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State Bar Court of California Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar KRISTIN L. RITSEMA SUPERVISING TRIAL COUNSEL THE STATE BAR OF CALIFORNIA 1149 S. HILL STREET LOS ANGELES, CA 90015 (213) 765-1000 Bar # 149966	Case number(s) 00-0-15577 03-0-00651 03-0-03713 03-0-04012 04-0-10396 04-0-14756	(for Court's use) <div style="text-align: center; font-size: 24pt; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 18pt; font-weight: bold;">OCT 17 2006</div> <div style="text-align: center; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent EDWARD O. LEAR CENTURY LAW GROUP 5200 W. CENTURY BLVD. #940 LOS ANGELES, CA 90045 (310) 642-6900 Bar # 129220	<div style="font-size: 36pt; font-weight: bold; margin-bottom: 10px;">PUBLIC MATTER</div> <div style="display: flex; justify-content: space-around; align-items: center;"> kwiktag® 022 603 867 </div>	
In the Matter of KENNETH EDWARD COHEN Bar # 129220 A Member of the State Bar of California (Respondent)	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 July 7, 1987 (date)
- (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 and order consist of 46 pages.
- (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."
- (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.

(Do not write above this line.)

(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 284, Rules of Procedure.
- costs to be paid in equal amounts prior to February 1 for the following membership years: three(3) billing cycles following the effective date of the Supreme Court Order (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

(1) Prior record of discipline [see standard 1.2(f)]

(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 or a separate attachment entitled "Prior Discipline."

(2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.

(3) **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.

(4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See Attachment, pages 29-30.

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- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing ~~and demonstrates a pattern of misconduct.~~
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. 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 deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating 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 in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical 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 Respondent no longer suffers from such difficulties or disabilities.
- (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.

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- (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. See Attachment, pages 39-40
- (11) **Good Character:** Respondent's 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: See Attachment, pages 39-41.

D. Discipline:

(1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of two (2) years
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) 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 three (3) years, which will commence upon the effective date of the Supreme Court order in this matter.
(See rule 953, Calif. Rules of Ct.)

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(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of sixty (60) days
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following: _____

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), 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.

(Do not write above this line.)

- (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: _____
- (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 checked="" type="checkbox"/> Law Office Management Conditions |
| <input checked="" type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |
- See Attachment, pages 42-43.

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 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason: _____
- (2) **Rule 955, California Rules of Court:** Respondent must comply with the requirements of rule 955, 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 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, 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:**

(Do not write above this line.)

In the Matter of KENNETH EDWARD COHEN	Case Number(s): 00-0-15577, 03-0-00651 03-0-03713, 03-0-04012 04-0-10396, 04-0-14756
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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF of the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Isaac Garcia	\$695	March 29, 2000
Alice Johnson	\$270	March 19, 2002
Janee Fleming	\$595	September 3, 2002
Maria Benavidez	\$1,000	February 5, 2003

- Respondent must pay the above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than _____.

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency
Isaac Garcia	\$100	Monthly, with payment due on the first day of each month commencing the first month following the effective date of the disciplinary order, until paid in full.
Alice Johnson	\$100	
Janee Fleming	\$100	
Maria Benavidez	\$100	

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

(Do not write above this line.)

In the Matter of KENNETH EDWARD COHEN	Case Number(s): 00-0-15577, 03-0-00651 03-0-03713, 03-0-04012 04-0-10396, 04-0-14756
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b. Respondent has kept and maintained the following:

- i. a written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.

3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

(Do not write above this line.)

In the Matter of KENNETH EDWARD COHEN	Case Number(s): 00-0-15577, 03-0-00651, 03-0-03713 03-0-04012, 04-0-10396, 04-0-14756
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Law Office Management Conditions

- a. Within 60 days/ ~~---months/~~ ~~-----years~~ of the effective date of the discipline herein, Respondent must develop a law office management/ organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. Within _____ days/ _____ months _____ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than _____ hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for _____ year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.
- d. During the period of probation imposed as a result of this stipulation, Respondent must comply with the law office management/organization plan developed by Respondent and approved by the Office of Probation pursuant to section a. above. With each quarterly report required during the period of probation, Respondent shall aver under penalty of perjury whether he has complied with the law office management/organization plan during the period covered by the report.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: KENNETH EDWARD COHEN

CASE NUMBERS: 00-O-15577, 03-O-00651, 03-O-03713,
 03-O-04012, 04-O-10396 and 04-O-14756

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of September 15, 2006, the estimated prosecution costs in this matter are approximately \$5,454.49. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which will be included in any final cost assessment. 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.

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Jurisdiction

1. Respondent was admitted to the practice of law in the State of California on July 7, 1987, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

COUNT ONE

Case No. 00-O-15577
Business and Professions Code section 6068(m)
[Failure to Inform Clients of Significant Development
and Failure to Respond to Status Inquiries]

2. Respondent failed to inform his clients of a significant development and failed to promptly respond to reasonable status inquiries of his clients in a matter in which he agreed to

provide legal services, in wilful violation of Business and Professions Code section 6068(m) as follows:

3. On March 29, 2000, Isaac and Petra Garcia employed Respondent to handle a Chapter 13 bankruptcy matter. The scope of Respondent's employment with respect to the bankruptcy matter was limited to preparing and filing the Chapter 13 petition and schedules, representing the Garcias at the section 341(a) creditors' hearing, and representing the Garcias at all confirmation hearings. In return, the Garcias paid Respondent attorney fees in the amount of \$900 and filing fees in the amount of \$185 on March 29, 2000.

4. Subsequently, Respondent performed the legal services for which he was retained. He prepared the Chapter 13 petition and schedules on behalf of the Garcias based on the information they provided to him and filed the petition and schedules on April 3, 2000. Based on the information provided by the Garcias, it appeared that they had debt in the amount of approximately \$7,000. With the original petition, Respondent and the Garcias proposed a Chapter 13 payment plan that required the Garcias to pay \$331 per month for 36 months, to be paid to the Bankruptcy Trustee commencing 30 days after the petition was filed. The Garcias began making payments to the Trustee pursuant to the proposed payment plan.

5. On May 5, 2000, Respondent attended the section 341(a) creditors' meeting. On July 5, 2000, Respondent filed an unanticipated amendment to the Chapter 13 petition and schedules that Respondent states was necessitated by the fact that the Garcias initially failed to notify him about debt related to a Citibank credit card that they wanted to keep. Respondent charged and the Garcias paid an additional \$95 for the amended petition and schedules, approximately \$75 of

which was for Respondent's fee and \$20 of which was for the filing fee. With the amended Chapter 13 petition, Respondent and the Garcias proposed an amended Chapter 13 payment plan that required the Garcias to pay \$374 per month for 36 months. The increase in the monthly payment was necessitated by the Citibank debt that was not reflected on the original Chapter 13 petition. The Garcias subsequently made payments to the Trustee pursuant to the amended proposed payment plan.

