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State Bar Court of California		
Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco		
Counsel for the State Bar Kevin B. Taylor Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015 (213) 765-1334 Bar # 151715	Case number(s) 03-0-00782-RAP <div style="font-size: 2em; font-weight: bold; text-align: center;">PUBLIC MATTER</div>	(for Court's use) <div style="font-size: 2em; font-weight: bold; text-align: center;">FILED</div> DEC 06 2005 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per, Respondent David A. Clare 4675 S. MacArthur Ct. #1250 Newport Beach, CA 92660 Bar # 44971	Submitted to <input checked="" type="checkbox"/> assigned judge <input type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input checked="" type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of TIMOTHY LEE MC CANDLESS Bar # 147715 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted July 30, 1990
(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 13 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

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(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
- costs to be paid in equal amounts prior to February 1 for the following membership years:
- (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
- costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
- costs entirely waived

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

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

(a) State Bar Court case # of prior case _____

(b) Date prior discipline effective _____

(c) Rules of Professional Conduct/ State Bar Act violations: _____

(d) Degree of prior discipline _____

(e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
Please see Stipulation page 11.

(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. Respondent's clients suffered terminating sanctions as a result of Respondent's failure to perform legal services.

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- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing 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 with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____
in restitution to _____ without the threat or force of disciplinary,
civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.

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- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (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 must be suspended from the practice of law for a period of three (3) years
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following: _____
- (b) The above-referenced suspension is stayed.
- (2) **Probation:** The parties recommend that no probation be ordered in this matter because Respondent is currently on Probation until January 2009 as a result of ~~Respondent must be placed on probation for a period of _____ which will commence upon the effective date of the Supreme Court order in this matter. (See rule 953, Code Rules of Ct.)~~
his prior discipline. Appropriate conditions of probation were addressed in the prior discipline, case number 02-0-11346.

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(3) **Actual Suspension:**

(a) Respondent must be actually suspended from the practice of law in the State of California for a period of Six (6) months

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

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.

(Do not write above this line.)

- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: Ethics School previously ordered by Supreme Court on January 12, 2004
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason: MPRE previously ordered by Supreme Court on January 12, 2004
- (2) **Rule 955, California Rules of Court:** Respondent must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 955, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: _____
- (5) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: TIMOTHY LEE McCANDLESS, State Bar No. 147715

CASE NUMBER: 03-O-00782

FACTS AND CONCLUSIONS OF LAW

Respondent was admitted to the practice of law in the State of California on July 30, 1990.

In or about September 2000, Carlos and Olga Vera ("Veras") employed Respondent to represent them as defendants in a personal injury matter entitled Hamilton v. Vera, Los Angeles Superior Court case number BC 236860 ("Hamilton action").

Respondent timely filed an answer on behalf of the Veras.

Thereafter, Respondent began serving a 60 day actual suspension from the practice of law. The suspension ran from October 22, 2000 to December 21, 2000. Respondent contends that he arranged for another attorney to supervise his cases while he was on suspension.

Respondent never informed the Veras of the above-mentioned suspension or that he would not be able to represent them from October 22, 2000 to December 21, 2000.

On or about October 31, 2000, while Respondent was out of his office, the plaintiff in the Hamilton action served Respondent with interrogatories propounded upon the Veras. The interrogatories were not responded to in a timely fashion.

Respondent became aware of the subject interrogatories when he returned to his office on or about December 28, 2000. Respondent contends that he prepared responses to the interrogatories on behalf of the Veras, but that the responses were lost due to flooding in his office. Respondent received interrogatory verification forms executed by the Veras, but never served the Veras' responses to the subject interrogatories.

On or about February 5, 2001, the plaintiff in the Hamilton action filed and properly served upon Respondent a motion to compel the Veras to answer the subject interrogatories. Respondent did not respond to the motion. Therefore, on or about March 16, 2001, the Court in the Hamilton action issued an order compelling the Veras to answer the interrogatories. The plaintiff in the Hamilton action properly served Respondent with notice of the Court's order.

