



1 **II. SIGNIFICANT PROCEDURAL HISTORY**

2 **A. Case No. 04-O-11377**

3 On July 15, 2004, the State Bar filed a Notice of Disciplinary Charges (NDC) in case number  
4 04-O-11377. On that same date the State Bar properly served the NDC on Respondent at his official  
5 membership records address, by certified mail, return receipt requested, as provided in Business and  
6 Professions Code section 6002.1 (c). On August 9, 2004, the United States Postal Service returned  
7 the NDC bearing the stamp "Return to Sender, Not Deliverable as Addressed, Unable to Forward."<sup>1</sup>

8 Respondent did not file a responsive pleading to the NDC. On August 10, 2004, the State  
9 Bar filed a motion for entry of default and on that same day properly served the motion on  
10 Respondent at his official membership records address. The motion advised Respondent that  
11 minimum discipline of disbarment would be sought if he was found culpable. Respondent did not  
12 respond to the motion.

13 On August 26, 2004, the court entered Respondent's default and enrolled him inactive  
14 effective three days after service of the order. The order was properly served on Respondent at his  
15 official membership records address on that same date by certified mail, return receipt requested.  
16 On September 8, 2004, the United States Postal Service returned the mailing with the annotation  
17 "Return to Sender."

18 On August 31, 2004, the State Bar filed a request for waiver of default hearing and a brief  
19 on culpability and discipline. On September 15, 2004, the court took this matter under submission  
20 for decision.

21 **B. Case No. 04-O-10829**

22 On September 1, 2004, the State Bar filed a Notice of Disciplinary Charges (NDC) in case  
23 number 04-O-10829. On that same date the State Bar properly served the NDC on Respondent at  
24 his official membership records address, by certified mail, return receipt requested, as provided in  
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26 <sup>1</sup>The State Bar also mailed a courtesy copy of the NDC to Respondent at 38760 Sky  
27 Canyon Drive, Suite B, Murrieta, California 92563-2562. On August 6, 2004, the U.S. Postal  
28 Service returned the courtesy copy with the stamp "Return to Sender-Addressee Not At This  
Address."

1 Business and Professions Code section 6002.1 (c).

2 Respondent did not file a responsive pleading to the NDC. On September 28, 2004, the State  
3 Bar properly served a motion for entry of default on Respondent at his official membership records  
4 address and filed the motion on September 30, 2004. The motion advised Respondent that minimum  
5 discipline of disbarment would be sought if he was found culpable. Respondent did not respond to  
6 the motion.

7 On October 15, 2004, the court entered Respondent's default and enrolled him inactive  
8 effective three days after service of the order. The order was properly served on Respondent at his  
9 official membership records address on that same date by certified mail, return receipt requested.

10 On November 4, 2004, the court took this matter under submission for decision.

11 Finding good cause, the court, on its own motion, hereby consolidates both proceedings.

12 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13 The court's findings are based on the allegations contained in the NDCs as they are deemed  
14 admitted and no further proof is required to establish the truth of those allegations. (Bus. & Prof.  
15 Code, section 6088; Rules Proc. of State Bar, rule 200(d)(1)(A).)

16 **A. Jurisdiction**

17 Respondent was admitted to the practice of law in California on June 9, 1995, and has been  
18 a member of the State Bar at all times relevant to the charges.

19 **B. Case No. 04-O-11377**

20 **Facts**

21 On July 9, 2003, John and Angelina Gabriele employed Respondent to prepare a limited  
22 partnership and trust on their behalf. Respondent agreed to do the work for \$5,400 in advanced legal  
23 fees.

24 The Gabrieles paid Respondent \$2,900.00 on July 21, 2003, in advanced attorney fees. On  
25 July 22, 2003, Respondent informed the Gabrieles that he had opened an account at a new bank that  
26 was placing a ten-day hold on the \$2,900.00 check they had given him. Respondent informed the  
27 Gabrieles that he would return the first check to them and requested a replacement check for the  
28 \$2,900.00. The Gabrieles gave Respondent a replacement check in the amount of \$2,900.00 for

1 attorney fees on July 22, 2003.

