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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
Counsel For The State Bar Heather L. Meyers Contract Deputy Trial Counsel 845 South Figueroa Street Los Angeles, CA 90017 (213) 765-1075 Bar # 302264	Case Number(s): 15-O-14382	For Court use only FILED  MAR 22 2016 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Counsel For Respondent Diane L. Karpman Karpman & Associates 1339 N. Wetherly Drive Los Angeles, CA 90069 (310) 887-3900 Bar # 64266	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION ☐ PREVIOUS STIPULATION REJECTED	
In the Matter of: David Lawrence Warner Bar # 194804 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 **April 23, 1998**.
- (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: **two (2) 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.

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.
- (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.

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

Additional mitigating circumstances:

No Prior Discipline - see Attachment page 8.
Pre-filing Stipulation - see Attachment page 8.

D. Discipline:

(1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of **one (1) year**.

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) 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 **one (1) year**, 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 fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), 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 present learning and ability in the general law, pursuant to standard 1.2(c)(1), 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 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: .

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- (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:
- | | |
|---|---|
| ☐ Substance Abuse Conditions | ☐ Law Office Management Conditions |
| ☐ Medical Conditions | ☐ 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.**
- ☐ 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 TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DAVID LAWRENCE WARNER

CASE NUMBER: 15-O-14382

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-14382 (State Bar Investigation)

FACTS:

1. As a member of the State Bar, respondent was required to complete 25 hours of Minimum Continuing Legal Education ("MCLE") during the period commencing on February 1, 2011, and ending on January 31, 2014, (the "compliance period").
2. On February 7, 2014, respondent reported under penalty of perjury to the State Bar that he was in compliance with the MCLE requirements, and, in particular, that he had completed his MCLE during the compliance period.
3. In fact, respondent had not completed any hours of eligible MCLE courses within the compliance period.
4. When respondent reported to the State Bar under penalty of perjury that he was in compliance with the MCLE requirements, respondent mistakenly believed that by reading MCLE approved articles alone, without completing the self-assessment tests and paying any fees, and without completing any participatory hours, respondent had completed his MCLE requirements. When respondent reported his MCLE compliance to the State Bar, respondent was grossly negligent in not knowing that he was not in compliance with MCLE requirements.
5. On July 7, 2014, respondent was notified by Member Records and Compliance ("MRC") of his MCLE audit. Respondent was placed on involuntary inactive status on November 1, 2014 for not completing his MCLE hours.
6. On January 20, 2016, respondent complied with the audit by submitting 25 hours of MCLE credit to MRC and, having previously paid his reinstatement fee, he was reinstated to active status.

CONCLUSIONS OF LAW:

7. By reporting under penalty of perjury to the State Bar that he was in compliance with the MCLE requirements when he was grossly negligent in not knowing that he was not in compliance with MCLE requirements, respondent committed an act involving, moral turpitude, dishonesty or corruption in wilful violation of Business and Professions Code section 6106.

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent was admitted to practice on April 23, 1998. At the time of the misconduct, respondent had practiced law for 15 years without a record of discipline. While respondent's conduct is serious, he is entitled to substantial mitigation for a discipline-free record after a significant number of years of practicing law. (*Hawes v. State Bar*, (1990) 51 Cal.3d 587, 596 [gave significant weight in mitigation to attorney practicing 10 years without discipline]; *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41 [mitigation credit for many years of discipline free practice given even when conduct is serious].)

Prefiling Stipulation: Respondent is entitled to mitigation for entering into this stipulation prior to the filing of disciplinary charges, thereby preserving State Bar Court time and resources. (*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].) Respondent has also acknowledged his misconduct by entering into this stipulation.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistence across cases dealing with similar misconduct and surrounding circumstances." (Std. 1.1). The Standards help fulfill the primary purpose 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" (*In re Silverton* (2005) 36 Cal 4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220) as they "promote the consistent and uniform application of disciplinary measures" (*In re Silverton* at 91). As a result, the Standards should be followed "whenever possible" (*Id.* at 92, quoting *In re Young* (1989) 49 Cal.3d 257, 267) and deviations from the discipline stated in the Standards "should be elaborated with care." (*Id.* at 92).

In determining whether to impose a sanction greater or less than the specified in a given Standard, attention should be paid to the factors set forth in the specific Standard, as well as the primary purposes of discipline; the balancing of all mitigating and aggravating circumstances; the type of misconduct at issue; whether and to what extent 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)).

Standard 2.11 applies to respondent's acts of moral turpitude. Standard 2.11 states that the presumed discipline for an act of moral turpitude is disbarment or actual suspension. Standard 2.11 further states, "[t]he degree of sanction depends on the magnitude of misconduct; the extent to which the misconduct harmed or misled the victim, which may include the adjudicator; the impact on the administration of justice, if any; and the extent to which the misconduct related to the member's practice of law."

