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<b>State Bar Court of California</b> <b>Hearing Department</b> <b>Los Angeles</b> <b>ACTUAL SUSPENSION</b>			<b>PUBLIC MATTER</b>
Counsel For The State Bar  <b>Patrice Vallier-Glass</b> <b>Deputy Trial Counsel</b> <b>845 S. Figueroa St.</b> <b>Los Angeles, CA 90017</b> <b>(213) 765-1180</b>  Bar # 305900	Case Number(s): <b>16-O-16764-CV</b>	For Court use only          <b>FILED</b> <i>EE</i>  <b>MAR 21 2018</b>  STATE BAR COURT CLERK'S OFFICE LOS ANGELES	
In Pro Per Respondent  <b>Thomas Mark Burton</b> <b>P.O. Box 1619</b> <b>Salt Lake City, UT 84110</b> <b>(801) 918-1656</b>  Bar # 35856	Submitted to: <b>Settlement Judge</b>  STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING  <b>ACTUAL SUSPENSION</b>  <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter of: <b>THOMAS MARK BURTON</b>  Bar # 35856  A Member of the State Bar of California (Respondent)			

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

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **January 5, 1965**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **12** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".



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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):
  - 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 [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.  

See page 8; see also Exhibit One, 12 pages.
- (2)  **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3)  **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4)  **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5)  **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6)  **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

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- (8)  **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10)  **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11)  **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See page 9.
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution.
- (14)  **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
- (15)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2)  **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary 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.

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- (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:**

**Pretrial Stipulation, see page 9.**  
**Good Character, see page 9.**

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of **one 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 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.

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- iii.  and until Respondent does the following: **pay the \$1,500 judicial sanction to the Ventura County Superior Court as ordered on September 21, 2016 in People v. Burton, case no. 2106033754, and provide proof of payment of the sanction to the Office of Probation.**

**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: **Respondent resides in another state. A comparable alternative to Ethics School is provided in Section F(5) below.**

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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:
- |   |   |
|---|---|
| <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.**
- 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:** As a further condition of probation, because respondent resides in another state, respondent must either 1) attend a session of State Bar Ethics School, pass the test given at the end of that session, and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of the discipline herein; or 2) attend a session of Utah State Bar Ethics School, and provide proof of attendance satisfactory to the Office of Probation within one (1) year of the effective date of the discipline herein; or 3) complete six (6) hours of live, in-person, or live online-webinar Minimum Continuing Legal Education ("MCLE") approved courses in legal ethics offered through a certified MCLE provider in Utah or California and provide proof of same satisfactory to the Office of Probation within one (1) year of the effective date of discipline.

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(Effective July 1, 2015)

Actual Suspension



7. On September 22, 2016, the supervising judge mailed respondent a letter informing him that he was relieved as attorney of record in the *Gallegos* matter, but that respondent still had an obligation to pay the fine he received on the OSC re Sanctions in the *Burton* matter. Respondent received the letter.

8. On September 28, 2016, respondent sent a letter to the supervising judge in response to the supervising judge's September 22, 2016 letter. In respondent's letter, respondent acknowledged that he understood that the court fined him \$1,500.

9. On October 3, 2016, the supervising judge mailed respondent a letter clarifying that the court sanctioned respondent for failing to appear at the jury trial when ordered and for failure to appear at the OSC when ordered. Respondent received the letter.

10. To date, respondent has not paid the judicial sanction.

#### CONCLUSIONS OF LAW:

11. By failing to appear personally in court on September 14, 2016 and September 21, 2016 in *People v. Gallegos*, case no. 20113009594, in violation of orders made by the Ventura County Superior Court, respondent disobeyed or violated orders of the court requiring him to do or forbear acts connected with or in the course of his profession, which he ought in good faith to have done or forbear to have done, in willful violation of Business and Professions Code, section 6103.

12. By failing to appear personally in court on September 21, 2016 in *People v. Burton*, case no. 2016033754, in violation of orders made by the Ventura County Superior Court, respondent disobeyed or violated orders of the court requiring him to do or forbear acts connected with or in the course of his profession, which he ought in good faith to have done or forbear to have done, in willful violation of Business and Professions Code, section 6103.

