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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION		
Counsel For The State Bar Dane C. Dauphine Supervising Trial Counsel 1149 South Hill St. Los Angeles, CA 90015-2299 Tel. (213) 765-1293 Bar # 121606	Case Number(s): 09-J-10857 <div style="text-align: center; font-size: 1.2em;">PUBLIC MATTER</div>	For Court use only <div style="text-align: center;"> FILED JUN 22 2011 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Counsel For Respondent George M. Mavris 1 Point Saint George Pl. Crescent City, CA 95531 Tel. (707) 464-1418 Bar # 179471	Submitted to: Assigned Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING STAYED SUSPENSION; NO ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: Bruce Matsuo Nishioka Bar # 153321 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 June 11, 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 12 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."

(Effective January 1, 2011)



- (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.
 - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: 2012 & 2013. (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.

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.
- (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. Respondent was admitted in 1991 and has no prior discipline, and the misconduct here was isolated to one client matter and did not result from intentional acts but rather a failure to supervise the paralegal.
- (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 cooperated with the Oregon disciplinary authorities and with the California State Bar in stipulating to the misconduct.
- (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. Respondent showed remorse by reimbursing the fees to the estate.
- (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. In October 2006, Respondent's father died unexpectedly, and Respondent took responsibility for caring for his elderly and physically disabled mother who lived 300 miles from his home. As a result, Respondent's attention was diverted from his law practice and he overly relied upon the paralegal.

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- (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) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of six months.

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent is placed on probation for a period of two years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

E. Additional Conditions of Probation:

- (1) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) ☒ 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.
- (3) ☒ 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.
- (4) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. 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 probation during the preceding calendar quarter. Respondent must also state 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 days, that report must be submitted on the next 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 period of probation and no later than the last day of probation.

- (5) ☐ 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 to the monitor 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 probation monitor.

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- (6) ☒ 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 probation conditions.
- (7) ☒ 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 State Bar Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (8) ☐ 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.
- (9) ☐ 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:

- (1) ☒ **Multistate Professional Responsibility Examination:** 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. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- ☐ No MPRE recommended. Reason: .
- (2) ☐ **Other Conditions:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Bruce Matsuo Nishioka

CASE NUMBER(S): 09-J-10857

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. 09-J-10857 (Discipline in Other Jurisdiction)

PROCEDURAL BACKGROUND IN OTHER JURISDICTION:

1. Respondent was admitted by the Oregon Supreme Court to practice law in the State of Oregon on May 2, 2001.
2. On February 9, 2009, Respondent entered into a Stipulation for Discipline with the Oregon State Bar in case no. 08-80 admitting that Respondent had committed violations of rules 1.5(a), 5.3(a), and 5.5(a) of the Oregon Rules of Professional Conduct.
3. On or about February 23, 2009, the State Disciplinary Board of the Supreme Court of the State of Oregon approved the stipulation in case no. 08-80 and ordered that Respondent be publicly reprimanded. Thereafter, that order became final.

FACTS:

4. James Henry Wilsdon died testate August 5, 2005 (hereinafter "Deceased"). The Deceased named his son, John Wilsdon (hereinafter "Wilsdon") to serve as his personal representative. Wilsdon, his sister, and the Deceased's wife were the beneficiaries of the Deceased's estate. About late September 2005, Wilsdon retained Respondent to probate the Deceased's estate and represent him as the Deceased's personal representative. Pursuant to Respondent's written fee agreement with Wilsdon, Respondent's time would be billed at the rate of \$180 per hour and legal assistant time would be billed at the rate of \$65 per hour.
5. At all material times, Respondent used the services of Donald Tilton (hereinafter "Tilton"), a non-lawyer legal assistant and/or law clerk concerning the Wilsdon probate matter. About November 15, 2005, Tilton prepared and filed a probate petition, signed by Wilsdon, which identified Respondent as Wilsdon's attorney, *In the Matter of Estate of James Henry Wilsdon*, Curry County Circuit Court Case No. 05PR087 (hereinafter "Probate Case").
6. On December 13, 2005, the court appointed Wilsdon to serve as the Deceased's personal representative, and on December 14, 2005, issued letters testamentary. On January 5, 2006, Tilton prepared and sent notice of the probate and Wilsdon's appointment to the Deceased's heirs. Tilton thereafter prepared, and Wilsdon signed, a final accounting and petition for general judgment of final

distribution, which was filed with the court on March 10, 2006. The petition stated that there were no assets to probate because they had all been designated "pay on death" by the Deceased and therefore passed to the heirs outside of the state.

7. About March 13, 2006, Respondent filed a motion to extend the time to file the inventory or to file a motion to close the probate. Respondent represented to the court that additional assets had been discovered and investigation was required. The motion was accomplished with an affidavit signed by Tilton stating that he was investigating the Deceased's assets. The court granted the motion and extended the time for filing of the inventory to March 27, 2006. Thereafter, Respondent submitted a proposed order approving final accounting in the Probate Case, which stated that no additional assets had been found. The court signed the order on May 22, 2006, and closed the Probate Case.

8. In April 2007, Tilton prepared, and on May 21, 2007, filed a Petition to Reopen Estate. The petition, signed by Wilsdon, stated that further administration of the estate was necessary because he had learned of an unprobated asset – an account held by Franklin Templeton in the name of the Deceased alone; and that claims and expenses had been presented to the personal representative during the original probate, but they had not been paid from estate assets because there were no assets to pay them. The claims and expenses consisted of the Deceased's funeral expenses that had been paid by the Deceased's wife, and Respondent's attorney fees and costs that were paid by the Deceased's daughter.

9. On July 18, 2007, the court signed a Limited Judgment Reopening Estate and Appointing Personal Representative. The court again appointed Wilsdon to serve as the Deceased's personal representative.

