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ORIGINAL

**State Bar Court of California
Hearing Department
Los Angeles**

Counsel For The State Bar CHRISTINE SOUHRADA DEPUTY TRIAL COUNSEL 1149 SOUTH HILL STREET LOS ANGELES, CA 90015 TELEPHONE: (213) 765-1162	Case Number (s) 06-0-14303 PUBLIC MATTER	(for Court's use) FILED MAR 13 2009 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
Bar # 228256 Counsel For Respondent Lawrence P Bemis 8850 Porter Loop Jackson, WY 83001 (213) 948-9590		
Bar # 213824 In the Matter Of: RYAN STEARNS Bar # 165262 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO 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 **June 8, 1993**.
- (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: **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 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

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

Respondent has been admitted since 1993 without prior discipline.

Since the commencement of these proceedings, Respondent has been cooperative with the State Bar.

D. Discipline:

(1) ☒ **Stayed Suspension:**

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

The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent is placed on probation for a period of **18 months**, 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:
- | | |
|---|---|
| <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 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:**

Attachment to Stipulation Re Facts, Conclusions of Law and Disposition
in the Matter of Ryan Stearns

Case no. 06-O-14303

I. Facts

1. In August of 2003, Respondent represented Brigitte and William Baker (the "Bakers") in the sale of their wine retail store known as "Bacchus Wine Made Simple" ("Bacchus"). On August 7, 2003, Ronald S. Miranda ("Miranda") contacted Respondent to inform him that Miranda and his finance, Charlene M. Bean ("Bean," collectively the "Mirandas"), had negotiated with the Bakers to purchase Bacchus for \$120,000.

2. On August 11, 2003, Respondent and the Mirandas discussed, several matters including, but not limited to the lease that Miranda would negotiate with the landlord for Bacchus, and the formation of a S-corporation to be known as XO Wine Glass, Inc., doing business as Bacchus Wine Made Simple, to purchase and operate Bacchus.

3. On August 12, 2003, the Mirandas agreed to pay a flat fee of \$1,000 to Respondent to incorporate XO Wine Glass, Inc.

4. On August 13, 2003, the Mirandas met with Respondent and agreed to pay him \$240 to review and revise the rider to the lease prepared by Miranda for the building housing Bacchus.

5. The Bakers, Miranda, and Bean understood that Respondent was representing both parties in the sale of Bacchus, and recall Respondent making statements to lead them to that understanding. Respondent would testify that he does not recall making such statements.

6. On August 26, 2003, Respondent met with Brigitte Baker and the Mirandas to discuss the escrow and transfer of the license to sell liquor. The parties also signed the Addendum to the Purchase Agreement for Bacchus prepared by Respondent. Respondent split the cost for the meeting between the Bakers and the Mirandas.

7. Respondent never obtained informed written consent from the Mirandas before representing them and the Bakers in connection with the purchase and sale of Bacchus.

8. Between August of 2003 and April of 2006, Respondent provided legal representation to the Mirandas on various matters.

9. In June of 2004, Nick Silpin ("Silpin") operated a restaurant known as the "Francesca Wine Bistro." The restaurant was in a building owned by the Stearns Family

Trust (the "Stearns Trust"), which is a trust established by Respondent's mother and father. Respondent managed (i.e., was the landlord for) the building housing the Francesca Wine Bistro for the Stearns Trust. Respondent also provided legal services to Silpin and was a close friend of Silpin. By June of 2004, Silpin owed at least \$25,000 in unpaid rent to the Stearns Trust.

10. Sometime before June 5, 2004, the Mirandas entered into negotiations with Silpin to purchase the Francesca Wine Bistro. The Mirandas ultimately agreed to purchase the Francesca Wine Bistro from Silpin for \$180,000. On June 5, 2004, Bean signed an "Agreement for Purchase and Sale of Assets" to pay \$180,000 to Francesca Wine Bistro, Inc., for the Francesca Wine Bistro. Respondent prepared the agreement for Silpin.

11. Respondent never provided written disclosure to the Mirandas that he had a legal, business, financial, professional and/or personal relationship with Silpin or the Stearns Trust, or that both Silpin and the Stearns Trust would be affected substantially by the transaction. Respondent did not provide written disclosure to the Mirandas of the debt owed by Silpin to the Stearns Trust.