13. By failing to pay the \$1,500 judicial sanction in *People v. Burton*, case no. 2016033754, in violation of an order by the Ventura County Superior Court on September 21, 2016, respondent disobeyed or violated orders of the court requiring him to do or forbear acts connected with or in the course of his profession, which he ought in good faith to have done or forbear to have done, in willful violation of Business and Professions Code, section 6103.

#### AGGRAVATING CIRCUMSTANCES.

**Prior Record of Discipline (Std. 1.5(a)):** Respondent has one prior record of discipline issued by the Utah Supreme Court on August 26, 2014. Relying on the preponderance of evidence standard in Utah disciplinary proceedings, the court publicly reprimanded respondent finding that respondent made statements in a criminal appellate brief that had no substantial purpose other than to embarrass or burden a victim in violation of Utah Rules of Professional Conduct, rule 4.4(a). The Court also found that the statements respondent made in his brief, that the trial court's actions were "sinister" and "abusive," displayed reckless disregard to their truth or falsity, in violation of Utah Rules of Professional Conduct, rule 8.2.

Though respondent's prior Utah misconduct was found by a preponderance of evidence, the State Bar concluded that the evidence of misconduct was sufficient to support a warning for violating

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Business and Professions Code sections 6068(b), 6068(f), and 6068(o)(6). Therefore, this prior misconduct warrants nominal weight in aggravation.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent's failure to personally appear at court hearings alongside his failure to pay judicial sanctions constitute multiple acts of misconduct.

#### MITIGATING CIRCUMSTANCES.

**Pretrial Stipulation:** By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of his wrongdoing and for saving the State Bar significant resources and time. (See *Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

**Good Character:** Respondent provided four character letters and a declaration regarding his pro bono work and community service. One attorney attested that he covered respondent's court appearances which led to respondent's instant misconduct. The same attorney stated that respondent called him before and after every appearance at which respondent was not present and that respondent is a dedicated attorney who is deeply concerned for, and committed to, respondent's clients. Another reference who has known respondent for over 10 years attested that respondent is a man of high moral value, dedicated to his family, his clients and his church. Another attorney stated that respondent is a person of honesty and integrity and that respondent's conduct underlying this disciplinary matter is out of character for respondent. That same attorney also stated that he previously referred criminal matters to respondent and that respondent also handled cases *pro bono* for several of their mutual friends. A law clerk attested that respondent always has his client's best interest at heart and that he has referred matters to respondent. However, these character references did not demonstrate an awareness of the full extent of respondent's misconduct.

Respondent also handled numerous criminal matters *pro bono*, and is an active member of the Church of Jesus Christ of Latter-day Saints where he previously served as Bishop of the Pleasanton Second Ward and Pleasanton Fourth Ward in California, as a church counselor to Bishops, and as a member of three High Councils. Respondent has also taught Sunday School for Adults for over 15 years. Based upon the attestations and respondent's declaration, respondent is entitled to nominal mitigation credit for his good character. (See *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar [three and four favorable character witnesses afforded little to no weight in mitigation]; see *In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 477 [when witnesses are not aware of the full extent of respondent's misconduct and do not address disciplinary concerns or respondent's fitness to practice law their evidence is entitled to limited weight].)

#### AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and

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preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the Standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the Standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

Standard 2.12(a) is the most severe sanction for the misconduct at issue. It states:

“Disbarment or actual suspension is the presumed sanction for disobedience or violation of a court order related to the member’s practice of law, the attorney’s oath, or duties required of an attorney under Business and Professions Code section 6068(a)(b)(d)(e)(f) or (h).”

Respondent failed to obey the court’s orders requiring respondent to appear personally on September 14, 2016 and September 21, 2016. However, respondent did arrange for a covering attorney to appear on both dates, which prevented harm to the client. In addition, respondent faxed his *Declaration and Response to Order to Appear* to the court on the day of the hearing, which indicates his attempt to explain why he could not obey the court’s orders for him to appear personally. However, to date, respondent has neither paid nor appealed the sanctions.

In aggravation, the Utah Supreme Court publicly reprimanded respondent in 2015. However, since the State Bar did not impose any reciprocal discipline and the Utah finding was by a preponderance of the evidence, respondent’s prior discipline in Utah should be attributed nominal weight in aggravation. Respondent is also entitled to mitigation for entering into this stipulation and providing some evidence of good character.

