



(Do not write above this line.)

State Bar Court of California  
Hearing Department  
Los Angeles

<p>Counsel For The State Bar</p> <p><b>Kevin B. Taylor</b> Supervising Trial Counsel Enforcement 1149 S. Hill Street Los Angeles, California 90015</p> <p>Bar # 151715</p>	<p>Case Number (s) Investigation No. 06-O-13018</p>	<p>(for Court's use)</p> <p><b>FILED</b></p> <p>SEP 09 2008 <i>VOC</i></p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p><b>PUBLIC MATTER</b></p>
<p>In Pro Per Respondent</p> <p><b>Walter Michael Kaye</b> 301 E. Colorado Blvd., Ste. 514 Pasadena, California 91101</p> <p>Bar # 46854</p>	<p>Submitted to: <b>Assigned Judge</b></p>	
<p>In the Matter Of: <b>Walter Michael Kaye</b></p> <p>Bar # 46854</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>STAYED SUSPENSION; NO ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

**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 **June 26, 1970**.
- (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 **12** 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.
- (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.
  - costs to be paid in equal amounts prior to February 1 for the following membership years: (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
  - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
  - costs entirely waived

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

- (1)  **Prior record of discipline** [see standard 1.2(f)]
- (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (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**

**Respondent's current misconduct evidences multiple acts of wrongdoing.**

**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**

See page   10   of this stipulation.

#### D. Discipline:

(1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of **2 (two) 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:

The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent is placed on probation for a period of **2 (two) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court)

#### E. Additional Conditions of Probation:

- (1)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2)  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.
- (3)  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.
- (4)  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.

- (5)  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.

- (6)  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.
- (7)  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 State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (8)  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.
- (9)  The following conditions are attached hereto and incorporated:
- Substance Abuse Conditions                       Law Office Management Conditions
- Medical Conditions                                       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 within one year. **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)  **Other Conditions:**

In the Matter of Walter Michael Kaye A Member of the State Bar 46854	Case number(s): Investigation No. 06-O-13018
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**Financial Conditions**

**a. Restitution**

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

**b. Installment Restitution Payments**

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

**c. Client Funds Certificate**

- 1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
  - a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

- b. Respondent has kept and maintained the following:
- i. A written ledger for each client on whose behalf funds are held that sets forth:
    1. the name of such client;
    2. the date, amount and source of all funds received on behalf of such client;
    3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
    4. the current balance for such client.
  - ii. a written journal for each client trust fund account that sets forth:
    1. the name of such account;
    2. the date, amount and client affected by each debit and credit; and,
    3. the current balance in such account.
  - iii. all bank statements and cancelled checks for each client trust account; and,
  - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
- i. each item of security and property held;
  - ii. the person on whose behalf the security or property is held;
  - iii. the date of receipt of the security or property;
  - iv. the date of distribution of the security or property; and,
  - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

**d. Client Trust Accounting School**

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

**ATTACHMENT TO**

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

IN THE MATTER OF: WALTER MICHAEL KAYE, State Bar No. 46854

INVESTIGATION NUMBER: 06-O-13018

**FACTS AND CONCLUSIONS OF LAW**

Respondent was admitted to the practice of law in the State of California on June 26, 1970.

In January 2004, Respondent entered into an agreement to represent Michael J. Brown (“Michael Sr”) in two matters. The first matter was a criminal case (“the Criminal Case”) in which Michael Sr was the defendant. The second matter was a dependency case (“the Dependency Case”) involving Michael Sr’s son, Michael J. Brown, Jr (“Michael Jr”).

Prior to January 2004, Michael Sr’s mother, Jeanne Brown (“Mrs. Brown”), agreed to pay Respondent’s attorney fees for his representation of Michael Sr. It was agreed between Respondent and Mrs. Brown that those fees would be \$75,000, paid in advance, for all services required of Respondent on the two cases. Mrs. Brown paid Respondent the \$75,000 in three installments delivered to Respondent between December 2003 and February 2004.

In or about November 2004, Michael Sr entered into a plea agreement resolving the Criminal Case.

