PUBLIC MATTER – DESIGNATED FOR PUBLICATION

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **FRANCIS T. FAHY,** A Member of the State Bar.	**05-O-05123** **OPINION ON REVIEW**

Respondent Francis T. Fahy, a member of the State Bar since 1990, was found culpable of serious misconduct while acting as a civil trial juror in 2004 in a medical negligence case tried in the Superior Court of San Francisco. A State Bar Court hearing judge found that, even though the evidence led respondent to believe that the defendant was responsible for the plaintiff's injuries, respondent voted to find the defendant not liable for negligence in order to end a likely jury deadlock so that he could return his attention to his law practice. When respondent was questioned by the trial judge about his actions, he misrepresented the reasons for his vote. Based on the seriousness of respondent's misconduct and his previous two-year actual suspension, the hearing judge recommended disbarment.

Respondent appeals, arguing his innocence of the charges and that a number of procedural errors occurred. The State Bar's Office of Chief Trial Counsel (State Bar) supports the hearing judge's culpability findings, argues that additional culpability should be found and supports the recommendation of disbarment.

On our independent review of the record (Cal. Rules of Court, rule 9.12; *In re Morse* (1995) 11 Cal.4th 184, 195), we reject respondent's claims as unsupported and agree with the hearing judge's recommended disbarment. As the evidence clearly shows, respondent's acts

went beyond dereliction of his duties as an attorney to follow the law when sworn to act as a trial juror. Indeed, his deceit of the trial judge and exploitation, for personal reasons, of the very institution which underpins our system of litigation demonstrate respondent's unfitness to continue to be licensed as an attorney, especially in light of his serious prior misconduct for which he is currently on actual suspension.

I. STATEMENT OF THE CASE

The key facts are relatively simple and established largely by documentary evidence. A patient sued an ophthalmologist in San Francisco Superior Court for medical negligence in performing laser eye surgery. On March 29, 2004, respondent was selected as one of the trial jurors in the action and he took the juror's oath pursuant to Code of Civil Procedure section 232.[1] Deliberations started on April 16, 2004,[2] and continued into the next week. Although the jury took a number of votes, it was unable to reach a verdict; and, by April 21, it appeared deadlocked 8 to 4 in favor of the defendant. On April 21 and 22, the jury foreperson, Beth Rimbey, advised the assigned judge, David Ballati, of the deadlock and requested the court's guidance. Judge Ballati urged the jury to continue to deliberate and to review and discuss all of the evidence; and, on April 22, he directed the jury to resume its deliberations on Monday, April 26.

On April 22, respondent concluded that Judge Ballati would not declare a mistrial due to the jury's impasse. He foresaw further lengthy deliberations that his busy law practice could not afford. Accordingly, on that day, he told the other jurors that if the judge would not declare a mistrial, respondent would change his vote for the defense to break the deadlock so he could return his attention to his law practice. On April 26, respondent changed his vote, thus creating a verdict in favor of the defendant.

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[1]As pertinent, this statutory oath required respondent to "well and truly try" the pending case and "render a true verdict . . . according only to the evidence presented . . . and to the instructions of the court."

[2]Unless noted otherwise, all later references to dates are within the year 2004.

Meanwhile, juror foreperson Rimbey, concerned that respondent was failing to follow his duty as a juror, reported to Judge Ballati that "some jurors"[3] had changed their votes solely to end the deliberations and not based on the evidence. After consulting with counsel for the plaintiff and the defendant, Judge Ballati questioned the jurors separately as to whether each juror followed the court's instructions and whether the jurors' most recent vote was based on anything but the trial evidence or the court's instructions. When respondent was questioned, he stated that he acted only within the court's instructions and the trial evidence. As no proof of juror misconduct was evident, Judge Ballati entered the defense verdict and discharged the jury.

On June 10, the plaintiff moved for a new trial based on respondent's misconduct. The plaintiff's motion included respondent's declaration detailing how he decided to vote for a defense verdict solely to end deliberations and to return to his law practice.[4] Respondent also testified before Judge Ballati that the signature on the declaration appeared to be his and was in fact his correct signature, but the key statements as to his conduct as a juror were incorrect. He

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[3]Although Rimbey used the plural in her message to Judge Ballati, she observed the reported misconduct only as to respondent.