In the instant case, the lack of harm to respondent’s client, the limited amount of misconduct, the evidence of good character and respondent’s willingness to enter a stipulation support a discipline in the low range of Standard 2.12(a), even after considering the slight aggravation created by respondent’s prior Utah misconduct. Therefore, the appropriate level of discipline is a one-year suspension, stayed, with a one-year probation on condition of 30 days’ actual suspension, and until he pays the \$1,500 sanction ordered by the court and provides proof of payment to the Office of Probation. This discipline would protect the public, the courts and the legal profession, maintain the highest professional standards, and preserve public confidence in the legal profession.

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**COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of February 9, 2018, the discipline costs in this matter are \$7,793. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

**EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT**

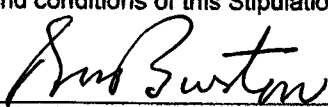
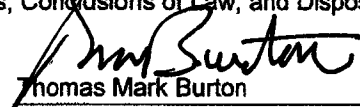
Respondent may not receive MCLE credit for completion of the Utah Bar's Ethics School, and/or any other educational course(s) to be ordered as a condition of reproof or suspension. (Rules Proc. of State Bar, rule 3201.)

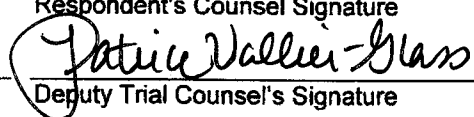
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In the Matter of: <b>THOMAS MARK BURTON</b>	Case number(s): <b>16-O-16764-CV</b>
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**SIGNATURE OF THE PARTIES**

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.

2/14/18                                              
Date                              Respondent's Signature                              Print Name  
Thomas Mark Burton

2/16/18                                            Patrice Vallier-Glass  
Date                              Deputy Trial Counsel's Signature                              Print Name

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In the Matter of: <b>THOMAS MARK BURTON</b>	Case Number(s): <b>16-O-16764-CV</b>
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**ACTUAL SUSPENSION ORDER**

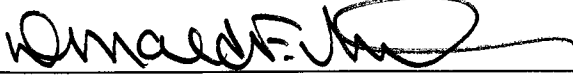
Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

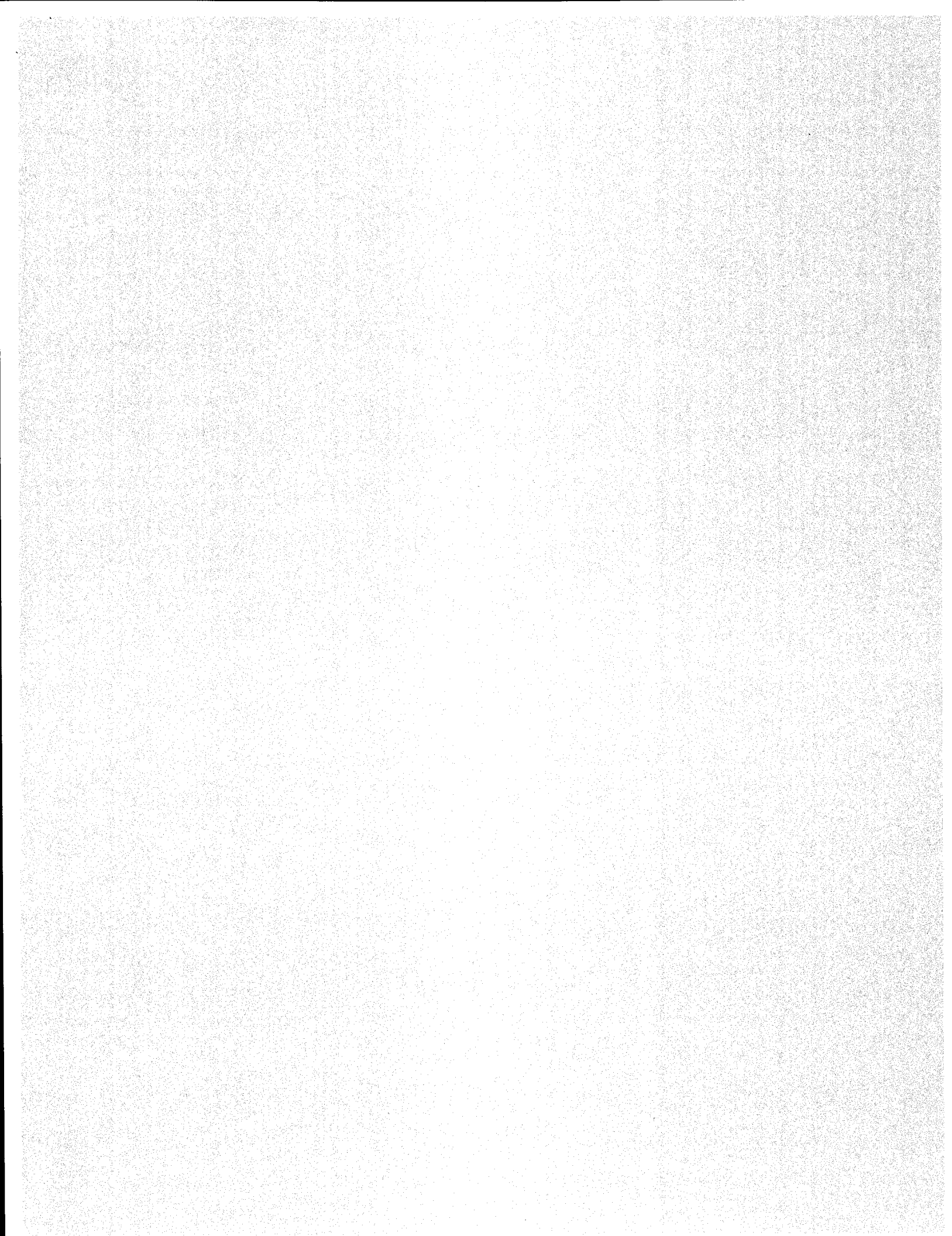
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