6. On July 13, 2000, Respondent appeared at the confirmation hearing, which the Bankruptcy Court continued to August 10, 2000. On August 10, 2000, Respondent appeared at the confirmation hearing, which the Court again continued to October 12, 2000.

7. On October 12, 2000, Respondent appeared at the confirmation hearing. At the hearing, the attorney for the Bankruptcy Trustee indicated that the Garcias were current with plan payments and mortgage payments. However, she indicated that the Chapter 13 payment plan proposed by Respondent and the Garcias was not feasible because of two creditors' claims by the Franchise Tax Board and Bank United. The Franchise Tax Board claim for unpaid property taxes owed by the Garcias in the amount of \$3,489.07 had never been listed on the original or amended Chapter 13 petitions and schedules. Bank United carried the Garcias' mortgage, and though Bank United was listed as a creditor in the original and amended Chapter 13 petitions and schedules, the amount owed (in default) was listed as \$3,500, when it was actually \$11,536.05. Accordingly, the attorney for the Bankruptcy Trustee would not agree to the Chapter 13 payment plan as proposed because the payments proposed were not adequate in light of the addition of the Franchise Tax Board claim and the increase in the amount of the

Bank United claim. However, she would agree to a plan payment of \$762 per month, which would accommodate all claims and which was feasible in light of the Garcias' disposable income as reported in their Chapter 13 petitions and schedules. Respondent agreed to interlineate the plan to include the Franchise Tax Board claim, the increased Bank United claim, and the increased monthly payment plan. Accordingly, the Bankruptcy Court confirmed the plan as modified on October 12, 2000.

8. Following the October 12, 2000 confirmation hearing, Respondent failed to personally notify the Garcias that the Chapter 13 plan payment had been increased to \$762. However, as is customary, the Bankruptcy Court served the Garcias with notice of the order confirming their Chapter 13 plan with monthly payments of \$762 due for 36 months.

9. Upon receipt of the order confirming their Chapter 13 plan with an increased monthly payment of \$762, the Garcias telephoned Respondent on five occasions in October 2000 to inquire as to the status of their case and the reasons for the increased payments. Each time, they left messages for Respondent requesting him to contact them about their bankruptcy case and the increased payments. Respondent failed to respond to the telephone calls. At no time to date has Respondent contacted the Garcias to explain why the Chapter 13 plan payment was increased.

Conclusions of Law

10. By failing to contact the Garcias to inform them that the proposed Chapter 13 monthly payment was rejected and an increased monthly payment of \$762 per month was approved and to inform them of the reasons therefore, Respondent failed to inform his clients of

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Attachment Page 4

a significant development in a matter in which he agreed to provide legal services, in wilful violation of Business and Professions Code section 6068(m).

11. By failing to respond to the Garcias' telephone calls inquiring about the status of their bankruptcy matter and the increased payments, Respondent failed to promptly respond to reasonable status inquiries of his clients in a matter in which he agreed to provide legal services, in wilful violation of Business and Professions Code section 6068(m).

COUNT TWO

Case No. 00-O-15577
Rule 3-110(A) of the Rules of Professional Conduct
[Failure to Competently Perform Legal Services]

12. Respondent intentionally, recklessly or repeatedly failed to perform legal services competently in violation of rule 3-110(A) of the Rules of Professional Conduct as follows:

13. On March 29, 2000, Isaac Garcia employed Respondent to handle a child support modification matter. Mr. Garcia owed his ex-wife a significant amount of overdue child support payments and was seeking to reduce his child support obligation. On March 29, 2000, Mr. Garcia paid Respondent \$695 in advance attorney's fees for the child support modification matter.

14. According to Respondent, after meeting with Mr. Garcia, he did a preliminary computer analysis utilizing a child support guidelines program (the "DissoMaster"). Although Respondent provided to the State Bar copies of three pages showing different support payment scenarios depending upon how much time the child spent with the non-custodial parent, Mr. Garcia and his wife, Petra, deny that they ever received these documents from Respondent. In

any event, the computer runs did not include real information about Mr. Garcia's ex-wife's financial circumstances, so they were of little value even if Mr. Garcia had received them. Further, according to Respondent, in or about June 2000, he wrote a letter to Mr. Garcia in which he advised Mr. Garcia not to try to modify his child support obligation at that time because doing so might affect the Chapter 13 bankruptcy case. Respondent provided the State Bar with an unsigned copy of such a letter. Although Mr. Garcia and his wife deny that they ever received this letter from Respondent, Mr. Garcia acknowledges that Respondent advised Mr. Garcia to wait until the Chapter 13 bankruptcy matter was completed before seeking to modify his child support obligation.

15. In the Fall of 2000, Mr. Garcia and his wife telephoned Respondent on several occasions regarding the child support modification matter. Each time, they left messages requesting Respondent to contact them to discuss the matter. However, Respondent failed to respond.

16. On October 2, 2000, Mr. Garcia wrote a letter to Respondent in which he complained that Respondent failed to return his calls and that he needed to talk to Respondent about his child support problem. In the letter, Mr. Garcia noted that he did not have a driver's license (because it was suspended as a result of failure to pay child support) and that though he understood that Respondent told him to wait because of the Chapter 13 matter, six months had passed and he needed to get his problem fixed. Mr. Garcia noted that every month his balance (of back child support owed) increased and the problem got worse. He requested Respondent to please respond soon. The October 2, 2000 letter was mailed to Respondent via the United States Postal Service

in a sealed envelope properly addressed to Respondent at the address that Respondent had given him, first class certified mail, return receipt requested, postage prepaid. The letter was not returned by the United States Postal Service as unclaimed or for any other reason. The letter was received in Respondent's office on October 5, 2000 and was signed for by someone named Olivia. Respondent failed to respond to Mr. Garcia's October 2, 2000 letter.

17. Respondent failed to perform any additional services for Mr. Garcia with respect to the child support modification matter.

Conclusions of Law

18. By failing to perform any legal services on behalf of Mr. Garcia with respect to the child support modification matter after receipt of Mr. Garcia's October 2, 2000 letter, Respondent intentionally, recklessly or repeatedly failed to perform legal services competently in violation of rule 3-110(A) of the Rules of Professional Conduct.

COUNT THREE

Case No. 00-O-15577
Business and Professions Code section 6068(m)
[Failure to Respond to Status Inquiries]

19. Respondent failed to promptly respond to reasonable status inquiries of his client in a matter in which he agreed to provide legal services, in wilful violation of Business and Professions Code section 6068(m) as follows:

20. The stipulated facts set forth in paragraphs 13 through 17 are hereby incorporated by reference as if set forth in full.