As stated above, Respondent never served the Veras' responses to the subject interrogatories. Therefore, on or about June 26, 2001, the plaintiff in the Hamilton action filed and properly served upon Respondent a motion seeking terminating sanctions against the Veras. Respondent did not respond to the motion. Therefore, on or about July 24, 2001, the Court in the Hamilton action issued an order striking the Veras' answer to the Hamilton complaint. The plaintiff in the Hamilton action properly served Respondent with notice of the Court's order.

On or about October 18, 2001, Respondent filed a motion seeking relief from the terminating sanction imposed upon the Veras. In that motion, Respondent accepted responsibility for the Veras' failure to respond to discovery. However, the Court denied the motion for relief.

Thereafter, the Veras terminated Respondent and employed new counsel to resolve the Hamilton action.

On or about March 22, 2002, the Veras filed a malpractice action against Respondent. That action resulted in a stipulated judgment against Respondent.

Legal Conclusions

By failing to serve the Veras' responses to Hamilton's interrogatories, respond to Hamilton's motion to compel or respond to Hamilton's motion for terminating sanctions, Respondent failed to perform the legal services for which he was employed, in wilful violation of rule 3-110(A) of the California Rules of Professional Conduct.

By failing to inform the Veras of the fact that he would not be able to practice law from October 22, 2000 to December 21, 2000, a period of time during which discovery in the Hamilton action would be ongoing, Respondent failed to keep his clients reasonably informed of significant developments in a matter with regard to which he had agreed to provide legal services, in wilful violation of Business and Professions Code, section 6068(m).

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY

The parties waive any variance between the Notice of Disciplinary Charges filed on January 6, 2005, and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

PENDING PROCEEDINGS

The disclosure date referred to, on page one, paragraph A.(6), was November 16, 2005.

DISMISSALS

The parties respectfully request that the Court dismiss the following alleged violations in the interest of justice:

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
03-O-00782	THREE	RPC 3-700(A)(2)
	FOUR	B&P 6068(o)(2)
	FIVE	B&P 6103
	SIX	B&P 6106

AUTHORITIES SUPPORTING STIPULATED DISCIPLINE

Standard 2.4(b) of the Standards For Attorney Sanctions For Professional Misconduct provides that a reproof or suspension is the appropriate discipline for the wilful failure to perform legal services where the misconduct does not demonstrate a pattern or involve a failure to communicate with a client. The degree of discipline also turns on the extent of the misconduct and degree of harm to the client.

Standard 2.6 (a) provides that culpability for violations of Business and Professions Code, section 6068 shall result in disbarment or suspension depending on the gravity of the offense or harm, if any, to the victim, with due regard to the purpose of imposing discipline as set forth in Standard 1.3.

Standard 1.3 provides that the primary purpose of discipline is the protection of the public, the courts and legal profession; maintenance of high professional standards; and the preservation of public confidence in the legal profession.

Standard 1.7(a) provides that where a respondent has suffered prior discipline, subsequent discipline shall be greater than the earlier discipline unless the earlier discipline is remote in time or minimal in severity.

Comment on Stipulated Discipline

As explained below, the gravamen of the misconduct addressed herein is similar in nature to, and occurred during the same time period as, the misconduct addressed in Respondent's January 2004 discipline in case number 02-O-11346.

Disciplinary case 02-O-11346 involved three client matters. The misconduct addressed in that case consisted of eight violations, involving rules 3-100(A), 3-700(A)(2) and (D)(1) of the Rules of Professional Conduct and section 6068(m) of the Business and Professions Code. The misconduct occurred from April 1999 to October 2002.

The discipline imposed in 02-O-11346 included a six months actual suspension.

As set forth above, this stipulation addresses one client matter and violations of rule 3-110(A) of the Rules of Professional Conduct and section 6068(m) of the Business and Professions Code. The rule 3-110(A) violation occurred from February 2001 to July 2001. The section 6068(m) violation occurred in or about October 2000.

The parties submit that discipline in this matter should be considered in terms of what this matter would have added to the discipline imposed in the prior matter had the two cases been consolidated. See In the Matter of Sklar, (Rev. Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602 at page 619.