At no time did Respondent represent Michael Jr in any matter or otherwise have any attorney/client relationship with him. Michael Jr was represented by counsel other than Respondent in the Dependency Case.

In or about November 2004, Respondent believed that Mrs. Brown and Michael Sr were very concerned about the ongoing police investigation in the Dependency Case and, more specifically, the police investigator’s intention to interview Michael Jr a second time.

Respondent, therefore, felt pressured to learn when and where the second interview of Michael Jr would take place so that he could inform Michael Sr of same. Furthermore, it was Respondent’s belief that if he had the subject information it would be of assistance to Michael Sr with any legal steps he wished to take to address the issue of a second interview.

Therefore, in or about November 2004, Respondent called and spoke with the police investigator assigned to investigate the Dependency Case. During that conversation, Respondent identified himself to the police investigator as Michael Jr's attorney when Respondent knew that the statement was false.

Respondent misrepresented his relationship with Michael Jr for the purpose of inducing the police investigator to disclose information regarding the Dependency Case and Michael Jr which Respondent might not otherwise be entitled to know.

Thereafter, but also in November 2004, Respondent filed a substitution of attorney with the Dependency Court in order to represent Michael Sr in the Dependency Case. Michael Jr's attorney objected to the substitution because of Respondent's conversation with the police investigator. A hearing was held on the substitution and the court denied Respondent's request to substitute into the Dependency Case on behalf of Michael Sr.

Based upon the fact that the Criminal Case was resolved and the court had denied Respondent's motion to represent Michael Sr in the Dependency Case, Respondent's services for Michael Sr concluded in November 2004.

On or about November 18, 2004, Respondent sent a letter to Michael Sr and Mrs. Brown terminating Respondent's representation of Michael Sr and promising to refund unearned fees to Mrs. Brown ("the Refund Agreement"). In the Refund Agreement, Respondent agreed to refund \$40,000 to Mrs. Brown as unearned fees from Respondent's representation of Michael Sr. The refund was to be paid to Mrs. Brown by Respondent at the rate of \$5,000 per month beginning December 1, 2004.

On or about November 18, 2004, Respondent paid Mrs. Brown \$5,000 as the first installment of the refund. Thereafter Respondent made no further payments toward the refund until August 2008 when Respondent paid Mrs. Brown the remaining \$35,000 he had originally agreed to refund plus an additional refund of \$5,000 as a good faith gesture.

### Legal Conclusions

By misrepresenting to the police investigator that he was Michael Jr's attorney when Respondent knew that the statement was false, Respondent failed to employ only those means consistent with the truth while maintaining the cause confided to him in wilful violation of *Business and Professions Code*, section 6068(d).

By failing to refund the \$35,000 in unearned fees to Mrs. Brown until August 2008, Respondent failed to promptly refund unearned fees upon the termination of employment in wilful violation of rule 3-700(D)(2) of the *California Rules of Professional Conduct*.

## FACTS IN MITIGATION

Respondent has no record of prior discipline since being admitted to the State Bar of California and commencing his practice of law in June 1970.

Respondent displayed candor and cooperation with the State Bar during the investigation of this matter. Respondent also recognized and acknowledged the wrongfulness of his conduct.

In August 2008, Respondent paid Mrs. Brown the \$35,000 he had originally agreed to refund her. In addition and as an act of good faith, Respondent also refunded Mrs. Brown an additional \$5,000 of the advanced attorney fees she had paid him.

Finally, Respondent states that in and about the year 2005, he suffered significant financial and emotional stress due to the dissolution of his marriage.

## DISCUSSION RE STIPULATED DISCIPLINE

Standard 1.3 of the *Standards For Attorney Sanctions For Professional Misconduct* provides that the primary purpose of discipline is the protection of the public, the courts and legal profession; maintenance of high professional standards; and the preservation of public confidence in the legal profession.

Standard 2.6 states that disbarment or suspension is the appropriate discipline, depending upon the gravity of the offense or harm, if any, to the victim, and the purposes of imposing discipline, for a violation of *Business and Professions Code*, section 6068.

