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State Bar Court of California		
Hearing Department <input type="checkbox"/> Los Angeles <input checked="" type="checkbox"/> San Francisco		
Counsel for the State Bar Robert A. Henderson Deputy Trial Counsel 180 Howard Street, 7th Floor San Francisco, CA 94105 (415) 538-2385 Bar # 173205	Case number(s) 05-C-04592 kwiktag® 022 603 766 	(for Court's use) PUBLIC MATTER FILED  AUG 09 2006 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
<input type="checkbox"/> Counsel for Respondent <input checked="" type="checkbox"/> In Pro Per, Respondent Garold L. Neely P.O. Box 32243 Stockton, CA 95213 (209) 513-2829 Bar # 189557	Submitted to <input type="checkbox"/> assigned judge <input checked="" type="checkbox"/> settlement judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of GAROLD L. NEELY Bar # 189557 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 July 2, 1997 (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 12 pages.
- (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.

(Do not write above this line.)

- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

- ☒ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
- ☐ costs to be paid in equal amounts prior to February 1 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

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 04-0-10684
- (b) ☒ Date prior discipline effective pending
- (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Business and Professions
Code sections 6068(a), 6106, 6125 and 6126

- (d) ☒ Degree of prior discipline 60 days actual

- (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.

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- (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.

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- (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:

Suffering from a substance abuse problem during the period of misconduct.

D. Discipline:

(1) ☒ Stayed Suspension:

- (a) ☒ Respondent must be suspended from the practice of law for a period of one (1) year
- 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: _____
- (b) ☒ The above-referenced suspension is stayed.

(2) ☒ Probation:

Respondent must be placed on probation for a period of three (3) years
which will commence upon the effective date of the Supreme Court order in this matter.
(See rule 953, Calif. Rules of Ct.)

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(3) ☒ Actual Suspension:

(a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of ninety (90) days

- 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: _____

E. Additional Conditions of Probation:

- (1) ☒ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, 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 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.

- (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 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.
- (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 probation conditions.

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- (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) ☐ 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 during the period of actual suspension or within one year, whichever period is longer. Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 951(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.
- ☐ No MPRE recommended. Reason: _____
- (2) ☒ Rule 955, California Rules of Court: Respondent must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ Conditional Rule 955, California Rules of Court: If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ Credit for Interim Suspension [conviction referral cases only]: Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension: _____
- (5) ☒ Other Conditions:
- See Attachments:

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Garold L. Neely

CASE NUMBER(S): 05-C-04592

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he/she is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

On September 1, 2005, respondent was involved in a physical altercation with his girlfriend. The police responded to the scene, took the statement of the victim and later arrested respondent. Respondent was convicted of a misdemeanor violation of Penal Code section 273.5(a), wilful infliction of corporal injury to his cohabitant. The crime for which respondent was convicted did not involve moral turpitude. However, the facts and circumstances surrounding the physical incident which led to his conviction, the injuries to his girlfriend/cohabitant, do warrant discipline.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was July 17, 2006.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of July 17, 2006, the estimated prosecution costs in this matter are approximately \$1,636. 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.

PROCEDURAL BACKGROUND IN CONVICTION PROCEEDING.

1. This is a proceeding pursuant to sections 6101 and 6102 of the Business and Professions Code and rule 951 of the California Rules of Court.
2. On October 3, 2005, respondent was convicted of violating Penal Code section 273.5, corporal injury to cohabitant.
3. On April 7, 2006, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department on the following issues: for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding the misdemeanor violation of Penal Code section 273.5, subdivision (a), of which Garold Lee Neely was convicted, involved moral turpitude or other misconduct warranting discipline.

AUTHORITIES SUPPORTING DISCIPLINE.

Standards

Standard 1.7 -- Effect of Prior Discipline

"(a) If a member is found culpable of professional misconduct in any proceeding in which discipline may be imposed and the member has a record of one prior imposition of discipline. . .the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding. . ."

