PUBLIC MATTER

THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of **GLENN EDWARD REED,** **Member No. 85272,** A Member of the State Bar.	**Case No. 03-J-03766-RAH** **DECISION**

I. INTRODUCTION

Respondent **GLENN EDWARD REED** was disbarred by order of the Supreme Court of the State of Washington for his misconduct involving one client and his trust accounts. As a result, the State Bar of California initiated this proceeding under Business and Professions Code section 6049.1 and rules 620 through 625 of the Rules of Procedure of the State Bar of California.

The issues in this proceeding are limited to: (1) the degree of discipline to be imposed upon Respondent in California; (2) whether, as a matter of law, Respondent's culpability in the Washington proceeding would not warrant the imposition of discipline in California under the laws or rules applicable in this state at the time of Respondent's misconduct in Washington; and (3) whether the Washington proceeding lacked fundamental constitutional protection. (Bus. & Prof. Code, § 6049.1(b).)

Respondent bears the burden of establishing that the conduct for which he was disciplined in Washington would not warrant the imposition of discipline in California and/or that the Washington proceeding lacked fundamental constitutional protection. (Bus. & Prof. Code, § 6049.1(b).) Since Respondent has defaulted and did not participate in this proceeding, the court focuses on the degree of discipline to be imposed in California.

In view of Respondent's misconduct and the evidence in aggravation and mitigation, the court recommends that Respondent be disbarred.

II. PERTINENT PROCEDURAL HISTORY

On October 29, 2003, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) properly filed and served a Notice of Disciplinary Charges (NDC) on Respondent at his official membership records address. (Rules Proc. of State Bar, rule 60.) The NDC was returned as undeliverable. Respondent did not file a response to the NDC. (Rules Proc. of State Bar, rule 103.)

The State Bar also mailed courtesy copies of the NDC, Notice of Assignment and Notice of Initial Status Conference, and Notice of Motion and Motion for Entry of Default to Respondent at 555 East Limberlost Drive, Apt. 2009, Tucson, Arizona 85705. They were not returned as undeliverable.

On motion of the State Bar, Respondent's default was entered on December 19, 2003. Respondent was enrolled as an inactive member on December 22, 2003. (Bus. & Prof. Code, § 6007(e).)[1] The State Bar also sent Respondent copies of the order of entry of default and order of involuntary inactive enrollment at the Arizona address. Again, they were not returned as undeliverable.

On January 14, 2004, Deputy Trial Counsel Eric H. Hsu of the State Bar spoke with Respondent by telephone. Respondent informed Hsu that he had received all State Bar mailings sent to his Arizona address and that the Arizona address was his current address.[2] Although the State Bar advised Respondent that it would not oppose a motion by Respondent to set aside his default, Respondent told Hsu that he did not wish to participate in this proceeding.

Respondent did not participate in these disciplinary proceedings. Accordingly, the court took this matter under submission on February 27, 2004.

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[1]References to section are to the Business and Professions Code, unless otherwise noted.

[2]Since September 26, 2001, Respondent's official membership records address has remained as 1207 N. 8th St., #1, Mount Vernon, Washington, and has not been changed as of February 27, 2004, the submission date of this matter.

III. JURISDICTION

Respondent was admitted to the practice of law in California on May 18, 1979, and has since been a member of the State Bar of California.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Business and Professions Code section 6049.1(a) provides, in pertinent part, that a certified copy of a final order by any court of record of any state of the United States, determining that a member of the State Bar committed professional misconduct in that jurisdiction shall be conclusive evidence that the member is culpable of professional misconduct in this state.

The court admits into evidence the certified copy of the Washington disciplinary proceedings entitled *In Re: Glenn E. Reed, Attorney at Law*, Bar No. 5328, Supreme Court No. 200,000-2, Order Approving Stipulation to Disbarment, which was attached to the NDC as exhibit 1; the applicable Washington State court rules on misconduct, a copy of which was attached to the NDC as exhibit 2; and the applicable Washington State court rules on rules for enforcement of lawyer conduct, a copy of which was attached to the NDC as exhibit 3.

The record of the Washington disciplinary proceeding conclusively establishes the following facts:

A. Disbarment from the State of Washington

Respondent was admitted to practice law in the State of Washington on October 18, 1973.

On June 25, 2003, the Supreme Court of the State of Washington issued an Order Approving Stipulation to Disbarment in Supreme Court No. 200,000-2. Respondent's disbarment became effective July 1, 2003. The Washington Supreme Court also ordered Respondent to pay restitution to several entities and that Respondent's reinstatement is conditioned on payment of costs, fees and restitution.

