



ORIGINAL

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~~CONFIDENTIAL~~

State Bar Court of California Hearing Department <input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> San Francisco PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND MENTAL HEALTH ISSUES		
Counsel for the State Bar BROOKE A. SCHAFER Deputy Trial Counsel 1149 South Hill Street Los Angeles, CA 90015 (213) 765-1051 Bar # 194824	Case Number(s) 04-O-10521; 04-O-15214; 05-O-00018	(for Court use) <div style="text-align: center;"> LODGED <i>MDS</i> OCT - 4 2006 STATE BAR COURT CLERK'S OFFICE LOS ANGELES FILED OCT 19 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
PUBLIC MATTER		
<input checked="" type="checkbox"/> Counsel for Respondent <input type="checkbox"/> In Pro Per MICHAEL G. GERNER 10100 SANTA MONICA BLVD. SUITE 300 LOS ANGELES, CALIFORNIA 90067 (310) 772-2207 Bar # 65906	Submitted to Program Judge STIPULATION RE FACTS AND CONCLUSIONS OF LAW <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of MATTHEW P. TODD Bar # 133023 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 January 4, 1988 (date)
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition (to be attached separately) are rejected or changed by the Supreme Court. However, if Respondent is not accepted into the Lawyer Assistance Program, this stipulation will be rejected and will not be binding on Respondent or the State Bar.
- (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, except for Probation Revocation Proceedings. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation and order consists 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."

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- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§ 6086.10 & 6140.7 and will pay timely any disciplinary costs imposed in this proceeding.

B. Aggravating Circumstances [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 01-O-03426; et al.
- (b) Date prior discipline effective 12/25/03
- (c) Rules of Professional Conduct/State Bar Action violations RPC 4-100(A)
- (d) Degree of prior discipline Thirty (30) Days Actual; Twelve (12) Months Stayed; Twelve (12) Months Probation
- (e) If Respondent has two or more incidents of prior discipline, use space provided below or under "Prior Discipline" (above)
- (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 the victims of his/her misconduct or the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrong doing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances are involved.**

Additional aggravating circumstances:

See attached.

(Do not write above this line.)

C. Mitigating Circumstances [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 to 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 of 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 were directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drugs 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:

1 **Attachment to Alternate Discipline Program Stipulation re:**
2 **Facts and Conclusions of Law**
3 ***In re Matthew P. Todd***

3 Case nos. 04-O-15214, 05-O-00018 and 04-O-10521

4 **I. JURISDICTION**

5 1. Respondent, Matthew P. Todd, bar no. 133023, was admitted to the
6 practice of law California on January 4, 1988, and since that time has been a
7 member of the State Bar of California.

8 **II. STATEMENT OF ACTS OR OMISSIONS ACKNOWLEDGED BY**
9 **RESPONDENT AS CAUSE OR CAUSES FOR DISCIPLINE, AND**
10 **CONCLUSIONS OF LAW**

11 **Case no. 04-O-15214 (Crockett matter)**

12 2. In February 2002 David Crockett hired Respondent to represent him
13 in a marital separation action, nine days after Crockett had been served with the
14 petition. Respondent knew of the filing deadline. Crockett paid Respondent
15 \$1500.00 in advance fees up front, and another \$1500.00 in advance fees later in
16 their professional relationship.

17 3. Respondent did not file an answer to the summons and petition until
18 April 16, 2002, after the deadline to file. The court, however, had already
19 entered a default, requested by petitioner on April 10, 2002, but had sent notice
20 to Crockett rather than Respondent as Respondent had not appeared until after
21 default was taken. The court's notice of default was served on Crockett by mail
22 in mid-May 2002, after Crockett had left the state; the address used by the court
23 was by that time no good. Thus, at the time Respondent was not aware default
24 had been requested or taken.

25 4. Moreover, based on Respondent's notes at the time, both he and
26 opposing counsel thought as of May 8, 2002, that default had not been entered
27 due to Respondent's filing of the answer the previous April 16th. Thus both

1 sides proceeded with the litigation.

2 5. Crockett moved out of California in mid-May 2002. He provided two
3 addresses to Respondent, one in Oklahoma and one in Michigan, where he could
4 be reached and/or mail could be sent. In July 2002 Crockett provided an email
5 address as well.

6 6. Opposing counsel propounded discovery in June 2002. The
7 discovery went unanswered, mostly because Crockett did not provide
8 Respondent the necessary information to answer it. In July and August 2002
9 Respondent tried on several occasions to reach his client. The last
10 communication attempt by Respondent to Crockett was in August 2002.

