

PUBLIC MATTER

FILED 

AUG 16 2005

THE STATE BAR COURT STATE BAR COURT CLERK'S OFFICE
HEARING DEPARTMENT - LOS ANGELES SAN FRANCISCO

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8 In the Matter of

9 JOHN PASQUALE BRUNO,

10 Member No. 32822,

11 A Member of the State Bar.

) Case No. 02-O-12532-PEM
) 03-O-02951
) (Consolidated)

DECISION

INTRODUCTION

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14 In this disciplinary matter, Cecilia Horton-Billard appeared for the Office of the Chief
15 Trial Counsel of the State Bar of California ("State Bar"). Respondent John Pasquale Bruno did
16 not appear in person or by counsel.

17 After considering the evidence and the law, the court recommends, among other things, a
18 three-year stayed suspension and actual suspension for two years and until respondent makes
19 restitution to a client; complies with Rules Procedure of State Bar, title IV, Standards for
20 Attorney Sanctions for Professional Misconduct, standard 1.4(c)(ii) ("standards"); and until he
21 complies with rule 205, of the Rules of Procedure of the State Bar ("rule(s)").

SIGNIFICANT PROCEDURAL HISTORY

Case No. 02-O-12532

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24 The Notice of Disciplinary Charges ("NDC") was filed on October 20, 2004, and was
25 properly served on respondent on that same date at his official membership records address, by
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1 certified mail, return receipt requested, as provided in Business and Professions Code section¹
2 6002.1(c) ("official address"). Service was deemed complete as of the time of mailing. (*Lydon*
3 *v. State Bar* (1988) 45 Cal.3d 1181, 1186.) A courtesy copy was also served by regular mail.
4 Neither copy of the correspondence was returned as undeliverable.

5 On October 28, 2004, respondent was properly served at his official address with a notice
6 advising him, among other things, that a status conference would be held on December 6, 2004.
7 On November 12, 2004, a corrected notice regarding the December 6 status conference was
8 properly served on respondent. Neither item of correspondence was returned as undeliverable.

9 Respondent did not appear at the status conference. On that same date, he was properly
10 served with an order memorializing the status conference and also advising him that the matter
11 would proceed by default.

12 Respondent did not file a responsive pleading to the NDC. On January 3, 2005, a motion
13 for entry of default was properly served on respondent at his official address by certified mail,
14 return receipt requested. The motion advised him that minimum discipline of one year stayed
15 suspension, two years' probation and 90 days' actual suspension would be sought if he was found
16 culpable. He did not respond to the motion.

17 On January 21, 2005, the court entered respondent's default and enrolled him inactive
18 effective three days after service of the order. The order was properly served on him at his
19 official address on that same date by certified mail, return receipt requested.

20 On February 1 and 3, 2005, the State Bar served respondent with a waiver of hearing and
21 a brief addressing culpability and level of discipline. In that brief, the State Bar sought two
22 years' stayed suspension, probation and 90 days' actual suspension.

23 The matter was submitted for decision on February 10, 2005. This date was later vacated
24 and this matter was consolidated with case no. 03-O-02951 by order filed on April 29, 2005.

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28 ¹All future references to "section(s)" are to the Business and Professions Code unless
otherwise specified.

1 Case No. 03-O-02951

2 The NDC was filed on January 11, 2005, and was properly served on respondent on that
3 same date at his official address, by certified mail, return receipt requested. It was not returned
4 as undeliverable.

5 On January 26, 2005, respondent was properly served at his official address with a notice
6 advising him, among other things, that a status conference would be held on February 22, 2005.
7 On February 9, 2005, a notice rescheduling the status conference to March 14, 2005, was
8 properly served on respondent. Neither item of correspondence was returned as undeliverable.

9 Respondent did not appear at the status conference. On that same date, he was properly
10 served with an order memorializing the status conference and also advising him that the matter
11 would proceed by default.

