



PUBLIC MATTER

FILED

18

MAR 29 2016

NOT FOR PUBLICATION

STATE BAR COURT OF CALIFORNIA

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of

KAREN LEE CALDWELL,
Member No. 181749,

A Member of the State Bar.

) Case Nos.: **13-O-14406-LMA**
) **14-O-01475 (Cons.)**
)
) **DECISION AND DISCIPLINE**
) **ORDER; ORDER SEALING CERTAIN**
) **DOCUMENTS**
)

Introduction¹

In this disciplinary proceeding, respondent **Karen Lee Caldwell**² was accepted for participation in the State Bar Court's Alternative Discipline Program (ADP). As Respondent has successfully completed the ADP, the court hereby orders, as set forth below, the imposition of discipline relating to a successful completion of the ADP.

Pertinent Procedural History

On December 2, 2013, the State Bar of California's Office of the Chief Trial Counsel (State Bar) filed a Notice of Disciplinary Charges (NDC) against Respondent in case no. 13-O-14406.³ Respondent sought to participate in the State Bar Court's ADP. This matter was referred to the ADP on January 6, 2014.

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct, and all statutory references are to the Business and Professions Code.

² Respondent was admitted to the practice of law in this state on February 27, 1996, and has been a member of the State Bar of California since that time.

³ This matter was later consolidated with an investigation matter, case no. 14-O-01475.

On February 3, 2014, Respondent contacted the State Bar's Lawyer Assistance Program (LAP) to assist her with her mental health issue. On February 5, 2014, Respondent submitted a declaration to the court, establishing a nexus between her mental health issue and the charges in this matter. On April 23, 2014, Respondent signed a LAP Participation Plan.

The parties entered into a Stipulation Re Facts and Conclusions of Law (Stipulation) on June 20, 2014. The Stipulation set forth the factual findings, legal conclusions, and mitigating and aggravating circumstances. The stipulation was received by the court on June 20, 2014.

Following briefing by the parties, the court issued a Confidential Statement of Alternative Dispositions and Orders dated August 25, 2014, formally advising the parties of: (1) the discipline which would be recommended to the Supreme Court if Respondent successfully completed the ADP, and (2) the discipline which would be recommended if Respondent failed to successfully complete or was terminated from the ADP. After agreeing to those alternative dispositions, Respondent executed the Contract and Waiver for Participation in the State Bar Court's ADP, the court accepted Respondent for participation in the ADP, and Respondent's period of participation in the ADP began on August 25, 2014.

On February 16, 2016, after receiving a certificate of one year of participation in the LAP, the court issued an order finding that Respondent successfully completed the ADP.

Findings of Fact and Conclusions of Law

The parties' Stipulation, including the court's orders approving the Stipulation, is attached and hereby incorporated by reference, as if fully set forth herein.

In case no. 13-O-14406, Respondent stipulated that she willfully: (1) failed to competently perform legal services in violation of rule 3-110(A); (2) failed to respond promptly to reasonable client status inquiries in violation of section 6068, subdivision (m); (3) failed to

cooperate in a disciplinary investigation by not providing a written response to the State Bar's letters regarding a client complaint in violation of section 6068, subdivision (i).

In case no. 14-O-01475, Respondent stipulated that she willfully: (1) failed to competently perform legal services in violation of rule 3-110(A); (2) failed to respond promptly to reasonable client status inquiries and failed to keep her client reasonably informed of significant developments in violation of section 6068, subdivision (m); and (3) failed to take reasonable steps to avoid foreseeable prejudice to her client upon termination of employment in violation of rule 3-700(A)(2).

In aggravation, Respondent engaged in multiple acts of misconduct. In mitigation, Respondent had no prior record of discipline in seventeen years of practice prior to the present misconduct and cooperated with the State Bar by entering into a pretrial stipulation.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but rather to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve confidence in the legal profession.

(*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate alternative discipline recommendations if Respondent successfully completed the ADP and if she did not successfully complete the ADP, the court considered the parties' briefs on discipline as well as certain standards and case law. In particular, the court considered Former Standards⁴ 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 2.5(b), 2.8(b), 2.8(c), and 2.15, and *Bach v. State Bar* (1991) 52 Cal.3d 1221.

⁴ Effective July 1, 2015, the standards were amended. As the Confidential Statement was prepared prior to the amending of the standards, this court relied on and applied the standards that were in effect at the time the Confidential Statement was signed.

Because Respondent has now successfully completed the ADP, this court, in turn, now orders the imposition of the lower level of discipline, set forth more fully below, contained in the Confidential Statement of Alternative Dispositions and Orders.

