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State Bar Court of California Hearing Department San Francisco DISBARMENT		
<p>Counsel For The State Bar</p> <p>Susan Chan Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105</p> <p>Bar # 233229</p>	<p>Case Number(s): 08-C-13011</p>	<p>For Court use only</p> <p style="text-align: center;">PUBLIC MATTER</p> <p style="text-align: center;">FILED <i>LOS</i></p> <p style="text-align: center;">FEB 02 2011</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</p>
<p>In Pro Per Respondent</p> <p>Robert W. Wiley 4265 Lakeshore Blvd. - Space 14 Lakeport, CA 95423</p> <p>Bar # 64883</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT</p> <p>DISBARMENT</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: ROBERT W. WILEY</p> <p>Bar # 64883</p> <p>A Member of the State Bar of California (Respondent)</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 August 21, 1975.
- (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 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."



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- (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 to be awarded to the State Bar.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

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**
- (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:
- (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. See Attached.
- (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 Attached.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

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- (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. See Attached.
- (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.
- (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.

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Additional mitigating circumstances:

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D. Discipline: Disbarment.

E. Additional Requirements:

- (1) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, 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.

- (2) **Restitution:** Respondent must make restitution to _____ in the amount of \$ _____ plus 10 percent interest per year from _____. If the Client Security Fund has reimbursed _____ for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than _____ days from the effective date of the Supreme Court order in this case.

- (3) **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISBARMENT

IN THE MATTER OF: ROBERT W. WILEY

CASE NUMBER: 08-C-13011

FACTS AND CONCLUSIONS OF LAW

Facts

1. On June 25, 2008, respondent was charged with four felony counts of knowing possession or control of child pornography, in violation of Penal Code section 311.11(a), in Superior Court of California, Lake County, Case No. CR913362.
2. The underlying facts of the charges are as follows: Respondent was an attorney who regularly appeared in Department A of Lake County Superior Court on Juvenile Dependency matters (W&I 300 et seq. and W&I 600 et seq.). On February 27, 2007, respondent appeared in Department A of Lake County Superior Court. On February 27, 2007, a bailiff found a "thumb drive"-- a small portable device for storing digital data, in Department A of Lake County Superior Court. An examination of the device established that it contained numerous images which depicted sexual conduct of persons under the age of 18 within the meaning of Penal Code section 311.4(d). The device also contained legal documents generated by respondent. On September 20, 2007, a Lake County search warrant was served on respondent at his law office. The Lake County search warrant also included respondent's home. Digital images discovered on respondent's computers established numerous images which depicted sexual conduct of persons under the age of 18 within the meaning of Penal Code section 311.4(d).
3. Following a preliminary hearing on August 28, 2008, respondent was charged with two felony counts of knowing possession or control of child pornography, in violation of Penal Code Section 311.11(a), in Superior Court of California, Lake County, Case No. CR913362.

Count I

On or about February 27, 2007, respondent was in possession of digital images stored on one silver Ivo Magic Gig A Bank (USB 1) of a person under the age of 18 years old personally engaging in and simulating sexual conduct as defined in Penal Code section 311.4(d).

Count II

On or about September 20, 2007, respondent was in possession of digital images stored on one USB Drive; digital images stored on one Hitachi drive serial no.

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EL54UDAN and one Western digital external hard drive, serial no. WCANK6641865; digital images stored on one Seagate drive, serial no. 4LRS1FMN and one Maxtor hard drive, serial no. Y355T3AE, the production of which involved a person under the age of 18 years old personally engaging in and simulating sexual conduct as defined in Penal Code section 311.4(d).

4. On January 9, 2009, respondent plead guilty to Count I, and was convicted of a violation of Penal Code section 311.11(a), *knowing* possession of child pornography, a felony, in Superior Court of California, Lake County, Case No. CR913362. Count II was dismissed as part of the plea agreement.

Penal Code section 311.11(a) provides as follows:

“(a) Every person who knowingly possesses or controls any matter, representation of information, data, or image, including but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film or filmstrip, the production of which involves the use of a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4 is guilty of a felony and shall be punishable by imprisonment in state prison, or a county jail for up to one year, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both the fine and imprisonment.”

Penal Code Section 311.4 provides as follows:

“(d)(1) As used in subdivisions (b) and (c), “sexual conduct” means any of the following, whether actual or simulated: sexual intercourse, oral copulation, anal intercourse, anal oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, penetration of the vagina or rectum by any object in a lewd or lascivious manner, exhibition of the genitals or pubic or rectal area for the purpose of sexual stimulation of the viewer, any lewd or lascivious sexual act as defined by Section 288, or excretory functions performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being sexual conduct.

“(2) As used in subdivisions (b) and (c), “matter” means any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, or any other computer-related equipment or computer generated image that contains or incorporates in any manner, any film, filmstrip, photograph, negative, slide, photocopy, videotape, or video laser disc.”

