

**DECLARATION OF ROBERT L. CORBIN**

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 FOR THE COUNTY OF ORANGE

11	In the Matter of the Assumption of Jurisdiction Over the Law Practice of	}	CASE NO. 05CC00971
12			DECLARATION OF ROBERT L. CORBIN IN SUPPORT OF
13	CHARLES F. BENNINGHOFF, III State Bar Membership No. 63634		ESTABLISHING CHARLES BENNINGHOFF'S DILIGENCE IN
14			INFORMING THE CALIFORNIA BAR OF HIS INTENT TO PROVIDE
15	A Resigned Member of the State Bar	}	LAY REPRESENTATION SERVICES IN OCTOBER, 2000

16  
 17 DATE: June 17, 2005  
 18 TIME: 9:00 a.m.  
 19 LOC.: C20

20 I, ROBERT L. CORBIN, declare and state as follows:

21 1. I am an attorney licensed to practice in the State of California and am a  
 22 member in good standing of the State Bar of California.

23 2. I submit this declaration in support of Charles Benninghoff's efforts to  
 24 establish diligence in informing the State Bar of California of his intent to provide lay  
 25 representation services in October, 2000.

26 3. In 1999, Mr. Benninghoff pleaded guilty before United States District Court  
 27 Judge Manuel L. Real, in connection with an indictment alleging that he and others submitted  
 28 false statements to a financial institution and a federal agency. Mr. Benninghoff was  
 sentenced to 12 months in custody, placed on supervised release for three years, fined

1 \$30,000, ordered to pay \$150.00 to the Victim's Restitution Fund and ordered to perform  
2 1800 hours of community service. It is my understanding that shortly before or after his  
3 sentencing date, Mr. Benninghoff resigned from the State Bar of California. Mr.  
4 Benninghoff appealed his sentence but also served the custodial portion of his sentence while  
5 his appeal was pending. After Mr. Benninghoff's release, the United States Court of Appeals  
6 vacated his previously imposed sentence and remanded him for re-sentencing before Judge  
7 Real.

8 4. Mr. Benninghoff consulted with me in October, 2000 in connection with his  
9 re-sentencing. Mr. Benninghoff eventually retained me on January 8, 2001 and I represented  
10 him at his re-sentencing on February 22, 2001. However, during our initial consultation in  
11 October, 2000, we discussed the need for Mr. Benninghoff to address all conditions of his  
12 supervised release so that his probation officer and Judge Real would believe that he was  
13 earning a living lawfully.

14 5. I have reviewed my firm's correspondence files and found the attached letter  
15 dated October 19, 2000 from Mr. Benninghoff to Susan J. Anderson, Office of the Trial  
16 Counsel, California State Bar Association (Exhibit "A"). This letter discusses Mr.  
17 Benninghoff's desire to represent clients at administrative hearings as a resigned lawyer and  
18 his belief that the Office of Administrative Hearing for the State Bar of California did not  
19 require the holder of the law license to represent clients before administrative agencies. I  
20 specifically recall reviewing this letter in either 2000 or early 2001.

21 6. Mr. Benninghoff recently sent me a copy of an e-mail which indicates that he  
22 included Exhibit "A" as an attachment. This e-mail, attached hereto as Exhibit "B", was  
23 addressed to me and my partner, Michael W. Fitzgerald at Mr. Fitzgerald's former e-mail  
24 address. I believe that Exhibit "A", the October 19, 2000 letter to Ms. Anderson, was printed  
25 from this e-mail and placed in our firm's correspondence files.


26 7. Attached herein as Exhibit "C" is a letter dated July 17, 2001 from Lisa C.  
27 Goldkuhl, Deputy Legislative Counsel of the Office of Legislative Counsel of California to  
28 the Honorable Tom McClintock. This letter deals with the question of whether a resigned

1 member of the State Bar may represent a party in an administrative hearing of a government  
2 agency. The letter concludes "that a resigned member of the State Bar may not represent a  
3 party as an attorney in an administrative hearing of a government agency but may represent a  
4 party as a non-attorney in an administrative proceeding of a government agency where a  
5 statute, regulation of law, authorizes a party to be represented by a non-attorney, except  
6 where a resigned attorney is specifically prohibited from providing representation as a non-  
7 attorney"

8 8. While I cannot find Exhibit "C" in my firm's files, I have a specific  
9 recollection of having received this letter from Mr. Benninghoff during the summer of 2001.  
10 Mr. Benninghoff had been re-sentenced by Judge Real on February 22, 2001 and during the  
11 summer of 2001, I continued to consult with Mr. Benninghoff about ways he could make  
12 sure that he was in compliance with all remaining condition of his supervision. I recall that  
13 Mr. Benninghoff was communicating with his probation officer at that time about whether he  
14 could represent clients before administrative agencies and this letter was part of the mix of  
15 information he had gathered on this subject.