2 Respondent did not return the first check and on July 22, 2003, cashed both of the \$2,900.00  
3 checks the Gabrieleles had given him for advanced attorney fees.

4 Respondent misrepresented to the Gabrieleles that he needed a replacement check and that he  
5 would return the first check for attorney fees.

6 On August 12, 2003, Respondent met with the Gabrieleles to have them sign documents  
7 pertaining to the limited partnership and trust. According to Respondent his assistant was to bring  
8 the documents to the meeting. After Respondent's assistant did not appear at the meeting,  
9 Respondent returned to the Gabrieleles \$400.00 of the advanced legal fee they paid him and informed  
10 them that he would obtain the documents from his assistant and personally return to the Gabrieleles'  
11 office so they could sign the documents. Respondent did not return to the Gabrieleles' office that  
12 night.

13 At no time did Respondent ever present any documents to the Gabrieleles for signature. At no  
14 time did Respondent prepare the limited partnership and trust or perform any legal services for the  
15 Gabrieleles.

16 Between August 13, 2003 to October 8, 2003, the Gabrieleles called Respondent's office  
17 approximately seven times leaving messages requesting Respondent to return their telephone calls.  
18 Respondent did not return any of the Gabrieleles' telephone calls they placed during this time.

19 Thereafter the Gabrieleles tried to continue to contact Respondent telephonically at the last  
20 known telephone number he provided them, but the number was eventually disconnected with no  
21 forwarding number. Respondent did not provide the Gabrieleles a new telephone number or address  
22 for him.

23 On March 20, 2004, Mrs. Gabriele sent Respondent a letter requesting a refund of the  
24 advanced fees paid to Respondent. Mrs. Gabriele sent the letter to Respondent by certified mail, but  
25 the U.S. Postal Service returned the letter as unclaimed. Other than the \$400.00 he returned on  
26 August 12, 2003, Respondent did not refund any other portion of the \$5,900.00 the Gabrieleles paid  
27 him for advanced fees.

28 On April 1, 2004, the State Bar opened an investigation in case no. 04-O-11377 pursuant to

1 a complaint filed by the Gabrieles.

2 On April 12, 2004, a State Bar investigator mailed a letter to Respondent requesting him to  
3 respond in writing to the allegations in the Gabrieles' complaint. The State Bar investigator mailed  
4 the letter to Respondent at his official membership records address. The United States Postal Service  
5 returned the letter with a forwarding address of 38760 Sky Canyon Drive, Suite B, Murrieta,  
6 California 92563.

7 On May 5, 2004, a State Bar investigator mailed a letter to Respondent at the Murrieta,  
8 California, address requesting Respondent to respond in writing to the allegations in the Gabrieles'  
9 complaint. The United States Postal Service returned the letter marked "Return to Sender not at this  
10 address."

11 Respondent did not respond or otherwise communicate with the State Bar investigator.

12 **Legal Conclusions**

13 **Count One: Rule 3-110(A) (Failing to Perform Competently)**

14 Rule 3-110(A) of the Rules of Professional Conduct<sup>2</sup> prohibits an attorney from intentionally,  
15 recklessly or repeatedly failing to perform legal services competently.

16 By failing to perform any services on behalf of the Gabrieles, Respondent intentionally,  
17 recklessly or repeatedly did not perform competently the legal services for which he was employed,  
18 in wilful violation of rule 3-110(A).

19 **Count Two: Section 6106 (Moral Turpitude)**

20 Section 6106 prohibits an attorney from engaging in conduct involving moral turpitude,  
21 dishonesty or corruption.

22 By misrepresenting to the Gabrieles that he needed a replacement check for the advance  
23 attorney fees and by misrepresenting that he would return the first check for advanced attorney fees,  
24 Respondent committed acts involving moral turpitude, dishonesty or corruption in wilful violation  
25 of section 6106.

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27 \_\_\_\_\_  
28 <sup>2</sup>Unless otherwise noted, all further references to "rule(s)" refer to the Rules of Professional Conduct.

