



PUBLIC MATTER

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SEP 14 2004

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In the Matter of)
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GREGORY B. BAMBO, III,)
)
Member No. 169703,)
)
A Member of the State Bar.)

Case No. 00-O-14561; 02-O-14642;
03-O-03176; 03-O-04279-PEM
Decision and Order of Involuntary Inactive
Enrollment

I. INTRODUCTION

In this disciplinary matter which proceeded by default, Desiree T. Washington appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Gregory B. Bambo, III (Respondent) did not appear in person or by counsel.

In four separate matters Respondent is charged with fifteen counts of professional misconduct, including commingling, failing to maintain client funds in trust, failing to promptly pay client funds, failing to perform with competence, failing to communicate, failing to refund unearned fees, failing to release client files, failing to cooperate with the State Bar, and committing acts of moral turpitude.

After considering the evidence and the law, the court finds by clear and convincing evidence that Respondent is culpable of violating all counts as charged.

Accordingly, the court recommends that Respondent be disbarred from the practice of law in California.

II. SIGNIFICANT PROCEDURAL HISTORY

On March 26, 2004, the State Bar filed a Notice of Disciplinary Charges (NDC) in case numbers 00-O-14561, 02-O-14642, 03-O-03176, 03-O-04279. On that same date the State Bar

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1 properly served the NDC on Respondent at his official membership records address, by certified
2 mail, return receipt requested, as provided in Business and Professions Code section 6002.1 (c). On
3 March 29, 2004, the State Bar received the return receipt with Respondent's name.

4 On April 13, 2004, Respondent was properly served at his official membership records
5 address with a notice advising him, among other things, that an initial status conference would be
6 held on June 7, 2004. Respondent did not appear at the June 7, 2004, status conference.

7 Although the State Bar granted Respondent's request for a two-week extension to file his
8 answer, Respondent did not file a responsive pleading to the NDC. On June 1, 2004, the State Bar
9 filed and properly served a motion for entry of default on Respondent at his official membership
10 records address. The motion advised Respondent that minimum discipline of a three-year actual
11 suspension would be sought if he was found culpable. Respondent did not respond to the motion.

12 On June 17, 2004, the court entered Respondent's default and enrolled him inactive effective
13 three days after service of the order. The order was properly served on Respondent at his official
14 membership records address on that same date by certified mail, return receipt requested.

15 On June 30, 2004, the State Bar filed a request for waiver of default hearing and a brief on
16 culpability and discipline with exhibits.¹ On July 7, 2004, the court took this matter under
17 submission for decision.

18 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

19 Unless ordered by the court based on contrary evidence, the factual allegations set forth in
20 the NDC are deemed admitted upon entry of default and no further proof is required to establish the
21 truth of such facts. (Bus. & Prof. Code, section 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).)
22 The court's factual findings are based on the allegations contained in the NDC and documents filed
23 with the State Bar's disciplinary brief.

24 **A. Jurisdiction**

25 Respondent was admitted to the practice of law in California on December 14, 1993, and has
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27 ¹The exhibits include copies of declarations from Edward A. Bent and Kimberly Jones.
28 In accordance with Rules Proc. of State Bar, rule 202, the court receives these documents into
evidence.

1 been a member of the State Bar at all times since.

2 **B. Case No. 00-O-14561 (The Brent Matter [Counts 1(A)-1(C)])**

3 **Facts**

4 On January 20, 1998, Edward A. Bent employed Respondent to represent him in a real estate
5 matter involving material defects in a home he purchased. Respondent agreed to charge Bent on an
6 hourly basis. Bent initially paid Respondent \$10,000.00 in advanced attorney fees and eventually
7 paid Respondent an additional \$69,370.89 in attorney fees for a total of \$79,370.89.

8 Respondent filed a complaint on Bent's behalf entitled *Edward A. Bent v. Clarence Smith,*
9 *et. al.* in the California Superior Court, County of Alameda, case number 793669-2. On October 20,
10 1999, two of the defendants in Bent's complaint settled for \$60,000.00.