5. On February 27, 2009, respondent was sentenced to a jail term of 120 days to be served on home detention, three (3) years formal, supervised probation, payment of fees, and mandatory registration as a sex offender pursuant to Penal Code section 290.

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6. On April 20, 2009, the State Bar Court Review Department placed respondent on interim suspension from the practice of law pursuant to Business and Professions Code section 6102(a) pending the finality of this conviction and the completion of the ensuing disciplinary proceedings against him.
7. On or about July 30, 2009, respondent's resignation with charges pending was filed with the State Bar Court.
8. On August 3, 2009, the State Bar Court Hearing Department placed the case on abatement pending the outcome of the resignation proceedings.
9. On December 1, 2010, the Supreme Court of California issued an order rejecting respondent's resignation with charges pending (S178003) and remanded the underlying matter to the State Bar Court Hearing Department for a hearing and disposition.

Conclusions of Law

Respondent's conviction of a violation of Penal Code section 311.11(a), *knowing* possession of child pornography, a felony involves serious violations of moral standards in willful violation of Business and Professions Code section 6068(a) and 6106.

PENDING PROCEEDINGS

The disclosure date referred to, on page 2, paragraph A(7), was January 19, 2011.

FACTS SUPPORTING AGGRAVATING AND MITIGATING CIRCUMSTANCES

AGGRAVATING CIRCUMSTANCES

Standard 1.2(b)(ii): Respondent's misconduct of downloading and possession of numerous images depicting sexual conduct of persons under the age of 18 years old within the meaning of Penal Code section 311.4(d) evidences multiple acts of wrongdoing.

Standard 1.2(b)(iii): Respondent's misconduct was surrounded by bad faith and dishonesty. Respondent's *knowing* possession or control of child pornography, in violation of Penal Code section 311.11(a), is dishonest and violates intrinsic moral standards of society.

Standard 1.2(b)(iv): Respondent's misconduct caused significant harm to the victim(s), the public, and administration of justice. Respondent's *knowing* possession or control of child pornography, in violation of Penal Code section 311.11(a), violates intrinsic moral standards of society and inherently facilitates harm to children.

MITIGATING CIRCUMSTANCES

There are no mitigating circumstances.

SUPPORTING AUTHORITY

Standard 3.2 requires disbarment upon final conviction of a member of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission. Only if the most compelling mitigating circumstances clearly predominate, shall disbarment not be imposed. In those latter cases, the discipline shall not be less than a two-year actual suspension, prospective to any interim suspension imposed, irrespective of mitigating circumstances.

“Moral turpitude has been described as ‘an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and woman.’ In re Craig (1938) 12 Cal.2d 93, 97, see also Chadwick v. State Bar (1989) 49 Cal.3d 103, 110).

United States v. Santacruz (9th Cir. 2009) 563 F.3d 894, holding as a matter of first impression that felony possession of child pornography in violation of the federal statute constitutes moral turpitude for purposes of immigration law.

New York v. Ferber (1982) 458 U.S. 747, 756-758.

People v. Kongs (1994) 30 Cal.4th 1741, 1748-1749, 1754.

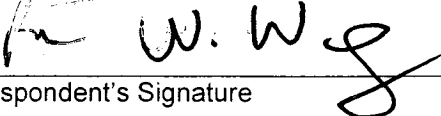
Matter of Disciplinary Proceedings Against Bruckner (1991) 161 Wis.2d 385, 467 N.W.2d 780 (importation and trading of child pornography involved moral turpitude); *In the Matter of Wolff* (D.C. 1985) 490 A.2d 1118, vacated 494 A.2d 932 (D.C. July 11, 1985), reasoning adopted on banc 511 A.2d 1047 (D.C. June 30, 1986) (conviction for distribution of child pornography involved moral turpitude).

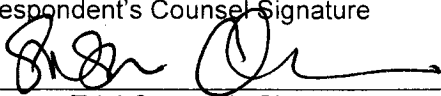
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In the Matter of: ROBERT W. WILEY	Case number(s): 08-C-13011
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SIGNATURE OF THE PARTIES

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.

Date 1/25/11 Respondent's Signature  Print Name Robert W. Wiley

Date 1/26/2011 Respondent's Counsel Signature  Print Name Susan Chan
Date Deputy Trial Counsel's Signature Print Name

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In the Matter of: ROBERT W. WILEY	Case Number(s): 08-C-13011
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DISBARMENT 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.)**

Respondent ROBERT W. WILEY is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Date Feb 2, 2011



Judge of the State Bar Court

LUCY ARMENDARIZ

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 San Francisco, on February 2, 2011, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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:

ROBERT WAYNE WILEY
4265 LAKESHORE BLVD SPC 14
LAKEPORT, CA 95453

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

SUSAN CHAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on February 2, 2011.



Laine Silber
Case Administrator
State Bar Court