



ORIGINAL

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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 Monique T. Miller, Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015 Tel.: (213) 765-1486 Bar # 212469	Case number(s) 05-J-03806	(for Court's use) <div style="text-align: center;"> FILED <i>MPS</i> FEB 03 2006 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent Robert James Ohlweiler 1901 First Ave., 217f San Diego, CA 92101 Tel.: (619) 234-0232 Bar # 117384	<div style="font-size: 2em; font-weight: bold;">PUBLIC MATTER</div>	
In the Matter of ROBERT JAMES OHLWEILER Bar # 117384 A Member of the State Bar of California (Respondent)	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 type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 February 5, 1981
(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 14 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:
2006 and 2007
(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."

(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.

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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.

(Do not write above this line.)

- (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 Two (2) 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:**

Respondent must be placed on probation for a period of Two (2) Years, which will commence upon the effective date of the Supreme Court order in this matter.
(See rule 953, Calif. Rules of Ct.)

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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 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 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: _____
- (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 checked="" 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: _____
- (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:**

In the Matter of ROBERT JAMES OHLWEILER
A Member of the State Bar Bar #117384

Case Number(s):
05-J-03806

Law Office Management Conditions

- a. Within ___ days/ ___ months/ ___ years of the effective date of the discipline herein, Respondent shall develop a law office management/ organization plan, which must be approved by respondent's probation monitor, or, if no monitor is assigned, by the Probation Unit. This plan must include procedures to send periodic reports to clients; the documentation of telephone messages received and sent; file maintenance; the meeting of deadlines; the establishment of procedures to withdraw as attorney, whether of record or not, when clients cannot be contacted or located; and, for the training and supervision of support personnel.
- b. Within ~~___ days/ ___ months~~ 1 years of the effective date of the discipline herein, respondent shall submit to the Probation Unit satisfactory evidence of completion of no less than 8 hours of MCLE approved courses in law office management, attorney client relations and/ or general legal ethics. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent shall not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. Within 30 days of the effective date of the discipline, respondent shall join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for ___ year(s). Respondent shall furnish satisfactory evidence of membership in the section to the Probation Unit of the Office of Chief Trial Counsel in the first report required.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ROBERT JAMES OHLWEILER

CASE NUMBER: 05-J-03806

PROCEDURAL BACKGROUND

This is a proceeding brought under Business and Professions Code section 6049.1 and Rules of Procedure of the State Bar of California 620 through 625.

FACTS AND CONCLUSIONS OF LAW.

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

1. Respondent, Robert James Ohlweiler, was admitted to the practice of law in California on February 5, 1985, and was a member at all times pertinent to these charges and is currently a member of the State Bar of California.
2. Respondent was an attorney licensed to practice law in Ohio and a member of the State Bar of Ohio at all times pertinent to these charges. Respondent's Ohio Bar Card Number is #0037651.

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3. On or about March 27, 2002, in the matter entitled *Stark County Bar Association, Relator, v. Robert James Ohlweiler, Respondent*, Case No. 01-1882, the Supreme Court of Ohio issued an Order on Certified Report by the Board of Commissioners on Grievances and Discipline that Respondent be suspended for two (2) years, stayed, with two (2) years probation under certain conditions, including a monitoring program with random testing by an alcohol treatment provider in California and refund of \$440 to Molly McNulty plus interest.
4. The March 27, 2002 Supreme Court Order was based upon the Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on

Grievances and Discipline of the Supreme Court of Ohio, filed on October 22, 2001. The findings of fact were as follows:

FACTS

- The McNulty Grievance: On or about July 31, 1995, Molly McNulty ("McNulty") retained Respondent to initiate a Chapter 7 bankruptcy proceeding. Between July 31 and October 30, 1995, McNulty paid Respondent a total amount of \$550 in advanced fees and costs. Following the October 30, 1995 payment, Respondent moved his office without notifying McNulty of a change of address. Respondent also failed to provide any legal services on behalf of McNulty and to communicate with her since October 31, 1995.
- The Gowens Grievance: Some time prior to June 1997, Suzette and Kevin Gowens (the "Gowens") paid Respondent \$675 to file a bankruptcy proceeding. Respondent failed to perform any legal services. Upon investigation and inquiry by the Stark County Bar Association, Respondent returned the Gowens' fees.
- The Parker Grievance: In or about May 1996, Trish Parker ("Parker") paid Respondent \$305 to file a bankruptcy proceeding. Thereafter, Respondent moved his office without notifying Parker of a change of address. Respondent also failed to provide any legal services on behalf of Parker. Upon investigation and inquiry by the Stark County Bar Association, Respondent returned Parker's fees.
- The Miller Grievance: In or about 1996, Jamie C. Miller ("Miller") paid Respondent \$560 to file a bankruptcy proceeding. Thereafter, Respondent failed to provide any legal services on behalf of Miller and to respond to Miller's calls. Upon investigation and inquiry by the Stark County Bar Association, Respondent returned Miller's fees. Respondent informed the Stark County Bar Association that he was not in practice anymore.
- The Winters Grievance: In or about 1995, Jennifer L. Winters ("Winters") paid Respondent \$250 to file a bankruptcy proceeding. Thereafter, Respondent failed to provide any legal services on behalf of Winters. Upon investigation and inquiry by the Stark County Bar Association, Respondent returned Winters' fees. Respondent informed the Stark County Bar Association that he was no longer actively practicing law.
- The Starkey Grievance: In or about April 1996, Patrick Starkey ("Starkey") retained Respondent to file a bankruptcy proceeding. Between April 1996 and February 1997, Starkey paid Respondent a total amount of \$565. Thereafter,

Respondent failed to provide any legal services on behalf of Starkey. Upon investigation and inquiry by the Stark County Bar Association, Respondent returned Starkey's fees.

