

State Bar Court of California
Hearing Department
Los Angeles

PUBLIC MATTER

Counsel For The State Bar Eli D. Morgenstern Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015-2212 Telephone (213) 765-1334 Bar # 190560	Case Number (s) 05-O-03399	(for Court's use) FILED MAR 21 2007 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In Pro Per Respondent John R. Schiro 12522 Moorpark Street, Suite 107 Stuido City, CA 91604 Telephone (818) 980-7888 Bar # 86394	Submitted to: Assigned Judge	
In the Matter Of: JOHN R. SCHIRO Bar # 86394 A Member of the State Bar of California (Respondent)	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 **May 31, 1979**.
- (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 **11** 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."



In the Matter of

Case number(s): 05-0-03399

JOHN R. SCHIRO

A Member of the State Bar

NOLO CONTENDERE PLEA TO STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION

Bus. & Prof. Code § 6085.5 Disciplinary Charges; Pleas to Allegations

There are three kinds of pleas to the allegations of a Notice of Disciplinary Charges or other pleading which initiates a disciplinary proceeding against a member:

- (a) Admission of culpability.
- (b) Denial of culpability.
- (c) **Nolo contendere, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere shall be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court shall find the member culpable. The legal effect of such a plea shall be the same as that of an admission of culpability for all purposes, except that the plea and any admission required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based. (Added by Stats. 1996, ch. 1104.) (emphasis supplied)**

Rule 133, Rules of Procedure of the State Bar of California **STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

(a) A proposed stipulation as to facts, conclusions of law, and disposition must set forth each of the following:

(5) a statement that Respondent either

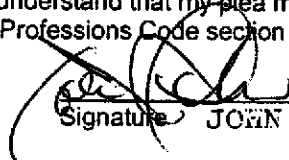
- (i) admits the facts set forth in the stipulation are true and that he or she is culpable of violations of the specified statutes and/or Rules of Professional Conduct or
- (ii) **pleads nolo contendere to those facts and violations. If the Respondent pleads nolo contendere, the stipulation shall include each of the following:**
 - (a) **an acknowledgement that the Respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified in the stipulation; and**
 - (b) **if requested by the Court, a statement by the Deputy Trial Counsel that the factual stipulations are supported by evidence obtained in the State Bar investigation of the matter (emphasis supplied)**

I, the Respondent in this matter, have read the applicable provisions of Bus. & Prof. Code § 6085.5 and rule 133(a)(5) of the Rules of Procedure of the State Bar of California. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea must be considered the same as an admission of culpability except as state in Business and Professions Code section 6085.5(c).

Date

3/16/07

Signature



JOHN R. SCHIRO

Print Name

- (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.
- (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: **three billing cycles following the effective date of the Supreme Court Order.**
(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.
- (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:

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.
- (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

Although the discipline herein is serious, Respondent has been a member of the State Bar since May 31, 1974, and has no prior record of discipline.

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **one (1) year**.

- 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 **one (1) year**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ **Actual Suspension:**

(a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **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.
- (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 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 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- ☐ No MPRE recommended. Reason: .
- (2) ☐ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, 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 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, 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: JOHN R. SCHIRO

CASE NUMBER(S): 05-O-03399

FACTS AND CONCLUSIONS OF LAW.

Facts

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

1. On or about August 23, 2002, John Dass ("Dass") employed Respondent to prepare and file a civil lawsuit against Sidharta Chakravarti, Pragna Chakravarti and David Gibson Escrow ("Escrow lawsuit"). Respondent agreed to prepare and file the Escrow lawsuit for fees of \$100 per hour up to a maximum of 30 hours (\$3,000) plus a contingency fee of 20% if the matter was resolved prior to an arbitration or trial, or 33 and 1/3% if it was resolved after an arbitration or trial.

2. On or about August 25, 2002, Dass paid Respondent \$1,500 in advanced fees.

3. At no time did Respondent prepare and file the Escrow lawsuit or provide any other legal services of value to Dass.

4. From in or about October 2002 through April 2003, Dass left approximately seven telephone messages for Respondent requesting that he return his calls and provide him with a status update of the Escrow lawsuit. Respondent received the messages. Respondent did not return any of these messages.

5. In or about February 2005, Dass employed attorney Steven Lovett ("Lovett") to represent him in the Escrow lawsuit in place of Respondent. Respondent's employment was terminated at that time.

6. On or about February 25, 2005, Lovett sent Respondent a letter requesting that he return the Dass file and that he sign a substitution of attorney. Respondent received the letter. Respondent did not respond to the letter.

7. After failing to receive any response to his February 25, 2005 letter, on or about March 14, 2005, and March 17, 2005, Lovett left two telephone messages with Respondent regarding the return of the Dass file. Respondent received the messages. Respondent did not respond to the messages.

8. After failing to receive any communication from Respondent, on or about March 25, 2005, Lovett sent Respondent another letter informing him that Dass had terminated Respondent's services and asked him to return the Dass file and sign a substitution of attorney. Respondent received the letter. Respondent did not respond to the letter.

9. At no time did Respondent release the Dass file to Dass or to Lovett, because he could not locate the file.

10. Respondent failed to perform legal services of any value on behalf of Dass.

11. Respondent did not earn any portion of the \$1,500 in fees advanced by Dass.

12. On or about December 12, 2006, Respondent refunded \$2,144.79 to Dass, which represented the \$1,500 advanced fee paid to him by Dass, plus accrued interest in the amount of \$644.79.

