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State Bar Court of California
Hearing Department
Los Angeles

Counsel For The State Bar Jean Cha. Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 Bar # 228137	Case Number (s) 05-0-01296 05-0-01851	(for Court's use) <div style="text-align: center;">FILED</div> <div style="text-align: center;">SEP 11 2006</div> <div style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
In Pro Per Respondent Paul A. Capritto 1115 Garden St. Santa Barbara, CA 93101 Bar # 91853	<div style="text-align: center;">PUBLIC MATTER</div> <div style="text-align: center;">NOT FOR PUBLICATION</div>	
In the Matter Of: PAUL A. CAPRITTO Bar # 91853 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING PRIVATE REPROVAL <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 **May 30, 1980**.
- (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 consists of **13** pages, not including the order.
- (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.

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Reproval



(Do not write above this line.)

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

- costs added to membership fee for calendar year following effective date of discipline (public reproof)
 case ineligible for costs (private reproof)
 costs to be paid in equal amounts 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

(9) The parties understand that:

- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
- (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
- (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Reproof

(Do not write above this line.)

- (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.
- (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:

N/A

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.

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004.)

Reproval

(Do not write above this line.)

- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

See page 10; Attachment to Stipulation - Mitigating Circumstances

D. Discipline:

- (1) **Private reproof (check applicable conditions, if any, below)**
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproof:

- (1) Respondent must comply with the conditions attached to the reproof for a period of **One Year**.
- (2) During the condition period attached to the reproof, 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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 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 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 conditions attached to the reproof.
- (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.

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- (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 conditions attached to the reprobation.
- (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) 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 within one year of the effective date of the reprobation.
- No MPRE recommended. Reason: **Private Reproval.**
- (11) 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:

None.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: PAUL A. CAPRITTO

CASE NUMBER: 05-O-01296; 05-O-01851-RAH

JURISDICTION

Paul A. Capritto (Respondent) was admitted to the practice of law in the State of California on May 30, 1980, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California and Business and Professions Code.

GENERAL BACKGROUND

Respondent admits that the following facts are true and that he is culpable of violations of the specified Rule of Professional Conduct.

Case No. 05-O-01296 (Garner Matter)

1. On November 16, 2003, Suzan Garner (Garner) employed Respondent on an hourly fee basis to obtain a modification of child support (the modification matter) paid by Curtis Ronci (Ronci), the father of their son, who was represented by attorney Donald Briggs (Briggs).
2. On December 9, 2003, Respondent filed a Notice of Motion for Modification of Child Support on behalf of Garner in *Curtis Ronci v. Suzan Garner*, Santa Barbara Superior Court, case no. 1131763 (the child support action).
3. On December 11, 2003, Garner paid Respondent \$5,000 in advanced legal fees in the modification matter.
4. On June 21, 2004, the court issued its tentative findings and ruling in favor of Garner in the child support action ordering Ronci to pay Garner \$542 a month in child support. The court ordered Respondent to prepare and submit an order consistent with the court's tentative findings and rulings.
5. On June 28, 2004, Respondent faxed Garner a copy of the court's tentative ruling in the child support action.

6. On July 5, 2004, Respondent sent Briggs a proposed Findings and Order in the child support action.

7. On July 15, 2004 and August 2, 2004, Briggs wrote Respondent noting an error in the court's calculation regarding the child support payment.

8. The court relied on the family law dissomaster program but entered an incorrect mathematical calculation and an error occurred which affected the child support amount.

9. Respondent did not respond in writing to Briggs because Garner did not want to stipulate to the correction. In an electronic message dated August 24, 2004 responding to Ronci's request to correct the miscalculation, Garner invited Ronci to seek modification of the calculation in the family law court.

10. On August 24, 2004, Briggs filed a motion asking the court to correct its June 21, 2004 tentative findings and reduce the amount of child support from \$542 to \$441 based on the calculation error and asked the court to award \$750 in attorney fees. Briggs served Respondent with the motion. Respondent did not inform Garner that a motion to correct the court's tentative findings had been filed pursuant to his interpretation of section 215 of the Family Code of the State of California as well as relevant case law. Respondent did not respond to the motion on Garner's behalf nor did he tell her that he did not respond.

11. In the first week of September 2004, Respondent, as was his informal practice in similar circumstances, called the family law judge's secretary, advised that the service was improper, and assumed that the hearing would be taken off calendar as a result of defective service.