11 On November 22, 1999, Respondent sent Bent an e-mail informing him that he owed
12 Respondent \$11,048.65 in costs and \$25,851.50 in attorney fees for a total balance of \$36,900.15
13 owing to Respondent. Bent disputed the amount owed to Respondent as attorney fees, and was
14 entitled to receive a minimum of \$23,099.85 which represented the portion of the settlement not
15 claimed for costs or attorney fees.

16 Respondent maintained a client trust account (CTA) with Wells Fargo Bank, account number
17 0153-648324. On February 23, 2000, Respondent deposited the two settlement checks totaling
18 \$60,000.00 into his CTA. On February 24, 2000, Respondent withdrew \$60,000.00 from his CTA
19 and purchased a cashier's check for \$60,000.00 payable to himself. Rather than disburse any of the
20 settlement funds to Bent, Respondent took the entire \$60,000 settlement for his own use and benefit.
21 By February 29, 2000, Respondent's CTA balance fell to \$7.72.

22 On March 15, 2000, an attorney for Bent, Gordon Brown, wrote Respondent that Bent was
23 entitled to \$40,000.00 of the settlement and that the remaining \$20,000.00 should be held in trust
24 until resolution of the fee dispute. At no time did Respondent disburse any of the settlement
25 proceeds to Bent.

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1 **Legal Conclusions**

2 **Count One(A): Rule 4-100(A) (Failure to Maintain Funds in Trust)**

3 Rule 4-100(A) of the Rules of Professional Conduct² requires an attorney to deposit in a bank
4 account labeled "Trust Account," "Client's Funds Account" or words of similar import all funds
5 received or held for the benefit of clients.

6 By not maintaining on deposit in his CTA at least \$23,099.85 Bent was entitled to receive,
7 Respondent wilfully violated rule 4-100(A).

8 **Count One(B): Rule 4-100(B)(4) (Failure to Promptly Pay Client Funds)**

9 Rule 4-100(B)(4) requires an attorney to promptly pay or deliver, as requested by the client,
10 any funds in the attorney's possession which the client is entitled to receive.

11 By not disbursing any funds to Bent after the March 15, 2000, request, Respondent wilfully
12 violated rule 4-100(B)(4).

13 **Count One(C): Section 6106 (Moral Turpitude-Misappropriation)**

14 Section 6106 of the Business and Professions Code³ prohibits an attorney from engaging in
15 conduct involving moral turpitude, dishonesty or corruption.

16 By taking the entire \$60,000.00 settlement for his own use and benefit, Respondent
17 dishonestly or with gross negligence misappropriated at least \$23,099.85 of Bent's settlement
18 proceeds thereby committing an act of moral turpitude, dishonesty, or corruption in wilful violation
19 of section 6106.

20 **C. Case No. 02-O-14642 (The Kirtman Matter [Counts 2(A)-2(D)])**

21 **Facts**

22 On July 12, 2002, Beverly Kirtman employed Respondent to assist her with the sale of her
23 home. Because Kirtman was undergoing a marital dissolution, her realty agent advised her to seek
24 the advice of an attorney regarding her home's sale.

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26 ²Unless otherwise noted, all further references to "rule(s)" refer to the Rules of
27 Professional Conduct.

28 ³Unless otherwise noted, all further references to "section" refer to the Business and
Professions Code.

1 Respondent requested \$1,300.00 as his fee for representing Kirtman and accepted a partial
2 payment of his fee in the form of a \$650.00 check from Kirtman which he deposited on July 17,
3 2002.

4 Between July 15, 2002, to August 2002 Kirtman called Respondent once per week to
5 determine the status of her case. Respondent failed to return her calls.

6 Respondent failed to take any steps to assist Kirtman in the sale of her home, and on August
7 12, 2002, Respondent called Kirtman at work and left her a message advising her that he would
8 return her check by the end of the following week. Respondent failed to return the \$650.00 to
9 Kirtman.

