

(Do not write above this line.)

**State Bar Court of California**  
**Hearing Department**  
**San Francisco**



<p>Counsel For The State Bar</p> <p>Erica Dennings Deputy Trial Counsel State Bar of California 180 Howard Street, 7th Fl. San Francisco, CA 94105 (415) 538-2285</p> <p>Bar # 145755</p>	<p>Case Number (s)</p> <p>09-C-10028-LMA 09-N-12616</p>	<p>(for Court's use)</p> <p><b>PUBLIC MATTER</b></p> <p><b>FILED</b> <i>RS</i></p> <p>SEP 09 2010</p> <p>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel For Respondent</p> <p>Michael E. Wine 301 N. Lake Avenue, Suite 800 Pasadena, CA 91101 (626) 796-6106</p> <p>Bar # 58657</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter Of: Joseph L. Spiva</p> <p>Bar # 114580</p> <p>A Member of the State Bar of California (Respondent)</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 December 3, 1984.
- (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."

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- (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):
- 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: Costs to be paid in equal amounts prior to February 1 for the following two 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.

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- (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. see attachment, page 8.
- (8)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

SEE Attachment, page 8.

**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. SEE Attachment, page 9.
- (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. SEE Attachment, page 9.
- (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. SEE Attachment, page 9
- (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 Attachment, pages 9 & 10.

**D. Discipline:**

(1)  **Stayed Suspension:**

(a)  Respondent must be suspended from the practice of law for a period of three (3) 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:

(b)  The above-referenced suspension is stayed.

(2)  **Probation:**

Respondent must be placed on probation for a period of three (3) years, 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 eighteen (18) months.

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 checked="" 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: March 13, 2009.
- (5)  **Other Conditions:** Respondent already complied with the requirements of rule 9.20 in connection with his interim suspension. He is not required to comply again.

ATTACHMENT TO

STIPULATION RE FACTS AND CONCLUSIONS OF LAW

IN THE MATTER OF:       JOSEPH LEROY SPIVA, SBN 114580

CASE NUMBER(S):        09-C-10028-LMA; 09-N-12616

Respondent admits that the following facts are true.

Case Number 09-C-10028:

Procedural Background

This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court. On September 10, 2008, respondent pled guilty to one felony violation of section 11377(a) of the California Health and Safety Code, possession of a controlled substance, methamphetamine. On March 5, 2009, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the facts and circumstances surrounding the conviction involved moral turpitude or other misconduct warranting discipline.

Facts

In or about March 2008, respondent paid G to help him move. After several days of moving items, G offered respondent some methamphetamine, which respondent took and used.

Later that night, at approximately midnight, respondent drove G to the casino. Unbeknownst to respondent and G, the person they picked up was an informant.

After respondent got back into his truck, G presented the methamphetamine to the informant. Respondent asked the informant whether she had some friends with her at the casino. The informant responded that her friends were in Yuba City and that she's headed back there. Respondent replied "that's a drag". The informant stated "this is some good shit". Respondent replied, "yes, it seems to be." Respondent stated tell your friends to come here. The informant stated "there's even little crystals in here." Respondent asked the informant "what are you guys gonna do.?" Respondent then asked G if he wanted to go to Yuba City. The informant then asked, "you want money, huh?" G replied "\$150." The informant said "I said \$130". Respondent said "\$130- that won't pay for my gas to get up here." The informant handed over money to G. The informant then said "Esta bien?" G replied "perfectamente." The informant then stated "If I want some more after this, I can give you a call, right?" G said "si". Respondent then drove toward the front of the casino, and the informant got out of the truck.

The informant identified respondent as the person who participated in the sale of the methamphetamine. The substance sold in respondent's truck was tested by the Sheriff's Department and identified as 1.295 grams of methamphetamine.

On May 20, 2008, the Colusa County District Attorney filed a felony complaint charging respondent with a violation of California Health and Safety Code Section 11379(a), sale of a controlled substance, methamphetamine. On June 3, 2008 respondent was arrested at his home in Yolo County. On September 10, 2008, the complaint was amended and respondent pled guilty to a felony violation of California Health and Safety Code §11377(a), possession of a controlled substance, methamphetamine. Respondent was also required to pay a fine, not possess any deadly/dangerous weapons, to submit to an AIDs test and provide test results, and to submit to DNA testing pursuant to Penal Code § 296. Respondent violated the terms of his probation on three occasions for arriving late to counseling sessions and, consequently, was ordered to attend an in-patient rehabilitation program in Florida, (Health Care Connection) for six months.

Conclusions Of Law

By driving to the casino, being present while the methamphetamine sale took place, and commenting on the price of the methamphetamine, respondent participated in the sale of a controlled substance, methamphetamine. The respondent acknowledges that by the conduct described herein of which he was convicted, did not involve moral turpitude, but did involve other misconduct warranting discipline in violation of section 6068(a) of the Business and Professions Code.

Case Number 09-N-12616:

Facts

Effective March 13, 2009, the Review Department of the State Bar issued its order suspending respondent from the practice of law, pending final disposition of case number 09-C-10028. In addition, the Review Department ordered respondent to comply with Rules of Court, rule 9.20, by performing the acts specified in subdivisions (a) and (c) within 30 and 40 days, respectively. Accordingly, respondent was required to file his rule 9.20(c) affidavit on or before April 22, 2009. Respondent failed to file his affidavit until November 4, 2009.

Conclusions Of Law

By wilfully failing to file a declaration of compliance under rule 9.20 (c) in a timely manner, Respondent failed to comply with a court order, in violation of Business and Professions Code section 6103.

