


Counsel for the State Bar The State Bar of California Office of the Chief Trial Counsel Enforcement Anthony J. Garcia, No. 171419 1149 South Hill Street, 10th Floor Los Angeles, California 90015-2299 Telephone: (213) 765-1000	Case number(s) 00-O-10931 kwiktag® 031 975 095 	(for Court's use) PUBLIC MATTER FILED MAR 01 2004 STATE BAR COURT CLERKS OFFICE LOS ANGELES
Counsel for Respondent Arthur Margolis Margolis & Margolis 2000 Riverside Drive Los Angeles, CA 90039-3758 (323) 953-8996	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING REPROVAL <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of Diana Carloni Nourse Bar # 100460 A Member of the State Bar of California (Respondent)		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 1, 1981
(date)
- (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 and order consist of 8 pages.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) 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.
- (7) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
 - ☐ costs added to membership fee for calendar year following effective date of discipline (public reproval)
 - ☐ case ineligible for costs (private reproval)
 - ☒ costs to be paid in equal amounts for the following membership years:
2004, 2005, 2006
 (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - ☐ costs waived in part as set forth under "Partial Waiver of Costs"
 - ☐ costs entirely waived

Note: All information required by this form and any additional information which cannot be provided in the space provided, shall be set forth in the text component of this stipulation under specific headings, i.e. "Facts," "Dismissals," "Conclusions of Law."

In the Matter of DIANA Carlson-Nourse
A Member of the State Bar

Case Number(s): 00-0-1093

NOLO CONTENDERE PLEA TO STIPULATION AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION

Bus. & Prof. Code §6085.5 Disciplinary Charges; Pleas to Allegations

There are three kinds of pleas to the allegations of a notice of disciplinary charges or other pleading which initiates a disciplinary proceeding against a member:

(a) Admission of culpability.

(b) Denial of culpability.

(c) **Nolo contendere**, subject to the approval of the State Bar Court. The court shall ascertain whether the member completely understands that a plea of nolo contendere shall be considered the same as an admission of culpability and that, upon a plea of nolo contendere, the court shall find the member culpable. The legal effect of such a plea shall be the same as that of an admission of culpability for all purposes, except that the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, or the factual basis for, the pleas, may not be used against the member as an admission in any civil suit based upon or growing out of the act upon which the disciplinary proceeding is based. (Added by Stats. 1996, ch. 1104.) (emphasis supplied)

RULE 133, Rules of Procedure of the State Bar of California STIPULATIONS AS TO FACTS, CONCLUSIONS OF LAW AND DISPOSITION

(a) A proposed stipulation as to facts, conclusions of law, and disposition shall set forth each of the following: . . .

(5) a statement that respondent either

(i) admits the facts set forth in the stipulation are true and that he or she is culpable of violations of the specified statutes and/or Rules of Professional Conduct or

(ii) **pleads nolo contendere to those facts and violations. If the respondent pleads nolo contendere, the stipulation shall include each of the following:**

(a) **an acknowledgment that the respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of his or her culpability of the statutes and/or Rules of Professional Conduct specified in the stipulation; and**

(b) **If requested by the Court, a statement by the deputy trial counsel that the factual stipulations are supported by evidence obtained in the State Bar investigation of the matter. (emphasis supplied)**

I, the Respondent in this matter, have read the applicable provisions of Bus. & Prof. Code §6085.5 and rule 133(a)(5) of the Rules of Procedure of the State Bar of California. I plead nolo contendere to the charges set forth in this stipulation and I completely understand that my plea shall be considered the same as an admission of culpability except as stated in Business and Professions Code section 6085.5(c).

2-16-04 Diana Carlson-Nourse DIANA Carlson-Nourse
Date Signature print name

(Nolo Contendere Plea form approved by SBC Executive Committee 10/22/97)

(8) 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 under "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.

- (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.
- (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 to 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.

(13) ☐ No mitigating circumstances are involved.

Additional mitigating circumstances: Respondent is held in high regard in her community for her long-standing and extensive public service, including holding public office and substantial charitable work.

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 Reproval:

(1) ☒ Respondent shall comply with the conditions attached to the reproof for a period of ONE YEAR.

(2) ☒ During the condition period attached to the reproof, Respondent shall comply with the provisions of the State Bar Act and Rules of Professional Conduct.

(3) ☒ Within ten (10) days of any change, Respondent shall report to the Membership Records Office and to the Probation Unit, 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) ☒ Respondent shall submit written quarterly reports to the Probation Unit on each January 10, April 10, July 10, and October 10 of the condition period attached to the reproof. Under penalty of perjury, respondent shall 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. If the first report would cover less than thirty (30) days, that report shall 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.

- (5) ☐ Respondent shall be assigned a probation monitor. Respondent shall 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 shall furnish such reports as may be requested, in addition to quarterly reports required to be submitted to the Probation Unit. Respondent shall cooperate fully with the monitor.
- (6) ☐ Subject to assertion of applicable privileges, Respondent shall answer fully, promptly and truthfully any inquiries of the Probation Unit of the Office of the Chief Trial Counsel 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.
- (7) ☒ Within one (1) year of the effective date of the discipline herein, respondent shall provide to the Probation Unit satisfactory proof of attendance of the Ethics School and passage of the test given at the end of that session.
- ☐ No Ethics School ordered.
- (8) ☐ Respondent shall comply with all conditions of probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Probation Unit.
- (9) ☒ Respondent shall provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Probation Unit of the Office of the Chief Trial Counsel within one year of the effective date of the reprobation.
- ☐ No MPRE ordered.
- (10) ☐ 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 |
- (11) ☐ Other conditions negotiated by the parties:

ATTACHMENT TO STIPULATION
RE: FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: DIANA CARLONI-NOURSE
CASE NUMBER: 00-O-10931

A. FACTS AND CONCLUSIONS OF LAW

Respondent pleads nolo contendere to the following facts and violations of the specified statutes and Rules of Professional conduct. The Respondent completely understands that the plea of nolo contendere shall be considered the same as an admission of the stipulated facts and of her culpability of the statutes and Rules of Professional Conduct specified in the Stipulation.