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Conclusions of Law

21. By failing to respond to the Garcias' telephone calls requesting him to contact Mr. Garcia regarding the child support modification matter, and by failing to respond to Mr. Garcia's October 2, 2000 letter, Respondent failed to promptly respond to reasonable status inquiries of his client in a matter in which he agreed to provide legal services, in wilful violation of Business and Professions Code section 6068(m).

COUNT FOUR

Case No. 00-O-15577
Rule 3-700(D)(2) of the Rules of Professional Conduct
[Failure to Refund Unearned Fees]

22. Respondent failed, upon termination of employment, to promptly refund any part of a fee paid in advance that was not earned, in wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct, as follows:

23. The stipulated facts set forth in paragraphs 13 through 17 are hereby incorporated by reference as if set forth in full.

24. By failing to perform any legal services on behalf of Mr. Garcia with respect to the child support modification matter after receipt of Mr. Garcia's October 2, 2000 letter, by failing to communicate with Mr. Garcia with respect to the child support modification matter after in or about June 2000, and by failing to respond to Mr. Garcia's telephone calls and October 2, 2000 letter, Respondent effectively withdrew from representation of Mr. Garcia.

25. To date, Mr. Garcia has received no benefit from any legal services Respondent may have performed with respect to the child support modification matter.

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26. By failing to provide any legal services of value on behalf of Mr. Garcia, Respondent has failed to earn any portion of the \$695 in fees paid to him for the child support modification matter.

27. To date, Respondent has failed to refund any portion of the \$695 in fees paid to him to represent Mr. Garcia in the child support modification matter.

Conclusions of Law

28. By failing to refund any portion of the \$695 in fees paid by Mr. Garcia in the child support modification matter, Respondent has failed, upon termination of employment, to promptly refund unearned fees in wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

COUNT FIVE

Case No. 03-O-00651
Rule 3-110(A) of the Rules of Professional Conduct
[Failure to Competently Perform Legal Services]

29. Respondent intentionally, recklessly or repeatedly failed to perform legal services competently, in wilful violation of rule 3-110(A) of the Rules of Professional Conduct, as follows:

30. As of November 2000, Manuel Beltran and his wife, Yvonne Beltran, were facing a pending foreclosure action against their home. In December 2000, Mr. Beltran employed Respondent to file a bankruptcy petition in response to the foreclosure action. On December 2, 2000, the Beltrons met with Respondent's paralegal, Eddie Alvarez, at Respondent's office and

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provided all the information that was requested of them. At this meeting, Mr. Beltran paid \$1,450 for the bankruptcy matter.

31. Respondent filed a Chapter 13 bankruptcy petition on behalf of Mr. Beltran on January 5, 2001 in the Central District of California, case number LA 01-10322 EC (the "first bankruptcy matter"). The petition listed only Mr. Beltran as the debtor and did not list his wife.

32. There were various problems with the first bankruptcy petition filed on behalf of Mr. Beltran. For example, the petition failed to disclose that Mrs. Beltran had a job and earned an income. When the attorney for the bankruptcy trustee asked Mr. Beltran about this, he said essentially that he didn't realize his wife's income had to be listed as this was his bankruptcy.

33. With respect to the first bankruptcy matter, at all times, the Beltrons met and spoke only with Respondent's paralegal, Eddie Alvarez. Respondent never met with the Beltrons personally, nor did he ever speak with them telephonically. Respondent relied on Mr. Alvarez to communicate with the Beltrons.

34. In March 2001, the bankruptcy trustee filed various objections to confirmation of Mr. Beltran's Chapter 13 plan. Respondent failed to take appropriate action to address the bankruptcy trustee's concerns.

35. On April 10, 2001, the Bankruptcy Court dismissed Mr. Beltran's first bankruptcy proceeding for failure to prosecute.

36. Respondent was paid fees in the amount of \$2,242.00 with regard to Mr. Beltran's first bankruptcy matter—\$1,450 of which was paid by Mr. Beltran at the outset, and \$792 of which was paid by the bankruptcy trustee from the bankruptcy estate. As set forth below,

Respondent eventually refunded all fees paid with respect to Mr. Beltran's first bankruptcy matter.

37. On May 2, 2001, Respondent filed a second Chapter 13 bankruptcy petition on behalf of Mr. Beltran in the Central District of California, case number LA 01-23773 EC (the "second bankruptcy matter"). The petition again listed only Mr. Beltran as the debtor and did not list his wife.

38. As with the first bankruptcy matter, the Beltrons never met or spoke with Respondent with respect to the second bankruptcy matter. They met and spoke only with Mr. Alvarez.

39. There were various problems with the second bankruptcy petition filed on behalf of Mr. Beltran. On or about July 2, 2001, the bankruptcy trustee filed various objections to confirmation of Mr. Beltran's second Chapter 13 plan. Respondent failed to provide an amended schedule J, an amended Chapter 13 plan, and proof of service under penalty of perjury of the Chapter 13 plan as requested by the bankruptcy trustee.

40. The confirmation hearing in Mr. Beltran's second bankruptcy matter was scheduled for August 10, 2001. Neither Respondent nor anyone from his office appeared on Mr. Beltran's behalf at the confirmation hearing, despite the fact that proper notice of the time and date of the hearing was properly served on Respondent. As a result, the second bankruptcy matter was dismissed on August 10, 2001 with a prohibition against the refiling of another bankruptcy petition by or against the debtor for 180 days from the date of the dismissal order.

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41. Respondent filed a motion to vacate the bar to refile within 180 days, but the motion was denied.

42. Respondent was paid fees in the amount of \$1,300.00 with regard to Mr. Beltran's second bankruptcy matter, all of which was paid by the bankruptcy trustee from the bankruptcy estate. As set forth below, Respondent eventually refunded all fees paid with respect to Mr. Beltran's second bankruptcy matter.

43. After the dismissal of Mr. Beltran's second bankruptcy matter, Mr. Alvarez told the Beltrons not to worry, that they would not lose their home, and that Respondent would file a bankruptcy matter in Mrs. Beltran's name.

44. On September 21, 2001, Respondent filed a Chapter 13 bankruptcy petition on behalf of Mrs. Beltran in the Central District of California, case number LA 01-38505 EC (the "third bankruptcy matter"). The petition and schedules listed only Mrs. Beltran as the debtor, but they did disclose Mr. Beltran's employment and income.

45. As with the first and second bankruptcy matters, the Beltrons never met or spoke with Respondent with respect to the third bankruptcy matter. They met and spoke only with Mr. Alvarez.

46. The section 341(a) creditors' meeting was scheduled for October 31, 2001, and the confirmation hearing was scheduled for December 4, 2001. Respondent received notice of these dates and in fact sent out the required notice of these events to the creditors and other interested parties. The creditors' meeting was rescheduled to November 16, 2001. Respondent sent a

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contract attorney to appear at the November 16, 2001 creditors' meeting on behalf of Mrs. Beltran. Mrs. Beltran also appeared at the meeting.

