



PUBLIC MATTER

FILED

AUG 10 2004

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

**THE STATE BAR COURT
HEARING DEPARTMENT - SAN FRANCISCO**

In the Matter of

ERIN P. MORRISSEY
No. 158015,

A Member of the State Bar

Case No. 96-O-08688-PEM
98-O-03215

DECISION

I. INTRODUCTION

In this default proceeding, Respondent Erin P. Morrissey is charged with multiple acts of misconduct in one client matter, including: (1) failing to obey a court order; (2) seeking to mislead a judge; (3) withdrawing client funds from a client trust account prior to the resolution of a dispute with the client; and (4) making false statements under penalty of perjury.

For the reasons stated below, this Court finds Respondent culpable, by clear and convincing evidence, of most of the charged acts of misconduct. Based upon the misconduct found, the Court recommends that Respondent be suspended from the practice of law for a period of three years, that execution of such suspension be stayed and that Respondent be actually suspended for a period of two years and until she complies with Standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct, and with rule 205, Rules of Procedure ("rule"), among other things.

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1 **II. PERTINENT PROCEDURAL HISTORY**

2 This proceeding was initiated by the filing of an eight-count Notice of Disciplinary
3 Charges (“NDC”) on March 28, 2002, by the Office of Chief Trial Counsel of the State Bar
4 of California (“State Bar”). The NDC was properly served upon Respondent at her then-
5 counsel Jerome Fishkin’s official membership records address the same day in accordance
6 with the requirements of Business and Professions Code, section 6002.1, subdivision (c),¹
7 and rule 60.

8 On May 7, 2002, Respondent, through new counsel, filed a Motion to Dismiss the
9 NDC on grounds that it failed to state a disciplinable offense. On May 24, 2002 the Court
10 denied Respondent’s motion.

11 On June 27, 2002, the State Bar filed a First Amended NDC. On July 2, 2002,
12 Respondent filed her answer to the amended NDC.

13 On June 23, 2003, the settlement judge referred Respondent to the State Bar’s Lawyer
14 Assistance Program (“LAP”) and the State Bar Court’s Pilot Program for evaluation. By
15 order dated October 20, 2003, “[b]ased on Respondent’s repeated failure to cooperate” the
16 Pilot program judge returned the case for “standard case processing” and set an in-person
17 status conference for November 10, 2003.

18 On November 10, 2003, Respondent appeared at the status conference *in pro per*. The
19 matter was set for a status conference on March 1, 2004, an in-person pretrial conference
20 on April 26, 2004 and trial dates on May 11, 12, and 13. Pretrial statement and exhibits were
21 ordered due on April 12, 2004.

22 On February 24, 2004, Respondent appeared for a settlement conference. At the
23 settlement conference Respondent was warned that the State Bar’s settlement offer remained
24 open until February 27, 2004 and that she should prepare for trial if the offer was
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27 ¹All future references to “section” are to the Business and Professions Code unless
28 otherwise stated.

1 unacceptable to her. Respondent did not accept the offer, therefore, the April pretrial date
2 and May trial dates remained in place. On March 1, 2004, the State Bar served Respondent
3 with a notice in lieu of subpoena requesting her attendance at trial. Although she knew about
4 a status conference scheduled for March 1, 2004, she did not appear.

5 Respondent did not file a pretrial statement on April 12, 2004. On April 20, 2004,
6 the State Bar moved the Court for an order precluding Respondent from presenting witnesses
7 or exhibits due to Respondent's failure to file a pretrial statement. Respondent was properly
8 served with a copy of this motion on April 20, 2004, at her official and an alternate address.
9 On April 27, 2004, the Court granted the motion.

10 Respondent did not appear at the April 26 pretrial conference.

11 Respondent did not appear at trial on May 11, 2004. The Court entered Respondent's
12 default in accordance with rule 201. Notice of Entry of Default was properly served upon
13 Respondent on May 12, 2004.

