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DISCIPLINARY
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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re
DAVID E. LADOW,
Lawyer (Bar No. 7685).

Proceeding No. 16#00118
ODC File No(s). 13-00010
**STIPULATION TO ONE-YEAR
SUSPENSION**

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to One-Year Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Marsha Matsumoto, Respondent's counsel David B. Edwards, and Respondent lawyer David E. LaDow.

Respondent understands that he is entitled under the ELC to a hearing, to present exhibits and witnesses on his behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that he is entitled under the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the Supreme Court. Respondent further understands that a hearing and appeal could result in an

OLW

1 outcome more favorable or less favorable to him. Respondent chooses to resolve this
2 proceeding now by entering into the following stipulation to facts, misconduct, and sanction to
3 avoid the risk, time, and expense attendant to further proceedings.

4 **I. ADMISSION TO PRACTICE**

5 1. Respondent was admitted to practice law in the State of Washington on November
6 10, 1977.

7 **II. STIPULATED FACTS**

8 2. Krist and Marc Geriene (the Gerienes) operated a company, Nova Marine
9 Engineering, Inc. (NME), through which they pursued projects in discovering shipwrecks,
10 recovering artifacts, and developing new technologies.

11 3. The Gerienes met Respondent in 1996, when he began representing them in
12 various business and tax matters on an hourly fee basis.

13 4. During the late 1990's, the Gerienes designed and developed a portable,
14 submersible, remotely-operated vehicle called the Nova Ray. Several years after developing
15 the Nova Ray, the Gerienes decided to explore marketing the Nova Ray as a tool for
16 inspecting underwater pipes and drilling rigs.

17 ***5% Agreement***

18 5. In 2006, the Gerienes and Respondent entered into an arrangement under which
19 Respondent agreed to perform legal services in return for 5% of the income generated by the
20 Gerienes's explorations and inventions (5% Agreement).

21 6. At the time the Gerienes and Respondent entered into the 5% Agreement,
22 Respondent was not representing the Gerienes in any other matters.

23 7. Respondent did not provide the terms of the 5% Agreement to the Gerienes in

1 writing, did not advise the Gerienes in writing to seek the advice of independent counsel
2 before entering into the agreement, and did not obtain the Gerienes's informed written consent
3 to the agreement or to Respondent's role in the transaction.

4 8. Respondent did not receive any compensation under the 5% Agreement.

5 *November 21, 2008 Agreement*

6 9. In their efforts to market the Nova Ray, the Gerienes formed a new company,
7 Advent Marine Technologies, LLC (AMT), and entered into discussions with Petronas, a
8 Malaysian government-owned oil company.

9 10. In September 2008, the Gerienes entered into a \$51 million joint venture with
10 Petronas, which included \$25 million to acquire and commercialize the existing Nova Ray
11 technology for the purpose of inspecting underwater oil and gas operations (consisting of \$7
12 million in acquisition cost, \$4 million to capitalize commercialization, and \$14 million in a
13 three year earn out) plus an additional \$26 million to fund further research and development
14 of the Nova Ray technology.

15 11. Respondent represented the Gerienes in the Petronas transaction.

16 12. In September 2008, Respondent proposed the Gerienes hire Seattle Technology
17 Ventures, LLC (STV), to assist with the Petronas transaction, commercialization of the Nova
18 Ray, and other projects undertaken by the Gerienes.

19 13. Respondent informed the Gerienes that he and Mark DiSalle were joint owners of
20 STV and its only principals.

21 14. As compensation, STV would receive a 10% interest (divided equally between
22 Respondent and Mr. DiSalle) in: (1) the anticipated Petronas transaction closing, (2) the
23 Gerienes's interest in AMT in connection with the Petronas transaction, (3) the proceeds

1 received by the Gerienes from recovery projects undertaken during the term of the agreement,
2 and (4) the Gerienes's interest in other business opportunities undertaken during the term of
3 the agreement.

4 15. Respondent prepared a written agreement setting forth the compensation
5 arrangement between the Gerienes and STV (November 21, 2008 Agreement).

