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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION			PUBLIC MATTER
<p>Counsel For The State Bar</p> <p>Margaret P. Warren 1149 S. Hill Street Los Angeles, CA 90015-2299 (213) 765-1342</p> <p>Bar # 108774</p>	<p>Case Number(s): 10-O-03748</p>	<p>For Court use only</p> <div style="text-align: center;"> <p>FILED</p> <p>MAR 08 2011</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> </div>	
<p>In Pro Per Respondent</p> <p>Victor M. Comstock 5017 Marathon St. Los Angeles, CA 90029 (323) 422-2452</p> <p>Bar # 232078</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>		
<p>In the Matter of: Victor M. Comstock</p> <p>Bar # 232078</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 October 1, 2004.
- (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 13 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):
- Costs are added to membership fee for calendar year following effective date of discipline.
 - Costs are 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 three billing cycles following the effective date of the Supreme Court order: 2012, 2013 and 2014.. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are 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. Please see p. 11, below.
- (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.
- (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.

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(13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

Please see p. 11, below.

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:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is 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.)

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 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2) **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Victor M. Comstock
CASE NUMBER(S): 10-O-03748

WAIVER OF VARIANCE BETWEEN NOTICE OF DISCIPLINARY CHARGES AND STIPULATED FACTS AND CULPABILITY.

The parties hereby waive any variance between the Notice of Disciplinary Charges filed in this matter on December 22, 2010 in Case No. 10-O-03748, and the facts and conclusions of law contained in this stipulation.

FACTS AND CONCLUSIONS OF LAW.

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

Case No. 10-O-03748 (Complainants: Elizabeth Courtenay and Reginald Ware)

FACTS (Count One (C)):

1. On March 16, 1998, Reginald Eugene Ware ("Ware") was found guilty as charged of four felony offenses with various enhancements, in the matter entitled *People v. Ware*, case no. KA035871, filed in the Los Angeles Superior Court. The order of judgment was entered on March 17, 1998.
2. Mr. Ware had absented himself from the proceedings held on March 16, 1998 in *People v. Ware*. Sometime between March 1998 and December 2008, Mr. Ware was arrested.
3. In April 2009, Ware hired Respondent to represent him through sentencing in *People v. Ware*, and to file a motion for new trial. Ware's family (on behalf of Ware) paid Respondent a total of \$2500 of Respondent's \$3500 retainer for these services. Respondent completed these services on behalf of Ware.
4. On June 19, 2009, Ware was sentenced to 108 years to life in prison.
5. On June 25, 2009, Respondent filed a timely Notice of Appeal on behalf of Ware in case no. KA035871, to preserve Ware's appellate rights. The Notice of Appeal identified Respondent as "attorney for Defendant, Reginald Eugene Ware."

6. The Notice of Appeal was lodged with the appellate court on July 13, 2009. The appellate court records listed Respondent as counsel of record in Ware's appeal.

7. The appellate record was filed on August 14, 2009 and mailed to Respondent. Respondent received the appellate record shortly thereafter, and was thus put on notice that the appellate court showed Respondent as Ware's counsel of record on appeal. Respondent did not inform Ware he had received the appellate record; did not forward the appellate record to Ware; did not advise Ware of dates of upcoming events such as the briefing schedule; did not perform any work on Ware's appeal; and did not take any steps to properly remove himself as Ware's attorney of record in his appeal by substituting out or obtaining the appellate court's leave to withdraw.

8. Ware's opening brief on appeal was due within 40 days of August 14, 2009. On September 30, 2009, the appellate court sent Respondent a letter reminding him that the opening brief had not been filed, and that if the opening brief was not on file within 30 days of September 30, 2009, or good cause not shown for relief from default, the appeal would be dismissed. Respondent received the appellate court's letter. Respondent did not inform Ware of his receipt of this letter; performed no work on Ware's appeal; and took no steps to properly remove himself as Ware's attorney of record in his appeal by substituting out or obtaining the appellate court's leave to withdraw.

9. On November 5, 2009, Ware's appeal was dismissed. Respondent received notice of the dismissal, but did not inform Ware that his appeal had been dismissed. Nor did Respondent take any steps to set aside the dismissal or otherwise attempt to reinstate Ware's appeal.