12. On June 6, 2004, Bean signed a "Standard Industrial/Commercial Single-Tenant Lease -- Net" ("Lease") to lease the building housing the Francesca Wine Bistro for \$5,000 per month with the five-year term to run from June 6, 2004 to June 5, 2009. The Lease was prepared by Respondent and signed by Respondent as the "Authorized Agent" for the Stearns Trust.

13. On June 3 and June 8 of 2004, among other times, Respondent's office performed and billed for 0.9 hours of legal work for Mr. Miranda/ XO Wine Bistro.

14. Respondent never obtained informed written consent from the Mirandas before representing Silpin in the sale of Francesca Wine Bistro to the Mirandas, or before representing the Stearns Trust in the agreement to lease the building housing the Francesca Wine Bistro to the Mirandas.

15. On August 3, 2005, the Mirandas sent an email to Respondent stating that they were in negotiations to sell the Francesca Wine Bistro, which they had renamed the "XO Wine Bistro."

16. On August 3, 2005, Respondent sent an email to the Mirandas requesting that they "email the basic terms of sale (purchase price, payment terms, etc.), and what the lease conditions are, if any, and what the buyer is hoping as far as a lease."

17. On August 4, 2005, the Mirandas sent an email to Respondent stating, in part, that they had agreed to sell the XO Wine Bistro for \$330,000, and the buyers would like the right of first refusal if the Stearns Trust ever considered selling the building.

18. On August 4, 2005, Respondent sent an email to the Mirandas stating that he "need[ed] to know exactly what [the Mirandas] have invested in XO [Wine Bistro] to get an idea of [their] break even."

19. On August 5, 2005, the Mirandas sent an email to Respondent providing a detailed accounting of their \$332,400 investment into the XO Wine Bistro and the distribution of the \$330,000 sales price. The email stated, in part, that after paying: the \$150,000 owed to the Stearns Trust on the First and Second Promissory Notes; their investors; a loan; commissions and fees, they would net \$1,000.

20. In October or November of 2005, Respondent met with the Mirandas to discuss the assignment of lease for the XO Wine Bistro. The Stearns Trust agreed to assign the lease to the buyer for \$25,000.

21. On November 12, 2005, the Mirandas sent an email to Respondent providing a detailed accounting of their personal investment of \$23,230 into the XO Wine Bistro and the \$43,000 loan from the Small Business Administration.

22. On December 7, 2005, Respondent e-mailed to the Mirandas a copy of the sale agreement to be used by the Mirandas in the sale of the XO Wine Bistro. Respondent also provided a copy of the sale agreement to the buyers and spoke with the buyers about the agreement. If called to testify, Respondent would testify that he prepared the sale agreement at the request of the Mirandas.

23. In January of 2006, the Mirandas received the escrow papers for the sale of the XO Wine Bistro from the escrow company recommended by Respondent, United Escrow Co. The escrow instructions included payments to the Stearns Trust of \$6,000 for "Legal."

24. On March 31, 2006, United Escrow Co. issued a check to the Stearns Trust for \$202,650.51, which included the payments of \$6,000 for "Legal." This amount was for legal services performed by Respondent on behalf of the Stearns Trust.

25. Respondent never obtained the Mirandas' informed written consent before representing the Stearns Trust regarding the sale of the XO Wine Bistro and assignment of its lease.

II. Conclusions of Law

26. By failing to obtain informed written consent from the Mirandas before representing them and the Bakers in the purchase and sale of Bacchus, Respondent accepted representation of more than one client in a matter in which the interests of the actually conflicted, in willful violation of rule 3-310(C)(2) of the Rules of Professional Conduct.

27. By failing to obtain informed written consent from the Mirandas before representing them in the incorporation of XO Wine Glass, while also representing the Bakers in the sale of Bacchus to the Mirandas, Respondent represented a client in a matter and at the same time in a separate matter accepted as a client a person or entity whose interest in the first matter was adverse to the client in the first matter without the informed written consent of each client, in willful violation of rule 3-310(C)(3) of the Rules of Professional Conduct.

28. By failing to provide written disclosure to the Mirandas that Respondent had a legal, business, financial, professional and/or personal relationship with Silpin and that Silpin and the Stearns Trust would be affected substantially by the sale of Francesca Wine Bistro to the Mirandas, at a time when Respondent was also representing the Mirandas, Respondent accepted or continued representation of a client without providing written disclosure to the client where the member has or had a legal, business, financial, professional or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter, in willful violation of rule 3-310(B)(3).