14 The State Bar waived its right to a hearing under rule 202. The Court admitted into
15 evidence the NDC and all State Bar exhibits except exhibit 5, which was withdrawn by the
16 State Bar. The matter was taken under submission on May 14, 2004 after the State Bar filed
17 a declaration from the complaining witness.

18 The State Bar was represented throughout this proceeding by Deputy Trial Counsel
19 Wonder Liang and Sherrie McLetchie. After November 10, 2003, Respondent represented
20 herself at all subsequent hearings.

21 **III. FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

22 The following findings of facts are based on the NDC, the exhibits and the declaration
23 of the complaining witness.

24 **A. Jurisdiction**

25 Respondent was admitted to the practice of law in California on June 8, 1992, and has
26 been a member of the State Bar of California at all times since that date.
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1 **B. Findings of Fact - Case Nos. 96-O-08688 and 98-O-03215**

2 In June 1996, Susan Newman ("Newman") hired Respondent to represent her in
3 related family law matters, including an out-of-state adoption proceeding and a California
4 marital dissolution. Respondent associated her then-husband, Michael T. Morrissey
5 ("Michael"), also a California attorney, to help her represent Newman.

6 On July 12, 1996, Respondent filed Newman's petition for dissolution of marriage.
7 (*In re the Marriage of Newman*, Santa Clara County Superior Court, case no. FL-060331).
8 In August or September 1996, Respondent drafted a fee agreement that was signed by
9 Newman. It provided, in pertinent part, for fees of \$150 per hour for Respondent's services,
10 \$125 per hour for "staff attorney" time, a \$5000 advance fee, a \$500 "true retainer," plus
11 "actual costs," including travel time and expenses.

12 In September 1996, Newman sold a single-family dwelling in California, which she
13 contended was her separate property. The \$98,000 sale proceeds were deposited into
14 Respondent's trust account on September 20, 1996.

15 On October 18, 1996, Respondent sent Newman a bill for \$72,013.10 for attorney's
16 fees and costs in the adoption proceeding and the Newman divorce case of which \$19,000 was
17 for Michael's legal services at the rate of \$300 per hour. On October 18, 1996, Respondent
18 wrote two checks totaling \$60,000 payable to herself from her client trust account. On
19 October 22, 1996, Newman sent Respondent a facsimile transmission telling her to refrain
20 from collecting any additional money and payment until the matter was settled.
21

22 On November 15, 1996, in partial resolution of the fee dispute, Respondent sent
23 Newman a portion of the house sale proceeds via a client trust account check in the amount
24 of \$38,090.77. On December 4, 1996, Newman wrote Respondent and told her not to release
25 any of the funds she was holding in escrow to her firm or any other party. In December 1996,
26 Newman hired another attorney, Bradley Chibos ("Chibos") to review Respondent's file on
27 the Newman divorce case to determine whether the fees and costs invoiced were appropriate.

28 Michael was present at the December 31, 1996 hearing, in which Judge Gallagher

1 ordered Respondent to place the house sale proceeds into an account that could not be invaded
2 by anyone without an order of the Family Law Court ("blocked account"). Also on December
3 31, 1996, Jane Hindman ("Hindman") of Hammer & Jacobs, Newman's ex-husband's
4 attorney, prepared a written version of Judge Gallagher's order and sent it to Michael by
5 facsimile transmission and by U.S. mail.

6 On January 2, 1997, at Respondent's request, Hindman sent Respondent the draft order
7 by facsimile transmission. Thereafter, on January 13, 1997, Respondent deposited \$60,000
8 into Union Bank account number 1471031839 ("Union Bank Account"). Respondent opened
9 the Union Bank account in her own name "c/o Hammer and Jacobs, Jane Hindman."
10 Respondent did not request that Union Bank "block" the account as ordered by Judge
11 Gallagher. The Union Bank account was not a client trust account.

12 On January 22, 1997, Respondent falsely stated in a declaration under penalty of
13 perjury to the court that the employee of Union Bank with whom Respondent had dealt had
14 told her that the bank did not know how to set up an account so that it could only be invaded
15 by court order. At the January 27, 1997 case management conference in the Newman divorce
16 case at which Respondent was present, Judge Grilli of the Santa Clara County Superior Court
17 ordered that the Union Bank account not be invaded except by court order or written
18 agreement.