[4]Respondent volunteered his declaration to plaintiff's counsel Himmelheber confirming what he had told juror foreperson Rimbey. Himmelheber testified how he had drafted the declaration for respondent to sign. Respondent contacted Himmelheber and requested that some changes be made to the draft. Himmelheber made the changes and drove to respondent's house to obtain his signature. When they met, respondent presented to Himmelheber a retyped version of the original form of the declaration bearing his signature.

Respondent's signed declaration read in part: "I was convinced from the outset [of the trial] that [the defendant] had violated the standard of care in his care and treatment of the [p]laintiff . . . . During the trial that was supposed to last only 2-3 weeks, I maintained a busy law practice. As the trial continued into its 4th week, problems at work continued to mount as most of the day was devoted to my being a juror. Deliberations were a nightmare . . . . It was becoming very apparent that even if the other jurors were to vote in favor of the [p]laintiff on the issue of liability, that lengthy discussion would take place on other issues . . . [¶] As a result, I advised my fellow jurors that I would change my vote if Judge Ballati failed to declare a mistrial after he was advised that the jury was deadlocked because there was no way I could afford to spend another week away from the office . . .[¶] When I arrived on Monday, I changed my vote to favor [the defendant] even though he was liable for what happened to the [p]laintiff. I changed my vote so that the deliberations would finally come to an end and I could return to the office . . . ."

offered several theories for how his declaration could have been signed by him or could have appeared in the action. He contended that his signature was forged, signed by him by mistake or he was tricked into signing it. In granting plaintiff's motion for new trial, Judge Ballati observed that respondent's declaration was accurate but much of respondent's testimony about his declaration was "obfuscating and not credible."

Although the defendant appealed the order granting a new trial, it was upheld in an opinion of the Court of Appeal. (*Macdougall v. Buckley* (Nov. 17, 2005, A108008)[nonpub. opn.].)[5] In its opinion, the Court of Appeal stated in part: "[Respondent's] statement made explicit his intent to render his vote based not on the facts and the law but on the court's unwillingness to declare a mistrial. His subsequent change of vote confirmed this expressed intent. To reach the conclusion that misconduct occurred, we do not need to evaluate his thought processes - that is, to determine the reason he decided to violate his oath - but only to know the conclusion he reached, as he himself expressed it." (*Ibid.*)

This formal disciplinary proceeding began in April 2007, when the State Bar filed charges that respondent violated the Business and Professions Code as follows: section 6068, subdivision (a)[6] by failing to comply with his statutory duties as a juror; section 6106 by committing moral turpitude by lying to Judge Ballati when questioned in April 2004 about his verdict and by trying to corrupt the jury when attempting to influence the jury in deliberations based on an improper purpose; and section 6068, subdivision (b) by failing to maintain respect for the courts by his juror misconduct.

Respondent denied the charges and at the State Bar Court trial, he testified, as did jury foreperson Rimbey and plaintiff's counsel Himmelheber. After evaluating the witnesses and

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[5]The unpublished appellate opinion was properly considered as part of the record in this disciplinary proceeding. (Cal. Rules of Court, rule 8.1115(b)(2).)

[6]Unless noted otherwise, all later references to sections are to the provisions of the Business and Professions Code.

considering the documentary evidence, the State Bar Court hearing judge found respondent culpable of violating his duties under the law by his juror misconduct and of moral turpitude by misrepresenting to Judge Ballati that his vote for the defendant followed the law and evidence. The hearing judge did not find respondent culpable of the charge of moral turpitude in attempting to corrupt the jury in deliberations because she concluded there was no evidence offered by the State Bar to support that charge. She also found the charge of failing to maintain the respect due the court to be duplicative of the acts which support the found misconduct and dismissed this section 6068, subdivision (b) charge.