The Washington Supreme Court order was based upon the Washington State Bar Association (WSBA) Disciplinary Board's order approving a Stipulation to Disbarment entered into by Respondent, his counsel and WSBA Disciplinary Counsel on May 5, 2003.

Respondent stipulated that if this matter were to proceed to a public hearing, there was a substantial likelihood that the WSBA would be able to prove, by a clear preponderance of the

evidence, the facts and misconduct set forth below. Under section 6049.1(a), his misconduct in Washington is conclusive evidence that he is culpable of professional misconduct in California.

B. The Heinrichs Matter

Respondent represented Marvin Heinrichs in a personal injury matter which occurred in 2000.

In June 2001, Respondent negotiated with Wausau Insurance Companies a settlement of $3,500 to pay for Heinrichs' medical bills. Wausau sent a release and a check dated June 28, 2001, for $3,500, made payable to Heinrichs and Respondent. The client signed the release and endorsed the check.

Heinrichs and Respondent agreed that Respondent would deposit the check in a trust account and pay Heinrichs' medical bills. On July 6, 2001, Respondent deposited the check into his Interest On Lawyer's Trust Account (IOLTA) at Skagit State Bank (Skagit account).

In July 2001, Respondent made the following transactions in his Skagit account:

Date	*Deposit*	*Withdrawal*	*Balance*
7/6/01	$3,500		$15,366
7/9/01	$1,000		
7/9/01		$15,000	
7/10/01		$ 1,000	$ 366

Subsequently, Respondent did not pay any of Heinrichs' medical bills or pay any settlement funds to Heinrichs. Instead, Respondent used the money for his own purposes without authorization from his client to do so.

On February 14, 2002, the trust account was closed by a debit memo for $224.35, apparently due to a negative balance and repeated insufficiently funded checks.

During the following year, Heinrichs inquired repeatedly regarding the payment of his medical bills. Respondent misrepresented to Heinrichs that he had not received the final medical statements when in fact, he did. Eventually, Respondent quit responding to Heinrichs' status inquiries.

In July 2002, when Heinrichs threatened to report to the WSBA if Respondent did not return

his call, Respondent left a telephone message. Respondent informed Heinrichs that he had "screwed up," that he took Heinrichs' money out of his Skagit account, and that the account was overdrawn. He further promised that he would pay all the interests and late charges. But he did not.

In response to Heinrichs' complaint to the WSBA, Respondent stated on November 4, 2002:

> I settled a personal injury case for Marvin Heinrichs. I did not pay two outstanding medical bills from the proceeds of the settlement. I utilized the money for my own benefit. Two medical bills were not paid. They were bills from Ms. Stephanie Tate in the amount of $1,289.84 and Skagit River Chiropractic in the amount of $1,017.14.

As of May 5, 2003, Respondent has not paid Heinrichs' medical bills nor has he paid any portion of the settlement funds of $3,500 to Heinrichs.

C. Whidbey Island Bank IOLTA Account

On February 15, 2002, the day after the Skagit account was closed, Respondent opened an IOLTA account at Whidbey Island Bank, account No. 187000096 (Whidbey account), with a minimum deposit of $10.

On February 24, 2002, Respondent issued a check on the Whidbey account to John J. Cronin for $4,500, but stopped payment on that check on the same day. He delivered the check to Cronin with the intent to defraud him and did not make payment within 20 days.

Between April 30 and May 5, 2002, he wrote at least 15 insufficiently funded (NSF) checks on the Whidbey account to various business establishments, totaling over $250. At the time of issuance, Respondent knew that he did not have sufficient funds for the checks to be honored.

Over a 10-day period in May 2002, the Whidbey account proceeded to have $5,465.40 in return checks. There were no deposits made to cover any of the checks written on the Whidbey account. The bank closed the account on May 6, 2002 due to NSF activity, with an amount of $26 owing.

Respondent had another account, most likely an office account, at the Whidbey Island Bank, account No. 018000088, which the bank closed in March 2002 for Respondent's frequent issuance of insufficiently funded checks. The amount owing on the account was $558.62.

On the bottom of a March 29, 2002 letter from the bank, Respondent's handwritten notation stated:

> I was promised $10,000 would be transferred to my Trust Account. So temporarily used it as a personal checking account until trust account was closed by the Bank. No client funds were involved. I have made good on the majority of the bad checks. Glenn Reed.

There was never any deposit of $10,000 in Respondent's Whidbey account.

Respondent knowingly opened and maintained a bank account, representing falsely that it was an IOLTA account, when he did not intend to, and/or knew he was not using the account as an IOLTA account.