11 7. After August 2002, neither opposing counsel nor Crockett were able
12 to reach Respondent about Crockett's dissolution matter. Opposing counsel sent
13 several letters to Respondent in late summer and early fall 2002. In January
14 2003 opposing counsel filed a request for default setting/prove-up hearing, and
15 notified Respondent.

16 8. The default prove-up hearing was held in February 2003. Although
17 Respondent received notice of the hearing, he did not attend. The prove-up
18 hearing was based entirely on Crockett's wife's testimony.

19 9. After the judgment in the prove-up hearing, the court mailed a notice
20 of entry of judgment to Respondent in February 2003. In addition, opposing
21 counsel mailed a copy of the judgment at the same time. Respondent received
22 the notice of entry of judgment.

23 10. Respondent never informed Crockett that a judgment had been
24 entered against him. Crockett did not find out about the judgment until January
25 2004, when the Department of Defense advised Crockett that his military
26 pension benefits would be attached to comply with the court order.

27 11. Crockett made many attempts to reach Respondent. These included:

1 letters in October 2002 and April 2003 and telephone calls in September 2003
2 and February 2004. The April 2003 letter was returned as undeliverable even
3 though it was sent to an address Respondent had provided Crockett. The
4 February 2004 telephone call involved a message left on Respondent's
5 voicemail, on a new number in Canoga Park that Crockett was able to locate,
6 following Respondent's office move. Respondent at no time responded to
7 Crockett's letters or telephone calls.

8 12. At no time after August 2002 did Respondent communicate with
9 Crockett. In all pertinent respects, Respondent abandoned Crockett after that
10 time. Respondent did not inform Crockett of new contact information as he
11 moved, nor did he at any time take steps to withdraw from representation to
12 avoid reasonably foreseeable prejudice to his client.

13 13. Respondent provided no services of any value to Crockett, and as
14 such earned none of the \$3000.00 in advance fees.

15 14. After the State Bar opened an investigation into potential misconduct
16 in this matter, the State Bar investigator properly requested information in
17 writing in December 2004 and again in February 2005. At no time did
18 Respondent make any response, even though he received the requests for
19 information.

20 Conclusions of law – case no. 04-O-15214

21 – By failing to appear at the default prove-up hearing; by failing to notify
22 his client of the prove-up judgment after the hearing; by failing to notify his
23 client, opposing counsel and the court of his new address and contact
24 information when he moved offices; by failing to withdraw if he no longer had
25 the cooperation of his client; and by failing to respond to Crockett's requests for
26 information, Respondent repeatedly failed to perform legal services with
27 competence, in wilful violation of rule 3-110(A), Rules of Professional Conduct.

1 – By not responding timely to written requests for information in a State
2 Bar investigation, Respondent wilfully failed to cooperate in a disciplinary
3 investigation, in wilful violation of Business and Professions Code, section
4 6068(i).

5 **Case no. 05-O-00018 (Probation Violation)**

6 15. On May 6, 2003, Respondent stipulated to professional misconduct
7 in a State Bar proceeding under case nos. 01-O-03426 et al. On July 3, 2003,
8 State Bar Court approved the Stipulation and transmitted its recommendation to
9 the Supreme Court of California. The Stipulation included level of discipline
10 and certain enumerated probation conditions. Respondent was aware of the
11 Stipulation's contents and was served with the Stipulation by State Bar Court at
12 the same time it was transmitted to the Supreme Court.

13 16. On November 25, 2003, the California Supreme Court filed order
14 number S118760 (State Bar Court cause nos. 01-O-03426 et al.) (The "Order").
15 The Order provided that Respondent be actually suspended for 30 days, that he
16 received 12 months' stayed suspension and 12 months' probation upon certain
17 probation conditions.

18 17. The Order became effective 30 days after filing, on December 25,
19 2003. Meanwhile, on December 4, 2003, a deputy employed by the State Bar's
20 Office of Probation wrote to Respondent, again reminding him of the terms and
21 conditions of his discipline and probation imposed in the Order.

22 18. Among the probation conditions imposed by the Order were that
23 Respondent: (1) would file quarterly reports with the Office of Probation each
24 January 10, April 10, July 10 and October 10 of the period of probation, each
25 quarterly report to contain certain enumerated information; (2) would file a final
26 report with the Office of Probation during the final twenty days of his probation
27 period; (3) would provide proof of completion of the State Bar Ethics School to

1 the Office of Probation within one year of the effective date of the Order; and (4)
2 would provide proof of completion of the State Bar Client Trust Accounting
3 School to the Office of Probation within one year of the effective date of the
4 Order.