Standard 2.10 states that reproof or suspension is the appropriate discipline, with due regard to the harm suffered by any victim and the purposes of imposing discipline, for violations of any of the Rules of Professional Conduct not specifically specified in other Standards, such as rule 3-700.

The parties submit that the stipulated discipline in this matter complies with the Standards both specifically and with regard to the general purposes and goals of the disciplinary process.

As to Respondent's violation of *Business and Professions Code*, section 6068(d) and Standard 2.6, Respondent acknowledges that misrepresentations to law enforcement cause harm to society by increasing the work load and decreasing the effectiveness of our law enforcement agencies. Although Respondent felt pressured to gain information for his client, he recognizes that he should not have employed untruthful means to achieve his goal. Such recognition is an indication that Respondent will not repeat his misconduct in the future.

A two year stayed suspension, along with the probationary conditions set forth herein, is consistent with Standard 2.6.

The stipulated discipline is also supported by the Court's discussion in the case of *In the Matter of Jeffers* (Rev. Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211, where the respondent was placed on a one year stayed suspension for misleading a settlement conference judge regarding the status of a defendant in a civil proceeding and then failing to obey a court order requiring him to appear at a settlement conference.

As to Respondent's violation of rule 3-700(D)(2) of the *Rules of Professional Conduct* and Standard 2.10, Respondent acknowledges that Mrs. Brown was harmed by the fact that she had to wait nearly four years to receive her refund. In light of that fact, Respondent refunded \$5,000 more than what he and Mrs. Brown had agreed to in November 2004. Respondent recognized the harm he caused and attempted to mitigate it.

A two year stayed suspension, along with the probationary conditions set forth herein, is consistent with Standard 2.10.

Finally, the parties submit that given Respondent's recognition of wrongdoing, along with his belated but nonetheless good faith attempt to make Mrs. Brown whole, the stipulated discipline and probationary conditions in this matter are sufficient to assure that Respondent will conform his future conduct to ethical standards and, therefore, protect the public, courts and profession. This is consistent with Standard 1.3.

#### **PENDING PROCEEDINGS**

The disclosure date referred to, on page one, paragraph A.(7), was August 29, 2008.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of August 29, 2008, the rough estimate of disciplinary costs to be assessed in this matter is \$2000.

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In the Matter of Walter Michael Kaye	Case number(s): Investigation No. 06-O-13018
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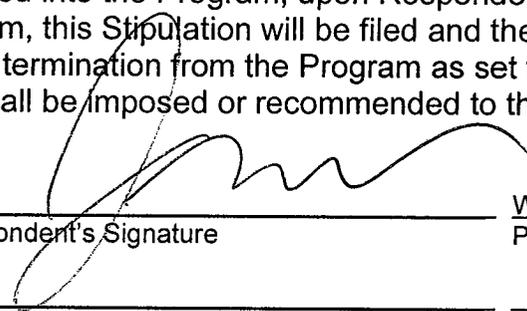
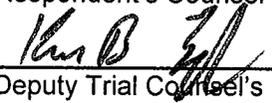
### SIGNATURE OF THE PARTIES

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.

<u>8/29/08</u> Date	 Respondent's Signature	Walter Michael Kaye Print Name
<u>                    </u> Date	Respondent's Counsel Signature	Print Name
<u>8/29/08</u> Date	 Deputy Trial Counsel's Signature	Kevin B. Taylor Print Name

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In the Matter Of <b>Walter Michael Kaye</b>	Case Number(s): <b>Investigation No. 06-O-13016</b>
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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.

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.)**

09-08-09  
Date

  
Judge of the State Bar Court

**RICHARD A. PLATEL**

**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 9, 2008, 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:

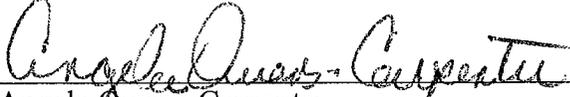
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

WALTER MICHAEL KAYE  
WALTER M KAYE & ASSOCIATES  
301 E COLORADO BLVD STE 514  
PASADENA CA 91101-1919

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

KEVIN TAYLOR, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 9, 2008.

  
Angela Owens-Carpenter  
Case Administrator  
State Bar Court