

<p>Counsel for the State Bar THE STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL ENFORCEMENT JEANNIE J. PARK, No. 167409 1149 South Hill Street, 10th Flr Los Angeles, CA 90015-2299 Telephone: (213) 765-1000</p>	<p>Case number(s) 02-0-11231-RAH 02-0-14222</p> <p>kwiktag® 031 975 176</p> 	<p>(for Court's use)</p> <p>FILED</p> <p>SEP 25 2003 <i>hc</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p>PUBLIC MATTER</p>
<p>Counsel for Respondent Marilyn Plunkett Quail, Esq. 3350 Shelby St., Suite 200 Ontario, CA 91764 (909) 944-2507 Bar No. 118602</p>	<p>Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of BETTYE JEWEL BARNARD</p> <p>Bar # 65129</p> <p>A Member of the State Bar of California (Respondent)</p>		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 18, 1975
 (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 12 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) 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.
- (7) 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:
2004, 2005, 2006, and 2007
 (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth under "Partial Waiver of Costs"
 - costs entirely waived

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."

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 00-0-15638

(b) date prior discipline effective February 23, 2003

(c) Rules of Professional Conduct/ State Bar Act violations: 3-110(A), 3-700(A)(2)

(d) degree of prior discipline 6 months stayed, 1 year probation

(e) If Respondent has two or more incidents of prior discipline, use space provided below or under "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.
- (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 or 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 to 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.
- (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.
- (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:

D. Discipline

1. Stayed Suspension.

- A. Respondent shall be suspended from the practice of law for a period of One (1) Year
- 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 to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____ and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
 - III. and until Respondent does the following: _____

B. The above-referenced suspension shall be stayed.

2. Probation.

Respondent shall be placed on probation for a period of Three (3) years which shall commence upon the effective date of the Supreme Court order herein. (See rule 953, California Rules of Court.)

3. Actual Suspension.

- A. Respondent shall be actually suspended from the practice of law in the State of California for a period of Thirty (30) 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 to _____ [payee(s)] (or the Client Security Fund, if appropriate), in the amount of _____, plus 10% per annum accruing from _____ and provides proof thereof to the Probation Unit, Office of the Chief Trial Counsel
 - 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 shall 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 shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent shall report to the Membership Records Office of the State Bar and to the Probation Unit, 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) Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, respondent shall 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. If the first report would cover less than 30 days, that report shall 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.

- (5) Respondent shall be assigned a probation monitor. Respondent shall 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 shall furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the probation monitor.
- (6) Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel 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.
- (7) Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit 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.
- (8) Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Probation Unit.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |
- (10) Other conditions negotiated by the parties: See Page 11.
- Multistate Professional Responsibility Examination: Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel 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.
- Rule 955, California Rules of Court: Respondent shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 30 and 40 days, respectively, from the effective date of the Supreme Court order herein.
- Conditional Rule 955, California Rules of Court: If Respondent remains actually suspended for 90 days or more, he/she shall comply with the provisions of subdivisions (a) and (c) of rule 955, California Rules of Court, within 120 and 130 days, respectively, from the effective date of the Supreme Court order herein.
- Credit for Interim Suspension [conviction referral cases only]: Respondent shall be credited for the period of his/her interim suspension toward the stipulated period of actual suspension.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: BETTYE JEWEL BARNARD
CASE NUMBER(S): 02-O-11231; 02-O-14222

FACTS AND CONCLUSIONS OF LAW.

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

02-O-11231

Facts

1. BETTYE JEWEL BARNARD ("Respondent") was admitted to the practice of law in the State of California on December 18, 1975, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.
2. On or about June 6, 2000, Claudia Ellis ("Ellis") hired Respondent to represent her in a marital dissolution action and to obtain a restraining order against her husband.
3. Ellis paid Respondent an initial consultation fee of \$100.00; a retainer of \$2,500.00; and later \$1,500.00 for Respondent to set and proceed with a divorce trial.
4. On or about June 16, 2000, Respondent filed a Petition for Dissolution of Marriage on behalf of Ellis in Los Angeles Superior Court, *Claudia M. Ellis vs. Larry B. Ellis*, case number BD325210.

On the same day, Respondent also filed an Order to Show Cause why Claudia Ellis should not be granted exclusive use of the house and why a restraining order should not be issued against Larry Ellis. The Order to Show Cause Hearing was set for July 18, 2000.
5. On or about July 18, 2000, Respondent filed an Application and Order for Reissuance of Order to Show Cause, because Larry Ellis had not been served yet. The new hearing date was August 15, 2000.
6. On or about August 15, 2000, Respondent notified the court that she was unable to serve the defendant Larry Ellis and requested a continuance. The court continued the matter to September 27, 2000.