12 Respondent did not file a responsive pleading to the NDC. On April 1, 2005, a motion
13 for entry of default was properly served on respondent at his official address by certified mail,
14 return receipt requested. The motion advised him that minimum discipline of three years' stayed
15 suspension, three years' probation and two years' actual suspension would be sought if he was
16 found culpable. The default motion was properly served again on April 12 and filed on April 13,
17 2005. He did not respond to the motions.

18 On April 28, 2005, the court entered respondent's default and enrolled him inactive
19 effective three days after service of the order. The order was properly served on him at his
20 official address on that same date by certified mail, return receipt requested. This
21 correspondence was returned unclaimed.

22 By order filed on April 29, 2005, this matter was consolidated with case no. 02-O-12532.

23 On May 16, 2005, the State Bar served respondent with a waiver of hearing and a brief
24 addressing culpability as well as the level of discipline in both consolidated matters. In that
25 brief, the State Bar sought four years' stayed suspension, and actual suspension of two years and
26 until respondent made restitution, complied with standard 1.4(c)(ii) and complied with rule 205.

27 The State Bar's efforts to locate and contact respondent were fruitless.

28 The consolidated cases were submitted for decision without hearing on May 18, 2005.

1 not returned to the State Bar as undeliverable or for any other reason. Respondent did not answer
2 the letter or otherwise communicate with the investigator.

3 On September 30, 2004, the State Bar wrote to respondent advising of its intent to file an
4 NDC regarding the allegations of misconduct in the Walch matter. The letter was addressed to
5 respondent's official address and sent by first-class mail, postage prepaid. It was not returned to
6 the State Bar as undeliverable or for any other reason. The NDC does not indicate whether
7 respondent answered this letter or otherwise communicated with the State Bar about it.

8 **Conclusions of Law**

9 **Count One - Section 6103 (Violation of Court Order)**

10 In relevant part, section 6103 makes it a cause for disbarment or suspension for an attorney
11 to wilfully disobey or violate a court order requiring him or her to do or to forbear an act
12 connected with or in the course of his or her profession, which he or she ought in good faith to do
13 or forbear.

14 There is not clear and convincing evidence that respondent wilfully disobeyed a court
15 order in wilful violation of section 6103. It is unclear whether there was an order directed against
16 respondent or a money judgment entered against him.² It is also unclear, if it was an order,
17 whether it was one requiring respondent to do or to forbear an act connected with or in the course
18 of his profession. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 950 [an attorney's deliberate
19 violation of a court order directed at him in his capacity as a removed representative of a
20 decedent's estate cannot be a violation of section 6103 because the order was not issued in
21 connection with or in the course of his profession as a lawyer].) Moreover, it is unknown whether
22 respondent actually knew that there was a final, binding court order at the time it was issued.³
23 Such knowledge of the order is an essential element in establishing whether an attorney wilfully
24 disobeyed or violated a court order in violation of section 6103. (*In the Matter of Maloney and*

26 ²If it was a money judgment, no authority was provided supporting the proposition that an
27 attorney's failure to pay it is, in and of itself, a violation of section 6103.

28 ³The NDC alleges only that he was properly served with the assignment of judgment.

1 *Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 787.) For the foregoing reasons, the
2 court cannot find respondent culpable of wilfully violating section 6103. Accordingly, this charge
3 is dismissed with prejudice.

4 **Count Two - Section 6068(i) (Failure to Participate in a Disciplinary Investigation)**

5 Section 6068(i) requires an attorney to participate and cooperate in any disciplinary
6 investigation or other disciplinary or regulatory proceeding pending against him- or herself.

7 By not responding to the December 6, 2002 letter, respondent did not participate in the
8 investigation of the allegations of misconduct regarding the Walch case in wilful violation of
9 6068(i).

10 No culpability is found regarding the September 30, 2004 letter since the NDC does not
11 indicate whether respondent answered the letter or otherwise communicated to the State Bar about
12 it.