10. On October 8, 2007, Tilton prepared, signed, and filed an inventory in the Probate Case. Tilton represented that he had power of attorney for the personal representative; that he had read the inventory; and verily believed it to be true. The inventory identified the Franklin Templeton account and stated that its values as of the date of the Deceased's death to be \$13,754.43.

11. About December 20, 2007, Tilton, again purporting to act for Wilsdon pursuant to a power of attorney, prepared, signed, and thereafter filed a final accounting and petition for general judgment of final distribution. The final accounting was supported by an affidavit signed by the Respondent in which he represented to the court that the estate had received \$16,463.21 from the Franklin Templeton investment; reimbursed the Deceased's daughter \$4,268.21 for her payment of Respondent attorney's fees and costs incurred in connection with the Probate Case; and reimbursed the Deceased's wife \$4,446.50 for the Deceased's funeral expenses. Respondent did not obtain or seek the court's approval of the attorney fees as required by ORS 116.183(1) before reimbursing the Deceased's daughter from estate funds.

12. About January 3, 2008, the court advised the Respondent of its concerns and questions regarding the final accounting and petition for general judgment of final distribution, including the payment of attorneys fees for the original probate without court approval; the reasonableness of fees paid and/or claimed in the Probate Case; Tilton's representations concerning his status as an attorney; and Tilton's actions in the Probate Case.

13. About March 17, 2008, Respondent withdrew from the representation. The court thereafter determined that the work performed for the Probate Case was below local standards, and on May 2, 2008, approved only \$1,500 as reasonable attorney fees and costs for all work performed in the original Probate Case and after the Probate Case was reopened.



14. During the Respondent's representation, Tilton had access to the Respondent's letterhead and pleading forms and the Respondent permitted Tilton to have them on Tilton's computer. Tilton provided legal advice and services to Wilsdon and engaged in the unauthorized practice of law. Respondent did not adequately supervise Tilton and failed to ensure that Tilton's work was compatible with Respondent's professional obligations. Respondent did not approve or know of all of Tilton's actions or review all of Tilton's work concerning the Probate Case, and did not adequately communicate with Wilsdon.

15. During Respondent's representation of Wilsdon, Tilton's name was billed to the client at the rate of \$180 per hour for the initial probate, and \$100 per hour for work performed after the Probate Case was reopened, which amounts exceeded the \$65 per hour authorized in Respondent's fee agreement. As a result of these charges and the failure to obtain court approval of the fees before they were paid, Respondent charged and collected illegal and excessive attorney fees for work performed in the Probate Case.

CONCLUSIONS OF LAW:

16. The disciplinary proceeding in the other jurisdiction provided Respondent with fundamental constitutional protection.

17. Respondent's conduct in the other jurisdiction as set forth above would warrant the imposition of discipline in California as violation(s) of the following:

18. By allowing Tilton access to Respondent's letterhead and pleading forms and failing to supervise him, Respondent aided a person in the unauthorized practice of law in willful violation of Rules of Professional Conduct, rule 1-300(A).

19. By failing to ensure that the Probate Case was handled properly, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).

20. By failing to obtain court approval for his fees prior to receiving them, Respondent collected an illegal fee in willful violation of Rules of Professional Conduct, rule 4-200(A).

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was May 12, 2011.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Discipline call for a reproof or suspension depending on the extent of the misconduct and the degree of harm to the client or victim. Standard 1.6(a) provides that where two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanctions imposed shall be the more or most severe of the different applicable sanctions. Culpability for failure to perform in matters not demonstrating a pattern shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client (Standard 2.4). Standard 2.7 applies to offenses involving an agreement to collect an unconscionable fee and requires at least a six-month actual suspension, but that standard does not specifically apply to illegal fees. See *In the Matter of Harney*

(Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 284 [recommending six months actual suspension for illegal fees and failure to refund fees but noting that standard 2.7 does not apply]. Culpability for offenses involving other violations not specified in another standard shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim (Standard 2.10).

Here, Respondent was disciplined in Oregon pursuant to a stipulation where it was determined that his mental state was one of negligence rather than intent to commit the misconduct. Respondent was negligent in failing to supervise the paralegal, Tilton, adequately. He incorrectly assumed that Tilton would seek his direction and obtain approval of all documents submitted to the court concerning the probate case. His misconduct also resulted from his failure to comply with court rules to obtain approval of the fees before they were paid from estate assets. Respondent demonstrated remorse by reimbursing the estate for funds that were paid without court approval. Considering Respondent's refund of fees and that he cooperated in entering into a stipulation both with the Oregon disciplinary authorities and the California State Bar, a stayed suspension with a period of probation will provide adequate protection of the public.

(Do not write above this line.)

In the Matter of:
Bruce Matsuo Nishioka, no. 153321

Case number(s):
09-J-10857

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>5-31-11</u>	<u>Bruce M. Nishioka</u>	Bruce M. Nishioka
Date	Respondent's Signature	Print Name
<u>5/27/11</u>	<u>George M. Mavris</u>	George M. Mavris
Date	Respondent's Counsel Signature	Print Name
<u>6-6-11</u>	<u>Dane C. Dauphine</u>	Dane C. Dauphine
Date	Deputy Trial Counsel's Signature	Print Name

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In the Matter of: Bruce Matsuo Nishioka, no. 153321	Case Number(s): 09-J-10857
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STAYED SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, 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 DISCIPLINE RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☒ All Hearing dates 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 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

6-22-11

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 June 22, 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:

GEORGE M. MAVRIS
1 POINT ST GEORGE PL
CRESCENT CITY, CA 95531

☐ 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:

Dane Christopher Dauphine, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on June 22, 2011.



Cristina Potter
Case Administrator
State Bar Court