Discipline Order

Accordingly, it is ordered that respondent **Karen Lee Caldwell**, State Bar no. 181749, is hereby privately reprovved. Pursuant to the provisions of rule 5.127(A) of the Rules of Procedure of the State Bar of California (Rules of Procedure), the private reprovval will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 5.128 of the Rules of Procedure, the court finds that the interests of Respondent and the protection of the public will be served by the following specified conditions being attached to the private reprovval imposed in this matter. Failure to comply with any conditions attached to this private reprovval may constitute cause for a separate proceeding for willful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California. Respondent is hereby ordered to comply with the following conditions attached to her private reprovval for a period of one year following the effective date of the private reprovval imposed in this matter:

1. During the reprovval period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct;
2. Within 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;
3. Within 30 days after 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 attached to her private reprovval. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the one-year period in which these conditions are in effect, Respondent must promptly meet with the probation deputy as directed and upon request;

4. 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 reprobation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all reprobation conditions during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against 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 20 days before the last day of the reprobation period and no later than the last day of the reprobation period;

5. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly and truthfully, any inquiries of the Office of Probation which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the reprobation conditions;
6. Within one 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 State Bar Ethics School, and passage of the test given at the end of that session;
7. Respondent must comply with all provisions and conditions of her Participation Plan/Agreement with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of her Participation Plan/Agreement to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of Respondent's participation in the LAP and her compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP; and
8. The period during which these conditions are in effect will commence upon the date this decision imposing the private reprobation becomes final.

Multistate Professional Responsibility Examination

It is also ordered that Respondent take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the discipline herein and provide

satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

Direction Re Decision and Order Sealing Certain Documents

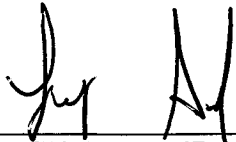
The court directs a court case administrator to file this Decision and Discipline Order; Order Sealing Certain Documents. Thereafter, pursuant to rule 5.388 of the Rules of Procedure, all other documents not previously filed in this matter are ordered sealed pursuant to rule 5.12 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to:

(1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

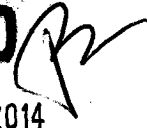
IT IS SO ORDERED.

Dated: March 29, 2016



LUCY ARMENDARIZ
Judge of the State Bar Court

(Do not write above this line.)

State Bar Court of California Hearing Department San Francisco ALTERNATIVE DISCIPLINE PROGRAM		
Counsel For The State Bar Susan Chan Supervising Senior Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 638-2384 Bar # 233229	Case Number (s) 13-O-14406- LMA 14-O-01475 (Inv.)	(for Court's use) PUBLIC MATTER FILED  AUG 25 2014 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
Counsel For Respondent Michael Train Caldwell 1010 B Street, Suite 300 San Rafael, CA 94901 (415) 453-8339 Bar # 156325	Submitted to: Program Judge	
In the Matter Of: KAREN LEE CALDWELL Bar # 181749 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS AND CONCLUSIONS OF LAW <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 December 16, 1991.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, except as otherwise provided in rule 804.5(c) of the Rules of Procedure, if Respondent is not accepted into the Alternative Discipline Program, this stipulation will be rejected and will not be binding on the Respondent or the State Bar.
- (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, except for Probation Revocation proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 7 pages, excluding 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."

(Do not write above this line.)

- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [see Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 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:
- (2) **Dishonesty:** Respondent's misconduct was intentional, 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.
- (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. **See attachment at 6.**
- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances are involved.**

Additional aggravating circumstances:

(Do not write above this line.)

C. Mitigating Circumstances [see standards 1.2(g) & 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 deemed serious.
- (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 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 with a good faith belief that was honestly held and 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 convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances are involved.**

Additional mitigating circumstances:

No Prior Discipline - see attachment, page 6.
Pretrial Stipulation - see attachment, page 6.

CONCLUSIONS OF LAW:

10. By failing to perform any work on Gougoutas' dissolution matter after November 3, 2009, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

11. By failing to promptly respond to Gougoutas' status inquiries in the dissolution matter, respondent failed to respond promptly to reasonable status inquiries of a client in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

12. By failing to provide a response to the State Bar's June 27, 2013 and August 15, 2013 letters and by failing to otherwise cooperate and participate in the State Bar's investigation of the Gougoutas complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in violation of Business and Profession Code section 6068(i).

Case No. 14-O-01475 (Complainant: Rose Johnson)

FACTS:

13. In February 2012, Rose Johnson ("Johnson") employed respondent to establish Johnson's claim as a beneficiary to her deceased father's estate ("estate matter").

14. On August 29, 2012, respondent filed on behalf of Johnson, a Notice of Petition to Administer Estate, Application for Waiver of Court Fees and Costs and Petition for Letters of Administration with Authorization to Administer Under the Independent Administration of Estates Act in the estate matter.