13 **Case No. 03-O-02951 (Rivera Matter)**

14 **Facts**

15 Ramiro Rivera purchased a HUD property in Colton, California, which the city later found
16 to uninhabitable. On April 29, 2003, Rivera retained respondent for \$2000 to obtain a refund of
17 his deposit or to "recooperate"⁴ the house.

18 On May 2, 2002, respondent wrote a letter addressed "To Whom It May Concern"
19 explaining why Rivera had not made his mortgage payments.

20 On May 5, 2002, respondent wrote a letter to the attorney for Rivera's mortgage holder
21 explaining why Rivera had not made the mortgage payments.

22 On July 3, 2002, respondent wrote a letter to HUD, the mortgage holder and the sellers of
23 the property demanding that Rivera's \$10,000 deposit on the house be returned to him.

24 Respondent did no further work on Rivera's case. He did not perform the work for which
25 he was hired and did not earn the advanced fees Rivera paid him. He effectively withdrew from
26 Rivera's matter and did not advise Rivera that he was doing so.

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28 ⁴The NDC did not define this term.

1 Between July 2002 and early April 2003, Rivera called and wrote to respondent to
2 determine the status of his case. Respondent did not communicate with Rivera.

3 On April 16, 2003, Rivera sent respondent a letter via facsimile in which he requested the
4 status of his case. The letter further indicated that Rivera had been unsuccessfully trying to
5 contact him since July 2002. Respondent did not answer the letter.

6 On April 29, 2003, Rivera informed respondent by letter that he had gone to respondent's
7 office and waited for four hours but respondent never showed up. The letter also included
8 Rivera's home and cell telephone numbers. Respondent did not answer this letter.

9 On June 5, 2003, Rivera sent respondent a certified letter asking for his file and a refund of
10 the money paid to respondent within 10 days. Respondent did not answer this letter or return the
11 file or refund the money.

12 In August 2003, the State Bar opened an investigation on case no. 03-O-02951 pursuant to
13 a complaint filed by Rivera regarding allegations of misconduct by respondent in this matter. On
14 August 25, 2003, a State Bar investigator sent respondent a letter requesting that respondent
15 answer in writing specific allegations of misconduct regarding the Rivera complaint.

16 On September 18, 2003, respondent sent a letter via facsimile to the State Bar investigator
17 stating that he had a meeting scheduled with Rivera the following week and that he would send
18 the requested documents to the investigator thereafter.

19 Respondent did not answer the August 25, 2003 letter, send the documents or otherwise
20 communicate with the investigator.

21 **Conclusions of Law**

22 **Count One - Rule of Professional Conduct⁵ 3-110(A) (Failing to Perform Competently)**

23 RPC 3-110(A) prohibits an attorney from intentionally, recklessly or repeatedly failing to
24 perform legal services competently.

25 By not obtaining a refund of the deposit or "recooperating" the house, respondent
26 intentionally, recklessly or repeatedly did not perform competently in wilful violation of RPC

27 _____
28 ⁵The Rules of Professional Conduct are subsequently referred to as "RPC."

1 3-110(A).

2 **Count Two - RPC 3-700(A)(2) (Improper Withdrawal from Representation)**

3 RPC 3-700(A)(2) prohibits an attorney from withdrawing from employment until he or she
4 has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of a client,
5 including giving due notice to the client, allowing time for employment of other counsel,
6 complying with RPC 3-700(D) and with other applicable laws and rules.

7 By not informing Rivera of his intent to stop working on his case and not communicating
8 with Rivera, respondent effectively withdrew from employment. By not informing the client of
9 his intent to withdraw from employment, respondent failed to take reasonable steps to avoid
10 reasonably foreseeable prejudice to Rivera in wilful violation of RPC 3-700(A)(2).

11 **Count Three - Section 6068(m) (Failure to Communicate)**

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

15 By not responding to Rivera's telephone calls and letters, respondent did not respond
16 promptly to his reasonable status inquiries about his case in wilful violation of section 6068(m).