CONCLUSIONS OF LAW

- By failing to provide legal services on behalf of McNulty, the Gowens, Parker, Miller, Winters, and Starkey, Respondent neglected legal matters entrusted to him in violation of the Ohio Code of Professional Responsibility's Disciplinary Rules ("DR") DR 6-101(A)(3).
- By failing to carry out contracts of employment entered into with clients for professional services, Respondent violated DR 7-101(A)(2).

AGGRAVATING CIRCUMSTANCE

Respondent failed to report the Ohio Supreme Court Discipline to the California Supreme Court, even though the October 22, 2001 Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio documented Respondent's recognition of his obligation to do so.

Respondent's failure to self-report to the California Supreme Court pursuant to a court order violates California Business and Professions Code section 6068(o)(3).

OTHER CIRCUMSTANCES

Respondent has fulfilled the conditions of his probation as ordered by the Supreme Court of Ohio by participating in a two-year monitoring program that included random testing by an alcohol treatment provider in California and refunding \$440 to Molly McNulty plus interest.

AUTHORITIES SUPPORTING DISCIPLINE.

Standards of Attorney Sanctions for Professional Misconduct, Title IV, of the Rules of Procedure of the State Bar of California (hereinafter "Standard(s)").

Standard 2.4 states that the wilful failure to perform services in an individual matter or matters not demonstrating a pattern of misconduct or the wilful failure 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(a) calls for suspension or disbarment for violation of any subdivision of Business and Professions Code section 6068.

Case Law

In *Matthew v. State Bar* (1989) 49 Cal. 3d 784, the attorney has been retained on two separate occasions by clients to perform legal services, had not completed the services, and had not returned unearned fees. On a third occasion, the attorney took four years to complete the preparation of a living trust. The court imposed a stayed suspension of three years with 60 days actual suspension.

In *Smith v. State Bar* (1985) 38 Cal. 3d 525, the attorney was found culpable of multiple violations stemming from two client matters, including failure to perform, failure to communicate, retaining unearned fees, and failure to obey court orders. The court imposed a 180 day suspension with 30 days actual.

In *In the Matter of Varakin* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 179, "the Legislature has specified that an attorney's failure to make a report required by . . . section 6068(o) may serve as a basis for discipline."

In *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 349, "Section 6049.1(b)(1) . . . makes . . . clear that the degree of discipline remains an issue to be determined under California law." "Section 6049.1 is not a 'like discipline' statute but rather requires that discipline be decided anew in this state based on all relevant factors."

AGREEMENTS AND WAIVERS PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6049.1.

- Respondent acknowledges that he has been disciplined in the State of Ohio for acts that would warrant discipline by the State Bar of California under the laws or rules binding upon members of the State Bar at the time he committed misconduct in Ohio. Respondent acknowledges that his conduct in Ohio, if charged by the State Bar of California, would have resulted in a finding of culpability for violation of Rules of Professional Conduct 3-110(A), Failure to Perform Competently, and 3-700(A)(2), Improper withdrawal.
- The proceeding in the above jurisdiction provided Respondent with fundamental constitutional protection.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of December 2, 2005, the estimated prosecution costs in this matter are approximately \$1,983.00. 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.

PENDING PROCEEDINGS.

As of December 20, 2005, the disclosure date referred to, on page one, paragraph A.(7), there are no other pending matters against Respondent.

(Do not write above this line.)

In the Matter of ROBERT JAMES OHLWEILER Bar #117384	Case number(s): 05-J-03806
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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.

1-11-06
Date


Respondent's signature

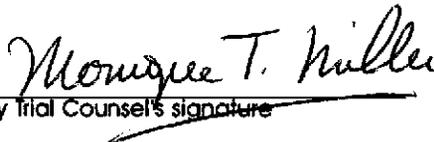
ROBERT JAMES OHLWEILER
Print name

Date

Respondent's Counsel's signature

Print name

January 12, 2006
Date


Deputy Trial Counsel's signature

MONIQUE T. MILLER
Print name

(Do not write above this line.)

In the Matter of ROBERT JAMES OHLWEILER	Case number(s): 05 J 03806 RAH
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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.

In paragraph A(8), replace the dates listed with "2007 and 2008."

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.)**

Date

2/2/06


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 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 February 3, 2006, 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:

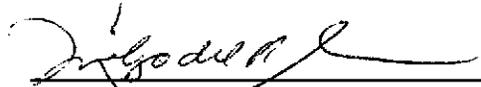
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ROBERT JAMES OHLWEILER
1901 FIRST AVENUE, 217F
SAN DIEGO, CA 92101**

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

Monique Miller, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **February 3, 2006.**



Milagro del R. Salmeron
Case Administrator
State Bar Court