In reaching her culpability conclusions, the hearing judge found that no credible evidence was presented that respondent's signature was forged on his declaration supporting plaintiff's motion for new trial. Instead, she found that neither respondent's testimony regarding the signature of his declaration nor the "various explanations [by respondent] as to why the signature thereon was either a forgery or a mistake" were credible. The hearing judge found that attorney Himmelheber's testimony that he drafted a declaration for respondent to sign was credible.

The hearing judge found no mitigating circumstances as respondent offered no evidence in mitigation but the judge found several aggravating ones. These consisted of respondent's recent misconduct resulting in significant actual suspension (see *post*), his multiple acts of misconduct, uncharged misconduct in acting in bad faith and for a corrupt motive by changing his vote to favor the defendant despite his belief that the defendant was liable for the plaintiff's injuries, that his misconduct significantly harmed the public and the administration of justice, that respondent showed indifference to rectifying or atoning for his misconduct, and that he lacked an understanding of his misconduct. As examples of this latter aggravating circumstance, the hearing judge cited respondent's arguments that he was immune from prosecution because his statements while a juror were protected by constitutional free speech guarantees, his assertion

that Himmelheber forged his name to the June 2004 declaration and his deprecatory reference to the juror foreperson.

As to respondent's prior record of discipline, effective in July 2007, the Supreme Court suspended respondent for three years, stayed, on conditions of probation which included a two-year actual suspension and until respondent demonstrates his rehabilitation, present fitness to practice and present learning and ability in the general law.[7] This decision flowed from our February 2007 opinion in which we recommended this discipline to the Supreme Court. Our decision found respondent culpable of willful misappropriation of $2,716.61 in trust funds in a single client matter. This misconduct, which occurred in 1999 and 2000, was accompanied by respondent's failure to report to his client the receipt of trust funds, his failure to maintain those funds in a trust account, and his failure to promptly pay them to his client.

Mitigating respondent's prior culpability was his repayment of $5,000 to his client before a State Bar complaint was filed. Evidence of pro bono work and cooperation with the State Bar by stipulating to certain facts were entitled to some or modest mitigative weight. Aggravating circumstances were respondent's deliberate concealment from the client and her successor counsel of the existence of her funds[8], his multiple acts of misconduct, uncharged misconduct showing that respondent failed to provide an accounting of funds to his client after withdrawing from employment and threatening to report the client's successor counsel to the State Bar if she did not pay respondent an attorney fee he maintained was due him. We also found aggravation in respondent's indifference to rectification or atonement for his wrongdoing and in his repeated acts of disrespect to the court and his opposing counsel in the disciplinary process, which harmed

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[7]Although the State Bar has expressed concern that the record of respondent's prior discipline was not admitted into evidence in the current proceeding, our review of the record is that respondent's prior discipline was admitted as Exhibit 1.

[8]We did not accord this aggravating circumstance additional weight as it rested on the same facts as those supporting respondent's willful misappropriation of trust funds.

the administration of justice. We noted instances of mocking references by respondent to atonement and invectives against the prosecutor, the State Bar Court hearing judge and disciplinary process in his pleadings and correspondence. In our assessment of the appropriate discipline to recommend in the prior proceeding, we observed that this would be a "prototypical misappropriation case but for respondent's unwillingness or inability to appreciate the impropriety of his conduct and his manifest disrespect" of those in the disciplinary process including this Court and the Supreme Court.

II. DISCUSSION

A. CULPABILITY

Respondent levies a host of arguments against the procedures employed in this proceeding. Chief among them is that he was foreclosed from offering exculpatory evidence. We have considered respondent's arguments and deem them without merit. Respondent had a full and fair opportunity to marshal and offer his evidence and we see no error warranting relief as to this claim or as to his other claims of procedural error.