17 **Count Four - RPC 3-700(D)(1) (Failure to Return Client Papers or Property)**

18 RPC 3-700(D)(1) requires an attorney whose employment has been terminated to promptly
19 release to the client, at the client's request, all client papers and property, subject to any protective
20 order or non-disclosure agreement. This includes correspondence, pleadings, deposition
21 transcripts, exhibits, physical evidence, expert's reports and other items reasonably necessary to
22 the client's representation, whether the client has paid for them or not.

23 By not returning Rivera's file after Rivera terminated his services and asked for its return,
24 respondent wilfully violated RPC 3-700(D)(1).

25 **Count Five - RPC 3-700(D)(2) (Failure to Return Unearned Fees)**

26 RPC 3-700(D)(2) requires an attorney whose employment has terminated to promptly
27 return any part of a fee paid in advance that has not been earned. This rule does not apply to true
28 retainer fees paid solely for the purpose of ensuring the availability of an attorney to handle a

1 matter.

2 By not returning Rivera's funds after Rivera terminated his services and asked for a
3 refund, respondent did not return an advanced, unearned fee in wilful violation of RPC
4 3-700(D)(2).

5 **Count Six - Section 6068(i) (Failure to Participate in a Disciplinary Investigation)**

6 Section 6068(i) requires an attorney to participate and cooperate in any disciplinary
7 investigation or other disciplinary or regulatory proceeding pending against him- or herself.

8 By not answering in writing specific allegations of misconduct regarding the Rivera
9 complaint, respondent did not participate in the State Bar's investigation of the allegations of
10 misconduct in the Rivera matter in wilful violation of 6068(i).

11 **LEVEL OF DISCIPLINE**

12 **Aggravating Circumstances**

13 Respondent has two prior instances of discipline. (Std. 1.2(b)(i).) In Supreme Court order
14 no. S038257 (State Bar Court case no. 89-O-10449; 90-O-18052 (Cons.)), effective June 11, 1994
15 , discipline was imposed consisting of one year's stayed suspension and 18 months' probation
16 with conditions, for violations of section 6068(i) (two counts), RPC's 3-500 and 4-100(A) and
17 former RPC's 2-111(A)(2), 6-101(A)(2) and 8-101(A) in two client matters.

18 In Supreme Court order no. S041050 (State Bar Court case no. 91-O-7104), effective
19 October 22, 1994 , discipline was imposed consisting of six months' probation commencing
20 consecutively to that imposed in Supreme Court order no. S038257 on conditions including
21 restitution. Respondent was found culpable, in one client matter, of violating section 6068(m),
22 RPC's 3-110(A), 3-700(A)(2) and 3-700(D)(2) and former RPC's 2-111(A)(2) and 6-101(A).

23 Aggravating weight is afforded to these two prior instances of discipline which involve
24 somewhat similar misconduct to that in the present case. However, in considering the weight to
25 be afforded this factor, the court noted that both disciplinary orders became effective in 1994; they
26 involved a total of three clients; and the misconduct occurred approximately between October
27 1986 and February 1991, the latter being more than 14 years ago. Accordingly, the prior records
28 of discipline are not given significant weight. (Cf. *In the Matter of Hanson* (Review Dept. 1994)

1 2 Cal. State Bar Ct. Rptr. 703, 713 [17 years between acts of misconduct in two separate
2 disciplinary matters].)

3 Respondent's multiple acts of misconduct are an aggravating factor. (Standard 1.2(b)(ii).)

4 Respondent's misconduct significantly harmed clients. (Standard 1.2(b)(iv).) Rivera had
5 to make repeated attempts to contact respondent about the status of his case during the better part
6 of a year.

7 Respondent's failure to participate in these proceedings prior to the entry of default is also
8 an aggravating factor. (Standard 1.2(b)(vi).) He has demonstrated his contemptuous attitude
9 toward disciplinary proceedings as well as his failure to comprehend the duty of an officer of the
10 court to participate therein, a serious aggravating factor. (Standard 1.2(b)(vi); Cf. *In the Matter of*
11 *Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 104, 109.)

