



ORIGINAL

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State Bar Court of California
Hearing Department
Los Angeles

<p>Counsel For The State Bar</p> <p>Bitu Shasty Deputy Trial Counsel 1149 S. Hill Street Los Angeles, California 90015-2299</p> <p>Bar # 225177</p>	<p>Case Number (s) 08-C-14854-DFM</p> <p>PUBLIC MATTER</p>	<p>(for Court's use)</p> <p>FILED</p> <p>APR 20 2010</p> <p>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Darryl L. Exum 3325 Wilshire Blvd., 7th Floor Los Angeles, California 90010</p> <p>Bar # 152063</p>	<p>Submitted to: Settlement Judge</p>	
<p>In the Matter Of: KEVIN KIRK RANDOLPH</p> <p>Bar # 149007</p> <p>A Member of the State Bar of California (Respondent)</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 4, 1990**.
- (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:
(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. **See Attachment page 8**
- (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.
- (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. **See Attachment Page 8**
- (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:

See Attachment Page 9

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 **1 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 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: **Respondent's misconduct was unrelated to the practice of law. (See In the Matter of Respondent G (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr.175.**

- (11) 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 |

F. Other Conditions Negotiated by the Parties:

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: KEVIN K. RANDOLPH

CASE NUMBER(S): 08-C-14854-DFM

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING

1. This is a proceeding pursuant to sections 6106 and 6102 of the Business and Professions Code and rule 9.10 of the California Rules of Court.
2. On August 28, 2009, Respondent was convicted of violating California Penal Code section 244.5, subdivision (b) (assault with a stun gun or taser) in Riverside County Superior Court.
3. On December 11, 2009, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: hearing and decision recommending the discipline to be imposed in the event that the hearing department finds that the facts and circumstances surround the violation of Penal Code section 244.5, subdivision (b) involved moral turpitude or other misconduct warranting discipline.

FACTS AND CONCLUSIONS OF LAW.

Respondent Kevin K. Randolph ("Respondent") admits that the following facts are true and that he violated Penal Code section 244.5, subdivision (b), as set forth below, and that said conduct involved other misconduct warranting discipline.

FACTS

On June 7, 2008, at approximately 1:14 p.m., Officer Hobbs of the Riverside County Sheriff's department was dispatched to 13721 Pine View Drive. Upon arrival, Officer Hobbs saw a white male, later identified as Ernest Barrio, standing in front of the location with blood covering most of the left side of his face and neck and left hand. He dispatched to have paramedics come to his location. Barrio stated that he had been tasered. Officer Hobbs also observed that Respondent had scrap marks on the front of both thighs and knees, including some blood on his face. He had paramedics also tend to Respondent. When asked by Officer Hobbs, Respondent admitted that he had deployed the taser.

Barrio told Officer Hobbs that he had been working in front of his garage when he noticed Respondent's son, Christopher, sitting in front of Barrio's property. Barrio observed Christopher shooting pellets from an air gun into an open field across the street. Barrio approached Christopher and told him to stop shooting the pellets and to go home. Christopher apologized and walked away. Shortly after, Barrio noticed that Christopher had only gone to the corner of the street and hid behind a tree. Barrio saw Christopher shooting pellets as vehicles drove by. Barrio then retrieved his camera from his house and began taking photos of Christopher shooting at vehicles with his air gun.

Barrio again asked Christopher to stop shooting at vehicles and that he was going to call the police. Christopher then left the location. Approximately 15 minutes later, Christopher returned to the location with his sister, Erin. Barrio saw Erin shooting pellets from the air gun into the open field and told her to stop. An argument ensued and Erin called Respondent to come to her location.

When Respondent arrived, Barrio and Respondent's children were still arguing. Respondent and Barrio had a verbal argument and Respondent was bumping Barrio with his stomach. Respondent then hit Barrio on top of his head in a forceful manner. Barrio and Respondent continued in their physical altercation with each other, including punching each other. Respondent then used a taser on Barrio in the stomach area. Barrio then retreated away from Respondent.

Officer Hobbs examined Barrio's head and saw two deep gashes about an inch and a half long in his scalp. He also saw an abrasion on his forehead about two inches long and two puncture marks on the left side of Barrio's stomach area.

