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State Bar Court of California
Hearing Department
Los Angeles
ACTUAL SUSPENSION



<p>Counsel For The State Bar</p> <p>AGUSTIN HERNANDEZ Deputy Trial Counsel 1149 South Hill St. Los Angeles, CA 90015-2299 (213) 765-1713</p> <p>Bar # 161625</p>	<p>Case Number(s): 11-O-19540</p>	<p>For Court use only</p> <p>PUBLIC MATTER</p> <p>FILED</p> <p>SEP 11 2012</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>RICHARD R. HURLEY 2801 W. Coast Hwy., Ste. 270 Newport Beach, CA 92663 (949) 275-2556</p> <p>Bar # 183440</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: WALTER ROY MITCHELL</p> <p>Bar # 165834</p> <p>A Member of the State Bar of California (Respondent)</p>		

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

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted September 17, 1993.
- (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):
 - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [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.
- (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.
- (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.

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- (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 coupled with present misconduct which is not deemed serious.
- (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 victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (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.
- (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.

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(13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

See pages 8 and 9 of the Stipulation Attachment.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of two years.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.

ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

(b) The above-referenced suspension is stayed.

(2) **Probation:**

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

(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of 30 days.

i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.

iii. and until Respondent does the following:

E. Additional Conditions of Probation:

(1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

(2) During the probation period, 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

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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 period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (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 to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (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 probation conditions.
- (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) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the *Multistate Professional Responsibility Examination ("MPRE")*, administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

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No MPRE recommended. Reason:

- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

Attachment language (if any):

ATTACHMENT TO STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: WALTER ROY MITCHELL

CASE NUMBERS: 11-O-19540

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. 11-O-19540 (State Bar Investigation):

FACTS:

1. Respondent failed to pay his State Bar membership fees as required by February 1, 2011.
2. On March 9, 2011, the Office of Membership Billing Services of the State Bar of California ("Membership Billing") properly mailed to Respondent at Respondent's membership records address a Final Delinquent Notice informing him that his continued failure to pay his State Bar membership fees will result in his suspension from the practice of law. The Final Delinquent Notice stated that the effective date of this suspension would be July 1, 2011. These documents were also e-mailed to Respondent on April 11, 2011.
3. On June 3, 2011, Membership Billing properly mailed to Respondent at his State Bar membership records address a Notice of Entry of Order of Suspension for Nonpayment of Fees. The Notice of Entry of Order of Suspension for Nonpayment of Fees stated that Respondent's name had been placed on a list of members that had been delinquent in their payment of membership fees, and that the delinquent list had been transmitted to the California Supreme Court. The Notice of Entry of Order of Suspension for Nonpayment of Fees further stated that on May 26, 2011, the California Supreme Court entered an order of suspension for those members on the delinquent list. The Notice of Entry of Order of Suspension for Nonpayment of Fees informed Respondent that the suspension order would become effective July 1, 2011.
4. The May 26, 2011 Supreme Court Order ordering that Respondent be suspended from the practice of law effective on July 1, 2011, due to nonpayment of fees under the State Bar Act, was properly served on Respondent at his State Bar membership record address. Respondent received the order.
5. Effective on July 1, 2011, Respondent was placed on not entitled status for failing to pay his State Bar membership fees.
6. At all relevant times, Respondent represented Jamar Lee Bryant ("Bryant") in two criminal matters pending in Orange County Superior Court entitled People v. Bryant, case no. 11NM04252 A, and People v. Bryant, case no. 11NM08349 M A (collectively referred to as the "Bryant matters").

7. On August 2, 2011, when Respondent was not entitled to practice law, he appeared in court on behalf of Bryant on the Bryant matters regarding a continuance of Bryant's matters due to Bryant being out of state due to military commitments.
8. Respondent's August 2, 2011 court appearances on the Bryant matters constituted the practice of law.
9. On August 2, 2011, when Respondent appeared in court on behalf of Bryant on the Bryant matters he was grossly negligent in not knowing that he was suspended from the practice of law. The court raised the issue of Respondent's suspension at that time.
10. On August 3, 2011, Respondent sent his State Bar membership fees for the year 2011 to Membership Billing. As a result of Respondent's State Bar membership fees being paid, on August 3, 2011, Respondent was returned to active status.
11. From July 1, 2011 to August 3, 2011, Respondent was ineligible to practice law because he failed to pay his State Bar membership fees. Respondent was grossly negligent in not knowing that he was ineligible to practice law during this period.

CONCLUSIONS OF LAW:

12. By engaging in acts constituting the practice of law while he was not entitled to practice law, Respondent held himself out as entitled to practice law and actually practiced law when he was not entitled to do so, in willful violation of Business and Professions Code sections 6125 and 6126, and thereby failed to support the Constitution and laws of the United States and of this state, in willful violation of Business and Professions Code, 6068(a).
13. By practicing law when Respondent was grossly negligent in not knowing that he was not entitled to practice law, Respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of Business and Professions Code, section 6106.

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES:

A mitigating circumstance is "an event or factor established clearly and convincingly by the member subject to a disciplinary proceeding as having caused or underlain the member's professional misconduct and which demonstrates that the public, courts and legal profession would be adequately protected by a more lenient degree of sanction than set forth in these standards for the particular act of professional misconduct found or acknowledged." (Standard 1.2(e).)