12 Mitigating Circumstances

13 Since respondent did not participate in these proceedings and he bears the burden of
14 establishing mitigation by clear and convincing evidence, the court has been provided no basis for
15 finding mitigating factors.

16 Discussion

17 The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to
18 protect the public, to preserve public confidence in the profession, and to maintain the highest
19 possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111;
20 *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

21 Standard 1.6 provides that the appropriate sanction for the misconduct found must be
22 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of
23 imposing discipline. If two or more acts of professional misconduct are found in a single
24 disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions.
25 (Standard 1.6(a).)

26 Standards 2.4(b), 2.6(a) and 2.10 apply in this matter. The most severe sanction is found
27 at standard 2.6(a) which recommends suspension or disbarment for violations of sections 6067
28 and 6068, depending on the gravity of the offense or harm, if any to the victim, with due regard to

1 the purposes of imposing discipline. The standards, however, are guidelines from which the court
2 may deviate in fashioning the most appropriate discipline considering all the proven facts and
3 circumstances of a given matter. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11; *Howard v. State*
4 *Bar* (1990) 51 Cal.3d 215.) They are "not mandatory 'sentences' imposed in a blind or mechanical
5 manner." (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

6 Respondent has been found culpable, in two client matters, of not performing legal
7 services for which he was retained; not communicating with and, essentially, abandoning his
8 client; not returning the client's file or refunding his money; and not cooperating with the State
9 Bar's investigation of possible misconduct (two counts). In aggravation, respondent has a
10 disciplinary record; engaged in multiple acts of misconduct; did not participate in these
11 proceedings prior to the entry of default; and harmed a client. He presented no mitigating
12 circumstances in this default case.

13 Respondent has two prior instances of discipline for somewhat similar misconduct.
14 However, these prior records did not result in actual suspension and are remote in time.⁶
15 Accordingly, although the level of discipline is progressive (standard 1.7(b)), disbarment is not
16 merited in this instance because the nature and extent of the two prior records lack sufficient
17 severity to warrant it. (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr.
18 697, 704; *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208, 217.)

19 The State Bar recommends four years' stayed suspension and actual suspension consisting
20 of two years and until respondent makes restitution, complies with standard 1.4(c)(ii) and
21 complies with rule 205.

22 The court found *Natali v. State Bar* (1988) 45 Cal.3d 456, and *Middleton v. State Bar*
23 (1990) 51 Cal.3d 548, instructive.

24 In *Natali*, discipline was imposed consisting of five years' stayed suspension, five years'
25 probation and three years' actual suspension. This case consisted of two consolidated matters. In

26
27 ⁶As previously noted, both disciplinary orders became effective in 1994. The misconduct
28 these matters involved three clients and occurred approximately between October 1986 and
February 1991, the latter being more than 14 years ago.

1 one client matter, respondent was found culpable of failing to perform, making a
2 misrepresentation to and abandoning the client. In the other matter, he was found culpable of
3 abandonment, failing to perform competently and violating a court order. In aggravation,
4 respondent had one prior instance of discipline, a public reproof. The court found a pattern of
5 misconduct (abandonment/failure to perform) over a 10-year period by considering the prior and
6 present misconduct. The court also noted respondent's lack of remorse, dishonesty and lack of
7 candor toward the court, clients and the State Bar. He also blamed others for his misconduct. The
8 mitigating effect of emotional distress due to his parents' deaths was discounted due to
9 remoteness in time. *Natali* presents greater misconduct (misrepresentation and violating a court
10 order) and more substantial aggravating factors than the present case, including a pattern of
11 misconduct, lack of remorse and dishonesty/lack of candor.