47. On December 3, 2001, Mrs. Beltran telephoned Respondent's office to make sure that Respondent would be appearing at the December 4 confirmation hearing. She spoke with Sheila Byers of Respondent's office and asked Ms. Byers to pass on her message to Respondent. Ms. Byers agreed to do so.

48. Respondent failed to appear for the confirmation hearing on December 4, 2001. As a result, the Bankruptcy Court continued the hearing to December 20, 2001 and advised Mrs. Beltran to seek new counsel. The Bankruptcy Court also issued an order to show cause why Respondent should not be ordered to disgorge fees paid or to be paid and why Respondent should not be sanctioned for abandoning his client. The hearing on the order to show cause was scheduled for December 20, 2001, but was later continued to February 7, 2002. Respondent received notice of the order to show cause.

49. On December 26, 2001, attorney David B. Lally substituted in to represent Mrs. Beltran in place of Respondent in the third bankruptcy matter.

50. On or about January 24, 2002, Respondent served and filed a declaration in response to the order to show cause re sanctions. In the declaration, Respondent apologized to the Court, to the Beltrons, to the bankruptcy trustee, to the trustee's staff attorney, and to Mrs. Beltran's new attorney. Respondent also took full responsibility for his failure to perform competently with respect to the Beltrons' bankruptcy matters, for his failure to appropriately supervise his staff, and for his failure to counsel Mr. and Mrs. Beltran appropriately. In the declaration,

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Respondent committed to refund to the Beltrans forthwith all fees paid to him with respect to the bankruptcy matters, which totaled \$3,342. In the declaration, though he specifically did not offer it as an excuse for his behavior, Respondent also outlined for the Court certain circumstances in his professional and personal life, including his physical and emotional problems as well as his wife's serious illness, that contributed to his failures with respect to the Beltrans. These circumstances are described more fully later in this Attachment.

51. At the February 7, 2002 hearing on the order to show cause, Respondent refunded to the Beltrans all fees paid with respect to the Beltrans' bankruptcy matters in the total amount of \$3,542. A cashier's check in this amount was given to Mrs. Beltran's new attorney, Mr. Lally, at the hearing.

52. At the February 7, 2002 hearing on the order to show cause, the Bankruptcy Court accepted Respondent's apology for his lack of performance in the Beltrans' matters and discharged the order to show cause without imposing any sanctions, monetary or otherwise, upon Respondent.

Conclusions of Law

53. By failing to meet with the Beltrans personally to give them his advice and counsel in their bankruptcy matters, by relying on his office staff to communicate with the Beltrans, by failing to properly prepare the bankruptcy petitions and all required schedules, by failing to appropriately supervise his office staff, by failing to address the trustee's objections to confirmation of the first and second bankruptcy plans, by allowing the first bankruptcy matter to be dismissed for failure to prosecute, by failing to appear at the confirmation hearing in the

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second bankruptcy matter and allowing it too to be dismissed, and by failing to appear at the confirmation hearing in the third bankruptcy matter, Respondent intentionally, recklessly or repeatedly failed to perform legal services competently in wilful violation of rule 3-110(A) of the Rules of Professional Conduct

COUNT SIX

Case No. 03-O-03713
Rule 3-110(A) of the Rules of Professional Conduct
[Failure to Competently Perform Legal Services]

54. Respondent intentionally, recklessly or repeatedly failed to perform legal services competently in violation of rule 3-110(A) of the Rules of Professional Conduct as follows:

55. In or about February, 2002, Alice Johnson paid a bankruptcy preparation service to prepare a Chapter 7 bankruptcy petition, which she filed in propria persona on February 22, 2002. There were problems with the bankruptcy petition prepared by the service, including two creditors that were not listed in the petition and schedules. To assist her in fixing the problems with her Chapter 7 bankruptcy petition, on March 19, 2002, Ms. Johnson employed Respondent to prepare amendments to the bankruptcy petition and schedules and to represent her at the section 341(a) creditors' hearing. Respondent's flat fee for these services was \$250.

56. On March 19, 2002, Ms. Johnson paid Respondent \$250 in advanced fees plus \$20 for the filing fee for the amended petition and schedules. That same day, Ms. Johnson signed a substitution of attorney that substituted Respondent as her attorney in place of Ms. Johnson in propria persona.

57. Thereafter, Respondent prepared some of the documents required to amend Ms.

Johnson's Chapter 7 bankruptcy petition and schedules. However, the documents were never filed with the Bankruptcy Court.

58. Respondent appeared on Ms. Johnson's behalf at the section 341(a) creditors' meeting. When Ms. Johnson asked about the amendments to her petition and schedules, Respondent told her they could be done later.

59. At no time did Respondent file the amendments to Ms. Johnson's Chapter 7 bankruptcy petition and schedules.

60. On May 29, 2002, Ms. Johnson's debts listed in the original petition were discharged and the bankruptcy matter concluded. Respondent subsequently failed to take any action to address the issue of the amendments or to seek to reopen Ms. Johnson's bankruptcy matter to amend the petition and schedules.

Conclusions of Law

61. By failing to finalize and file the required paperwork for the amendments to Ms. Johnson's Chapter 7 bankruptcy petition and schedules, and by failing to take any action after the bankruptcy discharge to reopen the matter to amend the petition and schedules, Respondent intentionally, recklessly or repeatedly failed to perform legal services competently in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

COUNT SEVEN

Case No. 03-O-03713
Business and Professions Code section 6068(m)
[Failure to Respond to Status Inquiries]

62. Respondent failed to promptly respond to reasonable status inquiries of his client in a

matter in which he agreed to provide legal services, in wilful violation of Business and Professions Code section 6068(m) as follows:

63. The stipulated facts set forth in paragraphs 55 through 60 are hereby incorporated by reference as if set forth in full.

64. After her bankruptcy matter had concluded, Ms. Johnson was contacted by the two creditors who were not discharged in her Chapter 7 bankruptcy matter because they had not been listed. She then telephoned Respondent on several occasions at the telephone number he had given her and left messages requesting him to contact her. Respondent failed to respond.

65. On November 18, 2002, Ms. Johnson wrote a letter to Respondent in which she notified him that the two creditors he was supposed to add to her bankruptcy case were pursuing collection actions against her. She requested Respondent to contact her as soon as possible. The November 18, 2002 letter was properly mailed on November 19, 2002 via the United States Postal Service in a sealed envelope properly addressed to Respondent at the address he had given Ms. Johnson, first class certified mail, return receipt requested, postage prepaid. The United States Postal Service did not return the letter as unclaimed or for any other reason. The letter was received in Respondent's office on or about November 20, 2002, and Steve Cohen of Respondent's office signed for it. On November 19, 2002, Ms. Johnson also sent the November 18, 2002 letter to Respondent via facsimile transmission to the fax number Respondent gave her. Respondent failed to respond to the November 18, 2002 letter.