19 On January 30, 1997, Hindman sent to Respondent by facsimile transmission the
20 written version of Judge Gallagher's December 31, 1996 order, which was filed January 29,
21 1997. It stated that "[i]f the bank cannot place the funds in an account that is restricted to
22 'accessible by court order only' then the account should have a co-signer designated by the
23 law firm of Hammer and Jacobs." On February 21, 1997, Hindman contacted Union Bank,
24 which confirmed that the funds were still on deposit, but that the account was not a trust or
25 blocked account, and that it was only in Respondent's name.

26 On March 3, 1997, Respondent, *in propria persona*, filed a petition for marital
27 dissolution. (*In re the Marriage of Morrissey*, Santa Clara County Superior Court.) She listed
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1 the \$60,000 in the Union Bank account as a community asset. On that same date, Newman
2 signed a substitution of attorney form substituting Michael for Respondent as her new counsel
3 in the Newman divorce.

4 On March 14, 1997, Respondent filed an ex parte application for attorney fees in the
5 Newman divorce seeking release of the \$60,000 held by Union Bank. She characterized these
6 funds as attorney fees earned by and owed to her. On March 31, 1997, Hindman and Hammer
7 and Jacobs substituted out of the Newman divorce case. At the April 15, 1997 hearing in the
8 Newman divorce case, the Court ordered that the \$60,000 be placed in a blocked bank account
9 with Respondent and Michael as co-signatories until they resolve their competing claims to
10 it as earned attorney fees.

11 On May 7, 1997, in the Newman divorce case, the court ordered "block funds in the
12 amount of \$60,000 plus interest, currently held at Union Bank in the name of Erin Morrissey
13 and Phil Hammer [sic] shall be held in Trust for Susan Hjeltness Newman by Michael
14 Morrissey and Erin Petereson [sic] Morrissey, said account requiring both counsel's signature
15 or further order of the Court."

16 On May 8, 1997, Respondent stated in a declaration under penalty of perjury filed
17 with the court that she was "unaware of any fee dispute with client as I have not been
18 contacted by her regarding it."

19 At the May 28, 1997 order to show cause hearing regarding, *inter alia*, attorney fees
20 in the Newman divorce case, Judge Grilli denied Michael Morrissey's motion to release funds
21 from the "blocked account."

22 On June 11, 1997, Respondent withdrew a total of \$60,679.60 from the Union Bank
23 account. Respondent and Michael agreed between themselves that Respondent would take
24 approximately \$54,000 and that Michael would take \$6,000. At the September 22, 1997
25 settlement conference in the Newman divorce case, Judge Grilli ordered that "existing orders
26 remain in effect." On March 16, 1999, Judge Grilli again ordered all orders in the Newman
27 divorce case remain in effect.
28

1 Although Newman has demanded the return of the \$60,000, she has not received any
2 part of it from Respondent. The sales proceeds from her house represented her life savings.
3 By not returning the \$60,000, Respondent has caused extreme financial harm to Newman and
4 her family for whom Newman is the sole provider.

5 **C. Conclusions of Law**

6 **1. Count One- Section 6103 (Violation of Court Order)**

7 In relevant part, section 6103 makes it a cause for disbarment or suspension for an
8 attorney to wilfully disobey or violate a court order requiring him or her to do or to forbear
9 an act connected with or in the course of his or her profession, which he or she ought in good
10 faith to do or forbear.

11 There is clear and convincing evidence that Respondent wilfully disobeyed a court
12 order in wilful violation of section 6103. She deposited the disputed funds into a bank account
13 in her name only, and did nothing to correct the nature of the account to conform to Judge
14 Gallagher's December 31, 1996 order. Respondent violated the order requiring her to deposit
15 \$60,000 into a "blocked" account.