6 16. The November 21, 2008 Agreement also included the following terms:

- 7 • the Gerienes "may not terminate this Agreement prior to December 31,
8 2012, in the absence of a material default by STV";
- 9 • Neither STV nor any of its affiliates, members, employees or agents shall
10 be liable to the Gerienes or its subsidiaries or affiliates for any loss,
11 damage or expense arising out of or in connection with the performance
12 of services contemplated by this Agreement unless such loss, liability,
13 damage or expense shall be proven to result directly from the gross
14 negligence or willful misconduct of STV.

15 17. The November 21, 2008 Agreement did not fully disclose what, if any, differences
16 existed between the services STV was providing under the November 21, 2008 Agreement
17 and the services Respondent agreed to provide under the 5% Agreement.

18 18. The November 21, 2008 Agreement was signed by both of the Gerienes and by
19 Respondent on behalf of STV.

20 19. In forming and executing the November 21, 2008 Agreement, the Gerienes
21 reasonably believed that Respondent was their lawyer.

22 20. The November 21, 2008 Agreement superseded all prior agreements between
23 Respondent and the Gerienes.

24 21. Respondent did not advise the Gerienes in writing to seek the advice of
independent counsel before entering into the November 21, 2008 Agreement. Respondent did
not obtain the Gerienes's informed written consent to Respondent's role in the transaction or

1 to the conflict of interest created by Respondent's role as their lawyer and his interest in STV.

2 22. On December 19, 2008, the Petronas transaction closed.

3 23. Under the November 21, 2008 Agreement, Respondent received approximately
4 \$95,588 related to the Petronas closing.

5 ***Additional Fees of \$125,000 to Respondent***

6 24. On December 20, 2008, Respondent asked the Gerienes for additional
7 compensation, or a bonus, of \$125,000 for the work he performed in connection with the
8 Petronas transaction.

9 25. Respondent did not provide the Gerienes with a billing statement or a written
10 accounting of the work he performed in connection with the Petronas transaction.

11 26. The Gerienes were not obligated to pay Respondent the \$125,000.

12 27. The terms of the \$125,000 bonus were not provided to the Gerienes in writing.

13 28. Respondent did not advise the Gerienes in writing to seek the advice of
14 independent counsel before agreeing to the \$125,000 bonus. Respondent did not obtain the
15 Gerienes's informed written consent to the additional compensation or to Respondent's role in
16 the transaction.

17 29. On December 20, 2008, the Gerienes issued a check to Respondent in the amount
18 of \$125,000.

19 ***Professional Services Agreement with STV***

20 30. In late 2008, Respondent asked the Gerienes to begin paying a monthly fee to STV
21 for consulting services. The monthly fee was in addition to any monies paid to STV under the
22 November 21, 2008 Agreement and/or other agreements.

23 31. Respondent prepared a January 4, 2009 Professional Services Agreement (PSA)

1 between AMT and Mr. DiSalle “d/b/a Seattle Technology Ventures Management” for
2 management and business development consulting services.

3 32. Under the PSA, AMT agreed to pay \$25,000 per month for at least two months of
4 services and to reimburse STV for out-of-pocket expenses.

5 33. The PSA did not fully disclose what, if any, differences existed between the
6 services STV was providing under the PSA and the services STV agreed to provide under the
7 November 21, 2008 Agreement.

8 34. The PSA was signed by Krist Geriene on behalf of AMT and by Mr. DiSalle on
9 behalf of STV.

10 35. In forming and executing the PSA, the Gerienes reasonably believed that
11 Respondent was their lawyer.

12 36. Respondent did not advise the Gerienes in writing to seek the advice of
13 independent counsel before entering into the PSA. Respondent did not obtain the Gerienes’s
14 informed written consent to Respondent’s role in the transaction or to the conflict of interest
15 created by his role as their lawyer and his interest in STV.

16 37. Under the PSA, AMT paid approximately \$275,000 to STV.

17 38. As a principal in STV, Respondent received half of the funds paid to STV.

18 ***Operating Agreement of Marine Exploration Services, LLC***

19 39. The Gerienes’s relationship with Petronas led to the formation of another new
20 company, Advanced Marine Robotics, LLC (AMR), to handle the marketing and
21 commercialization of the Nova Ray in the United States.