10 On October 27, 2002, and November 7, 2002, a State Bar investigator sent Respondent letters
11 by first class mail addressed to Respondent's official membership records address requesting
12 Respondent to provide a written response to allegations related to Kirtman's matter. The letters were
13 not returned as undeliverable. Respondent failed to respond to the investigator's letters.

14 **Legal Conclusions**

15 **Count Two(A): Rule 3-110(A) (Failure to Perform with Competence)**

16 Rule 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to
17 perform legal services competently.

18 By not taking any steps to assist Kirtman in the sale of her home, Respondent intentionally,
19 recklessly or repeatedly did not perform competently the legal services for which he was employed,
20 in wilful violation of rule 3-110(A).

21 **Count Two(B): Section 6068(m) (Failure to Respond to Client Inquiries)**

22 Section 6068(m) requires an attorney to respond promptly to reasonable status inquiries of
23 clients and to keep clients reasonably informed of significant developments in matters with regard
24 to which the attorney has agreed to provide legal services.

25 By not responding to Kirtman's telephone inquiries regarding the status of her case,
26 Respondent did not respond to his client's reasonable status inquiries, in wilful violation of section
27 6068(m).

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1 **Count Two(C): Rule 3-700(D)(2) (Failure to Refund Unearned Fees)**

2 Rule 3-700(D)(2) requires an attorney whose employment has been terminated to promptly
3 refund any part of a fee paid in advance that has not been earned.

4 Respondent effectively terminated his employment when he left a message for Kirtman
5 informing her that he would return her check. There is no evidence that Respondent provided any
6 service or performed any work on Kirtman's behalf. Thus, by not refunding the advanced fees after
7 he terminated employment, Respondent did not refund a fee paid in advance that had not been
8 earned, in wilful violation of rule 3-700(D)(2).

9 **Count Two(D): Section 6068(i) (Failure to Cooperate in State Bar Investigation)**

10 Section 6068(i) requires an attorney to cooperate and participate in any disciplinary
11 investigation or proceeding pending against him.

12 By not responding to the State Bar investigator's letters regarding the Kirtman allegations,
13 Respondent did not cooperate in a disciplinary investigation, in wilful violation of section 6068(i).

14 **D. Case No. 03-O-03176 (The Jones Matter [Counts 3(A)-3(E)])**

15 **Facts**

16 On December 4, 2001, Kimberly Jones employed Respondent to represent her in an action
17 against her landlord and a realtor regarding property she leased. Jones paid Respondent \$2,500.00
18 as advanced fees.

19 In January 2002, Jones called Respondent and learned from him that "papers had been served
20 and that everything looked good." Jones again spoke with Respondent in February 2002 and
21 Respondent told her he was waiting for a response.

22 In April, May, and June 2002 Jones called Respondent and left messages to determine the
23 status of her case. Respondent left Jones a message in June telling her that her case would be settling
24 in a few months. In September 2002 Respondent told Jones that there would be a mediation and
25 reasserted that the case would be settling in a few months.

26 In actuality, Respondent did not perform any services on behalf of Jones. At no time did
27 Respondent file or serve a complaint on behalf of Jones, schedule a mediation, or settle her matter.
28 Respondent's statements to Jones regarding the status of her case were untrue and Respondent knew

1 they were untrue at the time he made them.

2 In April 2003, Jones asked her friend, Cronan Otto, to speak to Respondent about her case.
3 When Otto spoke with Respondent telephonically in April 2003, Respondent agreed to return Jones's
4 money to her but insisted that he would have to make five installment payments.

5 By June 2003, Jones retained new counsel, Daniel Bacon, to represent her. On June 6, 2003,
6 Bacon sent Respondent a letter requesting him to return Jones's file documents and the \$2,500.00
7 she paid him. On June 16, 2003, Bacon called Respondent and Respondent admitted that he
8 received Bacon's June 6, 2003, letter. On June 25, 2003, Respondent called Bacon and left a
9 message stating that he would return Jones's file by the end of the week. Respondent did not return
10 Jones's file or the \$2,500.00 in advanced fees she paid him.