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Conclusions of Law

66. By failing to respond to Ms. Johnson's telephone calls requesting him to contact her regarding the bankruptcy matter, and by failing to respond to Ms. Johnson's November 18, 2002 letter, Respondent failed to promptly respond to reasonable status inquiries of his client in a matter in which he agreed to provide legal services, in wilful violation of Business and Professions Code section 6068(m).

COUNT EIGHT

Case No. 03-O-03713
Rule 3-700(D)(2) of the Rules of Professional Conduct
[Failure to Refund Unearned Fees]

67. Respondent failed, upon termination of employment, to promptly refund any part of a fee paid in advance that was not earned, in wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct, as follows:

68. The stipulated facts set forth in paragraphs 55 through 60 are hereby incorporated by reference as if set forth in full.

69. By failing to finalize and file the amendments to Ms. Johnson's Chapter 7 bankruptcy petition and schedules, by failing to take any action after her bankruptcy discharge to attempt to reopen the matter to address the issue of the creditors who were left off the original petition, by failing to respond to Ms. Johnson's telephone calls, and by failing to respond to Ms. Johnson's letter, Respondent effectively withdrew from representation of Ms. Johnson.

70. Ms. Johnson received no benefit from any legal services Respondent may have performed with respect to the Chapter 7 bankruptcy matter.

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71. By failing to provide any legal services of value on behalf of Ms. Johnson, Respondent has failed to earn any portion of the \$250 in fees paid to him for the bankruptcy matter.

72. To date, Respondent has failed to refund any portion of the \$250 in fees paid to him to represent Ms. Johnson in the bankruptcy matter.

Conclusions of Law

73. By failing to refund any portion of the \$250 in fees paid by Ms. Johnson in the bankruptcy matter, Respondent has failed, upon termination of employment, to promptly refund unearned fees in wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

COUNT NINE

Case No. 03-O-04012
Rule 3-110(A) of the Rules of Professional Conduct
[Failure to Competently Perform Legal Services]

74. Respondent intentionally, recklessly or repeatedly failed to perform legal services competently in violation of rule 3-110(A) of the Rules of Professional Conduct as follows:

75. In or about September 2002, Janee Fleming saw an advertisement in which Respondent offered to handle Chapter 7 bankruptcy proceedings for a flat fee of \$595 plus filing fees. On September 3, 2002, Ms. Fleming employed Respondent to handle a Chapter 7 bankruptcy proceeding on her behalf. On the same day, Ms. Fleming paid Respondent his fee of \$595 plus filing fees. Respondent agreed to handle all aspects of the Chapter 7 bankruptcy matter for Ms. Fleming.

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76. Respondent prepared drafts of the required bankruptcy documents on behalf of Ms. Fleming by October 3, 2002. On October 7, 2002, Ms. Fleming provided additional creditor information, which Respondent incorporated into the final petition. Subsequently, Ms. Fleming approved and signed the petition and supporting documents.

77. On October 29, 2002, Respondent filed the Chapter 7 bankruptcy petition and supporting schedules on behalf of Ms. Fleming in the Eastern District of California, Fresno Division, case number 02-19895-A-7.

78. The section 341(a) creditors' meeting was scheduled for December 10, 2002. Respondent received proper notice of the date and time of the creditors' meeting.

79. On the morning of the December 10, 2002 creditors' meeting, Respondent's assistant called Ms. Fleming and informed her that Respondent would not be attending the creditors' meeting that day because he was sick. Ms. Fleming appeared at the meeting herself. Following the meeting, Ms. Fleming telephoned Respondent's office to inform Respondent of the amended items requested by the bankruptcy trustee. She left a detailed message with Respondent's assistant and requested Respondent to contact her regarding the status of her case. However, Respondent failed to return the call.

80. Ms. Fleming telephoned Respondent's office several times over the next several weeks. Each time she left messages requesting Respondent to contact her regarding the status of her case. Respondent failed to respond to any of her calls.

81. Respondent failed to perform any further legal services with respect to Ms. Fleming's bankruptcy matter. At no time did Respondent file the amendments requested by the

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trustee. Nor did Respondent make any court appearances in the matter. Ms. Fleming hired someone else to prepare and file the amended paper work to finalize her bankruptcy matter.

Conclusions of Law

82. By failing to appear at the December 10, 2002 creditors' meeting or send another attorney in his place to represent Ms. Fleming, by failing to prepare or file the amendments requested by the bankruptcy trustee, and by failing to complete the Chapter 7 bankruptcy proceeding on behalf of Ms. Fleming, Respondent intentionally, recklessly or repeatedly failed to perform legal services competently in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

COUNT TEN

Case No. 03-O-04012
Business and Professions Code section 6068(m)
[Failure to Respond to Status Inquiries]

83. Respondent failed to promptly respond to reasonable status inquiries of his client in a matter in which he agreed to provide legal services, in wilful violation of Business and Professions Code section 6068(m) as follows:

84. The stipulated facts set forth in paragraphs 75 through 81 are hereby incorporated by reference as if set forth in full.

85. Respondent failed to communicate with Ms. Fleming at all after he failed to appear at the December 10, 2002 creditors' meeting.

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Conclusions of Law

86. By failing to respond to Ms. Fleming's telephone calls requesting him to contact her regarding the bankruptcy matter, Respondent failed to promptly respond to reasonable status inquiries of his client in a matter in which he agreed to provide legal services, in wilful violation of Business and Professions Code section 6068(m).

COUNT ELEVEN

Case No. 03-O-04012
Rule 3-700(D)(2) of the Rules of Professional Conduct
[Failure to Refund Unearned Fees]

87. Respondent failed, upon termination of employment, to promptly refund any part of a fee paid in advance that was not earned, in wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct, as follows:

88. The stipulated facts set forth in paragraphs 75 through 81 and 85 are hereby incorporated by reference as if set forth in full.

89. By failing to appear at the creditors' meeting, by failing to prepare and file the amendments requested by the bankruptcy trustee, by failing to finalize and complete the work on Ms. Fleming's Chapter 7 bankruptcy matter, and by failing to contact Ms. Fleming at any time after he failed to appear at the creditors' meeting, Respondent effectively withdrew from representation of Ms. Fleming.

90. By failing to complete Ms. Fleming's Chapter 7 bankruptcy matter, Respondent failed to earn the entire flat fee of \$595 that Ms. Fleming paid for his services.

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91. To date, Respondent has failed to refund any portion of the \$595 in fees paid to him to represent Ms. Fleming in the bankruptcy matter.