22 40. In or around mid-2009, Respondent and Mr. DiSalle proposed forming a
23 management team to operate AMR. The management team included Respondent as general

1 counsel and Mr. DiSalle as chief executive officer.

2 41. In fall 2009, Respondent advised the Gerienes to change the name of AMR to
3 Marine Exploration Services, LLC (MES), and to sign a new agreement designating Mr.
4 DiSalle as manager of MES.

5 42. Respondent prepared a document entitled, Operating Agreement of Marine
6 Exploration Services, LLC (MES Operating Agreement).

7 43. Under the MES Operating Agreement, the Gerienes each received a 36% interest
8 in MES and STV received a 28% interest in MES.

9 44. The MES Operating Agreement was signed in or around March 2010 by both of
10 the Gerienes and by Mr. DiSalle on behalf of STV.

11 45. In forming and executing the MES Operating Agreement, the Gerienes reasonably
12 believed that Respondent was their lawyer.

13 46. Respondent did not advise the Gerienes in writing to seek the advice of
14 independent counsel before entering into the MES Operating Agreement. Respondent did not
15 obtain the Gerienes's informed written consent to Respondent's role in the transaction or to
16 the conflict of interest created by his role as their lawyer and his interest in STV.

17 ***Loan to MES***

18 47. In summer 2009, Respondent informed the Gerienes that MES needed money to
19 pay operating expenses if the Gerienes wished to commercialize the Nova Ray, because
20 Petronas had not provided funding to begin commercialization of the Nova Ray.

21 48. In response, the Gerienes agreed to loan \$1,000,000 to MES.

22 49. Respondent prepared a September 1, 2009 Promissory Note for the loan.

23 50. The Promissory Note provided, in part, that MES would repay \$1,000,000, plus

1 interest, on or before the one year anniversary of the Note. The Promissory Note also
2 provided that MES's obligation was unsecured.

3 51. In making the loan to MES, the Gerienes reasonably believed that Respondent was
4 their lawyer.

5 52. Respondent did not advise the Gerienes in writing to seek the advice of
6 independent counsel before making the loan. Respondent did not obtain the Gerienes's
7 informed written consent to Respondent's role in the transaction or to the conflict of interest
8 created by his role as their lawyer and his interests in STV and MES.

9 53. The Promissory Note was signed by MES's Chief Financial Officer David Rinn.

10 54. The Gerienes and Respondent disagree as to whether the Gerienes have been
11 partially repaid for their \$1,000,000 loan to MES. However, it is undisputed that at least
12 \$605,850 of the loan has not been repaid to the Gerienes.

13 ***Geriene et al. v. LaDow et al.***

14 55. In April 2013, the Gerienes filed a lawsuit against Respondent, Mr. DiSalle, STV,
15 and others in King County Superior Court. The lawsuit alleged breach of fiduciary duty,
16 among other claims.

17 56. In March 2014, the Honorable William Downing entered an order dismissing some
18 of the Gerienes's claims. However, in the same order, Judge Downing found that Respondent
19 breached RPC 1.8 by entering into a business transaction with the Gerienes without meeting
20 the requirements of RPC 1.8(a).

21 57. The Gerienes's lawsuit was tried in a bifurcated proceeding, before a jury in
22 October 2014 and before the Honorable Ken Schubert in December 2014.

23 58. The jury found, by a preponderance of the evidence, that Respondent breached his

1 fiduciary duty to the Gerienes as an officer of MES, but caused no damages.

2 59. In the second phase of the bifurcated proceeding, Judge Schubert heard the
3 Gerienes's equitable claim that Respondent breached his fiduciary duty as their lawyer. Judge
4 Schubert found that Respondent violated the RPC, and ordered him to disgorge his fees.

5 60. On April 7, 2015, Judge Schubert entered the following judgments:

- 6 • Judgment in favor of AMT against Respondent in the principal amount of
7 \$165,000;
- Judgment in favor of MES against Respondent in the amount of \$92,000;
- 8 • Judgment in favor of AMT against STV in the amount of \$250,000; and
- Judgment in favor of the Gerienes against STV in the amount of \$191,176.