D. The Big Rock Service & Grocery and Clear Lake Market Matters

Randy Audette is the owner of Big Rock Service & Grocery in Mount Vernon, Washington. Between June 20 and 22, 2002, Respondent issued nine checks made payable to Big Rock Store, totaling $564.75, on the Whidbey account. At the time, Respondent knew that the account had been closed in May and that there no funds to cover those checks.

Most of these checks were written for over the amount of the actual goods purchased, and Respondent received cash back from these checks in the excess amounts. When Audette inquired about payment, Respondent initially promised to pay later. Eventually, Respondent stopped returning Audette's phone calls.

In addition to the checks made payable to Big Rock Store, Respondent also wrote seven checks on the Whidbey account to Clear Lake Market between June 20 and 24, 2002, totaling $490.56. At the time, Respondent knew that the account was closed in May and that there were no funds to cover those checks.

As of May 5, 2003, Respondent has not paid all of the money owing to Big Rock Service & Grocery or to Clear Lake Market.

E. Stipulation to Misconduct

Rule 8.4(b) of the Washington Rules of Professional Conduct provides that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects (rule 8.4(b)).

Rule 8.4(c) of the Washington Rules of Professional Conduct provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or

misrepresentation (rule 8.4(c)).

Respondent stipulated to violating rules 8.4(b) and (c) of the Washington Rules of Professional Conduct as follows:

1. By misappropriating Heinrichs' $3,500 in settlement funds, Respondent violated rule 8.4(b) (by committing the crime of theft) and rule 8.4(c);
2. By making misrepresentations to Heinrichs about the reason he was not paying Heinrichs' medical bills, Respondent violated rule 8.4(c);
3. By knowingly opening and maintaining a bank account at Whidbey Island Bank, representing falsely that it was an IOLTA account, when he did not intend to, and/or knew he was not using the account as an IOLTA account, Respondent violated rule 8.4(c);
4. By writing a check for $4,500 payable to John J. Cronin, then stopping payment on that check and failing to make payment to Cronin for that check, Respondent violated rule 8.4(b) (by committing the felony crime of unlawful issuance of checks or drafts) and rule 8.4(c);
5. By making and/or delivering to various businesses between April 30 and May 5, 2002, as part of a common scheme or plan and with intent to defraud the various businesses, at least 15 checks totaling over $250, knowing at the time he drew and/or delivered those checks that he did not have sufficient funds in or credit with the bank to meet the checks in full upon presentation, Respondent violated rule 8.4(b) (felony crime of unlawful issuance of checks or drafts) and rule 8.4(c);
6. By making and delivering to Big Rock Store between June 20 and 22, 2002, nine checks totaling $564.75 on his Whidbey Island Bank IOLTA account, as part of a common scheme or plan and with the intent to defraud Big Rock Store, and with knowledge that there no funds on account at Whidbey Island Bank to cover those checks upon presentation because his account had been closed, Respondent violated rule 8.4(b) (felony crime of unlawful issuance of checks or drafts) and rule 8.4(c); and

7. By making and delivering to Clear Lake Market between June 20 and 24, 2002, seven checks totaling $490.56 on his Whidbey Island Bank IOLTA account, as part of a common scheme or plan and with the intent to defraud Clear Lake Market, and with knowledge that there no funds on account at Whidbey Island Bank to cover those checks upon presentation because his account had been closed, Respondent violated rule 8.4(b) (felony crime of unlawful issuance of checks or drafts) and rule 8.4(c).

F. Legal Conclusions

1. Failure to Maintain Client Funds in Trust Account and Commingling (Rule 4-100(A) of the Rules of Professional Conduct of the State Bar of California)[3]

Rule 4-100(A) provides that all funds received for the benefit of clients shall be deposited in a client trust account and that no funds belonging to the attorney shall be deposited therein or otherwise commingled therewith. The rule "absolutely bars use of the trust account for personal purposes, even if client funds are not on deposit." (*Doyle v. State Bar* (1982) 32 Cal.3d 12, 22-23.)

