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State Bar Court of California
Hearing Department
Los Angeles

Counsel For The State Bar Jayne Kim Assistant Chief Trial Counsel 1149 S. Hill Street LA, CA 90015 (213) 765-1714 Bar # 174614	Case Number (s) 07-O-11707	(for Court's use) <div align="center">PUBLIC MATTER</div> <div align="center">FILED</div> <div align="center">OCT 24 2008</div> <div align="center">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
Counsel For Respondent JoAnne Robbins Karpman & Associates 301 N. Canon Drive, Ste. 303 Beverly Hills, CA 90210 (310) 887-3900	Submitted to: Assigned Judge	
Bar # 82352	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING	
In the Matter Of: HENRI E. NICOLAS 1200 E. Harrison Street Brownsville, TX 78520 (956) 574-9333	<div align="center">PUBLIC REPROVAL</div> <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
Bar # 214756 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **October 30, 2001**.
- (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 **10** 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."
- (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 added to membership fee for calendar year following effective date of discipline (public reproof)
 - ☐ case ineligible for costs (private reproof)
 - ☒ costs to be paid in equal amounts for the following membership years: **next three billing cycles** (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - ☐ costs 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."

- (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. **Respondent's misconduct harmed 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 with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. **Respondent displayed candor before the District Court by identifying himself as an inactive member of the State Bar. Respondent displayed candor and cooperation during the State Bar's investigation and by way of this stipulation.**
- (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. **Respondent provide sufficient proof to the State Bar regarding his good character.**
- (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 was admitted to practice in Texas in 1999 and has no prior discipline in Texas or California.

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 must comply with the conditions attached to the reproof for a period of **ONE YEAR**.
- (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,

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 reproval.
- (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: **Respondent resides in Texas and the parties agree that Law Office Management Conditions will more adequately address the misconduct.**
- (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 reproval.
- ☐ No MPRE recommended. Reason: .
- (11) ☐ The following conditions are attached hereto and incorporated:
- | | |
|---|--|
| <input type="checkbox"/> Substance Abuse Conditions | <input checked="" type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

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Case number(s):
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A Member of the State Bar

Law Office Management Conditions

- a. ☐ Within days/ months/ years of the effective date of the discipline herein, Respondent must develop a law office management/organization plan, which must be approved by the Office of Probation. This plan must include procedures to (1) send periodic reports to clients; (2) document telephone messages received and sent; (3) maintain files; (4) meet deadlines; (5) withdraw as attorney, whether of record or not, when clients cannot be contacted or located; (6) train and supervise support personnel; and (7) address any subject area or deficiency that caused or contributed to Respondent's misconduct in the current proceeding.
- b. ☒ Within days/**six** months/ years of the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of no less than **six** hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney client relations and/or general legal ethics. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for attending these courses (Rule 3201, Rules of Procedure of the State Bar.)
- c. ☐ Within 30 days of the effective date of the discipline, Respondent must join the Law Practice Management and Technology Section of the State Bar of California and pay the dues and costs of enrollment for year(s). Respondent must furnish satisfactory evidence of membership in the section to the Office of Probation of the State Bar of California in the first report required.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
IN THE MATTER OF HENRI E. NICOLAS
CASE NO: 07-O-11707

1. Henri E. Nicolas ("Respondent") was admitted to the practice of law in the State of California on October 30, 2001, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California ("State Bar").
2. At all relevant times, Respondent was a licensed attorney in Texas and partner of the Texas law firm Rodriguez & Nicolas. Respondent was authorized to appear before the United States District Court for the Southern District of Texas and the United States Court of Appeals for the Fifth District.
3. At all relevant times, Respondent was an inactive member of the State Bar.
4. On October 13, 2006, Universal Environmental, Inc. ("Universal") filed a lawsuit against ESCO Marine, Inc. ("ESCO") in Solano County, California, Solano County Superior Court case no. FCS028552, entitled *Universal Environmental, Inc. v. ESCO Marine, Inc.* ("the Universal lawsuit"). At all times, ESCO's answer was due by November 27, 2006.
5. ESCO was one of Respondent's most significant and long-standing clients in Texas. Respondent represented ESCO in a variety of different legal matters.
6. After the filing of the Universal lawsuit, Respondent attempted to secure local counsel for ESCO. In October 2006, Respondent contacted a licensed California attorney to discuss that attorney's firm taking over the Universal lawsuit.
7. In November 2006, ESCO decided that the California attorney's fees were too expensive and declined to retain that attorney. Respondent was unable to secure another attorney for ESCO by November 27, 2006. As a corporation, ESCO was unable to file in propria persona.
8. On November 27, 2006, Respondent filed an Answer in the Universal lawsuit with the sole purpose of protecting ESCO. In the caption of the pleading, Respondent clearly identified himself as an inactive member of the State Bar and at all times notified the court and parties in the Universal lawsuit of his inactive status.
9. Thereafter, Respondent and ESCO remained committed to obtaining California counsel to take over the Universal lawsuit. During this time period, however, Respondent was also distracted with a very busy practice in Texas and significant family problems (discussed more below).

