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State Bar Court of California

Hearing Department

Counsel For The State Bar Sherrie B. McLetchie Deputy Trial Counsel 180 Howard Street San Francisco, California 94105 (415) 538-2000 Bar # 85447	Case Number (s) 05-C-01856-JMR	(for Court's use) PUBLIC MATTER FILED <i>LOS</i> AUG 17 2006 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Timothy Aspinwall Nossaman, Guthner, Knox & Elliott, LLP 915 L Street, Ste. 1000 Sacramento, California 95814-3705 (916) 442-8888 Bar # 132506	Submitted to: Settlement Judge	
In the Matter Of: William Ernest Gnass Bar # 50605 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PUBLIC REPROVAL <input 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 January 5, 1972.
- (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."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Approval

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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 added to membership fee for calendar year following effective date of discipline (public reproof)
- case ineligible for costs (private reproof)
- costs to be paid in equal amounts for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- costs 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 [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) Prior record of discipline [see standard 1.2(f)]
 - (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."
- (2) Dishonesty: Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

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- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances are involved.**

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice. ~~except with respect to misconduct which is not subject to discipline~~
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the ~~victim of his/her misconduct~~ with the State Bar during disciplinary investigation and proceedings. See pg. 10.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical 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 Respondent no longer suffers from such difficulties or disabilities.
- (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.

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- (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 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 convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances are involved.**

Additional mitigating circumstances:

The Waterford City Council unanimously passed a resolution on July 7, 2006, whereby the City Council "congratulates and recognizes William E. Grass on his excellence, his many contributions to the City of Waterford and his indomitable spirit." The week of July 9, 2006, was by this resolution declared William E. Grass Week in the City of Waterford.

The 1996 final report of the Stanislaus County Grand Jury found that respondent fully disclosed to the Waterford City Council his role as bond counsel to the public finance authorities, and that there was no evidence of any conflict of interest. See 'Facts and Conclusion of Law,' pages 7-8, *infra*."

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 .
- (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.
- (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 reproof. 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 reproof 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.

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- (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. ~~Respondent must also comply with any conditions of probation in conjunction with any probation imposed by 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:

<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:

[Handwritten signatures]

In the Matter of

Case number(s).

William Ernest Gnass

05-C-01856-JMR

A Member of the State Bar

NOLO CONTENDERE PLEA TO STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION**Bus. & Prof. Code § 6085.5 Disciplinary Charges: Pleas to Allegations**

There are three kinds of pleas to the allegations of a Notice of Disciplinary Charges or other pleading which initiates a disciplinary proceeding against a member:

- (a) Admission of culpability.
- (b) Denial of culpability.
- (c) **Nolo contendere**, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere shall be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court shall find the member culpable. The legal effect of such a plea shall be the same as that of an admission of culpability for all purposes, except that the plea and any admission required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based. (Added by Stats. 1996, ch. 1104.) (emphasis supplied)

Rule 133, Rules of Procedure of the State Bar of California STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION

(a) A proposed stipulation as to facts, conclusions of law, and disposition must set forth each of the following:

- (5) a statement that Respondent either
 - (i) admits the facts set forth in the stipulation are true and that he or she is culpable of violations of the specified statutes and/or Rules of Professional Conduct or
 - (ii) **pleads nolo contendere to those facts and violations. If the Respondent pleads nolo contendere, the stipulation shall include each of the following:**
 - (a) an acknowledgement that the Respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified in the stipulation; and
 - (b) If requested by the Court, a statement by the Deputy Trial Counsel that the factual stipulations are supported by evidence obtained in the State Bar investigation of the matter (emphasis supplied)

I, the Respondent in this matter, have read the applicable provisions of Bus. & Prof. Code § 6085.5 and rule 133(a)(5) of the Rules of Procedure of the State Bar of California. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea must be considered the same as an admission of culpability except as state in Business and Professions Code section 6085.5(c).

Date JULY 19, 2006

Signature

William E. Gnass
Print Name

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Attachment language (if any):

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING.