12. On September 22, 2004, the court held the hearing regarding the motion to correct the court's findings. Based on Respondent's assumptions about the improper service and his call to the court's secretary that service was not proper and to take the matter off calendar, Respondent did not appear. The court granted Ronci's motion to correct the error and reduced the amount of child support in accordance with the corrected calculation and awarded \$750 in attorney fees to Ronci.

13. On September 24, 2004, Briggs wrote Respondent informing him that the monthly child support had been corrected to the \$441 amount and enclosed a proposed order after hearing for Respondent's review and signature.

14. On September 28, 2004, Respondent informed Briggs that the September 22, 2004 court order was invalid because Briggs did not personally serve Garner with the motion according to section 215 of the Family Code. Section 215 pertains to post judgment requests to modify and must be personally served on the opposing party rather than opposing counsel. This letter was

faxed to Garner. Respondent did not inform Garner of the findings of the September 22, 2004 hearing until September 28, 2004, the date that Respondent became aware of the court's findings and that the hearing was not in fact taken off calendar.

15. On September 30, 2004, Briggs responded to Respondent's September 28, 2004 letter by disagreeing with Respondent's position regarding the applicability of the section 215 and noted that the June 21, 2004 court order was a tentative ruling rather than a final order and did not have to be personally served on Garner. Briggs informed Respondent that he would submit the proposed order after hearing to the court for approval with a declaration setting forth the history of the child support action.

16. On October 1, 2004, the court received an order entitled Findings and Order After Hearing and an order entitled Findings, Rulings, and Order After Hearing.

17. On October 5, 2004, the court signed the Findings and Order After Hearing submitted by Briggs. On October 6, 2004, the order was filed with the court in the child support action. Pursuant to the order filed on October 6, 2004, Garner was ordered to pay \$750 in attorney fees and Ronci was required to pay \$441 in child support. Respondent did not inform Garner of these findings.

18. Beginning with the November 2004 child support payment, Ronci began paying \$441 instead of \$542, which he had commenced paying in July 2004.

19. Garner contacted Respondent. For purposes of this stipulation only, resolving doubts in favor of the Respondent, there is sufficient basis to believe that Respondent made telephonic responses. He failed to memorialize them or to counter Garner's written claim that he was not communicating with her.

20. By failing to inform Garner that Briggs had filed a motion to correct the court's June 21, 2004 ruling on August 24, 2004, respond to Briggs's motion, appear at the September 22, 2004 hearing on behalf of Garner, Respondent intentionally failed to perform legal services with competence in wilful violation of Rules of Professional Conduct, rule 3-110(A).

21. Respondent failed to keep Garner reasonably informed of significant developments from August 24, 2004 through September 28, 2004 in a matter in which Respondent had agreed to provide legal services in wilful violation of Business and Professions Code section 6068(m).

PENDING PROCEEDINGS

The disclosure date referred to, on page one, paragraph A.(7), was August 31, 2006.

DISMISSALS

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

<u>Case No.</u>	<u>Count</u>	<u>Alleged Violation</u>
05-O-01296	Three	Business and Professions Code section 6068(m)
05-O-01851	Four	Rules of Professional Conduct rule 3-110(A)
05-O-01851	Five	Business and Professions Code section 6068(m)
05-O-01851	Six	Business and Professions Code section 6103

STATE BAR ETHICS SCHOOL

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, Respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School. (See paragraph E.(8) at page 6, *supra*.)

MITIGATING CIRCUMSTANCES

There was no ultimate harm to Garner. (Standard 1.2(e)(iii).) California family law courts order child support based upon calculations factoring percentage of child custody and each parent's ability to support the child. The results in the Garner/Ronci matter were determined by law. There was a delay and additional attorney's fee accrued as a natural progression of the proceedings. Respondent did perform work for Garner in that there was a modification of child support in her favor. Prior to the modification, Garner was receiving no support.

Respondent understands that an alternative would have been to object to jurisdiction based upon his belief service was defective.

Respondent has provided the State Bar with a detailed explanation, statutes, case law and documentation regarding his conduct and the thinking which led to the specific actions he took in the case. (Standard 1.2(e)(v).) He recognizes and is appreciative of the nature of his conduct that he will now specially appear where section 215 issues arise. He understands that it is often necessary and otherwise good practice to respond to his clients and to third parties, in writing. (Standard 1.2(e)(v).)