Respondent wilfully violated rule 4-100(A) as follows:

a. Respondent had a fiduciary duty to hold in trust his client's share of the $3,500 settlement funds in the Heinrichs matter. Within four days after he had deposited the settlement proceeds, Respondent's Skagit account balance fell to $366 on July 10, 2001, and by February 14, 2002, it dropped to negative $224.35. His failure to hold in trust the $3,500 settlement funds clearly and convincingly violated rule 4-100(A) in the Heinrichs matter.

b. Respondent issued at least 15 checks drawn on the Whidbey account to various business establishments between April 30 and May 5, 2002. And in June 2002, after the account had been closed, he wrote nine additional bad checks to Big Rock Store and seven bad checks to Clear Lake Market. Using the Whidbey account for his personal expenses constituted commingling within the meaning of rule 4-100(A)

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[3]References to rule are to the current Rules of Professional Conduct, unless otherwise noted.

even where there were no client funds in the trust account. (*Arm v. State Bar* (1990) 50 Cal.3d 763, 776-777.) Therefore, Respondent is culpable of commingling funds in his Whidbey account in wilful violation of rule 4-100(A).

2. Moral Turpitude (Bus. & Prof. Code, § 6106)

Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude, dishonesty or corruption.

The mere fact that the balance in an attorney's trust account has fallen below the total of amounts deposited in and purportedly held in trust, supports a conclusion of misappropriation. (*Giovanazzi v. State Bar* (1980) 28 Cal.3d 465, 474-475.) The rule regarding safekeeping of entrusted funds leaves no room for inquiry into the attorney's intent. (See *In the Matter of Bleecker* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 113.)

Moreover, "[t]he California Supreme Court has always reserved harsh language for an attorney's practice of issuing bad checks.... 'It is settled that the "continued practice of issuing [numerous] checks which [the attorney knows will] not be honored violates 'the fundamental rule of ethics – that of common honesty – without which the profession is worse than valueless in the place it holds in the administration of justice."' [Citations.]' (*Bowles v. State Bar* (1989) 48 Cal. 3d 100, 109 [bracketed language in original].) In every instance of which we are aware, where an attorney was found to have written multiple bad checks, the Court has found such continued conduct to be an act of moral turpitude. [Citations.]" (*In the Matter of Heiser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 47, 53-54.)

Accordingly, Respondent wilfully violated section 6106 by engaging in acts of moral turpitude, dishonesty or corruption as follows:

a. By misappropriating funds from the Skagit account when the balance fell below the amount of entrusted funds of $3,500 soon after the funds were deposited;

b. By misrepresenting to Heinrichs that he was waiting for the final statements from the medical providers before he could pay the bills when in fact he had already received those bills;

c. By knowingly opening and maintaining a bank account at Whidbey Island Bank,

representing falsely that it was an IOLTA account, when he did not intend to, and/or knew he was not using the account as an IOLTA account;

d. By issuing a bad check for $4,500 to Cronin when he knew he did not have the funds in the Whidbey account;

e. By issuing at least 15 bad checks to various businesses when he knew he did not have sufficient funds in the Whidbey account with the intent to defraud those businesses;

f. By issuing nine bad checks, totaling $564.75, to Big Rock Store when he knew he did not have sufficient funds in the Whidbey account with the intent to defraud Big Rock Store; and

g. By issuing seven bad checks, totaling $490.56, to Clear Lake Market when he knew he did not have sufficient funds in the Whidbey account with the intent to defraud Clear Lake Market.

V. MITIGATING AND AGGRAVATING CIRCUMSTANCES

A. Mitigation

No mitigating factor was submitted into evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)[4]

Although Respondent has no record of prior discipline in his 22 years of practice when the misconduct began in 2001, his lack of record is not considered as mitigation because his present misconduct is very serious. (Std. 1.2(e)(i).)

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent committed multiple acts of wrongdoing over a period of several months, including failing to maintain client funds, misappropriating $3,500 and issuing bad checks. (Std. 1.2(b)(ii).) However, Respondent's issuance of 31 NSF checks from February to June 2002 does not rise to the level of a pattern of misconduct. The Supreme Court has limited this characterization to "only the most serious instances of repeated misconduct over a prolonged period of time." (*Young*

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[4]All further references to standards are to this source.

v. State Bar (1990) 50 Cal.3d 1204, 1217.) Here, while writing bad checks is serious, four months is not an extended period of time, particularly since Respondent has no prior record in the previous 22 years of practice.

Respondent's misappropriation of $3,500 and issuance of insufficiently funded checks caused his client and other businesses substantial harm. (Std. 1.2(b)(iv).) He also stipulated that his submission of false evidence, false statements and other deceptive practices during the disciplinary process in Washington constitutes harm to the administration of justice.

Respondent demonstrated indifference toward rectification of or atonement for the consequences of his misconduct. (Std. 1.2(b)(v).) He has not made restitution to Heinrichs, Big Rock Store, Clear Lake Market, or Cronin.