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 951 of the California Rules of Court.
2. On February 22, 2005, by plea of nolo contendere, in *People v. William Ernest Gnass*, Stanislaus County Superior Court case number 1064714, respondent was convicted of three misdemeanor violations of Government Code sections 87100 and 91000 [using official position to influence a governmental decision], crimes which may or may not involve moral turpitude. Respondent was sentenced to 30 days in jail (with credit of 1 day), and placed on 36 months informal probation with conditions including that he not write any bond prospectuses while on probation, and pay a \$100 fine.
3. Respondent paid the \$100 fine and served the jail sentence by performing 19 days of legal services under the auspices of the Alternative Work Program in an office at the Waterford City Hall.
4. By order filed February 2, 2006, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department:

for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the misdemeanor violation of Government Code sections 87100 and 91000, of which William Ernest Gnass was convicted, involved moral turpitude or other misconduct warranting discipline.

FACTS AND CONCLUSION OF LAW.

Facts

1. Respondent functioned as the City Attorney for the City of Waterford since 1989. Flanagan, Mason, Robins, Gnass & Corman's 1989 contract with the City of Waterford provided for respondent's work as City Attorney for the City of Waterford and for work performed by other attorneys in the firm in the amount of \$1,500 per month for up to 15 hours per month and \$100 per hour of attorney time thereafter. The contract was amended or revised over the ensuing years providing for additional compensation at a higher hourly rate or contingent fee depending on the type of work being performed.

2. In 1990 the Waterford Public Finance Authority ("PFA") was formed. The members of the Waterford City Council also served as the members of the board of the Waterford PFA. Respondent was hired in 1990 as Authority Counsel for the Waterford PFA. From 1990 to 2006 respondent and other attorney-shareholders in and/or attorneys employed by Flanagan, Mason, Robbins, Gnass and Corman, and successor firm of Mason, Robbis, Gnass, and Browning provided legal services to the

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Waterford PFA. The firms were paid for work performed by the attorneys. The compensation varied based on the type of work performed. Compensation was either hourly or on a contingent fee basis.

3. According to Count 1 of the Second Amended Misdemeanor Complaint, filed February 22, 2005, in December 1995 respondent "knowing and with reason to know he had a financial interest, did knowingly and willfully and unlawfully make and participate in making, and used and attempted to use his official position to influence a governmental decision, to wit: The Waterford Public Financing Authority joining the Sierra-Central Valley Public Financing Authority for the purpose of issuing bonds."

4. According to Count 2 of the Second Amended Misdemeanor Complaint, on or about January 2, 1996, respondent "knowing and with reason to know he had a financial interest, did knowingly and willfully and unlawfully make and participate in making, and used and attempted to use his official position to influence a governmental decision, to wit: The Waterford Public Financing Authority joining the California Commerce Public Financing Authority¹ for the purpose of issuing bonds."

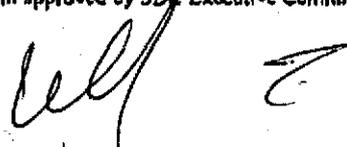
5. According to Count 3 of the Second Amended Misdemeanor Complaint, on or about April 15, 1996, respondent "knowing and with reason to know he had a financial interest, did knowingly and willfully and unlawfully make and participate in making, and used and attempted to use his official position to influence a governmental decision, to wit: The Waterford Public Financing Authority joining the Rancho Lucerne Valley Public Financing Authority for the purpose of issuing bonds."

6. While respondent was City Attorney for City of Waterford, respondent's firm, Flanagan, Mason, Robins, Gnass & Corman, was bond disclosure counsel for Sierra-Central Valley Public Financing Authority, California Commerce Public Financing Authority, Rancho Lucerne Valley Public Financing Authority. Although respondent's firm was the named disclosure counsel, in fact, respondent was the primary attorney in his firm functioning as the bond disclosure counsel.

Conclusion of Law

Based on the facts of this case, respondent's violation of Government Code sections 87100 and 91000 did not involve moral turpitude, but did involve other misconduct warranting discipline.

¹ California Commerce Public Financing Authority did business, among other names, as "California Desert Public Financing Authority." By billing dated February 26, 1997, Flanagan, Mason, Robins, Gnass & Corman billed California Desert Public Financing Authority for respondent's services as "special counsel" in the amount of \$24,000.