5 19. Respondent failed to comply with the probation conditions imposed
6 by the Order in several respects. He failed to file the first quarterly report that
7 was due on April 10, 2004. The Office of Probation sent him a letter on May 7,
8 2004, advising him that he had missed the due date for his first quarterly report
9 and asking that he immediately submit it.

10 20. Respondent filed the first quarterly report late, on May 24, 2004.

11 21. Another quarterly report was due on July 10, 2004. However,
12 Respondent filed this quarterly report late as well, on July 21, 2004.

13 22. Another quarterly report was due on October 10, 2004. However,
14 Respondent also filed this report late, on December 8, 2004.

15 23. In addition, Respondent did not submit proof that he attended State
16 Bar Ethics School or Client Trust Accounting School by December 25, 2004.

17 24. As of December 16, 2004, Respondent had no current telephone
18 number listed with the Membership Records Office or with the Office of
19 Probation, as on that date someone at the Office of Probation attempted to call
20 Respondent at this registered number but it was no longer valid.

21 25. Respondent never filed with Office of Probation the final report
22 which was due on December 25, 2004.

23 26. Respondent completed the State Bar Ethics School and the Client
24 Trust Accounting School in February 2006, over a year late.

25 Conclusion of law – case no. 05-O-00018

26 – By the untimely filing of three quarterly reports, by not filing the final
27 report to probation at all, by not attending State Bar Ethics School until February

1 2006, by not attending State Bar's Client Trust Accounting School until
2 February 2006, and by not updating his contact information, all of which were
3 terms of his disciplinary probation, Respondent wilfully violated Business and
4 Professions Code section 6068(k).

5 **Case no. 04-O-10521 (Zaferis matter)**

6 26. Christopher Zaferis hired Respondent in December 2000 to represent
7 him in a personal injury action, on a contingency basis.

8 27. Zaferis settled his personal injury matter in October 2002 for
9 \$37,500.00. The settlement check was made out to Zaferis and Respondent, and
10 Respondent deposited it into his client trust account in November 2002.

11 28. In November 2002, after subtracting 40% of the recovery for his
12 fees, Respondent gave Zaferis partial payment of \$11,377.81 and gave one
13 lienholder on Zaferis' behalf \$290.04. Thus Respondent was to maintain the
14 balance of approximately \$10,832.15 in his client trust account on his client's
15 behalf pending final distribution.

16 29. In May 2003 Zaferis received a demand from a collection agency
17 demanding payment for medical costs. Zaferis negotiated this amount down to
18 \$2000.00 and instructed Respondent to pay this amount out of the client trust
19 account, which Respondent did that month. In July 2003 Respondent gave
20 Zaferis a cashier's check in the amount of \$3000.00, representing another partial
21 distribution.

22 30. In November 2003, Respondent assured Zaferis that the remainder of
23 his settlement would be mailed to him within one day. To date, however, this
24 money has not been forthcoming.

25 31. With respect to Respondent's client trust account, although he was
26 required to maintain over \$10,800.00 on Zaferis' behalf between December 20,
27 2002, and April 30, 2003, at all such times the balance in that account was below

1 that amount. For example, on April 30, 2003, the balance in the client trust
2 account was only \$634.91. Respondent, acting with gross negligence,
3 misappropriated approximately \$10,100.00 of Zaferis' settlement money during
4 that time.

5 32. Zaferis is owed the remainder of his settlement, \$5832.15, which has
6 never been paid.

7 Conclusions of law – case no. 04-O-10521

8 – By not maintaining at least \$10,832.15 in his client trust account,
9 Respondent wilfully failed to maintain client funds received for the benefit of a
10 client in a bank account labeled “trust account,” “client’s funds account” or
11 words of similar import, in wilful violation of rule 4-100(A), Rules of
12 Professional Conduct.

13 – By misappropriating approximately \$10,100.00 of Zaferis' settlement
14 money, and by not paying Zaferis the remaining \$5832.15 owed to him since
15 2003, Respondent committed acts involving moral turpitude, in wilful violation
16 of Business and Professions Code section 6106.

17 **III. ADDITIONAL AGGRAVATING FACTORS**

18 Prior Misconduct

19 In addition to that misconduct described in section B, page 2, of the
20 stipulation, Respondent has the following prior discipline:

21 Case nos. 95-O-11336 & 96-H-03618

22 Violation of RPC 1-110 and 3-110(A). Received one year stayed
23 suspension, effective September 1998.

24 Case nos. 93-O-12247 & 94-O-13613

25 Violation of RPC 3-700(D)(1) and 5-200, B&PCode section 6068(d) &
26 (m). Private reproof effective June 1995.

1 **IV. ADDITIONAL MITIGATING FACTORS**

2 Remorse

3 Following the misconduct described herein, Respondent realized that it
4 was better for him not to be taking clients. He closed his law practice, and is no
5 longer practicing law but working in the insurance field. Currently he is saving
6 money for restitution to his former clients.