9 61. As of the date of this Stipulation, Respondent has paid \$6,850 toward the
10 judgments entered against him and STV.

11 III. STIPULATION TO MISCONDUCT

12 62. By entering into the 5% Agreement with the Gerienes without meeting the
13 requirements of RPC 1.8(a)(1), (a)(2), and (a)(3), Respondent violated RPC 1.8(a).

14 63. By entering into a business transaction and by modifying his fee agreement with
15 the Gerienes through the November 21, 2008 Agreement without meeting the requirements of
16 RPC 1.8(a)(1), (a)(2), and (a)(3), Respondent violated RPC 1.8(a).

17 64. By representing the Gerienes regarding the November 21, 2008 Agreement when
18 there was a significant risk the representation would be materially limited by Respondent's
19 own interests and by failing to obtain the Gerienes's informed written consent to the conflict,
20 Respondent violated RPC 1.7.

21 65. By modifying his fee agreement with the Gerienes to obtain additional
22 compensation of \$125,000 without meeting the requirements of RPC 1.8(a)(1), (a)(2), and
23 (a)(3), Respondent violated RPC 1.8(a).

1 66. By entering into a business transaction with the Gerienes through the PSA without
2 meeting the requirements of RPC 1.8(a)(1), (a)(2), and (a)(3), Respondent violated RPC
3 1.8(a).

4 67. By representing the Gerienes regarding the PSA when there was a significant risk
5 the representation would be materially limited by Respondent's own interests and by failing to
6 obtain the Gerienes's informed written consent to the conflict, Respondent violated RPC 1.7.

7 68. By entering into a business transaction with the Gerienes through the MES
8 Operating Agreement without meeting the requirements of RPC 1.8(a)(1), (a)(2), and (a)(3),
9 Respondent violated RPC 1.8(a).

10 69. By representing the Gerienes regarding the MES Operating Agreement when there
11 was a significant risk the representation would be materially limited by his own interests and
12 by failing to obtain the Gerienes's informed written consent to the conflict, Respondent
13 violated RPC 1.7.

14 70. By entering into a business transaction with the Gerienes through the \$1,000,000
15 loan to MES without meeting the requirements of RPC 1.8(a)(1), (a)(2), and (a)(3),
16 Respondent violated RPC 1.8(a).

17 71. By representing the Gerienes regarding the \$1,000,000 loan to MES when there
18 was a significant risk the representation would be materially limited by Respondent's own
19 interests and by failing to obtain the Gerienes's informed written consent to the conflict,
20 Respondent violated RPC 1.7.

21 **IV. PRIOR DISCIPLINE**

22 72. Respondent has no prior discipline.

1 **V. APPLICATION OF ABA STANDARDS**

2 73. The following American Bar Association Standards for Imposing Lawyer
3 Sanctions (1991 ed. & Feb. 1992 Supp.) apply to this case:

4 **4.3 Failure to Avoid Conflicts of Interest**

5 4.31 Disbarment is generally appropriate when a lawyer, without the informed
6 consent of client(s):

- 7 (a) engages in representation of a client knowing that the lawyer's interests
8 are adverse to the client's with the intent to benefit the lawyer or another,
9 and causes serious or potentially serious injury to the client; or
- 10 (b) simultaneously represents clients that the lawyer knows have adverse
11 interests with the intent to benefit the lawyer or another, and causes
12 serious or potentially serious injury to a client; or
- 13 (c) represents a client in a matter substantially related to a matter in which
14 the interests of a present or former client are materially adverse, and
15 knowingly uses information relating to the representation of a client with
16 the intent to benefit the lawyer or another and causes serious or
17 potentially serious injury to a client.

18 4.32 Suspension is generally appropriate when a lawyer knows of a conflict of
19 interest and does not fully disclose to a client the possible effect of that
20 conflict, and causes injury or potential injury to a client.

21 4.33 Reprimand is generally appropriate when a lawyer is negligent in
22 determining whether the representation of a client may be materially
23 affected by the lawyer's own interests, or whether the representation will
24 adversely affect another client, and causes injury or potential injury to a
client.