10. Elizabeth Courtenay ("Courtenay"), an attorney with California Appellate Project in Los Angeles ("CAP/LA"), wrote to Respondent on three occasions between late January and early March of 2010. In her letters, Courtenay requested information on behalf of Ware; advised Respondent that he was listed as attorney of record in the Ware appeal; informed Respondent that the appeal had been dismissed; and suggested to Respondent that he should either contact the court seeking to be removed as attorney of record or seek to reinstate the appeal. Respondent received Courtenay's letters, but did not respond to any of them in any manner; took no steps to contact the appellate court to be removed as Ware's counsel of record; and took no steps to try to reinstate Ware's appeal.

11. In May of 2010, CAP/LA and Courtenay accepted representation of Ware on appeal and

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sought to reinstate the appeal. On May 12, 2010, Courtenay filed a motion on behalf of Ware in the Court of Appeal to recall remittitur and reinstate appeal in *People v. Ware*. By the Court of Appeal's order filed on May 14, 2010 in *People v. Ware*, Ware's motion was granted; the remittitur recalled; the order of dismissal of the appeal vacated; and the appeal reinstated.

12. After Respondent filed the Notice of Appeal on behalf of Ware on June 25, 2009, he and Ware had some discussions regarding Respondent representing Ware in the appeal. However, Ware never entered into a written retainer agreement with Respondent to represent Ware in his appeal; nor did Ware (or anyone acting on Ware's behalf) ever pay Respondent any monies to represent Ware in the appeal.

13. Though Respondent filed the Notice of Appeal on Ware's behalf, he did so solely for the purpose of preserving Ware's appellate rights. At no time after filing the Notice of Appeal, however, did Respondent write to Ware and advise Ware that Respondent did not intend to represent Ware in the appeal; that Respondent's act of filing of the Notice of Appeal to preserve Ware's rights was not to be construed as an agreement by Respondent to represent Ware in the appeal; that significant events in the appeal would be coming up on the court calendar (e.g., the timing of the due date of Ware's opening brief); and that Ware needed to secure appellate representation as soon as possible.

LEGAL CONCLUSIONS:

14. By failing to take any steps to obtain leave of the court to withdraw as Ware's counsel of record in Ware's appeal; by failing to make clear to Ware, after filing the Notice of Appeal in Ware's case, that he would not be representing Ware in his appeal; by failing to deliver to Ware the record on appeal as soon as practicable after receiving it; by failing to inform Ware of important upcoming events in his appeal upon receipt of the record of appeal; by failing to respond to Ware's and Courtenay's communications requesting information concerning Ware's appeal; by not informing Ware of the dismissal of his appeal; and by failing to take any action to set aside (or assist in setting aside) the dismissal of Ware's appeal, Respondent withdrew from employment without taking reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client, in willful violation of rule 3-700(A)(2) of the Rules of Professional Conduct.

FACTS (Count One (D)):

15. On February 25, 2010, the State Bar opened an investigation pursuant to a complaint against Respondent filed by Courtenay and later joined by Ware ("Ware complaint").

16. On April 20, 2010, and May 10, 2010, a State Bar Investigator mailed letters to Respondent regarding the Ware complaint. The State Bar Investigator's letters requested Respondent to respond in writing to specified allegations of misconduct being investigated by the State Bar in the Ware complaint. Respondent received the letters.

17. On May 11, 2010, the State Bar Investigator telephoned Respondent, who confirmed receipt of the Investigator's April 20, 2010, letter and stated that he would respond to it by the end of the week. Thereafter, Respondent at no time provided a response to the Investigator, in writing or otherwise, to the allegations of misconduct in the Ware complaint.

LEGAL CONCLUSIONS:

18. By not providing a written response to the investigator's letters regarding the allegations in the Ware complaint or otherwise cooperating in the investigation of the Ware complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent in willful violation of Business and Professions Code section 6068(i).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was March 2, 2011.

AUTHORITIES SUPPORTING DISCIPLINE.