11 On September 11, 2003, and September 29, 2003, a State Bar investigator sent Respondent
12 letters by first class mail to Respondent's official membership records address requesting
13 Respondent to provide a written response to allegations related to Jones's matter. The letters were
14 not returned as undeliverable. Respondent failed to respond to the investigator's letters.

15 **Legal Conclusions**

16 **Count Three(A): Rule 3-110(A) (Failure to Perform with Competence)**

17 By not performing any services on behalf of Jones, Respondent intentionally, recklessly or
18 repeatedly did not perform competently the legal services for which he was employed, in wilful
19 violation of rule 3-110(A).

20 **Count Three(B): Section 6106 (Moral Turpitude-Misrepresentation)**

21 By telling Jones that papers had been served, that he was waiting for a response, that her case
22 would be settling in a few months, and that there would be a mediation when he knew such
23 statements to be untrue, Respondent intentionally misrepresented the status of Jones's case to her
24 thereby committing an act of moral turpitude, dishonesty, or corruption in wilful violation of section
25 6106.

26 **Count Three(C): Rule 3-700(D)(1) (Failure to Release File)**

27 Rule 3-700(D)(1) requires an attorney whose employment has been terminated to promptly
28 release to the client, at the client's request, all client papers and property.

1 By not returning Jones's file after her new attorney requested it, Respondent wilfully violated
2 rule 3-700(D)(1).

3 **Count Three(D): Rule 3-700(D)(2) (Failure to Refund Unearned Fees)**

4 There is no evidence that Respondent provided any service or performed any work on Jones's
5 behalf. Thus, by not refunding the advanced fees after Jones terminated Respondent's employment,
6 Respondent did not refund a fee paid in advance that had not been earned, in wilful violation of rule
7 3-700(D)(2).

8 **Count Three(E): Section 6068(i) (Failure to Cooperate in State Bar Investigation)**

9 By not responding to the State Bar investigator's letters regarding the Jones matter,
10 Respondent did not cooperate in a disciplinary investigation, in wilful violation of section 6068(i).

11 **E. Case No. 03-O-04279 (Counts 4(A)-4(C))**

12 **Facts**

13 On January 27, 2000, Respondent opened a client trust account with Bank of America,
14 account number 16648-02351 (CTA2).

15 In July 2003, twenty-four withdrawals totaling \$736.27 occurred from CTA2 to a payee
16 named Yerba Buena Ventures. Yerba Buena Ventures was not a client of Respondent. The
17 payments to Yerba Buena Ventures were not for client expenses but, instead, were for payment of
18 Respondent's personal expenses.

19 Between July 18, 2003, and September 25, 2003, inclusive, twenty-seven electronic debits
20 against CTA2 totaling \$1,038.89 were not honored due to insufficient funds. Respondent knew or
21 should have known at the time the electronic debits were initiated that he had insufficient funds in
22 CTA2.

23 On November 20, 2003, and December 5, 2003, a State Bar investigator sent Respondent
24 letters by first class mail to Respondent's official membership records address requesting
25 Respondent to provide a written response to allegations related to CTA2. The letters were not
26 returned as undeliverable. Respondent failed to respond to the investigator's letters.

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1 toward rectification. (Standard 1.2(b)(v).)

2 Respondent's lack of candor and cooperation with the State Bar during a disciplinary
3 proceeding, evidenced by his failure to participate prior to entry of default, is an aggravating
4 circumstance. (Standard 1.2(b)(vi); *Conroy v. State Bar* (1991) 53 Cal.3d 495, 507.) The court
5 notes that the conduct relied on for this finding closely equals the misconduct giving rise to the
6 finding of culpability under 6068(i) and correspondingly assigns little weight to this factor in
7 aggravation. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225
8 [Respondent's failure to participate in disciplinary proceeding before entry of default found to be
9 aggravating factor warranting little weight since conduct relied upon for the finding in aggravation
10 so closely resembled the conduct relied upon for culpability finding under section 6068(i)].)