Respondent contends the altercation was necessary to protect his children, however the Office of Chief Trial Counsel disputes this statement.

On August 15, 2008, Respondent was charged in Riverside County Superior Court with violating California Penal Code 244.5, subdivision (b), assault with a stun gun or taser, a felony. On August 28, 2009, Respondent pled guilty to a misdemeanor violation of Penal Code 244.5 subdivision (b). As part of the plea agreement it was stated that Respondent acted in the heat of anger. Respondent was placed on three years summary probation, ordered to be committed to the custody of the Riverside County Sheriff for 45 days, to be served on consecutive weekends and to pay restitution to victim Barrio.

CONCLUSIONS OF LAW:

The parties stipulate that the facts and circumstances surrounding Respondent's violation of California Penal Code, section 244.5, subdivision (b) did not involve moral turpitude, but did

involve other misconduct warranting discipline. Respondent acknowledges that by the conduct described above, he failed to support the laws of the State of California in wilful violation of California Business and Professions Code, section 6068(a).

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 13, 2010, the approximate costs in this matter is \$1,636. 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. The Interim Chief Trial Counsel has approved the cost at level 2.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was April 5, 2010.

COMPLIANCE WITH CONDITIONS OF PROBATION IN UNDERLYING CRIMINAL MATTER.

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 Office of Probation.

AGGRAVATING CIRCUMSTANCES.

Harm to Public (Standard 1.2(b)(iv))

Respondent's misconduct resulted in physical harm to victim Barrio. Barrio had two puncture marks on his stomach from the taser Respondent used on him. He also had two deep gashes, an inch and a half long in his scalp in addition to an abrasion on his forehead.

MITIGATING CIRCUMSTANCES

Good Character (Standard 1.2(e)(vi))

Respondent provided the State Bar with seven letters from the legal and general community attesting to his good character and who are aware of the full extent of Respondent's misconduct.

ADDITIONAL MITIGATING CIRCUMSTANCES

Respondent has been a member of the California State Bar for 20 years and has no prior record of discipline.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.3, Title IV, Standards for Attorney Sanctions for Professional Misconduct, provides that the primary purposes of the disciplinary system are: “the 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.”

Standard 3.4 states that “[f]inal conviction of a member of a crime which does not involve moral turpitude inherently or in the facts and circumstances surrounding the crime’s commission but which does involve other misconduct warranting discipline shall result in a sanction as prescribed under part B of these standards appropriate to the nature and extent of the misconduct found to have been committed by the member.”

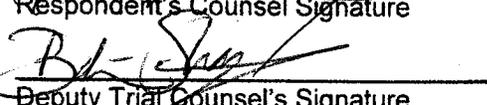
The parties further submit that the intent and goals of Standard 1.3 are met in this matter by the imposition of a public reproof with probationary conditions articulated herein, including that Respondent attend Ethics School.

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In the Matter of KEVIN KIRK RANDOLPH, No. 149007	Case number(s): 08-C-14854-DFM
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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.

<u>4/14/2010</u> Date	 Respondent's Signature	<u>KEVIN KIRK RANDOLPH</u> Print Name
<u>4/14/2010</u> Date	 Respondent's Counsel Signature	<u>DARRYL L. EXUM</u> Print Name
<u>4/15/10</u> Date	 Deputy Trial Counsel's Signature	<u>BITA SHASTY</u> Print Name

(Do not write above this line.)

In the Matter Of KEVIN KIRK RANDOLPH, No. 149007	Case Number(s): 08-C-14854-DFM
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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 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.

4/16/10

Date



Judge of the State Bar Court
RICHARD A. HONN

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 April 20, 2010, 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:

DARRYL L. EXUM
4129 MAIN ST STE 204
RIVERSIDE, CA 92501

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:

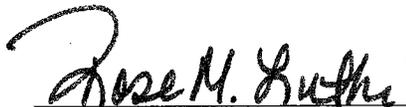
by fax transmission, at fax number . No error was reported by the fax machine that I used.

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:

Bitu Shasty, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on April 20, 2010.



Rose Luthi
Case Administrator
State Bar Court