//

7. The court file reflects that Respondent failed to appear at the September 27, 2000 hearing and that Larry Ellis had not been served. No appearances being made at the September 27, 2000 hearing, the court placed the matter off calendar.

Respondent alleges that she telephoned the court and advised the court that service had not been effected. Since the court had previously stated that it would not continue the case again, Ms. Barnard had no objection to the matter being taken off calendar, as an appearance would have been useless.

8. Despite Respondent's efforts to have a process server serve Larry Ellis, Larry Ellis was not served. Sometime in 2000, Claudia Ellis spent \$300.00 and had Larry Ellis served. Respondent received the proof of service from Ellis but failed to file it with the court.

9. On or about August 28, 2001, Respondent obtained a copy of an abstract of judgment recorded against Larry Ellis.

10. On or about October 26, 2001, Ellis wrote Respondent a letter requesting that Respondent respond to her telephone messages and letters. Ellis asked Respondent to at least let her know if Respondent was no longer representing her and to send her a refund.

After this October 26, 2001 letter, Respondent alleges that she spoke with Ellis regarding her case and advised Ellis that Respondent was not well so another attorney had been assisting on the case. The other attorney then was diagnosed with cancer and was unable to continue.

12. On or about February 20, 2002, Ellis wrote Respondent another letter requesting that Respondent respond to her letters and telephone messages. Ellis asked Respondent to at least let her know if Respondent was no longer representing her and to send her a refund.

13. Respondent failed to respond to Ellis' February 20, 2002 letter. Respondent did not inform Ellis that she was withdrawing from employment. After February 20, 2002, Respondent did not respond to Ellis' telephone messages or letters requesting status of the case.

14. Ellis hired a new attorney to complete the divorce. Ellis' new attorney filed a First Amended Petition on or about May 21, 2002, and a new application for restraining order on June 10, 2002.

15. On or about May 13, 2002, Respondent sent State Bar Investigator Sherri Carter a letter in response to the allegations of misconduct against her. Respondent stated in the letter that she believed Ellis was due a \$1,500.00 refund.

16. Respondent has not refunded any money to Ellis.

//
//

Conclusions of Law

1. By failing to file the proof of service with the court and by failing to take any further action in the Ellis matter after February 20, 2002, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).
2. By not informing Ellis of her intent not to file to file the proof of service, not to do any further work and withdraw from employment, Respondent failed, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to her client in wilful violation of Rules of Professional Conduct rule 3-700(A)(2).
3. By failing to respond to Ellis' February 20, 2002 letter and telephone calls regarding the status of her case, Respondent failed to promptly respond to reasonable status inquiries of a client in a matter in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code Section 6068(m).
4. By failing to refund to Ellis any portion of the \$2,500.00 in advance fees paid to Respondent, which Respondent had not earned, Respondent wilfully failed to refund unearned fees.

02-O-14222

Facts

1. On or about January 10, 2002, James Williams ("Williams") hired Respondent to clear title to a property located at 1433 East 49th Street in Los Angeles, California. Williams signed a retainer agreement for \$10,000.00 and paid \$5,000.00, with the remaining \$5,000.00 to be paid within 45 to 60 days.
2. On or about May 17, 2002, Williams advised Respondent that he would not meet with Respondent to pay the remaining attorneys fees because Respondent was too slow.
Respondent alleges that the purpose of the meeting was to confer regarding legal and factual research that Respondent had completed and to review drafts of a petition and complaint Respondent prepared on Williams' behalf.
3. In June 2002, Williams' wife left a voice mail message for Respondent requesting a refund of the \$5,000.00 paid.
4. On or about June 27, 2002, Respondent sent Williams a letter acknowledging receipt of the voice mail message from his wife requesting a refund. Without providing an accounting of the \$5,000.00 in advanced fees, Respondent merely stated that she put "quite a bit of work" into his matter.

5. On or about August 25, 2002, Williams filed a complaint with the State Bar stating that Respondent failed to provide any billing statements, failed to advise Williams the status of his case, and failed refund his \$5,000.00.

6. Respondent failed to provide Williams with an accounting.

7. Respondent failed to show that she did any work on Williams' case to earn the \$5,000.00 in advanced fees.

8. Title has not been cleared on the property located at 1433 East 49th Street in Los Angeles, California.

9. Respondent has not returned any portion of the \$5,000.00 in advanced fees to Williams.

Conclusions of Law

1. By failing to provide a detailed accounting of the \$5,000.00 paid to Respondent by Williams, Respondent failed to render appropriate accounts to a client in wilful violation of Rules of Professional Conduct, rule 4-100(B)(3).

