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State Bar Court of California Hearing Department Los Angeles REPROVAL		
<p>Counsel For The State Bar</p> <p>PAUL T. O'BRIEN 1149 S. HILL STREET LOS ANGELES, CA 90015-2299 (213) 765-1378</p> <p>Bar # 171252</p>	<p>Case Number(s): 07-O-13999 10-O-06905</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 24pt;">FILED</p> <p style="text-align: center;">MAR 17 2011 <i>MC</i></p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>GEOFFREY C. MORRISON 1350 COLUMBIA ST., UNIT 600 SAN DIEGO, CA 92101 (619) 277-8822</p> <p>Bar # 172059</p>	<p>PUBLIC MATTER</p>	
<p>In the Matter of: JAMES BYRNES</p> <p>Bar # 154882</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>PUBLIC REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</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 16, 1991.
- (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):
- Costs are added to membership fee for calendar year following effective date of discipline (public reproof).
 - Case ineligible for costs (private reproof).
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (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.
- (9) The parties understand that:
- (a) A private reproof imposed on a respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproof imposed on a respondent after initiation of a State Bar Court proceeding is part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) A public reproof imposed on a respondent is publicly available as part of the respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

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."

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Reproof

- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. Respondent's misconduct involved five violations of rule 3-300 or the Rules of Professional Conduct and one violation of rule 4-100(B)(4).
- (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

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any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.

- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

D. Discipline:

- (1) **Private reproof (check applicable conditions, if any, below)**
- (a) Approved by the Court prior to initiation of the State Bar Court proceedings (no public disclosure).
- (b) Approved by the Court after initiation of the State Bar Court proceedings (public disclosure).

or

- (2) **Public reproof (Check applicable conditions, if any, below)**

E. Conditions Attached to Reproof:

- (1) Respondent must comply with the conditions attached to the reproof for a period of two years.
- (2) During the condition period attached to the reproof, 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 condition period attached to the reproof. 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 the reproof during the preceding calendar quarter. Respondent

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must also state in each report 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 (thirty) days, that report must be submitted on the next following 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 condition period and no later than the last day of the condition period.

- (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 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 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 conditions attached to the reprobation.
- (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) 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 of the effective date of the reprobation.
 - No MPRE recommended. Reason:
- (11) The following conditions are attached hereto and incorporated:
 - Substance Abuse Conditions
 - Medical Conditions
 - Law Office Management Conditions
 - Financial Conditions

F. Other Conditions Negotiated by the Parties:

None.

Attachment language (if any):

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JAMES BYRNES

CASE NUMBER(S): 07-O-13999-RAP, et al.

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. 07-O-13999 (Complainant: James Boyle)

1. In January 2005, Brian Boyle ("Boyle") employed Respondent to represent him in matters related to the estate of his mother, Mary Boyle. Particularly, Boyle wanted a condominium that he had gifted to the estate returned to him after his mother died in May 2004. Boyle employed Respondent to negotiate with Boyle's two brothers for the return of the property.
2. Respondent provided legal services to Boyle relating to his mother's estate from January 2005 through March 2006.
3. In August and September 2005, Respondent provided legal services to Boyle relating to the trust of his aunt, Ruth Doyle Blain.
4. Because of Respondent's representation of Boyle, he was aware that Boyle had received money from his mother's estate, specifically, \$49,162.57, which he had received in or about August 2005. With this knowledge, Respondent approached Boyle about loaning money to Respondent. Boyle initially denied Respondent's request for a loan, but eventually agreed to lend money to Respondent through Respondent's business, BMI Development ("BMI").
5. On January 4, 2006, Boyle loaned \$25,000 to BMI, executing a promissory note pertaining to the transaction. Respondent signed the note as president of BMI.
6. Respondent did not advise Boyle, in writing, that he may seek the advice of an independent lawyer of Boyle's choice regarding the \$25,000 loan to BMI. Consequently, Boyle was not given a reasonable opportunity to seek independent legal advice.
7. On or about June 18, 2006, Boyle loaned another \$2000 to Respondent and BMI.
8. On August 11, 2006, Boyle loaned another \$2,000 to Respondent and BMI.
9. On September 22, 2006, Boyle loaned another \$5,000 to Respondent and BMI.
10. On January 22, 2007, Boyle loaned another \$5,003 to Respondent and BMI.

11. Respondent did not disclose and transmit, in writing, to Boyle, the terms of the loans of June, 18, 2006, August 11, 2006, September 22, 2006, and January 22, 2007. Respondent did not advise Boyle, in writing, that he may seek the advice of an independent lawyer of Boyle's choice regarding the various loans to Respondent and/or BMI. Consequently, Boyle was not given a reasonable opportunity to seek independent legal advice.

CONCLUSIONS OF LAW:

12. By not advising Boyle in writing that he may seek the advice of an independent lawyer of Boyle's choosing, by not giving him the opportunity to seek that advice, and by not obtaining Boyle's consent in writing to the terms of the loan after having a reasonable opportunity to seek that advice, Respondent entered into a business transaction with a client without complying with the requirements that the client was advised in writing that the client may seek the advice of an independent lawyer of the client's choosing, that the client be given a reasonable opportunity to seek that advice, and that the client thereafter consent in writing to the terms of the transaction, in willful violation of rule 3-300, Rules of Professional Conduct.