Conclusions of Law

By failing to prepare and file the Escrow lawsuit on behalf of Dass or provide any other legal services of value, and by failing to properly safeguard the client file, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

By failing to respond to Dass' telephone calls, Respondent failed to respond to a client's reasonable status inquiries in wilful violation of section 6068(m) of the Business and Professions Code.

By not refunding the \$1,500 advanced fees, which he did not earn, until December 12, 2006, Respondent failed to promptly refund unearned fees, in wilful violation of rule 3-700(D)(2) of the Rules of Professional Conduct.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was March 5, 2007.

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-03399	ONE	Business and Professions Code § 6106
05-O-03399	FOUR	Rules of Professional Conduct, rule 3-700(D)(1)

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 22, 2007, the estimated prosecution costs in this matter are approximately \$2,296. Respondent 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.

OTHER FACTORS IN CONSIDERATION.

Dass' dispute with Sidharta Chakravarti, Pragna Chakravarti and David Gibson Esrow involved a personal loan made by Dass to Sidharta Chakravarti and Pragna Chakravarti in the amount of approximately \$70,000. The loan was secured by a piece of real property; and the deed of trust was prepared by David Gibson Esrow. Through negligence on the part of David Gibson Esrow, Dass became a junior lien holder on the property. After Sidharta Chakravarti and Pragna Chakravarti were unable to repay the loan, Dass was unable to recover his funds from the foreclosure sale of the property.

After Dass terminated Respondent, Dass and Sidharta Chakravarti and Pragna Chakravarti agreed to a settlement in the amount of approximately \$45,000. However, Dass and David Gibson Esrow were unable to reach a settlement, and Dass was unable to sue David Gibson Esrow because the statute of limitations had run.

AUTHORITIES SUPPORTING DISCIPLINE.

Standards

Standard 2.4(b) of the Standards For Attorney Sanctions for Professional Misconduct,

Title IV of the Rules of Procedure ("Standards") provides that:

"Culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing 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."

Case Law

In *Layton v. State Bar* (1990) 50 Cal. 3d 889, the "client" ignored by the attorney was an estate and trust created from the residue of the estate. The attorney, in practice for over 30 years, served as both attorney and executor of the estate and trustee. Over a five year period, the attorney neglected his responsibilities as executor and attorney to conserve assets of the estate and to fulfill important duties as executor, including failing to file an accounting of the estate for almost five years. The primary beneficiary of the estate was unable to contact the attorney, was significantly harmed by his inaction and successfully sued for his removal. The Supreme Court concluded that the attorney's failure to perform services competently and diligently warranted a 30 day actual suspension.

In *Stuart v. State Bar* (1985) 40 Cal.3d 838, the attorney failed to answer interrogatories which caused his client's personal injury matter to be dismissed. The attorney also was found to have lost his client's file, and inadequately communicated with the client. The attorney had a prior private reproof. The Supreme Court ordered that the attorney be actually suspended for 30 days as part of a one year probation.

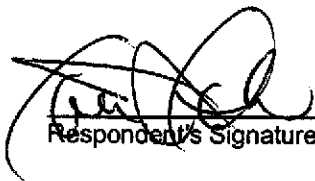
(Do not write above this line.)

In the Matter of John R. Schiro	Case number(s): 05-0-03399-RAP
------------------------------------	-----------------------------------

SIGNATURE OF THE PARTIES

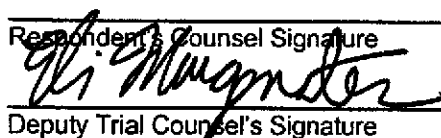
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

3/16/07
Date


Respondent's Signature

John R. Schiro
Print Name

3/30/07
Date


Deputy Trial Counsel's Signature

Eli D. Morgenstern
Print Name

(Do not write above this line.)

In the Matter Of
John R. Schiro

Case Number(s):
05-O-03399-RAP

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.

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 9.18(a), California Rules of Court.)**

03-21-07

Date



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 March 21, 2007, 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:

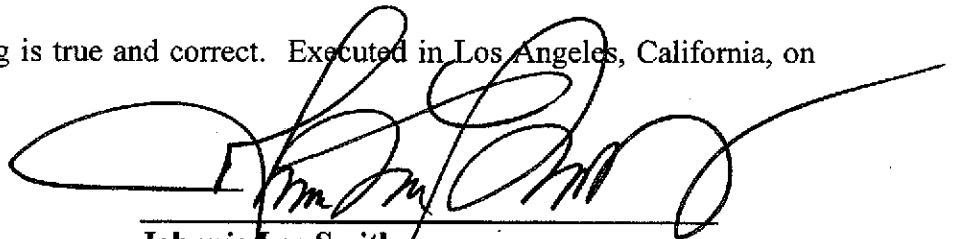
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**JOHN RAMSEY SCHIRO
12522 MOORPARK ST #107
STUDIO CITY, CA 91604**

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

ELI MORGENSTERN , Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **March 21, 2007.**

A large, stylized handwritten signature in black ink, appearing to read 'Johnnie Lee Smith', is written over a horizontal line.

Johnnie Lee Smith
Case Administrator
State Bar Court