

ORIGINAL

1 DIANE L. KARPMAN, SBN 64266  
2 JOANNE EARLS ROBBINS, SBN 82352  
3 **KARPMAN & ASSOCIATES**  
4 301 North Canon Drive, Suite 303  
5 Beverly Hills, California 90210  
6 (310) 887-3900

7 Attorneys for Respondent  
8 TODD E. MACALUSO

**FILED**

FEB 13 2009

STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES

9 **THE STATE BAR COURT**  
10 **HEARING DEPARTMENT - LOS ANGELES**

11 In the Matter of  
12 TODD E. MACALUSO  
13 No. 133009  
14 A Member of the State Bar  
15 \_\_\_\_\_  
16

CASE NOS. 06-O-14552, 07-O-10134  
& 07-O-10899-RAH

RESPONDENT'S RESPONSE TO  
NOTICE OF DISCIPLINARY  
CHARGES

17 Respondent, Todd E. Macaluso, by and through counsel, KARPMAN &  
18 ASSOCIATES, by JoAnne Earls Robbins, hereby answers the Notice of Disciplinary  
19 Charges filed herein as follows:  
20

21 1. Respondent admits that Respondent was admitted to the practice of law in the  
22 State of California on or about January 4, 1988, and that Respondent was a member at all  
23 times pertinent to these charges, and that Respondent is currently a member of the State Bar  
24 of California. All further Notices to Respondent in relation to these proceedings are to be  
25 sent to counsel at:

26 **KARPMAN & ASSOCIATES**  
27 **DIANE L. KARPMAN**  
28 **JOANNE EARLS ROBBINS**  
**301 NORTH CANON DRIVE, SUITE 303**  
**BEVERLY HILLS, CALIFORNIA 90210**







1 and supervision of his office staff, due to a personal tragedy in Respondent's family, the  
2 sudden and unexpected death of his only brother, which caused him severe emotional and  
3 psychological trauma.

4  
5 RESPONSE TO COUNT FOUR

6 10. Respondent, in response to Count Four of the State Bar's Notice of Disciplinary  
7 Charges, admits that the balance in his trust account fell below the required amount for a  
8 brief period of time. As soon as he became aware that the balance had dropped, he  
9 immediately deposited funds to correct the balance. The client involved did not complain to  
10 the State Bar.

11 11. Respondent specifically denies any wilful violation of **Rules of Professional**  
12 **Conduct, rule 4-100(A)**. Respondent's actions in failing to know that his trust account  
13 contained insufficient funds at that particular time were **not** a result of gross negligence, but  
14 the result of insufficient training and supervision of his office staff, due to a personal tragedy  
15 in Respondent's family, the sudden and unexpected death of his only brother, which caused  
16 him severe emotional and psychological trauma.

17  
18 RESPONSE TO COUNT FIVE

19 12. Respondent specifically denies any wilful violation of **Business and**  
20 **Professions Code, section 6106**. Respondent's actions in failing to know that his trust  
21 account contained insufficient funds at those particular times were **not** a result of gross  
22 negligence, moral turpitude, dishonesty or corruption, but the result of insufficient training  
23 and supervision of his office staff, due to a personal tragedy in Respondent's family, the  
24 sudden and unexpected death of his only brother, which caused him severe emotional and  
25 psychological trauma.

26  
27 RESPONSE TO COUNT SIX

28 13. Respondent, in response to Count Six of the State Bar's Notice of Disciplinary

1 Charges, specifically denies, on information and belief, each of the allegations and charges  
2 stated in that Count.

3 14. Consequently, and as a result, Respondent therefore specifically denies, on  
4 information and belief, any wilful violation of **Rules of Professional Conduct, rule 4-**  
5 **100(A).**

6  
7 RESPONSE TO COUNT SEVEN

8 15. Respondent, in response to Count Seven of the State Bar's Notice of  
9 Disciplinary Charges, specifically denies, on information and belief, each of the allegations  
10 and charges stated in that Count.

11 16. Respondent specifically denies any wilful violation of **Business and**  
12 **Professions Code, section 6106.** Any errors that may have occurred were **not** a result of  
13 gross negligence, moral turpitude, dishonesty or corruption, but the result of insufficient  
14 training and supervision of his office staff, due to a personal tragedy in Respondent's family,  
15 the sudden and unexpected death of his only brother, which caused him severe emotional and  
16 psychological trauma.

17  
18 RESPONSE TO COUNT EIGHT

19 17. Respondent, in response to Count Eight of the State Bar's Notice of  
20 Disciplinary Charges, specifically denies, on information and belief, any misuse of his trust  
21 account as stated in that Count.