4.34 Admonition is generally appropriate when a lawyer engages in an
isolated instance of negligence in determining whether the representation
of a client may be materially affected by the lawyer's own interests, or
whether the representation will adversely affect another client, and causes
little or no actual or potential injury to a client.

74. Under the ABA Standards, "knowledge" is the conscious awareness of the nature
or attendant circumstances of the conduct but without the conscious objective or purpose to
accomplish a particular result.

75. Respondent acted knowingly in failing to avoid a conflict of interest.

76. There was potential and actual injury in that the Gerienes entered into business
transactions with Respondent without being advised in writing to seek independent counsel

1 and without receiving adequate information in writing of the risks and advantages of entering
2 into the business transactions or of Respondent's role in the transactions.

3 77. The presumptive sanction is suspension.

4 78. The following aggravating factors apply under ABA Standard 9.22:

- 5 (d) multiple offenses; and
6 (i) substantial experience in the practice of law (Respondent was admitted to
the practice of law in 1977).

7 79. The following mitigating factors apply under ABA Standard 9.32:

- 8 (a) absence of a prior disciplinary record; and
9 (l) remorse.

10 80. It is an additional mitigating factor that Respondent has agreed to resolve this
11 matter at an early stage of the proceedings.

12 81. On balance the aggravating and mitigating factors do not require a departure from
13 the presumptive sanction.

14 **VI. STIPULATED DISCIPLINE**

15 82. The parties stipulate that Respondent shall receive a one-year suspension for his
16 conduct.

17 **VII. PROBATION**

18 83. Respondent will be subject to probation for a period of two years commencing
19 upon Respondent's reinstatement to the practice of law, and shall comply with the specific
20 probation terms set forth below:

21 Ethics School

- 22 a) Respondent shall attend Ethics School in person or by webinar (approximately 7.5
23 hours) or by obtaining the recorded product, and pay registration costs of \$150.
Respondent will receive all applicable approved CLE credits for time in attendance
at the Ethics School.

- 1 b) If Respondent attends Ethics School in person, Respondent agrees not to discuss the
2 grievance(s) or nature of misconduct that is the subject of this stipulation.
3 Respondent further agrees not to disclose the names or other identifying information
4 of other Ethics School attendees outside of Ethics School.
- 5 c) Respondent shall contact the Ethics School Administrator, currently Thea Jennings,
6 at (206) 733-5985 or theaj@wsba.org, within thirty (30) days of beginning
7 probation to confirm enrollment in Ethics School and related logistics.
- 8 d) The Ethics School Administrator may respond to inquiries from the Probation
9 Administrator regarding Respondent's compliance with these conditions.

10 Ethics Consultation

- 11 a) At the beginning of the probation period, the Probation Administrator will select a
12 lawyer (hereinafter referred to as ethics consultant) to conduct an ethics consultation
13 with Respondent;
- 14 b) Within three months of being notified of the ethics consultant's selection,
15 Respondent shall participate in a one hour consultation with the ethics consultant
16 regarding conflicts of interest, fee agreements, and compliance with the RPC.
- 17 c) Within two weeks of the consultation, Respondent shall provide proof of the
18 consultation to the Probation Administrator in the form of a written statement that
19 includes the date, time, and a brief summary of the consultation.
- 20 d) Respondent is responsible for all costs associated with the consultation.

21 Fee Agreements

- 22 a) On a quarterly basis, Respondent will provide the Probation Administrator with
23 copies of any and all fee agreements entered into within the probation period.
- 24 b) Respondent shall provide his fee agreements for months 1 through 3 by no later than
the 30th day of the fourth month after beginning probation. He shall provide his fee
agreements for months 4 through 6 by no later than the 30th day of the seventh month
after beginning probation, and so on throughout the probation period.