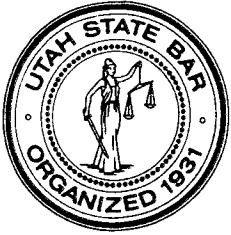
- 1) On page 5, under Paragraph "E. Additional Conditions of Probation," an "x" is inserted in the box for paragraph (1).
- 2) On page 9, on the seventh line in the second paragraph under "Good Character," after the word "Bar," the following language is inserted: "Ct. Rptr. 502, 512-513."
- 3) On page 9, on the seventh line in the second paragraph under "Good Character," after the word "three," the following word is inserted: "attorneys."
- 4) On page 9, on the seventh line in the second paragraph under "Good Character," "four" is deleted and in its place is inserted "six."

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.)**

3/21/18  
Date

  
DONALD F. MILES  
Judge of the State Bar Court





# Utah State Bar

## Office of Professional Conduct

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October 1, 2015

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Assistant Counsel

The State Bar of California  
Office of the Chief Trial Counsel  
845 South Figueroa St  
Los Angeles, California 90017-2515

Re: In the Matter of the Discipline of Thomas M. Burton  
OPC File No. 14-0012

To Whom it May Concern:

Enclosed please find copies of the Findings of Fact, Conclusions of Law and Recommendation of Discipline: Public Reprimand and the Order of Discipline: Public Reprimand entered against Mr. Burton. I am sending you this information as Thomas M. Burton is a member of your state Bar with a Bar number of 35856.

If you have any questions, please give me a call.

Sincerely,

Eliza Tito

Paralegal to Counsel

Office of Professional Conduct

Enclosures

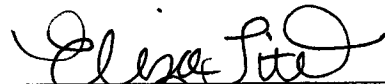
<b>SUPREME COURT OF UTAH</b> <b>ETHICS AND DISCIPLINE COMMITTEE SCREENING PANEL</b>	
<b>In the Matter of the Discipline of:</b>  <b>Thomas Burton #518</b>  <p style="text-align: center;"><b>Respondent.</b></p>	<b>AFFIDAVIT OF RECORDS CUSTODIAN</b>  <b>OPC File No. 14-0012</b>

STATE OF UTAH            )  
                                      :  
COUNTY OF SALT LAKE )

Eliza Tito, being first duly sworn, deposes and states:

1. I am over the age of 18 years and am competent to testify if called as a witness in these proceedings. I make statements in this affidavit to the best of my personal knowledge.
  
2. I am a paralegal presently employed by the Utah State Bar's Office of Professional Conduct ("OPC"). The OPC is the custodian of the disciplinary records of the Ethics and Discipline Committee of the Utah Supreme Court.
  
3. Attached, as Exhibit "A", is a true and correct copy of the Order of Discipline: Public Reprimand; Findings of Fact, Conclusions of Law, and Recommendation of Discipline: Public Reprimand, regarding OPC File No. 14-0012.