15. Subsequent to August 29, 2012, respondent performed no other legal services of value to Johnson in the estate matter. Respondent continued two scheduled hearing dates on October 19, 2012 and November 17, 2012.

16. On December 21, 2012, respondent's telephonic request to continue the probate hearing on the Petition for Letters of Administration was granted. The hearing was continued to February 8, 2013. Respondent did not inform Johnson of the continuance.

17. On February 8, 2013, respondent failed to appear at the probate hearing. The court denied Johnson's Petition for Letters of Administration and granted the proposed Administrator's Petition to administer the estate. Respondent did not inform Johnson that she failed to appear at the hearing nor did she inform Johnson that the court denied her petition.

18. Subsequent to February 8, 2013, Johnson contacted respondent by telephone and written requests for reasonable status inquiries in the estate matter. Respondent received the messages but did not respond.

CONCLUSIONS OF LAW:

19. By failing to perform any work on Johnson's estate matter after August 29, 2012, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in

willful violation of Rules of Professional Conduct, rule 3-110(A).

20. By failing to promptly respond to Johnson's status inquiries in the estate matter, by failing to inform Johnson that she failed to appear at the February 8, 2013 hearing and by failing to inform Johnson that her petition was denied, respondent failed to respond promptly to reasonable status inquiries of a client and failed to inform a client of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

21. Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to respondent's client, Johnson, by constructively terminating respondent's employment on February 8, 2013, by failing to take any action on the client's behalf after respondent failed to appear at the probate hearing, and thereafter failing to inform the client that respondent was withdrawing from employment, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent committed six acts of misconduct in two client matters, demonstrating multiple acts of misconduct.

MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline: At the time of the misconduct, respondent had practiced law for over 17 years without a prior record of discipline. Although respondent's misconduct is serious, her 17 years of discipline-free practice is a mitigating circumstance (*See In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 [where mitigative credit given for discipline-free practice despite serious misconduct].)

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a stipulation with the Office of Chief Trial Counsel prior to trial in the above referenced disciplinary matters, thereby saving State Bar Court time and resources. (*In the Matter of Downey* (Review Dept. 2009) 5 Cal. State Bar Ct. Rptr. 151, 156; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 993-994.) However, such mitigation is tempered by respondent's failure to participate in the State Bar investigation.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of June 11, 2014, the prosecution costs in this matter are \$4,263. 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 MCLE CREDIT


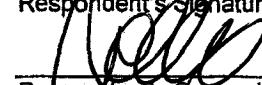
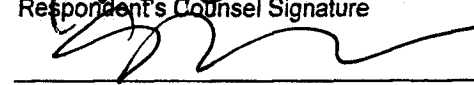
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School and/or any other educational course(s) to be ordered as condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: KAREN LEE CALDWELL	Case number(s): 13-O-14406; 14-O-01475
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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>6/16/2014</u> Date	<u></u> Respondent's Signature	<u>Karen Lee Caldwell</u> Print Name
<u>6/19/2014</u> Date	<u></u> Respondent's Counsel Signature	<u>Michael Train Caldwell</u> Print Name
<u>6/20/2014</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Susan Chan</u> Print Name

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In the Matter of: KAREN LEE CALDWELL	Case Number(s): 13-O-14406; 14-O-01475
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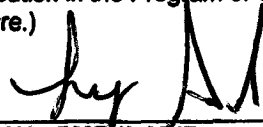
ALTERNATIVE DISCIPLINE PROGRAM ORDER

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 stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- 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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 5.58(E) & (F) and 5.382(D), Rules of Procedure.)

Aug 25, 2014
Date



LUCY ARMENDARIZ
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 August 25, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

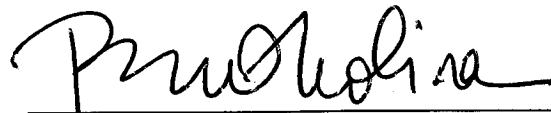
By personally delivering a copy of said document(s) to:

KAREN

~~MICHAEL T.~~ CALDWELL
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

SUSAN CHAN
180 HOWARD STREET, 6TH FLOOR
SAN FRANCISCO, CA 94105

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 25, 2014.



Bernadette C.O. Molina
Case Administrator
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 March 29, 2016, I deposited a true copy of the following document(s):

DECISION AND DISCIPLINE ORDER; ORDER SEALING CERTAIN DOCUMENTS

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

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:

KAREN L. CALDWELL
LAW OFFICES OF KAREN L CALDWELL
236 W PORTAL AVE # 119
SAN FRANCISCO, CA 94127

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

SUSAN CHAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 29, 2016.



Mazie Yip
Case Administrator
State Bar Court