Respondent spontaneously demonstrated remorse and recognition of wrongdoing. (Standard 1.2(e)(vii).) Respondent has revisited the formal approach to confirming future appearances through the revised office policy. Respondent has demonstrated that proper procedures have been implemented to avoid recurrence of the misconduct.

ANALYSIS

The Standards for Attorney Sanctions for Professional Misconduct provide guidance in determining the appropriate degree of discipline to be recommended,¹ are not mandatory sentencing guidelines, and are applied in a non-talismanic fashion from which the Supreme Court will generally not depart unless there is a compelling reason.²

For the present misconduct it is appropriate to consider reproof or suspension based on the extent of the misconduct and the degree of harm to the client. (Standard 2.4(b).) In order to properly fulfill the purposes of lawyer discipline, we must review the nature and extent of Respondent's disciplinary record in balanced consideration of the relevant factors; a myriad of mitigation and an absence of aggravation.³

In *In the Matter of Respondent G* (1992) 2 Cal. State Bar Ct. Rptr. 175, an attorney neglected a client in a probate case, which resulted in the client suffering three years accumulated interest and penalties on unpaid inheritance taxes. Although the attorney received notices regarding inheritance tax owed by his client Alice B., he failed to notify her until after the third notice. The attorney agreed to pay the accrued interest attributable to this oversight. Thus it was found that he failed to perform competently and failed to communicate. Mitigating factors included a lack of prior discipline, his candor and cooperation, the isolated nature of his misconduct, his recent voluntary participation in the State Bar's course on ethics, and his improvement in his office procedures to prevent recurrence of the misconduct. No aggravating factors were found. As a result, the review department ordered that the attorney be privately reproofed, and as a condition of his reproof, he was ordered to make restitution within three months.

Sufficient mitigating circumstances exist in the present matter to warrant a private reproof as in the review department's findings in *In the Matter of Respondent G*.

The conduct in this instance appears to be sufficiently aberrational to warrant a private reproof thus preserving the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession. (Standard 1.3.)

¹ *In the Matter of Taylor* (Review Dept. 1991) 1 Cal State Bar Ct. Rptr. 563, 580.

² *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404; *In the Matter of Stamper* (Review Dept. 1990) 1 Cal State Bar Ct. Rptr. 96.

³ *Greenbaum v. State Bar* (1976) 15 Cal.3d 893, 904; *Bernstein v. State Bar* (1972) 6 Cal.3d 909, 919.

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In the Matter of PAUL A. CAPRITTO	Case number(s): 05-0-01296; 05-0-01851
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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 Fact, Conclusions of Law and Disposition.

8/31/06
Date


Respondent's Signature

PAUL A. CAPRITTO
Print Name

Date

Respondent's Counsel Signature

Print Name

8/31/06
Date


Deputy Trial Counsel's Signature

JEAN CHA
Print Name

(Do not write above this line.)

In the Matter of PAUL A. CAPRITTO	Case number(s): 05-0-01296; 05-0-01851
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ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

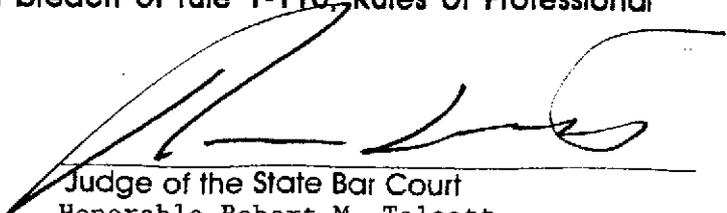
- The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

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 125(b), Rules of Procedure.) Otherwise the stipulation shall be effective 15 days after service of this order.

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date

9-8-06


Judge of the State Bar Court
Honorable Robert M. Talcott

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 September 11, 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:

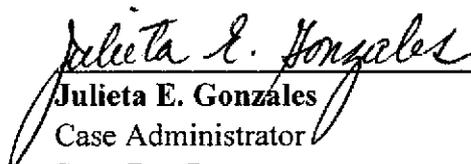
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**PAUL A CAPRITTO ESQ
1115 GARDEN ST
SANTA BARBARA, CA 93101**

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

Jean H. Cha, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **September 11, 2006**.



Julieta E. Gonzales
Case Administrator
State Bar Court