DATED this 1<sup>st</sup> day of October, 2015.

  
\_\_\_\_\_  
Eliza Tito



SUBSCRIBED AND SWORN TO before me this 1<sup>st</sup> day of October, 2015, by

Eliza Tito.

  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: Utah



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BEFORE THE ETHICS AND DISCIPLINE COMMITTEE  
OF THE UTAH SUPREME COURT

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In the Matter of the  
Discipline of:

Thomas M. Burton, #00518  
Respondent.

ORDER OF DISCIPLINE:  
PUBLIC REPRIMAND

Case No. 14-0012

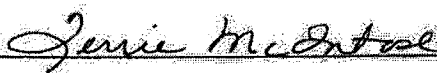
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This matter came for hearing on June 5, 2014, before Screening Panel "C" of the Ethics and Discipline Committee of the Utah Supreme Court. The Chair of the Ethics and Discipline Committee, having reviewed the Findings of Fact, Conclusions of Law, and the Recommendation of Discipline of the Screening Panel, and being fully advised in the premises, hereby orders that Thomas M. Burton be and is hereby, PUBLICLY REPRIMANDED for violating Rules 4.4(a) (Respect for Rights of Third Person) and 8.2 (Judicial Officials) of the Rules of Professional Conduct.

Pursuant to Rule 14-904(e) of the Utah Supreme Court Rules of Professional Practice, if an eligible claim is made to and paid by the Utah State Bar's Fund for

Client Protection, Mr. Burton shall be administratively suspended until reimbursement is made by Mr. Burton.

DATED this the 10<sup>th</sup> day of February, 2015.

  
\_\_\_\_\_  
Terrie McIntosh, Chair  
Ethics and Discipline Committee

**CERTIFICATE OF MAILING**

I hereby certify that on the 19<sup>th</sup> day of February, 2015 I caused to be mailed via US first class mail, postage prepaid, a true and correct copy of the foregoing ORDER OF DISCIPLINE: PUBLIC REPRIMAND to:

Thomas M. Burton  
PO Box 1619  
Salt Lake City, Utah 84110

A handwritten signature in cursive script, appearing to read "Eliza P. D.", is written over a horizontal line.

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BEFORE THE ETHICS AND DISCIPLINE COMMITTEE  
OF THE UTAH SUPREME COURT

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In the Matter of the  
Discipline of:

Thomas M. Burton, #00518

Respondent.

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND RECOMMENDATION  
OF DISCIPLINE: PUBLIC REPRIMAND

Case No. 14-0012

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The matter of the complaint of Brenda Wilson against Thomas M. Burton came for hearing before Screening Panel "C" of the Ethics and Discipline Committee of the Utah Supreme Court on June 5, 2014. Mr. Burton appeared telephonically without counsel; Ms. Wilson appeared in person with counsel; and Todd Wahlquist, Deputy Senior Counsel, appeared on behalf of the OPC. The Screening Panel recommends that Mr. Burton be publicly reprimanded for violating Rules 4.4(a) (Respect for Rights of Third Person) and 8.2 (Judicial Officials) of the Rules of Professional Conduct.

The facts upon which the Screening Panel has concluded establish probable cause of misconduct and, by a preponderance of the evidence, that Mr. Burton should be publicly reprimanded are as follows:

**FINDINGS OF FACT**

1. Thomas Burton was hired by an individual in connection with the appeal of his criminal conviction for stalking, electronic communication harassment and making a

terroristic threat.

2. Mr. Burton was hired after his client's Opening Brief was filed with the Utah Court of Appeals.

3. Mr. Burton filed a Reply Brief on behalf of his client.

4. In his Reply Brief, Mr. Burton stated that the trial Court's decision to allow the criminal trial of his client to continue in the defendant's absence, "... was abusive and sinister."

5. Mr. Burton further stated, "The Court punished Appellant without a trial, not for the charges before the Court, but for defying the Court's control of the calendar."

6. Also in his Reply Brief, Mr. Burton restated his client's vulgar and pejorative statements regarding the victim and made the argument that those statements were not threatening, just profane. He then went on to state that the victim "may have fit any or all of his pejorative descriptions."