Respondent's failure to participate in this disciplinary matter prior to the entry of his default is also a serious aggravating factor. (Std. 1.2(b)(vi).) Although he participated in the disciplinary proceedings in Washington, Respondent defaulted in this proceeding. In January 2004, Respondent told the State Bar that he did not wish to participate.

VI. DISCUSSION

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

Respondent's misconduct involved one client matter and trust account violations. The standards provide a broad range of sanctions ranging from reproval to disbarment, depending upon the gravity of the offenses and the harm to the client. (Stds. 1.6, 2.2, and 2.3.)

Under standard 2.2(a), disbarment shall be the discipline unless the most compelling mitigation circumstances clearly predominate.

The standards, however, are only guidelines and do not mandate the discipline to be imposed. (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at p. 251.)

The State Bar urges disbarment, arguing that Respondent is culpable of misappropriation of entrusted funds and citing several cases in support of its recommendation, including *Kennedy v. State Bar* (1989) 48 Cal.3d 610 and *Chang v. State Bar* (1989) 49 Cal.3d 114.

In *Kennedy*, the attorney was disbarred for his misconduct involving three client matters and misappropriation of over $10,000 from clients without any effort at reimbursement. His mishandling of the matters took place five years after he was admitted to the practice of law.

In *Chang*, the attorney was disbarred for misappropriating over $7,000 by secretly opening a trust account in his own name while employed by a law firm, depositing his client's funds in the trust account, later taking the funds, failing to comply with the client's request for copies of bank records, and refusing to pay the client the funds owed. The attorney was also found to have failed to cooperate in the disciplinary investigation by making misrepresentations to a State Bar investigator. The attorney offered no evidence in mitigation, but it was noted that he had no prior record of discipline. In ordering disbarment, however, the Supreme Court noted that it had several reasons to doubt that the attorney would conform his conduct in the future to the professional standards required of attorneys in California. In particular, the Supreme Court noted that the attorney had never acknowledged the impropriety of his actions; he had made no effort at reimbursing the client and displayed a lack of candor to the State Bar.

Like the attorneys in *Kennedy* and *Chang*, Respondent misappropriated $3,500 from one client, issued 31 NSF checks and failed to perform his subsequent promise to make good the checks. In fact, when the client called him about the settlement funds, Respondent acknowledged that he had "screwed up." Respondent admitted that he wrote those checks as part of a common scheme and with the intent to defraud the payees. He knew or should have known that there were insufficient funds in the Whidbey account between the months of February and May 2002. Yet, he continued to write the bad checks in June knowing that the account was closed in May.

In recommending discipline, the "paramount concern is protection of the public, the courts and the integrity of the legal profession." (*Snyder v. State Bar* (1990) 49 Cal.3d 1302.) The misappropriation of client funds is a grievous breach of an attorney's ethical responsibilities, violates basic notions of honesty and endangers public confidence in the legal profession. In all but the most

exceptional cases, it requires the imposition of the harshest discipline – disbarment. (*Grim v. State Bar* (1991) 53 Cal.3d 21.)

Respondent "is not entitled to be recommended to the public as a person worthy of trust, and accordingly not entitled to continue to practice law." (*Resner v. State Bar* (1960) 53 Cal.2d 605, 615.) Respondent's failure to participate in this hearing leaves the court without information about the underlying cause of Respondent's offense or of any mitigating circumstances surrounding his misconduct. Instead of cooperating with the State Bar or rectifying his misconduct, Respondent defaulted in this disciplinary proceeding. Therefore, based on the severity of the offense, the serious aggravating circumstances and the lack of mitigating factors, the court recommends disbarment.

VII. RECOMMENDED DISCIPLINE

This court recommends that Respondent **GLENN EDWARD REED** be disbarred from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this State.

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

VIII. COSTS

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

IX. ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

Dated: May 7, 2004

RICHARD A. HONN
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 May 11, 2004, I deposited a true copy of the following document(s):

DECISION, filed May 11, 2004

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

[X] by certified mail, No. 7160 3901 9844 8570 3728 , with return receipt requested, through the United States Postal Service at Los Angeles, California, addressed as follows:

GLENN EDWARD REED
1207 N 8TH ST #1
MOUNT VERNON, WA 98273

[X] by certified mail, No. 7160 3901 9844 8570 3711 , with return receipt requested, through the United States Postal Service at Los Angeles, California, addressed as follows:

GLENN EDWARD REED
PO BOX 75
CLEARLAKE, WA 98235-0075

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

Eric Hsu , Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **May 11, 2004**.

Milagro del R. Salmeron
Case Administrator
State Bar Court