**AGGRAVATING CIRCUMSTANCES.**

Multiple Acts of Misconduct: Respondent committed multiple acts of misconduct in case numbers 09-C-10028 and 09-N-12616.

### Additional Aggravating Circumstances:

On July 22, 1992, respondent pled no contest to violating Penal Code section 148 (resisting or obstructing a public officer). *People v. Joseph Spiva*, Yolo County case number 2-55773.

On November 21, 1991, respondent pled no contest to violating Vehicle Code section 23152(A) (driving under the influence of alcohol or drugs, or both) and Vehicle Code section 12500(a)(driving without a valid license). *People v. Joseph Spiva*, Yolo County case number 2-49576.

### MITIGATING CIRCUMSTANCES.

No prior record of discipline: Respondent has no record of discipline since being admitted in 1984.

Candor and Cooperation: Respondent has been completely candid and cooperative with the State Bar in resolving these matters.

Family Problems: Mr. Spiva's life had been in some turmoil at the time of the incident leading to his arrest and conviction. In November of 2005, Mr. Spiva took a sabbatical from the practice of law to assist his mother in caring for his 78 year-old father who had shortly before that time been unexpectedly diagnosed with stage four kidney cancer. In tidying up his father's affairs, Mr. Spiva sold his family home and moved to his wife's family ranch. His father then died in January of 2006.

Over the next two years, Mr. Spiva's marriage began disintegrating, and in March of 2007, he moved to a separate residence that was being remodeled on his wife's family ranch. In November of that year, after some six months of marriage counseling, Mr. Spiva's wife filed for divorce. As a way of coping with the mounting feelings of depression which resulted from dealing with his father's illness and death, and from dealing with the end of his marriage, Mr. Spiva, who had battled substance abuse problems in the past, began using meth again during the period of time leading up to his arrest on June 3, 2008, which resulted in the conviction at issue in these proceedings.

Shortly after Mr. Spiva's arrest, on July 1, 2008, his divorce became final, and while he was on vacation with the couple's minor daughter, Mr. Spiva's ex-wife obtained an *ex parte* order for sole custody of the child.

### Additional Mitigating Circumstances:

Substance Abuse Treatment: Respondent consulted the State Bar Lawyer's Assistance program, and, on May 15, 2009, he signed a LAP Evaluation Plan. Respondent entered inpatient treatment on May 28, 2009 at HealthCare Connection of Tampa, Florida. Respondent enrolled in the

Lawyer Assistance Program ("LAP") and signed an evaluation plan on May 15, 2009. Respondent signed a participation plan with the Lawyer Assistance Program on June 3, 2010. On June 22, 2010, Colusa County Superior Court issued its order setting aside respondent's conviction, dismissing the complaint upon which it was based, and providing that the arrest and conviction shall be deemed never to have occurred.

Respondent's Character: Respondent provided three character letters to the State Bar.

#### COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of August 18, 2010, the prosecution costs in this matter are \$3,530.00. 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.

#### PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was August 18, 2010.

#### SUBSTANCE ABUSE CONDITIONS

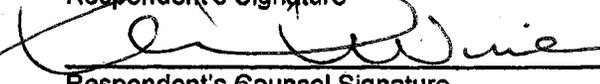
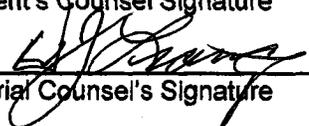
Respondent must comply with all provisions and conditions of respondent's Participation Agreement/Plan with the Lawyer Assistance Program ("LAP"), and must provide the Office of Probation with written evidence of compliance with each quarterly report, and with written certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of his Participation Agreement/Plan to the Office of Probation. Respondent must provide an appropriate written waiver authorizing the LAP to provide the Office of Probation, the Office of the Chief Trial Counsel, and the State Bar Court of information regarding respondent's participation in the LAP and his compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory written certification of completion of the LAP.

(Do not write above this line.)

In the Matter of  JOSEPH LEROY SPIVA, SBN 114580	Case number(s):  09-C-10028-LMA, et al
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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.

<u>August 24, 2010</u> Date	 Respondent's Signature	<u>Joseph L. Spiva</u> Print Name
<u>8/25/10</u> Date	 Respondent's Counsel Signature	<u>Michael E. Wine</u> Print Name
<u>8/26/10</u> Date	 Deputy Trial Counsel's Signature	<u>WONDER J. LIANG, DTC, FOR Erica L. M. Dennings</u> Print Name

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In the Matter Of <b>JOSEPH LEROY SPIVA, SBN 114580</b>	Case Number(s): <b>09-C-10028-LMA, ET AL</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.

1. On page 4, section D(1)(a)(i), the "x" in the box is deleted as unnecessary. (See, In re the Matter of Luis (Review Dept. 2004) 4 Cal. State Bar Ct. Rptr. 737.)
2. On page 4, section E(1), the "x" in the box is deleted as it is already recommended that he do it as part of his actual suspension.

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.)**

Sept 9, 2010  
Date

Pat McElroy  
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 San Francisco, on September 9, 2010, 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:

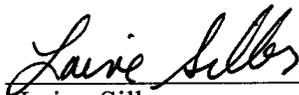
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

MICHAEL E. WINE  
301 N LAKE AVE STE 800  
PASADENA, CA 91101 - 5113

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

WONDER LIANG, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 9, 2010.



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Laine Silber  
Case Administrator  
State Bar Court