7. Later in his brief, while attacking the district court's jurisdiction, Mr. Burton stated the following:

"[Victim's] instigating a Utah criminal prosecution rather than resolving matters in a Wyoming civil proceeding or mediation, and the District Court's blithely assuming criminal subject matter and personal jurisdiction allowing it in absentia to try, convict, and imprison Appellant for 30 months for crimes committee [sic] in Wyoming, show a gross, illegal, and vindictive animus of which Appellant is the true victim."

8. In the brief to the Court of Appeals, Mr. Burton further stated, "Appellant is no terrorist, and his prosecution and conviction under such a statute of 'trash-talking' his

ex-girlfriend, who may well deserve it, is ludicrous.”

9. At oral arguments, the State moved to strike the Reply Brief filed by Mr. Burton because it contained irrelevant and scandalous material.

10. The Court of Appeals granted the motion to strike the Reply Brief filed by Mr. Burton.

11. Mr. Burton acted negligently.

#### **CONCLUSIONS OF LAW**

##### **(Rule 4.4(a) (Respect for Rights of Third Person))**

1. Rule 4.4. Respect for Rights of Third Persons states: “(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.” In addition to restating his client’s vulgar and pejorative characterizations of the victim in the Reply Brief, Mr. Burton went on to say that the victim “may have fit any or all of [these] pejorative descriptions” and “may well deserve” to be trash-talked. These statements had no substantial purpose other than to embarrass or burden the victim. Therefore, Mr. Burton violated of Rule 4.4(a).

##### **(Rule 8.2) (Judicial Officials))**

2. Rule 8.2 (Judicial Officials) states: “A lawyer shall not make a public statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or a candidate for election or appointment to judicial office.” Mr. Burton characterized the

trial court's actions as "sinister" and "abusive". By making statements about the court and judges with reckless disregard to their truth or falsity, Mr. Burton violated Rule 8.2 (Judicial Officials).

Actual injury was caused in this matter to the victim, to the legal profession and to the legal system. Mr. Burton's briefing caused emotional harm to the victim. Mr. Burton caused harm to the legal profession by impugning the conduct of other attorneys. Mr. Burton's conduct caused harm to the public reputation of the legal profession. Further, Mr. Burton's conduct also caused injury to the legal system in that two courts expended time and energy admonishing Mr. Burton for his unprofessional conduct that was made with reckless disregard for the truth.

Finally, there was potential injury to Mr. Burton's client because his client did not have the benefit of the Court of Appeals considering a reply brief on his behalf, because the court struck the brief. Although that was only a potential injury (since his client prevailed), it could have been very harmful to the client.

#### **AGGRAVATING FACTORS**

The Panel considered aggravating circumstances pursuant to Rule 14-607 of the Standards for Imposing Lawyer Sanctions as follows:

1. Refusal to acknowledge the wrongful nature of the conduct involved.
2. Pattern of similar misconduct.

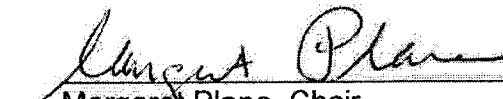
#### **RECOMMENDATION OF DISCIPLINE**

Based upon the foregoing, the Screening Panel recommends that Thomas M.



Burton be publicly reprimanded for violation of Rules 4.4(a) (Respect for Rights of Third Person) and 8.2 (Judicial Officials) of the Rules of Professional Conduct.

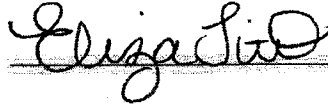
DATED this 26<sup>th</sup> day of August, 2014.

  
Margaret Plane, Chair  
Screening Panel "C"

CERTIFICATE OF SERVICE

I hereby certify that on this 9<sup>th</sup> day of September, 2014, I sent via United States first class mail, postage prepaid, a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION FOR DISCIPLINE: PUBLIC REPRIMAND to:

Thomas M. Burton  
PO Box 1619  
Salt Lake City, Utah 84110

  
\_\_\_\_\_

**CERTIFICATE OF SERVICE**

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist 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 21, 2018, 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:

**THOMAS MARK BURTON  
THOMAS MARK BURTON  
PO BOX 1619  
SALT LAKE CITY, UT 84110**

**Courtesy copy:  
THOMAS MARK BURTON  
9075 S. 1300 EAST  
SALT LAKE CITY, UT 84094**

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

**PATRICE N. VALLIER-GLASS, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 21, 2018.



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Erick Estrada  
Court Specialist  
State Bar Court