84. Respondent's failure to comply with the specific terms of probation may be
grounds for discipline.

VIII. RESTITUTION

85. Respondent agrees to pay restitution to the Gerienes, AMT, and MES in the
principal amounts totaling \$698,176, plus 5.25% interest calculated from April 7, 2015, as set

1 forth in the judgments entered by Judge Schubert:

- 2 • Judgment in favor of AMT against Respondent in the principal amount of \$165,000;
- 3 • Judgment in favor of MES against Respondent in the amount of \$92,000;
- 4 • Judgment in favor of AMT against STV in the amount of \$250,000; and
- Judgment in favor of the Gerienes against STV in the amount of \$191,176.

5 86. Respondent's reinstatement to the practice of law is conditioned on payment of
6 restitution or full compliance with a restitution payment plan, under ELC 13.3(b).

7 87. Respondent's failure to make restitution when ordered to do so or to comply with
8 the terms of the periodic payment plan may be grounds for discipline.

9 **IX. COSTS AND EXPENSES**

10 88. In light of Respondent's willingness to resolve this matter by stipulation at an early
11 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of
12 \$1,014 in accordance with ELC 13.9(i). The Association will seek a money judgment under
13 ELC 13.9(l) if these costs are not paid within 30 days of approval of this stipulation, unless
14 Respondent enters into a periodic payment plan with disciplinary counsel.

15 89. Respondent's reinstatement to the practice of law is conditioned on payment of
16 costs or full compliance with a costs payment plan, under ELC 13.3(b).

17 90. Respondent's failure to pay costs and expenses or to comply with the terms of a
18 periodic payment plan may be grounds for discipline.

19 **X. VOLUNTARY AGREEMENT**

20 91. Respondent states that prior to entering into this Stipulation he has consulted
21 independent legal counsel regarding this Stipulation, that Respondent is entering into this
22 Stipulation voluntarily, and that no promises or threats have been made by ODC, the
23 Association, nor by any representative thereof, to induce the Respondent to enter into this

1 Stipulation except as provided herein.

2 92. Once fully executed, this Stipulation is a contract governed by the legal principles
3 applicable to contracts, and may not be unilaterally revoked or modified by either party.

4 **XI. LIMITATIONS**

5 93. This Stipulation is a compromise agreement intended to resolve this matter in
6 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
7 expenditure of additional resources by the Respondent and ODC. Both the Respondent
8 lawyer and ODC acknowledge that the result after further proceedings in this matter might
9 differ from the result agreed to herein.

10 94. This Stipulation is not binding upon ODC or the respondent as a statement of all
11 existing facts relating to the professional conduct of the respondent lawyer, and any additional
12 existing facts may be proven in any subsequent disciplinary proceedings.

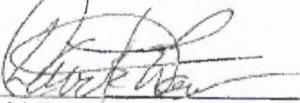
13 95. This Stipulation results from the consideration of various factors by both parties,
14 including the benefits to both by promptly resolving this matter without the time and expense
15 of hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review.
16 As such, approval of this Stipulation will not constitute precedent in determining the
17 appropriate sanction to be imposed in other cases; but, if approved, this Stipulation will be
18 admissible in subsequent proceedings against Respondent to the same extent as any other
19 approved Stipulation.

20 96. Under ELC 9.1(d)(4), the Disciplinary Board reviews a stipulation based solely on
21 the record agreed to by the parties. Under ELC 3.1(b), all documents that form the record
22 before the Board for its review become public information on approval of the Stipulation by
23 the Board, unless disclosure is restricted by order or rule of law.

1 97. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
2 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
3 Rules for Enforcement of Lawyer Conduct will be made.

4 98. If this Stipulation is not approved by the Disciplinary Board and Supreme Court,
5 this Stipulation will have no force or effect, and neither it nor the fact of its execution will be
6 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary
7 proceeding, or in any civil or criminal action.

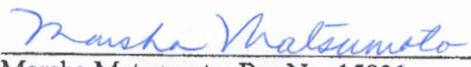
8 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation
9 to Discipline as set forth above.

10 
11 _____
12 David E. LaDow, Bar No. 7685
13 Respondent

Dated: 11/03/2017

13 
14 _____
15 David B. Edwards, Bar No. 44680
16 Counsel for Respondent

Dated: 11/03/2017

17 
18 _____
19 Marsha Matsumoto, Bar No. 15831
20 Managing Disciplinary Counsel

Dated: 11/03/2017