1                   **Count Three: Rule 3-700(A)(2) (Improper Withdrawal from Employment)**

2                   Rule 3-700(A)(2) prohibits an attorney from withdrawing from employment until the attorney  
3 has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client.

4                   By failing to provide the Gabrieleles with his new telephone number or address, Respondent  
5 constructively withdrew from representation of the Gabrieleles. Respondent did not notify the  
6 Gabrieleles that he was withdrawing from employment and denied them a reasonable opportunity to  
7 retain another attorney prior to his withdrawal.

8                   By failing to give notice to the Gabrieleles that he was withdrawing from the case and thereby  
9 failing to provide the Gabrieleles with a reasonable opportunity to employ other counsel, Respondent  
10 withdrew from employment without taking reasonable steps to avoid foreseeable prejudice, in wilful  
11 violation of rule 3-700(A)(2).

12                   **Count Four: Rule 3-700(D)(2) (Failure to Refund Unearned Fees)**

13                   Rule 3-700(D)(2) requires an attorney whose employment has been terminated to promptly  
14 refund any part of a fee paid in advance that has not been earned.

15                   There is no evidence that Respondent provided any service or performed any work on behalf  
16 of the Gabrieleles. Thus, by not refunding all of the advanced fees, after Respondent terminated his  
17 employment, Respondent did not refund a fee paid in advance that had not been earned, in wilful  
18 violation of rule 3-700(D)(2).

19                   **Count Five: Section 6068(m) (Failure to Respond to Client Inquiries)**

20                   Section 6068(m) of the Business and Professions Code<sup>3</sup> requires an attorney to respond  
21 promptly to reasonable status inquiries of clients and to keep clients reasonably informed of  
22 significant developments in matters with regard to which the attorney has agreed to provide legal  
23 services.

24                   By not responding to the Gabrieleles' telephone inquiries between August 13 to October 8,  
25 2003, Respondent did not respond to his clients' reasonable status inquiries, in wilful violation of  
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27 \_\_\_\_\_  
28                   <sup>3</sup>Unless otherwise noted, all further references to "section" refer to the Business and Professions Code.

1 section 6068(m).

2 **Count Six: Section 6068(i) (Failure to Cooperate in State Bar Investigation)**

3 Section 6068(i) requires an attorney to cooperate and participate in any disciplinary  
4 investigation or proceeding pending against him.

5 The court does not find Respondent culpable of violating section 6068(i). Since the  
6 investigator's letters were returned as undeliverable, there is no evidence that Respondent was  
7 actually aware of the State Bar's disciplinary investigation of his conduct in the Gabrieles' matter.  
8 Thus, there is insufficient evidence to clearly and convincingly demonstrate that Respondent failed  
9 to cooperate with the State Bar's disciplinary investigation.<sup>4</sup>

10 **C. Case No. 04-O-10829**

11 **Facts**

12 Prior to July 2001, Respondent practiced law as a partner with attorney Robert H. Tyler.  
13 Respondent and Tyler maintained a client trust account at Mission Oaks National Bank, account  
14 number 1504075.

15 In July 2001, Respondent and Tyler terminated their law partnership. After terminating their  
16 partnership Respondent and Tyler kept the client trust account open pending the distribution of  
17 \$1,179.86 to seven former clients who could not be located. Respondent did not disburse the funds  
18 to the former clients and was not entitled to receive any of the funds maintained in the client trust  
19 account.

20 On December 5, 2003, Respondent issued and cashed a check from the client trust in the  
21 amount of \$542.44 made payable to himself. As a result, the balance in the client trust account fell  
22 below the \$1,179.86 Respondent was required to maintain.

23 On March 4, 2004, the State Bar opened an investigation in case no. 04-O-10829 pursuant  
24 to a complaint filed by Tyler.

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26 <sup>4</sup>Since letters addressed to Respondent at his official membership records address were  
27 returned as undeliverable, the State Bar could have charged Respondent with a violation of  
28 Business and Professions Code section 6068, subdivision (j), which provides that it is the duty of  
a member of the State Bar to comply with the requirements of section 6002.1. However, the  
State Bar apparently chose not to charge Respondent with this violation.