16 **2. Count Two - Section 6068(d) (Employing Means Inconsistent with the Truth)**

17 Section 6068(d) requires an attorney from employing, for the purpose of maintaining the
18 causes confided to him or her, those means only as are consistent with the truth, and never to seek to
19 mislead the judge or any judicial officer by an artifice or false statement of fact or law.
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21 There is clear and convincing evidence that Respondent wilfully violated section 6068(d).
22 Respondent opened the Union Bank account in her own name "c/o Hammer & Jacobs, Jane
23 Hindman and did not request that the bank "block" the account as ordered by Judge Gallagher.
24 By stating in a declaration under penalty of perjury to the court that the Union Bank employee
25 with whom Respondent had dealt had told her that the bank did not know how to set up a
26 blocked account, Respondent was falsely representing to the Court that she had tried to set
27 up a blocked account but could not do so because of the bank's incompetence. Accordingly,
28 she sought to mislead a judicial officer by an artifice or false statement of fact.

1 **3. Count Three - Rule 5-200(B) (Misleading Court)**

2 Rule 5-200(B) of the Rules of Professional Conduct states, in relevant part that: “In
3 presenting a matter to a tribunal, a member ... shall not seek to mislead the judge, judicial
4 officer, or jury by an artifice or false statement of law or fact.”

5 There is clear and convincing evidence that Respondent violated rule 5-200(B) by
6 falsely stating in a declaration under penalty of perjury that Union Bank did not know how
7 to set up a “blocked” account. However, as the same facts support both the violations of section
8 6068(d) and rule 5-200(B), the latter charge is dismissed with prejudice. It is generally
9 inappropriate to find redundant charged allegations. The appropriate level of discipline for
10 an act of misconduct does not depend on how many rules of professional conduct or statutes
11 proscribe the misconduct. “There is ‘little, if any, purpose served by duplicative allegations
12 of misconduct.’” (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138,
13 148.)

14 **4. Count Four - Section 6106 (Dishonesty or Moral Turpitude)**

15 Section 6106 makes it a cause for disbarment or suspension to commit any act
16 involving moral turpitude, dishonesty or corruption, whether the act is committed in the
17 course of his or her relations as an attorney or otherwise, and whether the act is a felony or
18 misdemeanor or not.

19 There is clear and convincing evidence that Respondent violated section 6106 of the
20 Business and Professions Code. However, as the same facts support the violations of section
21 6068(d), 6106 and rule 5-200(B), the section 6106 charge is dismissed with prejudice.
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23 **5. Count Five - Rule 4-100(A)(2) (Withdrawing Disputed Funds)**

24 Rule of Professional Conduct 4-100(A)(2) provides that entrusted funds belonging in
25 part to the client and in part presently or potentially to the attorney or law firm, the portion
26 belonging to the latter must be withdrawn at the earliest reasonable time after the attorney’s
27 or firm’s interest becomes fixed. However, when the right of the attorney or firm to receive
28 a portion of trust funds is disputed by a client, the disputed portion shall not be withdrawn

1 until the dispute is finally resolved.

2 There is clear and convincing evidence that Respondent wilfully violated rule 4-
3 100(A)(2) by not redepositing \$60,000 withdrawn from her client trust account on October
4 18, 1996, upon receipt of the October 22, 1996 notice from her client that the client disputed
5 the October 18 billing for fees and costs and the withdrawal from the trust account. She
6 further violated this Rule of Professional Conduct by depositing the \$60,000 into the non-trust
7 Union Bank account on January 13, 1997.

8 **6. Count Six - Section 6068(d) (Employing Means Inconsistent with the Truth)**

9 There is clear and convincing evidence that respondent wilfully violated section
10 6068(d). On October 22, 1996 Newman sent Respondent a letter wherein she disputed the
11 October 18, 1996 bill for fees and costs. Furthermore, on December 4, 1996, Newman told
12 Respondent not to release any of the funds which Respondent was holding in escrow to her
13 firm of any other party. By falsely stated in a declaration under penalty of perjury on May 8,
14 1997, that she was unaware of any fee dispute with Newman and that Respondent had not
15 been contacted by Newman about the fee dispute Respondent sought to mislead the court.