2. By failing to return to Williams any portion of the \$5,000.00 in advanced fees paid to Respondent, which Respondent had not earned, Respondent wilfully violated Rules of Professional Conduct, rule 3-700(D)(2).

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.2(b)

Circumstances which shall be considered aggravating are:

- (i) prior discipline;
- (ii) multiple acts of wrongdoing;
- (iii) member's conduct surrounded by bad faith, dishonesty, overreaching, or, if trust funds were involved, refusal to account;
- (iv) significant harm to client, public or administration of justice;
- (v) member's indifference toward rectification or atonement for the consequences of his misconduct; or
- (vi) lack of candor and cooperation during the course of the disciplinary proceedings.

//

Standard 2.2

- (b) Culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation of rule 4-100, Rules of Professional Conduct, none of which offenses result in the wilful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances.

Standard 2.4 provides:

- (b) Culpability 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.

Standard 2.6

Culpability of a member of a violation of any of the following provisions of the Business and Professions Code 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:

- (a) Sections 6067 and 6068;
(b) Sections 6103 through 6105. . .

In In the Matter of Sullivan II (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 608, 611-613, the respondent was found culpable of two violations of failing to communicate with clients and four violations of failing to perform competently. Despite "21 years of blemish-free practice," it was recommended that respondent be suspended for 60 days actual, one year stayed, and given three years of probation. *Id.* at pp. 613, 614.

In In the Matter of Aquiluz (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, the attorney was found to have ignored the clients' instructions and abandoned their case in violation of former rules 6-101(A)(2) and 2-111(A)(2). The court recommended the respondent be suspended for one year, with the execution of the suspension stayed, with two years of probation with conditions.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was July 31, 2003.

FINANCIAL CONDITIONS, RESTITUTION.

1. Within **THREE YEARS** from the effective date of discipline in this matter, respondent must make restitution to **CLAUDIA ELLIS** or the Client Security Fund if it has paid, in the principal amount of \$2,500.00 and furnish satisfactory evidence of restitution to the Probation Unit. Respondent shall include in **each quarterly report** required herein satisfactory evidence of all **restitution payments** made by her during that reporting period.
2. Within **THREE YEARS** from the effective date of discipline in this matter, respondent must make restitution to **JAMES WILLIAMS** or the Client Security Fund if it has paid, in the principal amount of \$5,000.00 and furnish satisfactory evidence of restitution to the Probation Unit. Respondent shall include in **each quarterly report** required herein satisfactory evidence of all **restitution payments** made by her during that reporting period.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 31, 2003, the estimated prosecution costs in this matter are approximately \$2,915.00. 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.

STATE BAR ETHICS SCHOOL EXCLUSION.

It is not recommended that respondent be ordered to attend State Bar Ethics School since respondent was ordered to attend Ethics School by February 23, 2004 in connection with the discipline pursuant to California Supreme Court Case number S111161 [State Bar Court case number 00-O-15638].

MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION EXCLUSION.

It is recommended that respondent not be required to take the Multistate Professional Responsibility Examination because he or she was ordered to take and pass the examination by February 23, 2004 in connection with the discipline pursuant to California Supreme Court Case number S111161 [State Bar Court case number 00-O-15638].

8/27/03
Date


Respondent's signature

Bertie Jewel Barnard
print name
SBN 65129

8-26-03
Date


Respondent's Counsel's signature

Marilyn Plunkett Quail
print name

8-28-03
Date


Deputy Trial Counsel's signature

David T. Sauber
print name

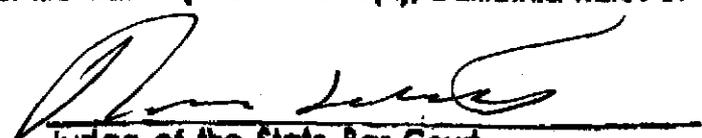
ORDER

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.

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.)

9/24/03
Date


Judge of the State Bar Court

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 Los Angeles, on September 25, 2003, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING ACTUAL SUSPENSION, filed September 25, 2003**

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 Los Angeles, California, addressed as follows:

**MARILY PLUNKETT QUAIL, ESQ.,
3350 SHELBY ST., SUITE 200
ONTARIO, CA 91764**

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

DAVID T. SAUBER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 25, 2003.



Tammy R. Cleaver
Case Administrator
State Bar Court