Concerning the merits, respondent essentially argues that we should prefer his version of the facts over those found by the hearing judge. He repeats his argument that his June 2004 declaration in support of the plaintiff's motion for new trial was not accurate and that he did not intend to sign the copy of it that became part of the record. However, this issue was analyzed by Judge Ballati with the benefit of observation of respondent's testimony and it was considered de novo by the hearing judge in light of respondent's and others' testimony. The hearing judge, as did Judge Ballati, found respondent's testimony to lack credibility as to the issues surrounding respondent's signature on his declaration. It is settled that we give great weight to the hearing judge's findings of fact that resolve witness credibility issues. (Rules Proc. of State Bar, rule 305(a); *Connor v. State Bar* (1990) 50 Cal.3d 1047, 1055; *In the Matter of Johnson* (Review

Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 183.) Our adherence to this rule is well-justified in this case as respondent's testimony was remarkable in showing his repeated inability to recall many of the most basic facts. In contrast, attorney Himmelheber and foreperson Rimbey, who also testified below, demonstrated no such difficulty.

Respondent also attacks the sufficiency of the evidence relied on by Judge Ballati and the State Bar Court hearing judge. In our view, the evidence convincingly supports the culpability found by the hearing judge. Respondent appears to claim that others should have presented evidence to exculpate him; however, it was respondent's burden to undertake the defense of the charges against him (see *Jones v. State Bar* (1989) 49 Cal.3d 273, 288), and he was given a full and fair opportunity to do so.

With regard to the hearing judge's findings that respondent violated his duty as an attorney to comply with the law (§ 6068, subd. (a)), by violating his duties as a civil trial juror, the conclusion is inescapable that he is culpable as charged. The only disciplinary cases we have found in the area of attorneys dealing with juries are cases in which an attorney sought to affect the venire in criminal cases (*Noland v. State Bar* (1965) 63 Cal.2d 298, 300-301) or sought as a party to influence an individual juror hearing his criminal case (*In re Possino* (1984) 37 Cal.3d 163, 166, 170). However, the harm to the parties and to the fair administration of justice is clear and serious when respondent disregarded his duty to vote as the facts and judge's instructions guided him, and instead voted as the convenience of his law practice swayed. To be sure, jury service for busy citizens of all occupations or with family responsibilities can be difficult, even burdensome, at times. Yet it is the accepted duty of citizens to serve, subject to the statutory provision for excuse for undue hardship. (Code Civ. Proc. §§ 191, 204, subd. (b).) Moreover, the Judicial Council has recognized that jury service is an "important civic responsibility," requiring court and staff use of all necessary and appropriate means to ensure that citizens fulfill this duty.

(Cal. Rules of Court, rule 2.1008(a).) Surely, respondent, as a practicing attorney at the time, was keenly aware of the role which an effective jury system serves in the fair administration of justice.

Respondent's violation was not a technical one. As the Court of Appeal and the State Bar Court hearing judge each found, respondent's vote was decisive in breaking the jury's deadlock. Patently, his change of vote to avoid continuing to serve as a juror voided the verdict he rendered and required the parties, their counsel and the courts to bear the additional costs, time and burdens of appellate and further trial court proceedings.

Even beyond respondent's clear violation of his statutory duties as a juror, his deceit to Judge Ballati during questioning of him regarding his verdict was most certainly an act of moral turpitude and reprehensible conduct for an attorney, proscribed by section 6106. It is settled that any act of dishonesty or misleading of a court is disciplinable. (*In the Matter of Chesnut* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 166, 174; *In the Matter of Lais* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 112, 122.) Here, the record is clear that respondent falsely represented to the judge that his verdict was within the court's instructions and the trial evidence.

We do uphold the hearing judge's decision finding respondent not culpable of the charge of moral turpitude for having sought to corrupt other jurors by unduly influencing them. We agree with the hearing judge as to the lack of any proof that respondent's remarks to the other jurors were calculated to have corrupted them. From all that we see in the record, the jurors steadfastly remained divided into two groups based on their evaluation of the evidence and it was only the respondent who espoused a verdict for reasons of personal convenience.