1 On April 2, 2004, a State Bar investigator mailed a letter to Respondent requesting him to  
2 respond in writing to the allegations in the Tyler complaint. The State Bar investigator mailed the  
3 letter to Respondent at his official membership records address. The United States Postal Service  
4 returned the letter with a forwarding address of 38760 Sky Canyon Drive, Suite B, Murrieta,  
5 California 92563.

6 On May 5, 2004, a State Bar investigator mailed a letter to Respondent at the Murrieta,  
7 California, address requesting Respondent to respond in writing to the allegations in the Tyler  
8 complaint. The United States Postal Service returned the letter marked "Return to Sender not at this  
9 address."

10 Respondent did not respond or otherwise communicate with the State Bar investigator.

11 **Legal Conclusions**

12 **Count One(A): Rule 4-100(A) (Failure to Maintain Funds in Trust)**

13 Rule 4-100(A) requires an attorney to deposit in a bank account labeled "Trust Account,"  
14 "Client's Funds Account" or words of similar import all funds received or held for the benefit of  
15 clients.

16 By not maintaining on deposit in his client trust account at least \$1,179.86 which his former  
17 clients were entitled to receive, Respondent wilfully violated rule 4-100(A).

18 **Count Two: Section 6106 (Moral Turpitude)**

19 By converting \$542.44 in client funds for his own personal use, Respondent committed an  
20 act involving moral turpitude, dishonesty or corruption in wilful violation of section 6106.

21 **Count Three: Section 6068(i) (Failure to Cooperate in State Bar Investigation)**

22 As in case number 04-O-11377, the court does not find Respondent culpable of violating  
23 section 6068(i). Since the investigator's letters were returned as undeliverable, there is no evidence  
24 that Respondent was actually aware of the State Bar's disciplinary investigation of his conduct  
25 regarding Tyler's complaint. Thus, there is insufficient evidence to clearly and convincingly  
26 demonstrate that Respondent failed to cooperate with the State Bar's disciplinary investigation.

27 **IV. LEVEL OF DISCIPLINE**

28 **A. Aggravating Circumstances**

1 Respondent's multiple acts of misconduct are an aggravating factor. (Standard 1.2(b)(ii),  
2 Rules Proc. Of State Bar, tit. IV, Stds. For Atty. Sanctions for Prof. Misconduct (Standards).)

3 Respondent made no attempt to rectify or atone for the consequences of his misconduct.  
4 (Standard 1.2(b)(v).)

5 Respondent's lack of candor and cooperation with the State Bar during a disciplinary  
6 proceeding, evidenced by his failure to participate prior to entry of default, is an aggravating  
7 circumstance. (Standard 1.2(b)(vi).) Respondent's failure to participate in the current proceeding  
8 shows that Respondent does not appreciate the seriousness of the charges or comprehend the  
9 importance of participation. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 507.) Such lack of  
10 participation is a serious aggravating factor since it establishes that Respondent does not comprehend  
11 the duty of an officer of the court to participate in disciplinary proceedings. Such a contemptuous  
12 attitude toward disciplinary proceedings is a highly relevant factor in determining the appropriate  
13 level of discipline. (*In the Matter of Stansbury* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 104,  
14 109.)

15 **B. Mitigating Circumstances**

16 Respondent bears the burden of establishing mitigation by clear and convincing evidence,  
17 and since he did not participate in these proceedings, no mitigating evidence was presented.  
18 However, for the purpose of mitigation, the court takes judicial notice, pursuant to Evidence Code  
19 section 452(h), of the membership records of the State Bar and the fact that Respondent has no prior  
20 record of discipline. (Standard 1.2(e)(i).) Respondent had been in practice approximately eight  
21 years prior to the start of his misconduct. The court, therefore, affords only slight mitigating weight  
22 to the absence of a prior record of discipline. (*In the Matter of Lynch* (Review Dept. 1995) 3 Cal.  
23 State Bar Ct. Rptr. 287, 295 [Attorney's unblemished practice of law for eight years and four months  
24 prior to the start of her misconduct was a mitigating circumstance but did not deserve significant  
25 weight].)