29. By failing to obtain informed written consent from the Mirandas before representing Silpin in the sale of Francesca Wine Bistro to the Mirandas, Respondent represented a client in a matter and at the same time in a separate matter accepted as a client a person or entity whose interest in the first matter was adverse to the client in the first matter without the informed written consent of each client, in willful violation of rule 3-310(C)(3) of the Rules of Professional Conduct.

30. By failing to obtain informed written consent from the Mirandas before representing the Stearns Trust in the agreement to lease the building housing the Francesca Wine Bistro to the Mirandas, Respondent represented a client in a matter and at the same time in a separate matter accepted as a client a person or entity whose interest in the first matter was adverse to the client in the first matter without the informed written consent of each client, in willful violation of rule 3-310(C)(3) of the Rules of Professional Conduct.

31. By failing to obtain the Mirandas' informed written consent before representing the Stearns Trust regarding the sale of the XO Wine Bistro and assignment of its lease, Respondent represented a client in a matter and at the same time in a separate matter accepted as a client a person or entity whose interest in the first matter was adverse to the client in the first matter without the informed written consent of each client, in willful violation of rule 3-310(C)(3) of the Rules of Professional Conduct.

III. Dismissals

The parties respectfully request that the Court dismiss count 3 (Rules of Professional Conduct, rule 3-300), count 4 (Business and Professions Code, section 6106), count 5 (Business and Professions Code, section 6106), count 6 (Business and Professions Code, section 6106), and count 7 (Rules of Professional Conduct, rule 3-300) with prejudice in the interest of justice.

IV. Waiver of Variance Between Notice of Disciplinary Charges and Stipulated Facts and Culpability:

The parties waive any variance between the Notice of Disciplinary Charges filed on October 20, 2008 and the facts and/or conclusions of law contained in this stipulation. Additionally, the parties waive the issuance of an amended Notice of Disciplinary Charges. The parties further waive the right to the filing of a Notice of Disciplinary Charges and to a formal hearing on any charge not included in the pending Notice of Disciplinary Charges.

V. Mitigation

Respondent has reimbursed to the Mirandas \$7,676.55 for legal fees he charged them related to the above-described transactions.

VI. Supporting Authority

Standard 2.10 states:

Culpability of a member of a violation of any provision of the Business and Professions Code not specified in these standards or of a wilful violation of any Rule of Professional Conduct not specified in these standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3.

VII. Estimate of Costs of Disciplinary Proceedings

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of March 6, 2009, the estimated prosecution costs in this matter are approximately \$3,654.00. Respondent acknowledges that this figure is an estimate only. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of RYAN STEARNS	Case number(s): 06-0-14303
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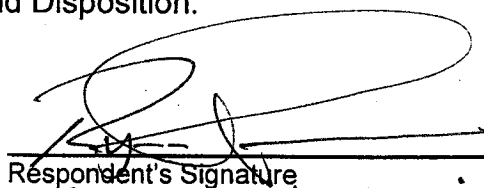
SIGNATURE OF THE PARTIES

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.

3-11-09
Date

March 11, 2009
Date

3/12/09
Date


Respondent's Signature

RYAN STEARNS
Print Name

Lawrence P. Bemis
Respondent's Counsel Signature

LAWRENCE BEMIS
Print Name


Deputy Trial Counsel's Signature

CHRISTINE SOUHRADA
Print Name

(Do not write above this line.)

In the Matter Of
RYAN STEARNS

Case Number(s):
06-0-14303

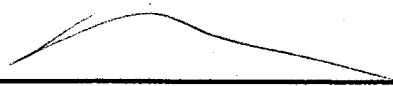
ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, *RSB*
IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED with ~~out~~ *3-13-09*
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.)**

03-13-09
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 March 13, 2009, 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:

LAWRENCE P. BEMIS
LAWRENCE P BEMIS
8850 PORTER LOOP
JACKSON, WY 83001

ELLEN ANNE PANSKY
PANSKY MARKLE HAM LLP
1010 SYCAMORE AVE UNIT 101
SOUTH PASADENA, CA 91030

- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- ☐ by overnight mail at , California, addressed as follows:

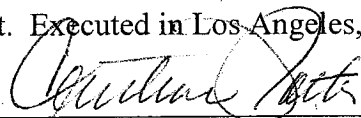
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Christine Ann Souhrada, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 13, 2009.


Cristina Potter
Case Administrator
State Bar Court