Case No. 10-O-06905 (Complainant: Patricia Conrad)

13. On October 6, 2009, Patricia Conrad ("Conrad") employed Respondent to represent her in a personal bankruptcy matter. Conrad advanced \$409 in costs.

14. In January 2010, Conrad terminated Respondent's employment in connection with her bankruptcy. Conrad requested the refund of the unused portion of her advanced costs at that time. Respondent had paid \$50 in advanced costs for an online credit course and \$35 for a credit report for Conrad; therefore, Conrad had a balance of \$324 in advanced costs due her upon termination.

15. Thereafter, Respondent did not refund any portion of the \$324 to Conrad, despite agreeing to pay Conrad that amount as a refund of costs in July 2010.

CONCLUSIONS OF LAW:

16. By not promptly refunding \$324 of the advanced costs to Conrad upon her request at the termination of his employment, Respondent failed to promptly pay, as requested by the client, funds in his possession that the client was entitled to receive, in willful violation of rule 4-100(B)(4), Rules of Professional Conduct.

17.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was February 28, 2011.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 2.8, Standards for Attorney Sanctions for Professional Misconduct provides that culpability of a member of a wilful violation of rule 3-300, Rules of Professional Conduct, shall result in suspension unless the extent of the member's misconduct and the harm to the client are minimal, in which case, the degree of discipline shall be reproof.

Aames v. State Bar (1973) 8 Cal.3d 910, involved attorneys who, while representing holders of a junior encumbrance on real property involved in litigation, purchased the senior encumbrance in order to allow the clients more time to raise money to prevent foreclosure by the senior encumbrance. No aggravating circumstances were discussed. Based on mitigating circumstances, which included no prior discipline, the attorneys acting in what they thought were the best interests of the clients, no intent to deceive or defraud, and client consent, the court imposed a private reproof.

While Respondent's misconduct did not involve any dishonesty or bad intent or overreaching, he repeatedly violated his obligations as an attorney in one matter and failed to rectify an easily discoverable wrong in another. His misconduct, then, exceeded that in *Aames*. Due in part to Respondent's lack of prior discipline over many years of practice, a public reproof is appropriate..

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of February 28, 2011, the prosecution costs in this matter are \$5,539. 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.

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In the Matter of: JAMES BYRNES	Case Number(s): 07-O-13999; 10-O-06905
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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
BRIAN BOYLE	\$43,256	February 5, 2009
PATRICIA CONRAD	\$324	January 22, 2010

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency

- 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.

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

b. Respondent has kept and maintained the following:

- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
- ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
- iii. all bank statements and cancelled checks for each client trust account; and,
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.

c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:

- i. each item of security and property held;
- ii. the person on whose behalf the security or property is held;
- iii. the date of receipt of the security or property;
- iv. the date of distribution of the security or property; and,
- v. the person to whom the security or property was distributed.

2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. **Client Trust Accounting School**

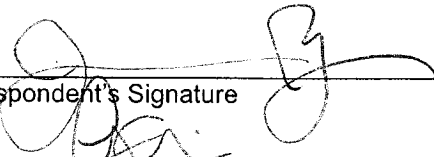
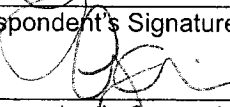

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

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In the Matter of: JAMES BYRNES	Case number(s): 07-O-13999-RAP, 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 Facts, Conclusions of Law, and Disposition.

<u>Mar 1 2011</u> Date	 Respondent's Signature	<u>James Byrnes</u> Print Name
<u>Mar 1, 2011</u> Date	 Respondent's Counsel Signature	<u>GEORGEY MORRISON</u> Print Name
<u>3/04/11</u> Date	 Deputy Trial Counsel's Signature	<u>PAUL O'BRIEN</u> Print Name

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In the Matter of: JAMES BYRNES	Case Number(s): 07-O-13999-RAP, et al.
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REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, 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 REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

1. On page 9, the box under the payees in paragraph "a. Restitution" of Financial

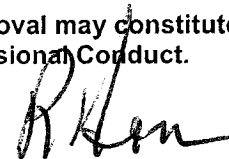
Conditions is checked, and the following italicized words are added:

Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than *the first six months of the reproof period.*

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.) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date 3/16/11



Judge of the State Bar Court

RICHARD A. HONN

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 17, 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:

GEOFFREY MORRISON
ATTORNEY AT LAW
1350 COLUMBIA ST, UNIT 600
SAN DIEGO CA 92101

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

by overnight mail at , California, addressed as follows:

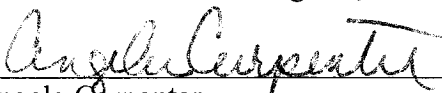
by fax transmission, at fax number . No error was reported by the fax machine that I used.

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

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

PAUL O'BRIEN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on March 17, 2011.



Angela Carpenter
Case Administrator
State Bar Court