Here, respondent made a grossly negligent misrepresentation, under penalty of perjury, that he completed the required 25 hour MCLE requirement during the compliance period. In fact, respondent failed to provide any acceptable evidence of MCLE hours completed during the compliance period. He

has subsequently completed his missing 25 hours of MCLE and has been restored to active status. Respondent's misconduct circumvented the continuing legal education requirements established for the purpose of enhancing attorney competence and protecting the public. This misconduct is somewhat tempered by the fact that he had 15 years discipline free practice at the time of the alleged misconduct for which respondent is entitled to significant mitigation. Respondent's misconduct is also mitigated by respondent entering into this pre-filing stipulation, thereby acknowledging his misconduct and saving State Bar time and resources. Further, there are no aggravating factors present. Therefore, respondent's conduct warrants discipline at the low end of Standard 2.11, consisting of a one year stayed suspension, one year of probation with conditions, including 30 days of actual suspension.

Case law also supports this level of discipline. It is important to consider the Review Department decision in *In the Matter of Yee* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 330. Attorney Yee submitted her MCLE compliance card and affirmed that she had completed the requisite 25 hours during her compliance period. However, during a subsequent audit and State Bar investigation, Yee was unable to produce any record of compliance. The Review Department found that "Yee's failure to verify her MCLE compliance before affirming it constitutes gross negligence amounting to moral turpitude for discipline purposes" (Yee at 334), but declined to find she had misrepresented her MCLE compliance intentionally. The Review Department found strong mitigation in Yee's case. In particular, the Review Department noted Yee's: (1) 10 and one half years of discipline-free practice; (2) her candor and cooperation with the State Bar during the investigation; (3) her good character as evidenced by the testimony of eleven witnesses; (4) her immediate recognition of wrongdoing and creation of a plan to avoid such issues in the future; and, (5) her significant amount of pro bono work and service to the community. *Id.* at 335-36. In *Yee*, the Review Department imposed discipline consisting of a public reproof.

Using *Yee* as a guide, respondent is afforded significant mitigation for his 15 years of practice without a record of discipline. Respondent is also entitled to mitigation for entering into this pre-filing stipulation. Unlike *Yee*, respondent has not provided any additional mitigation in the form of character references, pro bono work and community service. Nor has respondent provided any plan to avoid this issue in the future comparable to the remorse/recognition of wrongdoing that *Yee* exhibited. Further, like *Yee*, respondent did not complete any acceptable hours during the compliance period. Therefore, the application of the Standards and the findings in *Yee* support an outcome of public discipline greater than that in *Yee*, consisting of one year stayed suspension, one year of probation with conditions including 30 days actual suspension.

In light of the totality of the facts and circumstances presently available, including the significant mitigation for a 15 year discipline-free record and mitigation for entering into this pre-filing stipulation, and in light of Standard 2.11, discipline consisting of a one year stayed suspension and one year period of probation with conditions including a 30 day actual suspension from the practice of law is appropriate to protect the public, courts and the legal profession, to maintain high professional standards by attorneys, and to preserve public confidence in the legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of January 21, 2016, the prosecution costs in this matter are approximately \$3,066. 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.

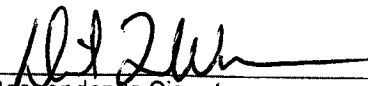
Pursuant to rule 3201, respondent may not receive MCLE credit for completion of the ethics courses ordered as a condition of his probation. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: DAVID LAWRENCE WARNER	Case number(s): 15-O-14382
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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>2/18/2016</u> Date	<u></u> Respondent's Signature	<u>David Lawrence Warner</u> Print Name
<u>2/22/2016</u> Date	<u></u> Respondent's Counsel Signature	<u>Diane Karpman</u> Print Name
<u>2-23-2016</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Heather Meyers</u> Print Name

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In the Matter of: DAVID LAWRENCE WARNER	Case Number(s): 15-O-14382
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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.)**

March 22, 2016
Date


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 March 22, 2016, I deposited a true copy of the following document(s):

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

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

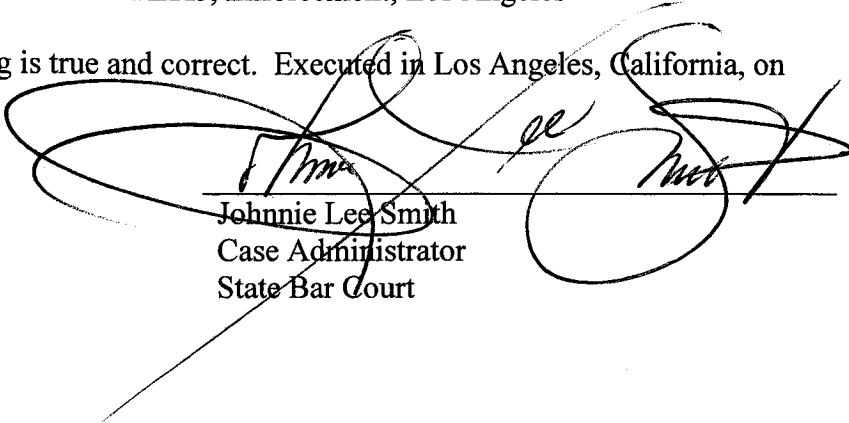
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**DIANE LYNNE KARPMAN
KARPMAN & ASSOCIATES
1339 N WETHERLY DR
LOS ANGELES, CA 90069**

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

HEATHER L. MEYERS, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 22, 2016.



Johnnie Lee Smith
Case Administrator
State Bar Court