As to the charge that respondent disrespected the court, the State Bar does not disagree that the findings arose from the same conduct. It merely asserts that the better practice would have been to find respondent culpable but to assess no added discipline. Whatever the ultimate

procedure used, duplicate or redundant charges add nothing to the appropriate resolution. (See *In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148-149.) In our view, the hearing judge's findings and conclusions that the charge was duplicative of the misconduct amply resolve the charges in this case pursuant to the evidence. Although we observe that respondent could have been charged with moral turpitude, in addition to the violation of section 6068, subdivision (a), for his deliberate abdication of his duties as a juror, the hearing judge appropriately found, as uncharged aggravating conduct, that respondent acted in bad faith and for a corrupt motive in voting for the defense to end his jury service. We adopt that finding; but will accord it no added weight in assessing the degree of discipline, as it arises from the same facts as our section 6068, subdivision (a), conclusions of respondent's culpability in violating his duties as a juror.

B. DEGREE OF DISCIPLINE

We uphold the hearing judge's findings that there are several aggravating circumstances and none in mitigation. Again, respondent had an ample opportunity to present any mitigating evidence he wished to offer, but chose not to do so. The most serious aggravating circumstance in this case is respondent's prior suspension for willful misappropriation of trust funds coupled with other trust account violations and the lack of recognition of the seriousness of his offense. As the State Bar notes correctly in its brief, respondent engaged in his misconduct in the current matter while defending his conduct in the prior matter.

Viewing the Standards for Attorney Sanctions for Professional Misconduct (Standards),[9] we first identify that they provide a range of discipline from suspension to disbarment for each of respondent's offenses. For his failure to comply with the law as to his discharge of his duties as a juror under section 6068, subdivision (a), the degree of discipline depends on the gravity of the

[9]Unless otherwise noted, all later references to standards are to Rules of Procedure of the State Bar, title iv, Standards for Attorney Sanctions for Professional Misconduct.

offense and the amount of harm to the victim, with due regard to the purposes of imposing discipline. (See std. 2.6 (a) and the discussion *post*, as to the purposes of attorney discipline.) For respondent's moral turpitude in misrepresenting his actions to Judge Ballati, the range depends on the extent to which the victim of the misconduct is harmed or misled and the act's magnitude and extent to which it relates to respondent's acts within the practice of law. (Std. 2.3.) We agree with the hearing judge's finding that respondent caused significant harm to the administration of justice and that his misconduct was serious, even though he was not acting as an attorney in the case but as a citizen. Certainly, respondent's participation as a juror was at the heart of the work of the courts and the administration of justice.

When we proceed to the task of balancing mitigating and aggravating factors (std. 1.6), we are guided to recommend significant actual suspension at a minimum, even if respondent had no prior discipline, given the weight in the present record of aggravation and absent any mitigation.

Looking solely at the two California cases involving an attorney's misconduct toward the jury system, we do not see consistent guidance. In *Noland v. State Bar*, *supra*, 63 Cal.2d 298, the Supreme Court imposed a 30-day actual suspension on an attorney with about five years of practice as an assistant district attorney. Nolan influenced court staff to remove from the list of prospective jurors in the county's master jury list the names of about 65 individuals who Noland believed would be less favorable to the prosecution based on their votes in previous jury service or their challenges by prosecutors when previously examined for jury service. The court's opinion did not reveal whether the attorney had a prior record of discipline but it appeared that he had a strained financial condition with many dependents.

In *In re Possino*, *supra*, 37 Cal.3d 163, the Supreme Court disbarred the attorney. This was a referral proceeding after Possino's conviction of offering to sell large quantities of

marijuana. There were many aggravating circumstances, including his improper approach to a juror in his criminal trial, purchasing cocktails for the juror and her companions, and conversing with her about himself, although he avoided talking to her about the case. Even though other drug convictions of attorneys had resulted in suspension, the court determined that Possino's evidence in mitigation did not serve to show that disbarment was excessive. The court had harsh words for Possino's approach to the trial juror, opining that it might have been criminal, and it was at the very least "grossly unethical" and "plainly demonstrates an unfitness to practice law." (*Id.* at p. 170.)