11 **B. Mitigating Circumstances**

12 Respondent bears the burden of establishing mitigation by clear and convincing evidence,
13 and since he did not participate in these proceedings, no mitigating evidence was presented.⁵
14 (Standard 1.2(e).)

15 **Discussion**

16 The purpose of disciplinary proceedings is not to punish the attorney, but to protect the
17 public, to preserve public confidence in the profession, and to maintain the highest possible
18 professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; Standard
19 1.3.)

20 Standard 1.6 provides that the appropriate sanction for the misconduct found must be
21 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of
22 imposing discipline.

23 Standard 2.2(a) provides for disbarment for wilful misappropriation of entrusted funds unless
24 the amount misappropriated is insignificantly small or the most compelling mitigating circumstances

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26 ⁵Although membership records of the State Bar indicate that Respondent has no prior
27 record of discipline, this does not warrant any weight in mitigation since Respondent had been in
28 practice for just over six years prior to the start of his misconduct in the Bent matter. (*In the
Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, 837 [Attorney's six
years of practice prior to the start of misconduct was not mitigating].)

1 clearly predominate.

2 Although standards 2.2(b), 2.3, 2.4(b), and 2.6(a) apply to in this proceeding, standard 2.2(a)
3 provides the most severe sanction.

4 The standards, however, are guidelines from which the court may deviate in fashioning the
5 most appropriate discipline considering all the proven facts and circumstances of a given matter.
6 (*Howard v. State Bar* (1990) 51 Cal.3d 215.) They are not mandatory sentences imposed in a blind
7 or mechanical manner.” (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

8 Respondent has been found culpable of misappropriating for his personal use at least
9 \$23,099.85 in client funds. Additionally, Respondent failed to competently perform in two matters,
10 failed to refund unearned fees in two matters, failed to cooperate with the State Bar’s investigation
11 in three matters, committed multiple acts of moral turpitude, commingled, failed to promptly pay
12 client funds, failed to communicate, and failed to release a client’s files. There is no mitigation. In
13 aggravation, the court has found client harm, multiple acts of misconduct, indifference toward
14 rectification, and a lack of candor and cooperation.

15 The court finds the following intentional misappropriation cases instructive in determining
16 the appropriate level of discipline:

17 In *In re Demergian* (1989) 48 Cal.3d 284 , an attorney was disbarred after he misappropriated
18 over \$25,000.00 from a client and was convicted of grand theft. In mitigation the attorney paid
19 restitution, suffered from a cocaine and alcohol addiction, experienced domestic difficulties,
20 cooperated with the State Bar, and displayed good character and remorse.

21 In *Kennedy v. State Bar* (1989) 4 Cal.3d 610, an attorney was disbarred after he
22 misappropriated over \$10,000.00 from multiple clients and failed to return client files. In mitigation,
23 the attorney had no priors in over thirteen years of practice. In aggravation, the attorney failed to pay
24 any restitution to his clients.

25 In *Weber v. State Bar* (1988) 47 Cal.3d 492, an attorney was disbarred for misappropriating
26 over \$24,000.00 from an estate and for failing to obey court orders, intentionally writing a check
27 against insufficient funds, commingling, and making misrepresentations to the court and his client.
28 In mitigation, the attorney had no priors. In aggravation, the attorney displayed a lack of contrition

1 or recognition of wrongdoing.

2 In *Kelly v. State Bar* (1988) 45 Cal.3d 649, an attorney was disbarred after he intentionally
3 misappropriated approximately \$20,000.00 and failed to provide an accounting. The attorney's
4 absence of a prior record of discipline in seven years of practice was afforded minimal weight in
5 mitigation.

