


<p>Counsel for the State Bar Esther Rogers, No. 148246 Office of Chief Trial Counsel The State Bar of California 180 Howard Street, 7th Floor San Francisco, CA 94105 (415)538-2445.</p>	<p>Case number(s) 00-0-14505 kwiktag® 022 606 925 </p>	<p>(for Court's use) PUBLIC MATTER FILED <i>RW</i> JAN 13 2004 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>Counsel for Respondent Nicholas J.P. Wagner Wagner & Jones The Atrium Building 1111 East Herndon Avenue #317 Fresno, CA 93720 (559)449-1800 (In Propria Persona)</p>	<p>Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>REPROVAL <input type="checkbox"/> PRIVATE <input checked="" type="checkbox"/> PUBLIC</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of NICHOLAS J.P. WAGNER Bar # 109455 A Member of the State Bar of California (Respondent)</p>		

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted December 12, 1983
(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 9 pages. *8 JMR*
- (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 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 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."

(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. See attached
- (2) No Harm: Respondent did not harm the client or person who was the object of the misconduct. See attached
- (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:

See attached

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 shall comply with the conditions attached to the reproof for a period of one (1) 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 reproof.
- (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 reproof.
- 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: Nicholas J.P. Wagner

CASE NUMBER(S): 00-O-14505

FACTS AND CONCLUSIONS OF LAW.

Case No. 00-O-14505

Count One

Statement of Facts

Prior to September 1999, Carlos and Rosa Gonzalez, husband and wife, and George Gonzalez, son of Carlos and Rosa, were employed by Boghosian Raisin Company. In or about September 1999, the Gonzalezes and other employees voted to go out on strike on October 1, 1999.

On or about October 1, 1999, the Gonzalezes and other employees went out on strike. On or about October 5, 1999, the Gonzalezes and the other employees who went out on strike were terminated because the union to which they belonged failed to comply with Section 8(d) of the Labor Management Relations Act, which required the union to file a strike notice with the Federal Mediation and Conciliation Service.

In or about November 1999, the Gonzalezes and the other employees who went out on strike employed respondent to assist them in getting their jobs back. On or about March 2, 2000, the Gonzalezes, among others, sent respondent a letter informing respondent that he was discharging respondent. Respondent received the letter soon after it was sent.

On March 27, 2000, respondent filed a complaint on behalf of several terminated Boghosian employees against the union in the matter *Aguilar et al. v. Packing House Employees and Warehousemen's Union et al.*, Fresno County Superior Court, Case no. 648375-4. The complaint stated that respondent was the attorney for plaintiffs and listed the Gonzalezes as plaintiffs. Respondent contends that he included the Gonzalezes as plaintiffs because he was unable to determine whether they understood that by failing to participate in the lawsuit, they would be precluded from recovering damages from the union.

On or about December 19, 2000, respondent sent a letter to Carlos and Rosa Gonzalez and some of the other plaintiffs who had sent him letters discharging him. The letter stated that respondent had been unable to verify whether it was actually Carlos Gonzalez's intent to dismiss respondent. It asked Carlos Gonzalez to sign an enclosed form to signify whether he wish to dismiss respondent. He sent the letter in both English and Spanish.

On or about December 26, 2000, Carlos Gonzalez sent respondent back the form respondent included with the letter and requested that respondent dismiss him from the lawsuit

against the union. Respondent received Carlos Gonzalez's request soon after December 26, 2000. Either respondent or someone acting on respondent's behalf placed the form in respondent's client file.

Respondent failed to dismiss Carlos Gonzalez from the March 27, 2000 lawsuit after receiving his request to do so. On January 21, 2003, respondent submitted a request for dismissal for Gonzalez. On January 23, 2003, the court entered the dismissal.

Respondent delegated the responsibility for communicating with the Gonzalezes to his office staff. Respondent did not properly supervise his office staff and was unaware of what efforts, if any, his staff was making to determine whether the March 2, 2000 letters discharging respondent was authentic.

Respondent also delegated to his office staff the responsibility for reviewing correspondence from clients. Respondent did not properly supervise his office staff when he allowed them to place Carlos Gonzalez's request that respondent dismiss him from the March 27, 2000 lawsuit in his client file without filing a request for dismissal.

Conclusions of Law

Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A) by failing to properly supervise his office staff.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(6), was December 10, 2003.

MITIGATING CIRCUMSTANCES.

No Prior Record. Standard 1.2(e)(i). Respondent has been admitted since 1983 and has no prior record of discipline.

No Harm. Standard 1.2(e)(iii). Respondent's clients suffered no harm as a result of respondent's failure to dismiss them from the lawsuit when he was requested to do so.

Date 12-18-3

Respondent's signature *J. Wagner*

print name THOMAS J. P. WAGNER

Date 12/29/

Respondent's Counsel's signature _____

print name _____

Date 12/29/03

Deputy Trial Counsel's signature *Esther Rogers*

print name ESTHER ROGERS

ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, 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 reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Date 1/13/04

Judge of the State Bar Court *John M. Runke*

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 San Francisco, on January 13, 2004, 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 San Francisco, California, addressed as follows:

**NICHOLAS J. P. WAGNER
WAGNER & JONES
THE ATRIUM BUILDING
1111 EAST HERNDON AVE #317
FRESNO CA 93720**

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

ESTHER ROGERS , Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **January 13, 2004.**



Bernadette C. O. Molina
Case Administrator
State Bar Court