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PENDING PROCEEDINGS.

The disclosure date referred to on page one, paragraph A.(7) was July 11, 2006.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 11, 2006, the estimated prosecution costs in this matter are approximately \$2,816. Respondent acknowledges that this figure is an estimate only. 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.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct do not offer any guidance in cases involving crimes which may or may not involve moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission. Standard 3.4 expressly refers to "part B of these standards," and standard 2.1 "Scope," the first standard in part B of the Standards, provides that:

This part shall pertain to the sanction to be imposed following offenses of professional misconduct of members found or acknowledged in original disciplinary proceedings. It shall exclude sanctions for misconduct following a member's conviction of crime pursuant to sections 6101-6102, Business and Professions Code. (Emphasis supplied.)

The State Bar has not been able to find published California Supreme Court or Review Department cases regarding attorney discipline based on violation of Government Code section 87100. However, in *People v. Honig* (1996) 48 Cal.App.4th 289, 340, fn. 23, that court stated that violation of section 87100 "would not even require a showing of the potential for personal benefit"²

The State Bar does not contend that respondent's criminal conduct involved moral turpitude. However, in misdemeanor conviction referral cases not involving moral turpitude, a public reproof is the commonly imposed degree of discipline where there is a nexus between the attorney's criminal conduct and the practice of law. Here, that nexus is clear.

² Honig was convicted of violation of Government Code sections 1090 and 1097. Although Honig is a member of the State Bar of California, there is no published Review Department or Supreme Court opinion regarding Honig's discipline as an attorney arising out of his criminal conviction.

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FACTS SUPPORTING MITIGATING CIRCUMSTANCES.

No Prior Discipline

Respondent was admitted on January 5, 1972. The criminal conduct of which he was convicted was not alleged to have commenced prior to December 1995. Thus, respondent had many (almost 24) years of practice without discipline.

Candor/Cooperation

Respondent displayed spontaneous candor and cooperation with the State Bar by promptly notifying the State Bar of his conviction and by entering into this stipulation.

Good Character

Respondent provided to the State Bar correspondence attesting to his good character.



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In the Matter of	Case number(s):
William Ernest Gnass	05-C-01856-JMR

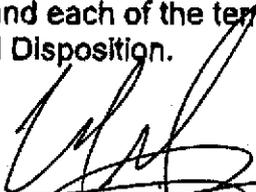
SIGNATURE OF THE PARTIES

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 Fact, Conclusions of Law and Disposition.

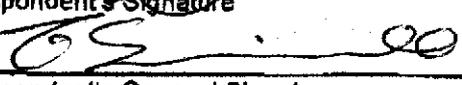
7/19/06
Date

7/20/06
Date

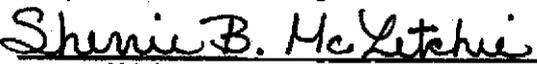
July 21, 2006
Date


Respondent's Signature

William E. Gnass
Print Name


Respondent's Counsel Signature

Timothy Aspinwall
Print Name


Deputy Trial Counsel's Signature

Sherrie B. McLetchie
Print Name

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

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In the Matter of William Ernest Gnass	Case number(s): 05-C-01856-JMR
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ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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.

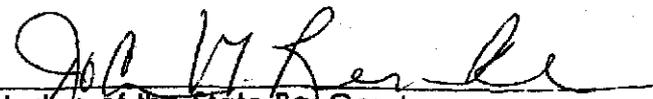
The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.

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 125(b), 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 reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

8/17/06
Date


Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; 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 17, 2006, 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:

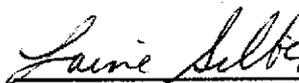
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**ROBERT JOSEPH SULLIVAN
TIMOTHY J. ASPINWALL
NOSSAMAN GUTHER KNOX ET AL
915 L ST #1000
SACRAMENTO, CA 95814 - 3701**

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

SHERRIE MCLETCHIE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 17, 2006.



Laine Silber
Case Administrator
State Bar Court