16 **7. Count Seven - Rule 5-200(B) (Misleading Court)**

17 There is clear and convincing evidence that Respondent violated rule 5-200(B).
18 Respondent was aware of the fact the Newman disputed her fees and costs and yet she stated
19 in her declaration filed with the court that she was unaware of such a dispute. However, as
20 the same facts support both the violations of section 6068(d) and rule 5-200(B), the latter charge
21 is dismissed with prejudice

22 **8. Count Eight - Section 6106 (Dishonesty or Moral Turpitude)**

23 There is clear and convincing evidence that Respondent violated section 6106 of the
24 Business and Professions Code. However, as the same facts support the violations of section
25 6068(d), 6106 and rule 5-200(B), the section 6106 charge is dismissed with prejudice.
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1 **C. Discussion**

2 **1. Aggravating Circumstances**

3 Respondent's misconduct significantly harmed a client, the public or the administration
4 of justice. (Standard 1.2(b)(iv), Standards for Attorney Sanctions for Professional
5 Misconduct.) By not resolving the dispute as to the \$60,000 taken as fees and costs, she
6 caused harm to Newman and her family.

7 Respondent's failure to participate in proceedings prior to the entry of default is also
8 an aggravating factor. (Standard 1.2(b)(vi).) She did not appear at the March 1, 2004, status
9 conference or at the April 26, 2004, pretrial conference. She also did not file a pretrial
10 statement as ordered. This conduct demonstrates her contemptuous attitude toward
11 disciplinary proceedings as well as her failure to comprehend the duty of an officer of the
12 court to participate therein, a serious aggravating factor. (*In the Matter of Stansbury* (Review
13 Dept. 2000) 4 Cal. State Bar Ct. Rptr. 103, 109 - 110.)

14 **2. Mitigating Circumstances**

15 Respondent has no prior instances of discipline since his admission to the practice of
16 law in California in 1992, a mitigating circumstance. (Standard 1.2(e)(i).)

17 **3. Level of Discipline**

18 The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to
19 protect the public, to preserve public confidence in the profession, and to maintain the highest
20 possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103,
21 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.) Standard 1.6 provides
22 that the appropriate sanction for the misconduct found must be balanced with any mitigating
23 or aggravating circumstances, with due regard for the purposes of imposing discipline. If two
24 or more acts of professional misconduct are found in a single disciplinary proceeding, the
25 sanction imposed shall be the most severe of the applicable sanctions. (Standard 1.6(a).)

26 In the instant case, the discipline recommended by the standards ranges from reproof
27 to disbarment. (Standards 2.2(b), 2.6(a) and (b).) The more severe sanction is suggested by
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1 standard 2.2(b): at least three months actual suspension regardless of mitigating circumstances
2 for commingling entrusted funds or property with personal property or committing another
3 violation of rule 4-100, none of which result in the wilful misappropriation of entrusted funds
4 or property. The standards, however, are guidelines from which the Court may deviate in
5 fashioning the most appropriate discipline considering all the proven facts and circumstances
6 of a given matter. (*In re Young* (1989) 49 Cal.3d 257, 267 (fn. 11) *Howard v. State Bar*
7 (1990) 51 Cal.3d 215.) They are "not mandatory 'sentences' imposed in a blind or mechanical
8 manner." (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

9 The prosecution suggests discipline of, among other things, two years and until
10 Respondent complies with standard 1.4(c)(ii). The Court agrees.