The duty to take reasonable steps to avoid foreseeable prejudice to the rights of a client when a member withdraws from employment continues until a court grants leave to withdraw and applies whether or not prejudice actually occurs. *In the Matter of Wolff* (Review Dept. 2006) 5 Cal. State Bar Ct. Rptr. 1. If an attorney is essentially withdrawing from employment he is obligated to give due notice to the client. *In the Matter of Brockway* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944.

The attorney of record in pending litigation remains counsel of record, and continues to have a duty to take actions essential to avoid foreseeable prejudice to client's interests, until a substitution of counsel is filed or court grants leave to withdraw. There is no requirement that prejudice actually occur. *In the Matter of Riley* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.

An attorney's failure to communicate with a client may also constitute incompetent legal practice or abandonment of the client when the facts demonstrate that the attorney's failure to communicate resulted

in the effective cessation of work on the client's case or indicated a withdrawal from employment. *In the Matter of Hindin* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657.

In the Matter of Nees (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 459 (abandonment of a criminal client is a serious matter warranting greater discipline than abandonment in other situations; such abandonment-type cases (primarily in the context of civil, not criminal litigation) typically involve a range of no actual suspension to 90 days' actual suspension.

Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct provides:

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession. Rehabilitation of a member is a permissible object of a sanction imposed upon the member but only if the imposition of rehabilitative sanctions is consistent with the above-stated primary purposes of sanctions for professional misconduct.

The parties submit that the protection of the public, the courts and the legal profession, and the preservation of public confidence in the legal profession, will be served by the disposition in this matter, which focuses on the rehabilitation of Respondent through the imposition of a one-year period of probation with conditions. The parties submit that the disposition herein is consistent with the fundamental purpose of disciplinary proceedings, as articulated in Standard 1.3; and submit that the stipulated discipline in this matter are sufficient assurance that Respondent will conform his future conduct to ethical standards and will adequately protect the public, the courts and the profession.

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>
10-O-03748	One(A)	rule 3-110(A), Rules of Professional Conduct
10-O-03748	One (B)	section 6068(m), Bus. & Prof. Code

AGGRAVATING FACTORS.

Respondent's actions resulted in harm to the administration of justice in that valuable court time had to be expended on addressing and ruling on Ware's motion to recall the remittitur and reinstate the appeal in *People v. Ware*.

MITIGATING FACTORS.

Respondent fully cooperated with the assigned Deputy Trial Counsel in this matter.

Respondent was admitted to the practice of law in the State of California on October 1, 2004, and has no prior record of discipline.

STATE BAR ETHICS SCHOOL.

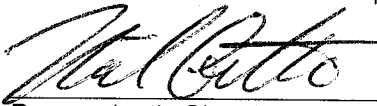
Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School. The MCLE credit for Ethics School will be in addition to Respondent's regular MCLE requirement.

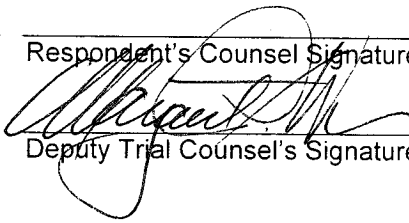
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In the Matter of: Victor M. Comstock, #232078	Case number(s): 10-O-03748
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SIGNATURE OF THE PARTIES

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, Conclusions of Law, and Disposition.

3-2-2011  Victor M. Comstock, in pro. per.
Date Respondent's Signature Print Name

3-2-2011  Margaret P. Warren
Date Deputy Trial Counsel's Signature Print Name

(Do not write above this line.)

In the Matter of:
Victor M. Comstock, #232078

Case Number(s):
10-O-03748

STAYED SUSPENSION 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 5.58(E) & (F), 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.)**

03-08-11

Date



Judge of the State Bar Court

RICHARD A. PLATEL

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 8, 2011, 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:

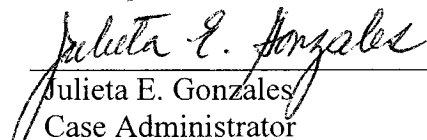
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

VICTOR M COMSTOCK ESQ
5017 MARATHON ST
LOS ANGELES, CA 90029

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

Margaret P. Warren, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 8, 2011.



Julieta E. Gonzales
Case Administrator
State Bar Court