Case Law

In re Otto (1989) 48 Cal.3d 970

A six-month actual suspension for an attorney convicted of violating Penal Code sections 273.5 and 245(a) [infliction of corporal punishment on a cohabitant]. The convictions were felonies which had been reduced to misdemeanors. Otto served 90 days in jail. The case does not provide the facts surrounding the convictions.

In re Hickey (1990) 50 Cal.3d 571

A 30-day actual suspension for an attorney convicted of a misdemeanor violation of Penal Code section 12025(b), carrying a concealed weapon. The attorney struck his wife in the side of her head with a gun. The attorney also threatened his wife.

A 60-day actual suspension for an attorney convicted of a misdemeanor violation of Penal Code section 243(c), battery on a police officer. The attorney, while intoxicated, scuffled with a police officer. The attorney had prior discipline.

AGGRAVATING CIRCUMSTANCES.

PRIOR DISCIPLINE.

Case No. 04-O-10684¹

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES.

Respondent from September 3, 2002 through December 2, 2003, held himself out as entitled to practice law, engaged in the unauthorized practice of law and thereby committed acts of dishonesty and moral turpitude.

STATE BAR ETHICS SCHOOL.

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

OTHER CONDITIONS NEGOTIATED BY THE PARTIES.

Respondent is required to fully comply with and successfully complete his program, through the San Joaquin Safety Council, which is part of his deferred entry of judgment in Case no. SM246175A.

The parties agree that so long as respondent remains fully in compliance with all of his probation conditions, the State Bar will not oppose respondent's motion to reactivate his State Bar membership.

The parties waive review of this stipulation and request the court to expedite the matter.

¹The discipline for this case is not yet final. The State Bar Court decision was filed with the Supreme Court on May 10, 2006. The Supreme Court has not yet acted on the recommendation.

**COMPLIANCE WITH CONDITIONS OF PROBATION/PAROLE IN UNDERLYING
CRIMINAL MATTER.**

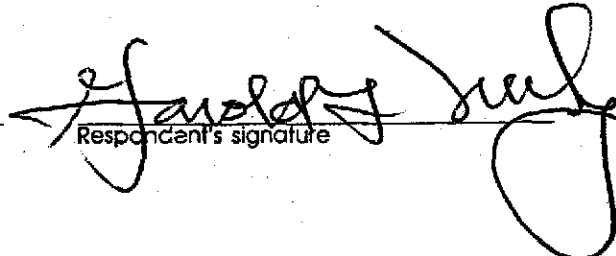
Respondent shall comply with all conditions of his Probation imposed in the underlying criminal matter and shall so declare under penalty of perjury in conjunction with any quarterly report required to be filed with the Probation Unit.

(Do not write above this line.)

In the Matter of GAROLD L. NEELY	Case number(s): 05-C-04592
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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 Facts, Conclusions of Law and Disposition.

7/31/06  GAROLD L. NEELY
Date Respondent's signature Print name

Date Respondent's Counsel's signature Print name

8/4/06  ROBERT A. HENDERSON
Date Deputy Trial Counsel's signature Print name

(Do not write above this line.)

In the Matter of Garold L. Neely	Case number(s): 05-C-04592
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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.

On July 18, 2006, the California Supreme Court accepted the recommendation in respondent's prior discipline, case no. 04-O-10684 (S143351). Thus, effective August 17, 2006, pursuant to that order respondent will be actually suspended for 60 days and until he files a motion under rule 205 of the Rules of Procedure of the State Bar. Since respondent is required to pass the MPRE as part of that order, the MPRE requirement in this stipulation on page 6 is deleted. Also, the conditional 1.4(c)(ii) requirement in this stipulation on page 5 is deleted since it is not applicable in this case.

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.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 953(a), California Rules of Court.)**

Date

8/9/06


JOANN M. REMKE
Judge of the State Bar Court

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 San Francisco, on August 9, 2006, 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:

**GAROLD L. NEELY
P O BOX 32243
STOCKTON CA 95213**

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

ROBERT HENDERSON, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on **August 9, 2006.**



**George Hue
Case Administrator
State Bar Court**