11 The Court found *In the Matter of Hertz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr.
12 456, instructive. In *Hertz*, the attorney was suspended for two years and until he complied
13 with standard 1.4(c)(ii) for violating sections 6106 and 6068(d), former RPCs 8-101 and 7-
14 105. Respondent Hertz held \$15,000 in trust in a family law matter in which he represented
15 the husband. Without the knowledge or consent of opposing party or her counsel, the attorney
16 released \$10,000 of the entrusted funds to the husband to pay community debts. He also took
17 the \$5000 balance as attorney fees but replaced it. During and after these transactions,
18 Respondent Hertz deceived opposing counsel, the superior and appellate courts and a State
19 Bar investigator as to the whereabouts of the entrusted funds. In aggravation, the Court
20 considered the attorney's pattern of nine acts of deceit and his taking extraordinary measures
21 over five years to cover up the misconduct. His deception resulted in civil proceedings that
22 burdened the administration of justice and exposed himself and his client to perjury. In
23 mitigation, the Court considered the attorney's remorse, good character evidence, community
24 and pro bono service and cooperation during the proceedings by stipulating to charges. No
25 mitigating weight was afforded to Respondent Hertz's four years of blemish-free conduct
26 prior to the start of the misconduct.
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28 *Hertz* presents similar misconduct with greater aggravation and mitigation than the

1 instant case. Moreover, Respondent's failure to participate in the current proceeding deprives
2 this Court of an opportunity to fully assess the likelihood that Respondent may engage in
3 further misconduct in the future. As a result, for the protection of the public, the courts and
4 legal profession, this Court concludes that Respondent should be actually suspended from the
5 practice of law for a period of two years and until she complies with standard 1.4(c)(ii) and
6 rule 205. If Respondent seeks relief pursuant to rule 205 and to return to the practice of law,
7 the resolution of the fee dispute with Newman may be addressed at that time.

8 **RECOMMENDED DISCIPLINE**

9 Accordingly, it is hereby recommended that Respondent ERIN P. MORRISSEY be suspended
10 from the practice of law for three years and until she provides proof satisfactory to the State Bar Court
11 of her rehabilitation, fitness to practice and present learning and ability in the general law pursuant
12 to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct; that said
13 suspension be stayed; and that she be actually suspended from the practice of law for two
14 years and until she complies with standard 1.4(c)(ii), Standards for Attorney Sanctions for
15 Professional Misconduct as set forth above; and until the State Bar Court grants a motion to terminate
16 Respondent's actual suspension at its conclusion or upon such later date ordered by the Court. (Rule
17 205(a), (c), Rules Proc. of State Bar.)

18 It is also recommended that she be ordered to comply with the conditions of probation, if any,
19 hereinafter imposed by the State Bar Court as a condition for terminating her actual suspension.

20 It is also recommended that Respondent be ordered to comply with the requirements of rule
21 955 of the California Rules of Court within 30 calendar days of the effective date of the Supreme
22 Court order in this matter, and file the affidavit provided for in paragraph (c) within 40 days of the
23 effective date of the order showing her compliance with said order.²

24 It is further recommended that Respondent be ordered to take and pass the Multistate
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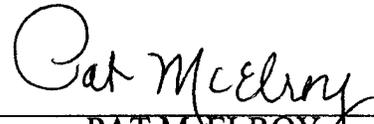
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27 ²Failure to comply with CRC 955 could result in disbarment. (*Bercovich v. State Bar*
28 (*1990*) 50 Cal.3d 116, 131.) Respondent is required to file a CRC 955(c) affidavit even if she
has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

1 Professional Responsibility Examination given by the National Conference of Bar Examiners during
2 the period of her actual suspension and furnish satisfactory proof of such to the State Bar Office of
3 Probation within said period.

4 **COSTS**

5 It is recommended that costs be awarded to the State Bar pursuant to Business and
6 Professions Code section 6086.10 and that such costs be made payable in accordance with
7 Business and Professions Code section 6140.7.

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11 Dated: August 9, 2004

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PAT MCELROY
14 Judge of the State Bar Court
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CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 August 10, 2004, I deposited a true copy of the following document(s):

DECISION

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:

ERIN P MORRISSEY
236 N SANTA CRUZ AVE #102B
LOS GATOS CA 95030

ERIN P. MORRISSEY
236 N SANTA CRUZ AVE #110
LOS GATOS CA 95030

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

WONDER LIANG, Enforcement, San Francisco
SHERRIE McLETCHIE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **August 10, 2004**.


George Hue
Case Administrator
State Bar Court