22 18. Respondent specifically denies any wilful violation of **Rules of Professional**  
23 **Conduct, rule 4-100(A).** Any mistakes made by Respondent in his use of his trust account  
24 at those particular times were simple human error, the result of insufficient training and  
25 supervision of his office staff, due to a personal tragedy in Respondent's family, the sudden  
26 and unexpected death of his only brother, which caused him severe emotional and  
27 psychological trauma.

28 //////////////

1 OMNIBUS DENIAL

2 19. Except as otherwise admitted or denied herein, Respondent specifically denies,  
3 on information and belief, each and every allegation contained in Counts One through Eight  
4 of the Notice of Disciplinary Charges.

5  
6 AFFIRMATIVE DEFENSES

7 FIRST AFFIRMATIVE DEFENSE

8 (Failure to State a Disciplinable Offense)

9 20. The Notice of Disciplinary Charges does not state facts sufficient to constitute  
10 a disciplinable offense.

11  
12 SECOND AFFIRMATIVE DEFENSE

13 (Failure to Give Sufficient Notice of the Charges)

14 21. The Notice of Disciplinary Charges does not give sufficient Notice of the  
15 charges against Respondent.

16  
17 THIRD AFFIRMATIVE DEFENSE

18 (Estoppel)

19 22. The Office of Chief Trial Counsel is equitably estopped from asserting each  
20 and all purported charges in the Notice of Disciplinary Charges, by reason of its own acts,  
21 omissions, and conduct, and that of its agents, upon which Respondent relied to Respondent's  
22 prejudice and detriment.

23  
24 FOURTH AFFIRMATIVE DEFENSE

25 (Waiver)

26 23. The Office of Chief Trial Counsel has waived all purported charges in the  
27 Notice of Disciplinary Charges, by reason of its own acts, omissions, and conduct or that of  
28 its agents.

1 FIFTH AFFIRMATIVE DEFENSE

2 (Laches)

3 24. The Notice of Disciplinary Charges does not state facts sufficient to constitute  
4 a disciplinable offense in that the Office of Trial Counsel has inexcusably and unreasonably  
5 delayed the commencement of the action, to the prejudice of Respondent.

6  
7 SIXTH AFFIRMATIVE DEFENSE

8 Duplicative Charges

9 25. The Notice of Disciplinary Charges is repetitive and redundant, and states  
10 duplicative charges for the same event, including but not limited to Counts One, Three, Five  
11 and Seven.

12  
13 EXTENUATING AND MITIGATING CIRCUMSTANCES

14 26. In the event Respondent is found guilty of unprofessional conduct as charged  
15 in the Notice of Disciplinary Charges, Respondent respectfully submits the following facts in  
16 mitigation without admitting that such charges are true or that the facts alleged therein  
17 constitute professional misconduct:

18 27. Throughout Respondent's professional career, Respondent has successfully  
19 endeavored to maintain a high level of respect and an excellent reputation among fellow  
20 attorneys and the courts for honesty, integrity, and professional competence in diligently and  
21 vigorously representing clients.

22 28. Respondent acted in good faith.

23 29. Respondent exhibited spontaneous candor and cooperation throughout the  
24 disciplinary investigation.

25 30. Testimonials will be provided from members of the community, to substantiate  
26 Respondent's good character, trustworthiness and excellence as a lawyer.

27 31. The period of time during which the alleged misconduct took place was an  
28 anomaly in Respondent's legal career and any behavior during that time was aberrational.





1 **KARPMAN & ASSOCIATES**  
301 North Canon Drive, Suite 303  
2 Beverly Hills, California 90210  
Telephone 310-887-3900  
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6 PROOF OF SERVICE BY U.S. MAIL

7 STATE OF CALIFORNIA )  
8 COUNTY OF LOS ANGELES )  
9

10 I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the  
11 within-entitled action; my business address is 301 North Canon Drive, Suite 303, Beverly Hills,  
12 California 90210. On February 11, 2009, I served **Respondent's Response to Notice of Disciplinary**  
13 **Charges, In the Matter of Todd E. Macaluso, Case Nos. 06-O-14552, 07-O-10134 and 07-O-10899-**  
14 **RAH**, on all interested parties in said action by placing a true copy thereof enclosed in a sealed envelope  
15 by U.S. Mail with appropriate postage thereon fully prepaid in a U.S. Mail depository addressed as  
16 follows:  
17

18 **Agustin Hernandez, Esq.**  
19 **Office of the Chief Trial Counsel, Enforcement**  
20 **The State Bar of California**  
1149 South Hill Street  
Los Angeles, CA 90015-2299

21 EXECUTED on February 11, 2009, at Beverly Hills, California. I declare under penalty  
22 of perjury that the foregoing is true and correct.  
23

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