Respondent has no prior record of discipline in 19 years of practice. Standard 1.2(e)(i) states that mitigation credit shall be given to a member who has no record of prior discipline over a period of many years of practice coupled with misconduct that is not deemed serious. Although Respondent's present misconduct is serious and therefore Respondent does not meet the requirements of Standard 1.2(e)(i), Respondent is entitled to some limited mitigation. (In the Matter of Riordan (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49; and In the Matter of Stamper (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 96, 106, fn.13.)

Respondent has acknowledged his wrongdoing and cooperated with the State Bar in these proceedings by entering into a stipulation of facts, conclusions of law and disposition without the necessity of having a trial on this matter. (In the Matter of Johnson (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190.)

AUTHORITY SUPPORTING LEVEL OF DISCIPLINE:

The primary purposes of disciplinary system and of sanctions imposed on an attorney for misconduct are the protection of the public, the courts and the legal profession, the maintenance of high professional standards by attorneys, and the preservation of public confidence in the legal profession. (Standard 1.3.) In this matter, the primary purposes of attorney discipline are accomplished by a 30-day actual suspension.

In determining the appropriate level of discipline, the Supreme Court has emphasized the importance of the standards and has held that great weight should be given to the application of the standards in determining the appropriate level of discipline. (In re Silverton (2005) 36 Cal. 4th 81, 89-94; In re Brown (1995) 12 Cal. 4th 205, 220.) Unless there are "grave doubts as to the propriety of the recommended discipline," it will uphold the application of the standards. (In re Silverton, supra, 36 Cal. 4th at p. 91-92.) The standards must be followed unless there is a compelling reason justifying a deviation from the standards. (In the Matter of Bouyer (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404.)

Pursuant to Standard 1.6(a), if a member commits two or more acts of professional misconduct in a single disciplinary proceeding, and different sanctions are prescribed by the standards for each act, the sanction that calls for the most severe sanction shall be imposed.

In this case, the standard that imposes the most severe sanction is Standard 2.3 which mandates discipline ranging from actual suspension to disbarment for acts of moral turpitude, fraud, or intentional dishonesty. The actual level of discipline is dependent upon the extent to which the victim of the misconduct is harmed or misled, the magnitude of the act of misconduct, and the degree to which it relates to the practice of law.

Respondent committed an act of moral turpitude in willful violation of Business and Professions Code § 6106 by appearing in court when was not entitled to practice law. Respondent was grossly negligent in not knowing that he had been enrolled in not entitled status. There is insufficient evidence to establish that Respondent knowingly committed this misconduct. There was no harm to Respondent's client who was actually out of state at the time of the hearing due to military commitments. Both his client, who thought Respondent was able to appear on his behalf, and the court conducting the proceeding were to some degree misled. Securing a continuance was directly related to the practice of law but an act of relatively minor magnitude. Appearing in court while not entitled is significant, although not as severe as when done through gross negligence. In mitigation, though this is an act of moral turpitude, Respondent has practiced 19 years without a record of prior discipline. Further, Respondent has cooperated in the investigation, admitted his culpability and entered into this stipulation.

Therefore, in light of the facts, conclusions and mitigation described above, a 30-day actual suspension, which is within the range of discipline within Standard 2.3, is an appropriate and sufficient level of discipline to protect the public, the courts and the integrity of the legal profession.

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CONCLUSIONS OF LAW

The parties waive any variance between the Notice of Disciplinary Charges filed on May 22, 2012, and the facts and conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

PENDING PROCEEDINGS:

The disclosure date referred to on page 2, section A.(7), was on August 7, 2012.

COSTS OF DISCIPLINARY PROCEEDINGS:

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 8, 2012, the prosecution costs in this matter are \$6,944. 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.


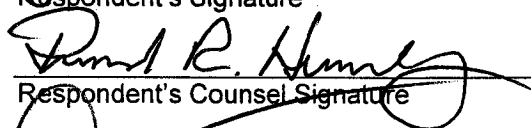
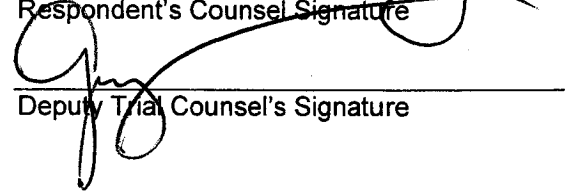
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In the Matter of: WALTER ROY MITCHELL	Case number(s): 11-O-19540
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SIGNATURE OF THE PARTIES

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.

<u>8/21/12</u> Date	 Respondent's Signature	<u>WALTER ROY MITCHELL</u> Print Name
<u>8/21/2012</u> Date	 Respondent's Counsel Signature	<u>RICHARD R. HURLEY</u> Print Name
<u>8/22/12</u> Date	 Deputy Trial Counsel's Signature	<u>AGUSTIN HERNANDEZ</u> Print Name

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In the Matter of: WALTER ROY MITCHELL	Case Number(s): 11-O-19540
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ACTUAL SUSPENSION ORDER

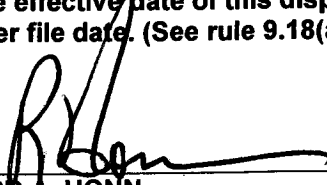
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

9/10/12


RICHARD A. HONN
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 September 11, 2012, 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:

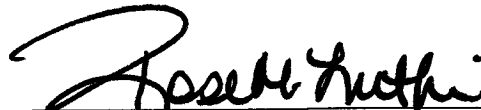
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

RICHARD R. HURLEY
2801 W COAST HWY STE 270
NEWPORT BEACH, CA 92663

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

AGUSTIN HERNANDEZ, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 11, 2012.



Rose Luthi
Case Administrator
State Bar Court