The Supreme Court in Farnham v. State Bar (July 1976) 17 C.3d 605, imposed a six month actual suspension for respondent's failure to perform legal services, failure to communicate and engaging in the unauthorized practice of law in two client matters over a 14 month period of time. The respondent in Farnham had suffered a prior discipline of 30 days actual suspension.

Considering the within case and 02-O-11346 as one matter, Respondent has four client matters with misconduct occurring over a period of approximately 3 ½ years. Respondent also has three prior disciplines: two of 30 days actual suspension and one of 60 days actual suspension. Based upon the number of acts of misconduct, period of time over which the misconduct occurred and the prior record of discipline, the parties submit that a 12 month actual suspension in this matter is consistent with Farnham and the Standards For Attorney Sanctions For Professional Misconduct.

The parties further submit that the intent and goals of Standards 1.3 and 1.7(a) are met by the imposition of a 12 month actual suspension when Respondent's January 2004 discipline matter and the within matter are considered as a single period of misconduct involving four client matters.

AGGRAVATING CIRCUMSTANCE: RESPONDENT'S RECORD OF PRIOR DISCIPLINE

- 1.) Case number 02-O-11346
Effective February 11, 2004
Violations: RPC 3-110(A), RPC 3-700(A)(2) and RPC 3-700(D)(1), B&P 6068(m)
Discipline: Six months actual suspension, three years stayed suspension

- 2.) Case number 96-O-07376
Effective October 22, 2000
Violations: RPC 3-110(A), RPC 4-200 and B&P 6103
Discipline: 60 days actual suspension and until restitution is paid, two years stayed suspension

- 3.) Case number 95-O-11810
Effective November 14, 1998
Violations: B&P 6068(c) & (d)
Discipline: 30 days actual suspension, 18 months stayed suspension

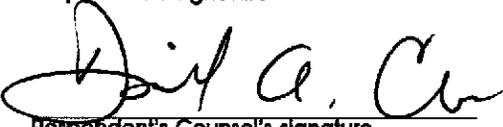
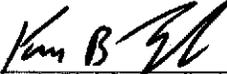
- 4.) Case number 93-O-10364
Effective August 12, 1995
Violations: RPC 4-100(A), 4-100(B) and B&P 6068(o)
Discipline: 30 days actual suspension, 12 months stayed suspension

(Do not write above this line.)

In the Matter of TIMOTHY LEE MC CANDLESS	Case number(s): 03-0-00782-RAP
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law and Disposition.

<u>11-16-05</u> Date	 Respondent's signature	<u>Timothy Lee McCandless</u> Print name
<u>11/21/05</u> Date	 Respondent's Counsel's signature	<u>David A. Clare</u> Print name
<u>11/22/05</u> Date	 Deputy Trial Counsel's signature	<u>Kevin B. Taylor</u> Print name

(Do not write above this line.)

In the Matter of TIMOTHY LEE MC CANDLESS	Case number(s): 03-O-00782-RAP
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

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

Page 6, F(3) - Delete Box Check.

Page 6, F(2) - Check Box.

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.)**

12/01/06
Date


RICHARD A. PLATEL
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 of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 6, 2005, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING**

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

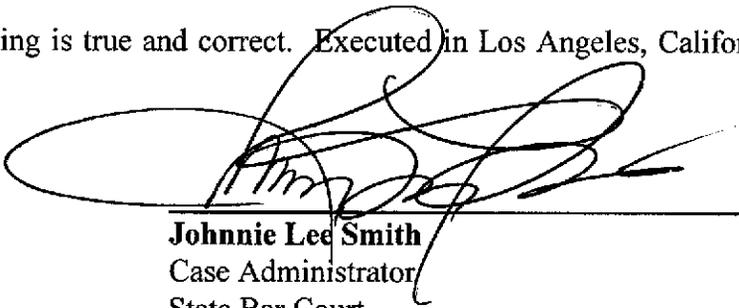
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DAVID ALAN CLARE
4675 MACARTHUR CT #1250
NEWPORT BEACH, CA 92660

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

KEVIN TAYLOR , Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 6, 2005.



Johnnie Lee Smith
Case Administrator
State Bar Court