12 In *Middleton*, the Supreme Court imposed five years' stayed suspension, five years'
13 probation on conditions including actual suspension of two years and until the attorney complied
14 with standard 1.4(c)(ii) in a default case. Respondent Middleton was found culpable, in three
15 client matters, of failing to perform and to communicate; communicating with a represented party;
16 and not cooperating with the State Bar's investigation of the disciplinary charges. There were no
17 mitigating circumstances. Aggravating factors included multiple acts of misconduct, harm to
18 clients and the public and one prior disciplinary record. As to the latter, respondent was actually
19 suspended for 30 days for misconduct in three client matters. The misconduct occurred the same
20 year in which she was admitted to the practice of law. Unlike in the present case, the misconduct
21 in the later case commenced only four years after the misconduct in the prior case. The majority
22 and dissenting opinions noted respondent's almost frivolous assertions in her defense on review.
23 (*Id.* at pp. 561, 563.) *Middleton* is roughly comparable to the present case although it presents
24 somewhat greater misconduct and aggravating factors.

25 Respondent's misconduct and lack of participation in this matter raises concerns about his
26 ability or willingness to comply with his ethical responsibilities to the public and to the State Bar.
27 No explanation has been offered that might persuade the court otherwise and the court can glean
28 none. Having considered the evidence and the law, the court believes that two years' actual

1 suspension to remain in effect until he makes restitution; explains to this court the reasons for not
2 participating herein; and manifests his willingness to comply fully with probation conditions that
3 may hereafter imposed, among other things, is adequate to protect the public and proportionate to
4 the misconduct found and the court so recommends.

5 **DISCIPLINE RECOMMENDATION**

6 Accordingly, it is hereby recommended that respondent be suspended from the practice of
7 law for three years; that said suspension be stayed; and that he be actually suspended from the
8 practice of law for two years and until he makes restitution to Ramiro Rivera (or the Client
9 Security Fund, if appropriate) in the amount of \$2,000, plus 10% interest per annum from April
10 29, 2003, and furnishes satisfactory proof thereof to the State Bar Office of Probation; and until
11 the State Bar Court grants a motion to terminate respondent's actual suspension at its conclusion
12 or upon such later date ordered by the court. (Rule 205(a) and (c).)

13 It is further recommended that respondent remain actually suspended until he has shown
14 proof satisfactory to the State Bar Court of rehabilitation, fitness to practice, and learning and
15 ability in the general law pursuant to standard 1.4(c)(ii). (See also, rule 205(b).)

16 It is also recommended that he be ordered to comply with the conditions of probation, if
17 any, hereinafter imposed by the State Bar Court as a condition for terminating his actual
18 suspension.

19 It is also recommended that respondent be ordered to comply with the requirements
20 California Rules of Court, rule 955, within 30 calendar days of the effective date of the Supreme
21 Court order in this matter, and file the affidavit provided for in paragraph (c) within 40 days of the
22 effective date of the order showing his compliance with said order.⁷

23 It is further recommended that respondent be ordered to take and pass the Multistate
24 Professional Responsibility Examination given by the National Conference of Bar Examiners
25 during the period of his actual suspension and furnish satisfactory proof of such to the State Bar
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27 ⁷Failure to comply with California Rules of Court, rule 955 could result in disbarment.
28 (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Respondent is required to file a 955(c)
affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

1 Office of Probation within said period.

2 COSTS

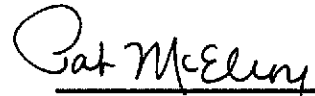
3 The court recommends that costs be awarded to the State Bar pursuant to Business and
4 Professions Code section 6086.10, and that those costs be payable in accordance with section
5 6140.7.

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9 Dated: August 15, 2005



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 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 San Francisco, on August 16, 2005, I deposited a true copy of the following document(s):

DECISION, filed AUGUST 16, 2005

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 San Francisco, California, addressed as follows:

JOHN PASQUALE BRUNO
P O BOX 5185
WEST HILLS CA 91308

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

CECILIA HORTON-BILLARD, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on August 16, 2005.


Laretta Cramer
Case Administrator
State Bar Court