Conclusions of Law

92. By failing to refund any portion of the \$595 in fees paid by Ms. Fleming in the bankruptcy matter, Respondent has failed, upon termination of employment, to promptly refund unearned fees in wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

COUNT TWELVE

Case No. 04-O-10396
Business and Professions Code section 6103
[Failure to Comply with Court Order]

93. Respondent failed to comply with a court order that he do or forbear . . . etc., in wilful violation of Business and Professions Code section 6103, as follows:

94. In February 2001, Maria Benavidez employed respondent to handle a Chapter 13 bankruptcy matter on her behalf. Ms. Benavidez paid Respondent attorneys fees in the amount of \$1,250 for the bankruptcy matter.

95. On February 20, 2001, Respondent filed a Chapter 13 bankruptcy petition on behalf of Ms. Benavidez in the Eastern District of California, case number 01-11395-B-13.

96. In May 2001, Ms. Benavidez retained attorney Robert S. Williams to take over the handling of her bankruptcy matter. Mr. Williams prepared and filed amended schedules and an amended Chapter 13 plan, appeared at the meeting of creditors, appeared at the confirmation hearing, and handled all remaining aspects of Ms. Benavidez' bankruptcy matter.

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97. Ms. Benavidez and Mr. Williams both requested Respondent to refund some portion of the \$1,250 in attorneys fees that Ms. Benavidez had paid to Respondent. However, Respondent failed to do so.

98. Accordingly, on January 21, 2003, Mr. Williams filed a motion on behalf of Ms. Benavidez requesting the Bankruptcy Court to order Respondent to disgorge \$1,000 of the fees paid by Ms. Benavidez. The hearing on the motion was scheduled for February 5, 2003. Respondent was properly served with notice of the motion and the hearing date. However, Respondent did not respond to the motion or appear at the hearing.

99. At the hearing on February 5, 2003, the Bankruptcy Court granted the motion and ordered Respondent to disgorge \$1,000 of the fees paid by Ms. Benavidez. On February 26, 2003, Mr. Williams caused to be served on Respondent a proposed order to disgorge fees. On March 7, 2003, the Bankruptcy Court filed an order that Respondent refund \$1,000 to Ms. Benavidez. It is unclear from a review of the bankruptcy file whether this order was served on Respondent. Respondent does not recall receiving it until he received it later from Mr. Williams.

100. On February 19, 2003, the Chapter 13 Trustee's office wrote a letter to Respondent notifying him that pursuant to the February 5, 2003 hearing, Respondent was to refund \$1,000 to Ms. Benavidez.

101. On January 3, 2004, Mr. Williams wrote a letter to Respondent in which he reminded Respondent that the Bankruptcy Court had ordered Respondent to disgorge fees paid to Ms. Benavidez. Enclosed with the letter was a copy of the order to disgorge fees. Mr. Williams' January 3, 2004 letter was properly mailed via the United States Postal Service in a

sealed envelope addressed to Respondent at his State Bar membership records address at the time, first class postage prepaid. The United States Postal Service did not return the letter as undeliverable or for any other reason. Respondent received the letter but failed to respond.

102. On December 21, 2004, Mr. Williams wrote another letter to Respondent with which he enclosed an order for Respondent's examination and in which he requested Respondent to advise when he wished to appear at Mr. Williams' office for the examination. Mr. Williams' December 21, 2004 letter was properly mailed via the United States Postal Service in a sealed envelope properly addressed to Respondent at his State Bar membership records address at the time, first class postage prepaid. The United States Postal Service did not return the letter as undeliverable or for any other reason. Respondent received the letter.

103. On April 13, 2005, Respondent called Mr. Williams, provided his new address and told Mr. Williams that he intended to refund fees to Ms. Benavidez in May. However, he failed to do so.

104. In January 2006, Respondent told Mr. Williams that he intended to refund fees to Ms. Benavidez in February. However, he failed to do so.

105. To date, Respondent has failed to refund \$1,000 to Ms. Benavidez as ordered by the Bankruptcy Court.

Conclusions of Law

106. By failing to refund to Ms. Benavidez \$1,000 as ordered by the Bankruptcy Court, Respondent failed to do an act connected with his profession which he ought in good faith to do, in wilful violation of Business and Professions Code section 6103.

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COUNT THIRTEEN

Case No. 04-O-10396
Rule 3-700(D)(2) of the Rules of Professional Conduct
[Failure to Refund Unearned Fees]

107. Respondent failed, upon termination of employment, to promptly refund any part of a fee paid in advance that was not earned, in wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct, as follows:

108. The stipulated facts set forth in paragraphs 94 through 105 are hereby incorporated by reference as if set forth in full.

Conclusions of Law

109. By failing to refund to Ms. Benavidez \$1,000 of the \$1,250 in advance fees she paid for the bankruptcy matter, Respondent failed, upon termination of employment, to promptly refund unearned fees in wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

COUNT FOURTEEN

Case No. 04-O-14756
Business and Professions Code section 6068(m)
[Failure to Respond to Status Inquiries]

110. Respondent failed to promptly respond to reasonable status inquiries of his client in a matter in which he agreed to provide legal services, in wilful violation of Business and Professions Code section 6068(m) as follows:

111. On June 2, 2004, Curtis Walker employed Respondent to handle a Chapter 7 bankruptcy proceeding on his behalf. Respondent agreed to handle all aspects of the Chapter 7

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bankruptcy matter for Mr. Walker for a flat fee of \$700, including filing fee. On June 2, 2004, Mr. Walker paid Respondent \$200 toward his \$700 fee. On June 14, 2004, Mr. Walker paid the remaining \$500 of Respondent's fee.

112. By June 14, 2004, Mr. Walker had given Respondent all of the documents and information that he needed to proceed with Mr. Walker's bankruptcy matter. Mr. Walker also signed various documents relating to the bankruptcy matter. At no time thereafter did Respondent file a bankruptcy matter on behalf of Mr. Walker.

113. Between approximately June 14, 2004 and July 14, 2004, Mr. Walker telephoned Respondent on five separate occasions at the telephone number that Respondent had given him. Each time, Mr. Walker left a detailed message requesting Respondent to contact him regarding the status of his bankruptcy matter. Respondent failed to respond to any of the calls.

Conclusions of Law

114. By failing to respond to Mr. Walker's telephone calls requesting him to contact Mr. Walker regarding the bankruptcy matter, Respondent failed to promptly respond to reasonable status inquiries of his client in a matter in which he agreed to provide legal services, in wilful violation of Business and Professions Code section 6068(m).

COUNT FIFTEEN

Case No. 04-O-14756
Rule 3-700(D)(2) of the Rules of Professional Conduct
[Failure to Refund Unearned Fees]

115. Respondent failed, upon termination of employment, to promptly refund any part of a fee paid in advance that was not earned, in wilful violation of rule 3-700(D)(2) of the Rules of

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Professional Conduct, as follows:

116. The stipulated facts set forth in paragraphs 111 through 113 are hereby incorporated by reference as if set forth in full.

117. On July 2, 2004, frustrated with Respondent's failure to communicate, Mr. Walker employed a paralegal service to assist in preparing the required bankruptcy petition and schedules. Mr. Walker subsequently filed the bankruptcy matter himself.