7 Family Problems

8 During and leading up to the misconduct, Respondent's marriage broke
9 apart, resulting in divorce. Respondent was left with care and custody of minor
10 children, including a disabled son who required special care and a great amount
11 of attention.

12 **V. RESTITUTION**

13 (1) David Crockett, \$3000.00 plus interest from January 1, 2003.

14 (2) Christopher Zaferis, \$5832.15, plus interest from July 1, 2003.

15 **VI. RULE 133(12) NOTIFICATION OF PENDING MATTERS**

16 Respondent was notified by writing dated May 18, 2006, of any matters
17 not included in this stipulation.

18 */// End of Attachment ////*

(Do not write above this line.)

In the Matter of MATTHEW P. TODD Member #: 133023	Case number(s): 04-O-10521; 04-O-15214; 05-O-00018
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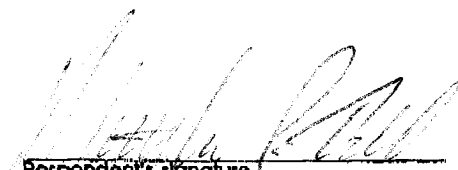


SIGNATURE OF THE PARTIES

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 and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, upon Respondent's successful completion of or termination from the Program, this Stipulation will be filed and the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Statement Re: Discipline shall be imposed or recommended to the Supreme Court.

Date <u>5/18/06</u>	 Respondent's signature	MATTHEW P. TODD Print name
Date <u>5-18-06</u>	 Respondent's Counsel's signature	MICHAEL G. GERNER Print name
Date <u>May 19, 2004</u>	 Deputy Trial Counsel's signature	BROOKE A. SCHAFER Print name

(Do not write above this line.)

In the Matter of MATTHEW P. TODD	Case number(s): 04 O 10521 RAH 04 O 15214 RAH 05 O 00018 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:

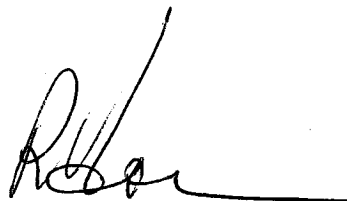
- The stipulation as to facts and conclusions of law is APPROVED.
- The stipulation as to facts and conclusions of law is APPROVED AS MODIFIED as set forth below.
- All Hearing dates are vacated.

On page 11 of the stipulation, lines 13 and 14, "plus interest" is deleted and "plus 10% interest per annum accruing" is inserted in its place. The remainder of lines 13 and 14 remain unchanged.

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; or 3) Respondent is not accepted for participation in the Program or does not sign the Program Contract. (See rule 135(b) and 802(d), Rules of Procedure.)

Oct. 10, 2006

Date



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 October 12, 2006, I deposited a true copy of the following document(s):

STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDERS;

STIPULATION RE FACTS AND CONCLUSIONS OF LAW;

**CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR COURT'S
ALTERNATIVE DISCIPLINE PROGRAM;**

**ORDER ENROLLING RESPONDENT INVOLUNTARILY INACTIVE PURSUANT
TO BUSINESS AND PROFESSIONS CODE SECTION 6233; FURTHER ORDERS**

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

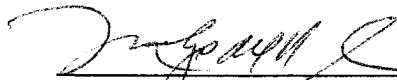
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**MICHAEL GALEN GERNER
MICHAEL G GERNER, A PROF
LAW CORP
10100 SANTA MONICA BLVD
#300
LOS ANGELES, CA 90067**

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

Brooke Schafer, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **October 12, 2006.**



Milagro del R. Salmeron
Case Administrator
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 April 25, 2008, I deposited a true copy of the following document(s):

STATEMENT OF ALTERNATIVE DISPOSITIONS AND ORDERS;

STIPULATION RE FACTS AND CONCLUSIONS OF LAW;

CONTRACT AND WAIVER FOR PARTICIPATION IN THE STATE BAR COURT'S ALTERNATIVE DISCIPLINE PROGRAM;

ORDER ENROLLING RESPONDENT INVOLUNTARILY INACTIVE PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 6233; FURTHER ORDERS

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

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

**MATTHEW P. TODD ESQ
LAW OFC MATTHEW P TODD
904 SILVER SPUR RD
ROLLING HILLS ESTATES, CA 90274 - 3800**

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

Brooke Schafer, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **April 25, 2008.**



Charles Nettles
Case Administrator
State Bar Court