, while he is not entitled to mitigation under Standard 1.6(a), his discipline-free record prior to the current misconduct is entitled to significant mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [gave attorney significant weight in mitigation for practicing law for over ten years without misconduct].)

Prefiling Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

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 has committed multiple acts of 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."

The most severe sanction applicable to respondent's misconduct is found in Standard 2.2, which applies to respondent's failure to provide an accounting in violation of Rules of Professional Conduct, rule 4-100(B)(3) and states:

- (a) Suspension or reproof is the presumed sanction for any other violation of Rule 4-100.

As there is the significant mitigating factor of many years in practice and the additional factor of a pre-filing stipulation, it is clear that the mitigation predominates in this matter. Therefore discipline at the low end of the range, a reproof, is appropriate.

Case law supports a reproof. In a matter involving an attorney that improperly withdrew from representation, failed to perform competently, failed to communicate and failed to refund unearned fees, the Supreme Court imposed a one year fully stayed suspension and eighteen months of probation. (See, *Colangelo v. State Bar* (1991) 53 Cal.3d 1255.)

In the current matter respondent has significant mitigation and fewer acts of misconduct than in *Colangelo*, therefore a public reproof is the appropriate level of discipline to both protect the public and maintain the high professional standards expected of the profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of May 23, 2016, the prosecution costs in this matter are \$3,200. 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 MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT

Respondent may not receive MCLE credit for completion of: State Bar Ethics School, State Bar Client Trust Accounting 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.)

(Do not write above this line.)

In the Matter of: ROBERT VAUGHN COHUNE	Case number(s): 15-O-11817
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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.

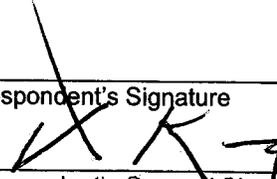
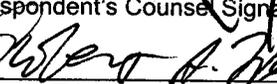
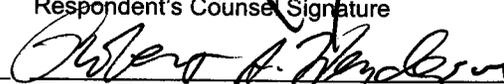
Date	<u>June 7, 2016</u>	Respondent's Signature		Robert V. Cohune Print Name
Date	Respondent's Counsel Signature	Lawrence J. King Print Name		
Date	Deputy Trial Counsel's Signature	Robert A. Henderson Print Name		

(Do not write above this line.)

In the Matter of: ROBERT VAUGHN COHUNE	Case number(s): 15-O-11817
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Date	Respondent's Signature	Robert V. Cohune
6/6/16		Print Name
Date	Respondent's Counsel Signature	Lawrence J. King
6/9/16		Print Name
Date	Deputy Trial Counsel's Signature	Robert A. Henderson
		Print Name

(Do not write above this line.)

In the Matter of: ROBERT VAUGHN COHUNE	Case Number(s): 15-O-11817
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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.

Date June 21, 2016



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 June 21, 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 San Francisco, California, addressed as follows:

LAWRENCE JOSEPH KING
11 WESTERN AVE
PETALUMA, CA 94952

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:

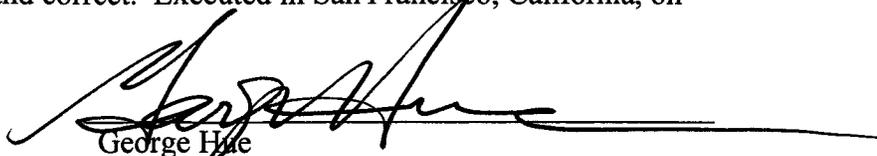
by fax transmission, at fax number . No error was reported by the fax machine that I used.

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:

Robert A. Henderson, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 21, 2016.


George Hue
Case Administrator
State Bar Court