118. On July 14, 2004, Mr. Walker filed a small claims lawsuit against Respondent in Los Angeles County, Northwest District, small claims case number LAV 04V05357. In the lawsuit, Mr. Walker sought a refund of the \$700 he had paid Respondent to handle his bankruptcy matter. The hearing in the matter was scheduled for August 23, 2004. On July 16, 2004, Respondent was properly served with notice of the small claims lawsuit as well as the hearing date.

119. At the hearing on August 23, 2004, judgment was entered in favor of Mr. Walker and against Respondent in the amount of \$700 plus \$52 in costs. Respondent was properly served with the notice of entry of judgment. However, he failed to pay the judgment.

120. Accordingly, on October 9, 2004, Mr. Walker wrote a letter to Respondent in which he requested Respondent to refund the \$700 he had paid for the bankruptcy matter plus the \$52 in costs he had incurred for the small claims court matter. With the letter, he enclosed a copy of the judgment. The October 9, 2004 letter was mailed on that same date via the United States Postal Service in a sealed envelope properly addressed to Respondent at the address he had given

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Mr. Walker, first class registered mail postage prepaid. The United States Postal Service did not return the letter as undeliverable or for any other reason.

121. On October 28, 2004, Respondent called Mr. Walker, apologized for not filing Mr. Walker's bankruptcy matter right away and offered to file the matter for him. Mr. Walker told Respondent that he had already filed a bankruptcy matter. Thereupon, Respondent stated that he would send Mr. Walker a refund check within the week. Thereafter, Respondent failed to do so.

122. Accordingly, on or about November 30, 2004, Mr. Walker properly served Respondent with an order to produce a statement of assets and appear for a judgment debtor examination on January 28, 2005.

123. On December 13, 2004, Respondent paid Mr. Walker \$760 via a money order representing a refund of fees and satisfaction of the small claims judgment.

Conclusions of Law

124. By failing to refund to Mr. Walker the \$700 in advance fees he had paid for the bankruptcy matter until December 13, 2004, Respondent failed, upon termination of employment, to promptly refund unearned fees in wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was September 15, 2006.

AGGRAVATING CIRCUMSTANCES

Respondent's misconduct harmed his clients as follows:

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Case no. 00-O-15577 Mr. Garcia has not had the use of the \$695 he paid Respondent for the child support modification matter.

Case no. 03-O-00651 On December 7, 2001, the Beltrans' home was sold in a non-judicial foreclosure sale. Although the Beltrans' subsequent counsel took steps to try to save their home, he was unable to do so.

Case no. 03-O-03713 Ms. Johnson has not had the use of the \$270 she paid Respondent to handle the amendments to her bankruptcy petition and schedules. In addition, sometime after Ms. Johnson's bankruptcy matter concluded, the two creditors that were not listed on the original petition, which were to have been added with the amendments Respondent was hired to prepare and file, contacted Ms. Johnson and pursued the collection of the debts she still owed. Ms. Johnson was required to hire another attorney to handle these creditors.

Case no. 04-O-10396 Ms. Gonzales has not had the use of the \$1,000 that Respondent was ordered to refund.

MITIGATING CIRCUMSTANCES

No Prior Discipline

Respondent was admitted to practice law in California on July 7, 1987 and has no prior record of discipline.

Emotional/Physical Difficulties and Family Problems

In the Fall of 1999, Respondent began experiencing unusual fatigue. In December 1999, Respondent suffered a heart attack and underwent two heart surgeries. His doctors instructed him to rest and reduce his work load. He began taking cases again in or about March 2000 (when the Garcias hired Respondent).

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In mid-2000, after visits to several doctors, Respondent's wife was diagnosed with Pulmonary Fibrosis, a terminal illness for which Respondent and his wife were told there is no cure. They were told that Respondent's wife might benefit from a lung transplant. As a result of her illness and her inability to breath well, Respondent's wife became unable to manage day to day activities such as shopping, cleaning, and taking care of their minor children, who at the time were ages 11 Nikki, 13 Spencer. Respondent reports that he spent more and more time at home taking over his wife's responsibilities. He spent less time in his office attending to his clients.

Respondent's wife's illness upset the family's emotional stability. Respondent and his children became seriously depressed. Respondent reports that he had little energy for maintaining his legal practice. He reduced his practice, but that caused financial difficulties which still persist.

After a lengthy search, Respondent and his wife found a doctor who they liked and trusted, who recommended the lung transplant program at UCLA. Respondent and his wife have seen many doctors at UCLA over the last several years, and Respondent's wife is on the lung transplant list. However, she has been unable to undergo lung transplant surgery for various reasons, including her inability to meet certain physical requirements before the surgery can be performed. They are still waiting.

In 1997, Respondent sought treatment for what was thought to have been severe depression. He was placed on medication at that time and treated with a psychiatrist. However, in June 2004, Respondent again sought treatment for his depression and this time he was diagnosed with Bipolar Disorder. In the course of these State Bar proceedings, at the request of the Office of the Chief Trial Counsel, Respondent underwent a clinical evaluation by a psychiatrist agreed upon by the parties. It is the opinion of the psychiatrist that Respondent was originally misdiagnosed as having Major Depression, which requires different medication than does Bipolar Disorder. It is further the opinion of the psychiatrist that but for his Bipolar Disorder, Respondent would probably have handled his wife's illness, difficulties with his practice, financial difficulties and other problems more effectively. However, because he was not properly diagnosed and treated, Respondent found himself sinking into a depression of apathy and hopelessness. It is the psychiatrist's opinion that there is no question that Respondent's Bipolar Disorder severely impacted his ability to effectively work as an attorney.

Remedial Measures

According to Respondent, he has taken remedial measures designed to prevent future misconduct. Respondent has reduced his practice to allow time to care for his wife and family as well as his clients. He has implemented a computerized tracking system for his files. He can access this system from anywhere via the internet. He has implemented a computerized calendaring system, which he uses in addition to a hard copy calendaring system. Finally, he has

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made arrangements with other attorneys willing to step in to assist in his cases should the need arise.

Acceptance of Responsibility

Respondent has been candid and cooperative with the State Bar in these proceedings. He has accepted responsibility for his misconduct.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct, Title IV of the Rules of Procedure of the State Bar of California (hereinafter "Standard"), provides that the primary purposes of disciplinary proceedings and imposing sanctions for professional misconduct are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession."

Standard 1.6(a) provides that the appropriate sanction for an act of professional misconduct shall be the sanction set forth in the standards for the particular misconduct found and that if multiple acts of misconduct are found and different sanctions are prescribed by the standards, then the sanction to be imposed shall be the most severe of the different applicable sanctions.