Because respondent has a significant, recent actual suspension, we look to standard 1.7(a), which provides that the discipline for a second case of misconduct shall be greater than the first, except for prior discipline that was so remote in time or imposed for so minimally severe an offense that it would be manifestly unjust to enhance the discipline. As respondent's prior was not remote – he continues to serve his actual suspension – and rested on the serious offense of willful misappropriation of trust funds and failure to follow the related ethical rules to safeguard those funds, neither exception is present.[10] In that regard, the hearing judge's recommendation of disbarment for the present offense is well merited.

What is of great concern is respondent's continued avoidance of responsibility for his misdeeds. (See *Noland v. State Bar*, *supra*, 63 Cal.2d at pp. 302-303.) Rather than focus on his

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[10]We have occasionally declined to apply standard 1.7(a) where the current offense and the prior misconduct happened contemporaneously (*In the Matter of Burckhardt* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 343, 351), or, as we observed in *In the Matter of Stewart* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 52, 61, where the prior and current misconduct were only a year apart and were of a fundamentally different nature, the prior had not been imposed until after the later misconduct, and the State Bar did not seek greater discipline in the second matter. Here, respondent's prior misconduct occurred four years before his current misconduct, both matters involved deceit and respondent was defending the charges in the prior at the time he was committing misconduct as a juror. Moreover, there is nothing in the definition of prior discipline which limits the application of standard 1.7(a) to discipline imposed or final prior to the commission of later misconduct. (See Rules Proc. of State Bar, rule 216; std. 1.2(f); as to prior discipline generally, see *Lewis v. State Bar* (1973) 9 Cal.3d 704, 715.)

own behavior to recognize his ethical misconduct and to seek to avoid it in the future, respondent has in his defense in the prior matter attacked others involved in the State Bar Court proceeding and again, in the present matter, he has extended his disaffection with the State Bar and the State Bar Court by commencing a federal civil rights action against the justices of the Supreme Court, the judges of this court and the State Bar attorneys assigned to this matter.

The purposes of disciplinary proceedings are not to punish respondent but to protect the courts, the public and the legal profession from those members of the bar who are unable or unwilling to discharge their duties ethically. (Std. 1.3; e.g., *In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 345.) Manifestly, looking at respondent's prior and current proceedings, he has demonstrated that clients, courts and the legal profession are at serious risk of future harm should he be allowed to continue to practice. Accordingly, we recommend that he not be allowed to resume practice without undergoing a formal reinstatement proceeding proving by clear and convincing evidence his rehabilitation, moral fitness and learning and ability in the law. (See Cal. Rules of Court, rule 9.10(f).)

III. FORMAL RECOMMENDATION

For the above reasons, we recommend that respondent, Francis T. Fahy, be disbarred from the practice of law in this State and that his name be stricken from the roll of attorneys.

As respondent has been continually under actual suspension since June 2007, we do not again recommend that he be required to comply with the provisions of California Rules of Court, rule 9.20.

We recommend that costs be awarded the State Bar in accordance with section 6086.10, such costs being enforceable both as provided in section 6140.7 and as a money judgment.

The order of the hearing judge below that respondent be enrolled as an inactive member of the State Bar pursuant to section 6007, subdivision (c)(4), shall continue in effect pending the consideration and decision of the Supreme Court on this recommendation.

STOVITZ, J.[11]

We concur:

EPSTEIN, Acting P. J.[12]

PURCELL, J.

[11]Retired Presiding Judge of the State Bar Court sitting by designation of the Presiding Judge.

[12]Serving as Acting Presiding Judge by designation of the Presiding Judge.

Case No. 05-O-05123

In the Matter of

FRANCIS T. FAHY

Hearing Judge

Hon. Lucy Armendariz

Counsel for the Parties

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For Respondent:	**Francis T. Fahy** **259 Oak St.** **San Francisco, CA 94102**

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on March 6, 2009, I deposited a true copy of the following document(s):

OPINION ON REVIEW FILED MARCH 6, 2009

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:

FRANCIS T. FAHY
259 OAK ST
SAN FRANCISCO, CA 94102

☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

☐ by overnight mail at , California, addressed as follows:

☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Donald Robert Steedman, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 6, 2009.

Milagro del R. Salmeron
Case Administrator
State Bar Court