10. In February 2007, a personal injury claim was filed against ESCO that potentially overlapped with the Universal lawsuit. ESCO submitted the claim to its insurer. Both Respondent and ESCO expected the insurer to retain California counsel and ESCO wanted to use that California counsel to take over the Universal lawsuit.
11. In order to secure more time for ESCO's insurer to retain California counsel, on March 8, 2007, Respondent filed a motion to appear *pro hac vice* in the Universal lawsuit. Relying on his good standing before the Texas State Bar and federal court, Respondent mistakenly believed his motion would be granted.
12. On April 24, 2007, the court in the Universal lawsuit denied Respondent's motion to appear *pro hac vice* on the grounds that Respondent had not associated with an active member of the State Bar.
13. In May 2007, Respondent and ESCO agreed upon local counsel to represent ESCO in the Universal lawsuit. In June 2007, that local counsel took over the case from Respondent.
14. By filing an Answer, representing ESCO in the Universal lawsuit, and otherwise engaging in the authorized practice of law in violation of Business and Professions Code sections 6125, 6126, Respondent failed to support the laws of the United States and of this state in willful violation of Business and Professions Code section 6068(a).

OTHER CIRCUMSTANCES:

During the first half of 2007, Respondent suffered significant, sensitive family difficulties that have been satisfactorily explained to the State Bar.

Since the time of the misconduct, Respondent and his partner have taken steps to ensure that Respondent has better support and additional resources to effectively manage his workload.

SUPPORTING AUTHORITIES FOR LEVEL OF DISCIPLINE:

In *In re Silvertown* (2005) 36 Cal. 4th 81, 92, the California Supreme Court held that the Standards for Attorney Sanctions for Professional Misconduct are entitled to "great weight" and the Court will "not reject a recommendation arising from the Standards unless [it has] grave doubts as to the propriety of the recommended discipline."

Std 2.6 provides for a range of discipline from **suspension to disbarment** for a violation of Business and Profession Code sections 6068(a), 6125, 6126.

Deviation from the Standards, however, may be appropriate where the misconduct appears to be aberrational and compelling mitigation exists. *See In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, *In the Matter of Respondent X* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 592.

In very limited and unusual circumstances, the California Supreme Court has rejected a suspension recommendation for misconduct involving the unauthorized practice of law. For example, in *Abraham v. State Bar* (1941) 17 Cal.2d 625, the California Supreme Court rejected the Board of Governors recommendation of 30 days actual suspension for a single instance of the unauthorized practice of law. Abraham had been administratively suspended for approximately one month during which time he filed a complaint in Superior Court. The State Bar filed charges more than two years after the misconduct by which time Abraham had resolved the administration suspension on his own volition and had not demonstrated any further problems. In *Call v. State Bar* (1955) 45 Cal.2d 104, 111 the California Supreme Court held that the “good faith of an attorney is a matter to be considered in determining whether discipline should be imposed for acts done through ignorance or mistake.”

The circumstances in the instant case are unique and Respondent’s misconduct appears aberrational in nature. Respondent clearly identified himself as an inactive member of the State Bar and ESCO confirmed to the State Bar that it was never the intent for Respondent to work on the Universal lawsuit. Moreover, several mitigating factors exist to warrant a deviation from the Standards and the stipulated discipline appears consistent with the purposes of discipline as provided in Std 1.3 (protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession).

PENDING PROCEEDINGS:

The disclosure date referred to, on page one, paragraph A.(7) was September 23, 2008.

COSTS:

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of September 23, 2008, the estimated prosecution costs in this matter are approximately \$1,983.00. Respondent acknowledges that this figure is an estimate only. 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. If Respondent fails to pay any installment within the time provided herein or as may be modified by the State Bar Court pursuant to section 6068.10, subdivision (c), the remaining balance of the costs is due and payable immediately and enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment unless relief has been granted under the Rules of Procedure of the State Bar of California. (Rules Proc. of State Bar, rule 286.)

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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 Fact, Conclusions of Law and Disposition.

10/08/08

Date

10/10/08

Date

10/14/08

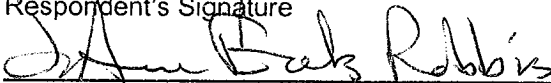
Date



Respondent's Signature

Henri E. Nicolas

Print Name



Respondent's Counsel Signature

JoAnne E. Robbins

Print Name



Deputy Trial Counsel's Signature

Jayne Kim

Print Name

Assistant Chief Trial

(Do not write above this line.)

In the Matter Of
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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.

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 125(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.

Date

10/23/08

Judge of the State Bar Court

DONALD F. MILES

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; 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 October 24, 2008, 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:

JOANNE EARLS ROBBINS, ESQ.
KARPMAN & ASSOCIATES
301 N CANON DR STE 303
BEVERLY HILLS, CA 90210

- ☐ 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:

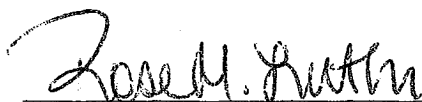
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

- ☐ 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:

JAYNE KIM, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 24, 2008.



Rose Luthi
Case Administrator
State Bar Court