In this stipulation, Respondent has stipulated to violations of rule 3-110(A) of the Rules of Professional Conduct for failing to perform legal services competently and violations of Business and Professions Code section 6068(m) for failing to communicate. Standard 2.4 provides that "[c]ulpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client."

In this stipulation, Respondent has also stipulated to violations of rule 3-700(D)(2) for failing to promptly refund unearned fees. Rule 3-700(D)(2) does not have a corresponding standard that prescribes the sanction for violation of that particular rule. However, standard 2.10 provides that culpability of a member of a violation of any Rule of Professional Conduct not specified in the standards "shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3"

Finally, in this stipulation, Respondent has stipulated to a violation of Business and Professions Code section 6103 for failing to comply with a court order. Standard 2.6 provides

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that culpability of a member of violation of Business and Professions Code section 6103 "shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3."

The Supreme Court gives the Standards "great weight," and will reject a recommendation consistent with the Standards only where the Court entertains "grave doubts" as to its propriety. (*In re Naney* (1990) 51 Cal. 3d 186, 190; *In re Silverton* (2005) 36 Cal. 4th 81, 91, 92.) Further, although the Standards are not mandatory, it is well established that the Standards may be deviated from only when there is a compelling, well-defined reason to do so. See *Aronin v. State Bar* (1990) 52 Cal. 3d 276, 291; *Bates v. State Bar* (1990) 52 Cal. 3d 1056, 1060, fn. 2.

In this case, the stipulated discipline is within the range of discipline prescribed by the standards as set forth above. In light of the fact that Respondent has been in practice for more than 19 years with no prior discipline, in light of the fact that he has cooperated with the State Bar and has taken responsibility for his actions, and in light of the fact that Respondent was dealing with significant personal and medical issues during the period of his misconduct, a lengthy period of actual suspension is not deemed necessary. Rather, the stayed suspension, the sixty days actual suspension, and the three years of monitored probation with the stipulated conditions, including mental health conditions, law office management conditions and restitution, is appropriate in this case to further the purposes of standard 1.3 to protect the public, the courts and the profession.

OTHER CONDITIONS NEGOTIATED BY THE PARTIES.

A. Mental Health Conditions

Respondent has participated in a clinical evaluation by an expert agreed upon by the parties in this matter. These mental health conditions are based upon the recommendations of that expert. The mental health conditions set forth below are conditions of Respondent's probation and are to be monitored by the Office of Probation.

1. Individual Psychotherapy Treatment:

a. Commencing within twenty (20) days of the effective date of the disciplinary order resulting from this stipulation, if he has not done so already, Respondent shall commence participating and shall continue to participate in individual psychotherapy treatment, a minimum of once per week, with a duly licensed psychiatrist or psychologist ("therapist").

b. No later than his first therapy session, Respondent shall provide his therapist with: (1) a copy of this Stipulation; (2) a copy of the expert's report upon which these conditions are based; and, (3) a release waiving rights of privacy and privilege and authorizing

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the Office of the Chief Trial Counsel and the Office of Probation access to all of Respondent's medical and treatment records. Revocation of the medical release/waiver constitutes a violation of this condition.

c. Respondent shall comply with all treatment recommendations of his therapist, as may be made initially or as may be later recommended or modified, including without limitation, individual therapy, group therapy and/or medication management (prescribed by the therapist if qualified or by a psychiatrist working in conjunction with his therapist).

d. Respondent shall authorize and instruct his therapist to prepare and submit to the Office of Probation a written report each calendar quarter describing Respondent's condition, including a prognosis, and his compliance with therapy and treatment recommendations, including but not limited to medication management.

e. Respondent shall further authorize and instruct his therapist to advise the Office of Probation within five (5) days of any non-compliance by Respondent with the conditions of his treatment.

2. Reporting Compliance to the Office of Probation:

a. With each written quarterly report or final report required as a condition of probation by the disciplinary order resulting from this stipulation, Respondent shall report, in writing and under penalty of perjury, his compliance with his mental health conditions; and he shall provide to the Office of Probation satisfactory proof of his attendance at the above-described therapy sessions. Proof of compliance and attendance shall be as requested by the Office of Probation and may include submission of a writing which clearly sets forth for each therapy session he attends the date and time of the session and which bears the signature of the therapist verifying Respondent's attendance at that session.

b. Within thirty (30) days of the effective date of the disciplinary order resulting from this stipulation, Respondent shall provide the Office of Probation with:

(1) The name, address, and telephone number of his therapist; and,

(2) Proof satisfactory to the Office of Probation that Respondent has provided his therapist with (a) a copy this stipulation; (b) the expert's report; and, (c) a written release and authorization for disclosure of medical/treatment records and information, including non-compliance with treatment recommendations, to the Office of Probation.

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3. Responsibility for Costs:

All costs related to the above-described conditions shall be the responsibility of the Respondent.

4. Modification of Conditions:

Modification of these mental health condition shall be made pursuant to the Rules of Procedure of the State Bar of California, rules 550 et seq. If Respondent's treating therapist determines that there has been a substantial change in Respondent's condition, Respondent or the Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the therapist by affidavit or under penalty of perjury, in support of the proposed modification.

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In the Matter of KENNETH EDWARD COHEN	Case number(s): 00-0-15577, 03-0-00651 03-0-03713, 03-0-04012 04-0-10396, 04-0-14756
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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.

9/28/06

Date

Kenneth E. Cohen

Respondent's signature

KENNETH E. COHEN

Print name

9/29/06

Date

E. O. Lear

Respondent's Counsel's signature

EDWARD O. LEAR

Print name

Sept. 29, 2006

Date

Kristin L. Ritsema

Deputy/Jtrial Counsel's signature

KRISTIN L. RITSEMA

Print name

(Do not write above this line.)

In the Matter of KENNETH EDWARD COHEN	Case number(s): 00-0-15577, 03-0-00651 03-0-03713, 03-0-04012 04-0-10396, 04-0-14756
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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:

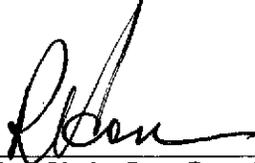
- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

1. On page 1, Counsel for Respondent, Edward O. Lear, Bar # "129220" is deleted and "132699" is inserted in its place.

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 135(b), 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 953(a), California Rules of Court.)

Date

10/16/06


Judge of the State Bar Court
RICHARD A. HONN

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 October 17, 2006, 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:

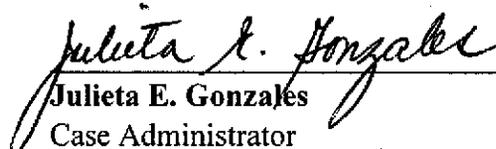
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**EDWARD O LEAR ESQ
CENTURY LAW GROUP
5200 W CENTURY BLVD #940
LOS ANGELES, CA 90045**

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

Kristin L. Ritsema, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **October 17, 2006**.



Julieta E. Gonzales
Case Administrator
State Bar Court