26 **Discussion**

27 The purpose of disciplinary proceedings is not to punish the attorney, but to protect the  
28 public, to preserve public confidence in the profession, and to maintain the highest possible

1 professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; Standard  
2 1.3.)

3 Standard 1.6 provides that the appropriate sanction for the misconduct found must be  
4 balanced with any mitigating or aggravating circumstances, with due regard for the purposes of  
5 imposing discipline. If two or more acts of professional misconduct are found in a single  
6 disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions.  
7 (Standard 1.6(a).) The level of discipline is progressive. (Standard 1.7(b).)

8 Standards 2.2(a), 2.3, 2.4(b), 2.6(a), and 2.10 apply in this matter. The most severe sanction  
9 is suggested by standard 2.2(a) which provides for disbarment. The standards, however, are  
10 guidelines from which the court may deviate in fashioning the most appropriate discipline  
11 considering all the proven facts and circumstances of a given matter. (*Howard v. State Bar* (1990)  
12 51 Cal.3d 215.) They are not mandatory sentences imposed in a blind or mechanical manner.”  
13 (*Gary v. State Bar* (1988) 44 Cal.3d 820, 828.)

14 Respondent has been found culpable in two client matters of various violations of the rules  
15 and statutes governing attorney conduct, specifically committing acts of moral turpitude or  
16 dishonesty, failing to competently perform legal services and communicate with a client, improperly  
17 withdrawing from employment, failing to refund unearned fees, and failing to maintain client funds  
18 in trust. There is minimal mitigation for the lack of a prior record of discipline for approximately  
19 eight years. In aggravation, the court has found multiple acts of misconduct, indifference toward  
20 rectification or atonement, and failure to participate in the proceeding prior to the entry of default.

21 The State Bar cites as instructive *Borre v. State Bar* (1991) 52 Cal.3d 1047, where an  
22 attorney received a five-year stayed suspension with a two-year actual suspension for misconduct  
23 stemming from his representation of an incarcerated client. The attorney failed to communicate  
24 significant developments to the client, failed to perform competently, and improperly withdrew from  
25 employment. The attorney also committed acts of moral turpitude by intentionally deceiving the  
26 client about the status of the case and providing the State Bar a fabricated letter designed to  
27 exculpate him. In mitigation, the attorney had no record of discipline in over fourteen years of  
28 practice.

1           In *In the Matter of Frazier* (Review Dept. 1992) 1 Cal. State Bar Ct. Rptr. 676, a five-year  
2 stayed suspension with a three-year actual suspension was imposed on an attorney who failed to  
3 perform, failed to communicate, and improperly withdrew from five client matters. Additionally,  
4 the attorney failed to maintain \$6,881 in trust and committed acts of moral turpitude and dishonesty  
5 by making misleading statements to two clients and for misappropriating the \$6,881. Although the  
6 attorney received no mitigation for having only practiced one year before committing ethical  
7 misconduct, the attorney did suffer from extreme emotional difficulties. In aggravation, the attorney  
8 failed to cooperate with the State Bar, displayed indifference toward rectification or atonement, and  
9 acted in bad faith. Furthermore, the attorney's misconduct involved multiple acts and significantly  
10 harmed clients.

11           In *In the Matter of Trillo* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 59, a three-year  
12 stayed suspension with one-year actual suspension was imposed on an attorney who, while  
13 representing two individuals in a single civil claim, failed to perform, failed to communicate and  
14 failed to refund unearned fees totaling \$2,000. Additionally, the attorney committed acts of moral  
15 turpitude by misrepresenting his status as a law firm partner and converting \$500 in advanced costs.  
16 In mitigation, the attorney practiced for over fourteen years with no prior record of discipline. In  
17 addition to the fact that the attorney defaulted, the court found in aggravation, client harm, multiple  
18 acts of misconduct, and a lack of candor and cooperation due to lack of payment of restitution.