The deputy trial counsel is prepared to inform the court, if requested, that the factual stipulations are supported by evidence obtained during the State Bar investigation of this matter.

Facts

On about September 2, 1993, a prisoner at the California Department of Corrections (CDC), David Fink (Fink) was involved in an altercation with prison guards. CDC did not refer the matter to the District Attorney for prosecution. Instead, CDC held a hearing and found Fink guilty of assault on prison staff. As a result, Fink lost 150 days of behavioral ("good-time") credits, was no longer entitled to accumulate good-time credits, and received a 12-month term in the secured housing unit at Pelican Bay State Prison.

On January 14, 1994, Fink filed a 42 USC §1983 action in federal court, *Fink v. Ylst*, naming CDC personnel and individual CDC guards as defendants. Respondent represented individual guards and CDC personnel in this matter.

On April 12, 1996, Fink filed a petition for a Writ of Habeas Corpus in federal court, *Fink v. Gomez*. On March 19, 1997, the court denied Fink's Habeas Corpus petition, finding that CDC violated Fink's due process rights when it found him guilty of assault on prison staff, but that the violation was harmless error. Respondent was not counsel of record Habeas Corpus proceeding.

Fink appealed the denial of his petition to the Ninth Circuit Court of Appeals. On February 23, 1998 the Court of Appeals found in Fink's favor and remanded the matter to the district court who, in turn, ordered CDC to restore Fink's credits unless it held another hearing within 60 days. CDC did not hold a hearing within 60 days, but scheduled another disciplinary hearing against Fink, for the same misconduct, after the district court order was final.

In preparation for court hearings regarding Fink's second disciplinary hearing, Respondent

asked her clients about the underlying facts of the case. Respondent's clients told her, or gave her documentation stating, that the second hearing was evidentiary only, and that no penalty would be imposed on Fink as a result of the second hearing. Respondent's file contained documentation that indicated that the matter of Fink's initial assault on prison staff had been referred to the District Attorney for felony prosecution..

Respondent, relying on the representations of her clients and the documentation she had received, never conducted an independent investigation into the underlying facts of the case. Respondent told the court that the second CDC hearing was evidentiary only, that no penalty was imposed on Fink as a result of the second hearing and that the matter of Fink's initial assault on prison staff was referred to the District Attorney for felony prosecution.

The court formally reprimanded Respondent and found that she acted with reckless disregard for the truth which rose to the level of objective bad faith, and with an improper purpose -- to gain an advantage in the *Fink v. Ylst* case by interfering with the *Fink v. Gomez* case. Although the court thought that Respondent's conduct may warrant a more severe sanction, it limited the sanction to a formal reprimand because it believed that " (1) [Respondent] will accept the sanction gracefully; (2) she may have acted in reckless disregard rather than in conscious bad faith; and (3) she will not become so identified with her clients' interests in the future that she will lose sight of her duty to represent her clients ethically before the court."

Conclusion of Law

By not conducting an independent investigation into the facts of the case she was handling before making statements to the court that the court found were false and made with gross negligence regarding their truth, Respondent failed to maintain the respect due to the courts and judicial officers in wilful violation Business and Professions Code, section 6068(b).

B. PENDING PROCEEDINGS

The disclosure date referred to on page one, paragraph A.(6), was February 10, 2004.

C. SUPPORTING AUTHORITIES

Sullins v. State Bar, 15 Cal.3d 609 (1975). Sullins received a public reproof for misconduct that consisted of a single instance of misleading a trial court in civil matter by concealing his receipt of a letter from an interested party. The attorney had no prior record of discipline over a lengthy period of practice. Unlike Sullins, Respondent did not deliberately and knowingly mislead the court.

2-16-2004
Date

Diana Carloni-Nourse
Respondent's signature

DIANA CARLONI-NOURSE
print name

2/18/04
Date

Arthur L. Margolis
Respondent's Counsel's signature

ARTHUR L. MARGOLIS
print name

2/19/04
Date

[Signature]
Deputy Trial Counsel's signature

ANTHONY J. GARCIA
print name

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.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) 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.

2/25/04
Date

[Signature]
Judge of the State Bar Court

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. 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 1, 2004, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING, filed March 1, 2004**

in a sealed envelope for collection and mailing on that date as follows:

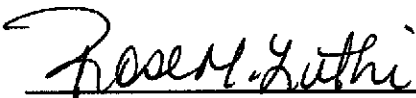
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**ARTHUR MARGOLIS, ESQ.
MARGOLIS & MARGOLIS
2000 RIVERSIDE DR
LOS ANGELES CA 90039-3758**

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

ANTHONY GARCIA, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **March 1, 2004.**



Rose M. Luthi
Case Administrator
State Bar Court