16 I declare under penalty of perjury under the laws of the State of California that the  
17 foregoing is true and correct.

18 Executed this 3rd day of June 2005 at Los Angeles, California.

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22 Robert L. Corbin  
23 Declarant  
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DECLARATION OF ROBERT J. SULLIVAN

I, Robert J. Sullivan, declare as follows:

1. I am an attorney at law licensed to practice in the State of California since June 1967. I am a partner in the law firm of Nossaman, Guthner, Knox & Elliott, LLP ("Nossaman"). I joined Nossaman on September 1, 1991, when my former firm, Turner & Sullivan, closed its doors after 18 years. My entire legal career, starting as a Deputy Attorney General in 1967, has been spent in the areas of government and administrative law. For the past 25 years, most of my time has been spent representing health care providers in licensing and regulatory disputes with local, state, or federal government.

A great deal of my time between 1967 and 1985 was spent in the area of public sector labor law, having been the Chief Counsel for the California State Employees Association in 1970. Among the appellate cases in which I was involved was most notably *Armistead v. State Personnel Board*, 22 Cal.3d 198 (1978). I represented Mr. Armistead. The court in this case delineated the reach of the APA insofar as state agencies are required to promulgate as "regulations" their policies, standards or rules that guide or interpret or specify the performance of their legal duties. This case signaled the death knell of "underground regulations."

2. I have never met Charles Benninghoff. My only contact with Mr. Benninghoff was a telephone call and e-mails in which he asked me to review documents in connection with a proceeding brought against him by the State Bar of California challenging his right to act as an authorized representative in administrative proceedings on the ground that he was engaging in the unauthorized practice of law. I agreed to review documents concerning his practice and provide the court with a declaration, if appropriate.

3. As long as I have been practicing law in California, it has been my understanding of the law that "non-attorneys" were permitted to represent parties in administrative adjudications conducted under the Administrative Procedure Act. (Gov. Code § 11500, et seq.) I have personally observed proceedings conducted before Administrative Law Judges of the Office of Administrative Hearings in which the respondents were represented by "authorized representatives" who were not members of the State Bar of California.

1 I read the Amicus Brief of Michael Asimow, Emeritus Professor of Law at UCLA School of  
2 Law. I incorporate as Exhibit 1 Professor Asimow's Amicus Brief Re Law Representation Under The  
3 California APA as Unauthorized Practice of Law. In my opinion, Professor Asimow accurately states  
4 the law: a litigant in an administrative adjudication conducted under the Administrative Procedure Act  
5 in this state is entitled to be represented either by an attorney admitted to practice in the State of  
6 California or a "authorized representative" of his or her choosing. There is no bar in the law prohibiting  
7 a person who resigned from the Bar with charges pending from acting as an authorized representative in  
8 administrative proceedings in California conducted under the Administrative Procedure Act.

9 4. I read the order issued by Administrative Law Judge Samuel D. Reyes in *The Matter of*  
10 *the Accusation Against Jocelyn A. Gordon, P.A.*, Case No. 1 E-2000-109815/OAH No. L2004090477, in  
11 which he prohibits Mr. Benninghoff from representing Respondent Gordon. I incorporate it as Exhibit  
12 2. In my opinion, his Order is not supported by the law of this state.

13 5. I believe that Judge Reyes' Order represents a "maverick decision." However, to the  
14 extent that his order becomes a policy or standard or custom of the Office of Administrative Hearings to  
15 henceforth prohibit unauthorized representatives from representing respondents in administrative  
16 adjudications, the order would be an invalid, underground regulation. (See Gov. Code § 11371(b):  
17 *Armistead v. State Personnel Board*, 22 Cal.3d 198 (1978).)

18 I declare under penalty of perjury the foregoing is true and correct. Executed on June 1, 2005, in  
19 Sacramento, California.

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22 ROBERT J. SULLIVAN  
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