19           The State Bar recommends, among other things, disbarment, and in the alternative a three-  
20 year actual suspension. The court found no case authority imposing this degree of discipline on facts  
21 sufficiently analogous to those of this matter and the State Bar cited none.

22           Respondent's misconduct is not nearly as extensive as the misconduct in *Frazier*. Although  
23 Respondent's misconduct is nearly analogous to the misconduct in *Trillo*, Respondent's matter  
24 involves two clients, rather than one, and Respondent's eight years of blemish-free practice does not  
25 command the same mitigative weight that the attorney's fourteen years of blemish-free practice did  
26 in *Trillo*. Thus, Respondent's misconduct warrants the imposition of discipline between the three-  
27 year and one-year period of actual suspension imposed in *Frazier* and *Trillo*, respectively.

28           After considering Respondent's misconduct and the law, and balancing the aggravating and

1 mitigating factors, the court recommends, among other things, actual suspension of two years and  
2 until Respondent makes restitution, complies with rule 205 and shows proof satisfactory to the State  
3 Bar Court of Respondent's rehabilitation, present fitness to practice, and present learning and ability  
4 in the general law in accordance with standard 1.4(c)(ii).

5 **V. DISCIPLINE RECOMMENDATION**

6 Accordingly, it is hereby recommended that Respondent LAWRENCE R. DORSA be  
7 suspended from the practice of law for three years and until Respondent has shown proof satisfactory  
8 to the State Bar Court of Respondent's rehabilitation, fitness to practice and learning and ability in  
9 the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for  
10 Professional Misconduct, that said suspension be stayed, and that Respondent be actually suspended  
11 from the practice of law for two years and until Respondent provides satisfactory proof to the State  
12 Bar's Office of Probation of payment of restitution to John and Angelina Gabriele and to the bank  
13 account currently holding funds belonging to unpaid clients from Respondent's former partnership  
14 (or the Client Security Fund, if appropriate) in the amount of \$5,400.00 plus 10% interest per annum  
15 from March 20, 2004, and \$542.44 plus 10% interest per annum from December 5, 2003,  
16 respectively, and until the State Bar Court grants a motion to terminate Respondent's actual  
17 suspension at its conclusion or upon such later date ordered by the court, and until Respondent has  
18 shown proof satisfactory to the State Bar Court of rehabilitation, fitness to practice, and learning and  
19 ability in the general law pursuant to Standard 1.4(c)(ii), Standards for Attorney Sanctions for  
20 Professional Misconduct. (Rules Proc. of State Bar, rule 205(a), (b), (c).)

21 It is also recommended that Respondent be ordered to comply with the conditions of  
22 probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating  
23 Respondent's actual suspension.

24 It is further recommended that Respondent be ordered to comply with the requirements of  
25 rule 955 of the California Rules of Court within 30 calendar days of the effective date of the  
26 Supreme Court order in this matter, and file the affidavit provided for in paragraph (c) within 40 days  
27 of the effective date of the order showing Respondent's compliance with said order.

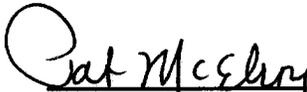
28 It is further recommended that Respondent be ordered to take and pass the Multistate

1 Professional Responsibility Examination given by the National Conference of Bar Examiners and  
2 provide proof of passage to the Office of Probation within one year of the effective date of the  
3 discipline herein or during the period of actual suspension, whichever is longer.

4 **VI. COSTS**

5 The court recommends that costs be awarded to the State Bar pursuant to Business and  
6 Professions Code section 6086.10 and that those costs be payable in accordance with section 6140.7.

7  
8 Dated: November 22, 2004

  
PAT MCELROY  
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 November 22, 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:

**LAWRENCE R. DORSA**  
**43460 RIDGE PARK DR #220**  
**TEMECULA CA 92590**

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

**ELI MORGENSTERN, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 22, 2004.



**Laretta Cramer**  
Case Administrator  
State Bar Court