6 In *Morales v. State Bar* (1988) 44 Cal.3d 1037, an attorney was disbarred after he
7 misappropriated for his own use \$23,343.00 from his former law firm's pension plan and \$3,000.00
8 in fees paid to his former law firm. No mitigation was found. In aggravation, the attorney displayed
9 a lack of candor and had two prior incidents of discipline.

10 Although Respondent failed to pay any restitution to his clients as in *Kennedy*, Respondent's
11 case is distinguishable in that he misappropriated more than twice the amount the attorney in
12 *Kennedy* misappropriated and Respondent misappropriated funds from a single client whereas the
13 attorney in *Kennedy* misappropriated from several clients.

14 Respondent's facts are similar to *Morales* in that Respondent has no mitigation to militate
15 the seriousness of his misconduct, and the amount misappropriated is also comparable.
16 Respondent's facts are more egregious than in *Morales* since he committed additional ethical
17 misconduct and has more extensive factors in aggravation.

18 The amount Respondent misappropriated is also comparable to the amount misappropriated
19 in *Kelly*, but unlike the attorney in *Kelly*, Respondent is culpable of serious additional ethical
20 misconduct and has aggravating factors nonexistent in *Kelly*.

21 Respondent's misconduct most closely parallels that in *Weber*. As in *Weber*, Respondent
22 misappropriated over \$20,000, commingled, committed acts of moral turpitude by making
23 misrepresentations and by withdrawing funds against an account known to have insufficient funds,
24 and showed indifference toward rectification or atonement for his wrongdoing. Unlike *Weber*,
25 Respondent has no mitigation due to the absence of a prior record of discipline.

26 Since Respondent's misconduct and factors in aggravation are more extensive than those in
27 either *Morales*, *Kelly*, or *Weber*, Respondent's discipline should be no less severe than that imposed
28 in those cases.

1 Furthermore, in determining the appropriate level of discipline, the court is mindful of case
2 law which holds that an attorney who has misappropriated client funds will generally be disbarred
3 absent strong extenuating circumstances. (*Harford v. State Bar* 52 (1990) 52 Cal.3d 93, 100; *Chang*
4 *v. State Bar* (1989) 49 Cal.3d 114, 128.) The court finds no extenuating circumstances on this
5 record.

6 The State Bar recommends, among other things, Respondent's disbarment.

7 After considering Respondent's misconduct and the law and balancing the aggravating and
8 mitigating factors, the court agrees with the State Bar and recommends Respondent's disbarment in
9 order to protect the public, enforce professional standards, and maintain public confidence in the
10 legal profession.

11 **V. DISCIPLINE RECOMMENDATION**

12 Accordingly, it is hereby recommended that Respondent GREGORY B. BAMBO, III be
13 disbarred from the practice of law in the State of California and that his name be stricken from the
14 rolls of attorneys in this State.

15 It is also recommended that the Supreme Court order Respondent to comply with rule 955,
16 paragraphs (a) and (c), of the California Rules of Court, within 30 and 40 days, respectively, of the
17 effective date of its order imposing discipline in this matter.

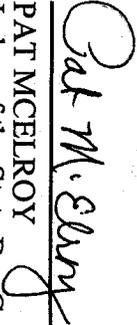
18 **VI. COSTS**

19 The court recommends that costs be awarded to the State Bar pursuant to section 6086.10 and
20 that those costs be payable in accordance with section 6140.7.

21 **VII. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

22 It is ordered that Respondent be transferred to involuntary inactive enrollment status pursuant
23 to section 6007(c)(4) and rule 220(c), Rules of Procedure of the State Bar of California. The inactive
24 enrollment shall become effective three days after service of this order.

Dated: September 13, 2004


PAT MCELROY
Judge of the State Bar Court

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

I am a Case Administrator of the State Bar Court. 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 San Francisco, on September 14, 2004, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:

- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

GREGORY B. BAMBO III
5229 FRESNO AVE #A
RICHMOND CA 94804

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

DESIREE WASHINGTON, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **September 14, 2004**.



Laretta Cramer
Case Administrator
State Bar Court