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State Bar Court of California
Hearing Department
San Francisco

Counsel For The State Bar Robert A. Endries Deputy Trial Counsel 180 Howard St., 7th Floor San Francisco, CA 94105 Tele: (415) 538-2357 Bar # 187721	Case Number (s) 08-O-10589; 08-C-11462- PEM	(for Court's use) PUBLIC MATTER <div style="text-align: center;"> FILED  JUL 21 2009 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO </div>
In Pro Per Respondent Garold L. Neely P.O. Box 32243 Stockton, CA 95213 Tele: (209) 451-6363	Submitted to: Assigned 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**.
- (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 **17** 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."
- (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):
- ☒ 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-O-10684**
 - (b) ☒ Date prior discipline effective **August 17, 2006**
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code Sections 6068(a) (duty to support all laws), 6125 (prohibiting practice of law by anyone other than active attorney), and 6126 (only active attorneys may hold themselves out as entitled to practice law).**
 - (d) ☒ Degree of prior discipline **One year suspension, stayed, sixty days actual suspension, and until respondent files and State Bar Court grants motion to terminate actual suspension.**
 - (e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below.

State Bar Court case # 05-C-04592, effective November 24, 2006; respondent admitted to criminal conviction for Penal Code section 273.5, wilful infliction of corporal injury to a co-habitant, Cheryl Adelbush; respondent received one year suspension, stayed, three years probation, ninety days actual suspension.

- (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. **At the time of the events surrounding respondent's most recent criminal conviction, respondent was violating the terms of a criminal restraining order from his prior conviction, which is harm to the public and the administration of justice. Respondent admitted to battery, a crime of violence, which harmed the victim, Cheryl Adelbush. Finally, respondent failed to follow the reporting requirements that are part of his probationary terms to the State Bar Court. Society has a significant interest in monitoring attorneys found in violation of their professional and ethical duties.**

- (5) ☒ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct. **Respondent failed to abide by the terms and conditions of his probation to the State Bar Court, which shows indifference towards atonement for his earlier misconduct. Further, respondent repeated the misconduct that resulted in his earlier criminal conviction, which also shows indifference towards rectification or atonement for the consequences of his 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. **Respondent failed to cooperate in the initial stages of this proceeding, resulting in a default against him, which respondent was able to set aside. Since the default was set aside, respondent has been cooperative with the State Bar.**
- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **This matter involves two cases with two separate instances of wrongdoing.**
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

The victim in the criminal case here, 08-C-11462, is the same as that from the prior "C" case, 05-C-04592.

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. **At the time the crime occurred, respondent's father was seriously ill in the hospital, and in fact died within a few months thereafter. This caused respondent to be in a fragile emotional state and contributed to his loss of self-control.**

- (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. **Respondent has a developmentally disabled child, for whom he is the sole provider, that requires special housing and care. Further, as indicated above, at the time of the criminal case, respondent's father was seriously ill in the hospital, and died within a few months thereafter.**
- (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 **three years**.
- 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 years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3) ☒ **Actual Suspension:**
- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **eighteen 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:

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.
- (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:

☒ Substance Abuse Conditions

☐ Law Office Management Conditions

☒ Medical Conditions

☐ 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 951-9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**

☐ No MPRE recommended. Reason:

(2) ☒ **Rule 955-9.20, California Rules of Court:** Respondent must comply with the requirements of rule 955-9.20, 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.

(3) ☐ **Conditional Rule 955-9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 955-9.20, 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:**

ELECTION NOT TO REQUEST STATE BAR COURT'S ALTERNATIVE DISCIPLINE PROGRAM.

By signing this stipulation, respondent acknowledges that he was provided information about the State Bar Court's Alternative Discipline Program (ADP), that he was offered the opportunity to request referral to and participation in the ADP, and that he has elected not to do so. Respondent further understands that by signing this stipulation, he will not be allowed to participate in the ADP on the captioned matter.

Attachment language begins here (if any):

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Garold L. Neely

CASE NUMBER(S): ET AL. 08-O-19589; 08-C-11462-PEM

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.

STIPULATED FACTS

Case 08-O-19589:

1. Garold M. Neely ("respondent") was admitted to the practice of law in the State of California on July 2, 1997, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.
2. Respondent violated Business and Professions Code, section 6068(k) by failing to comply with all conditions attached to any disciplinary probation, as follows:
3. On October 25, 2007, the California Supreme Court filed an order in case number S145975 (State Bar case number 05-C-04592) suspending respondent from the practice of law, staying imposition of suspension, placing respondent on probation for a period of three years, and requiring respondent to comply with specified conditions of probation. The discipline was based upon a stipulation that respondent has signed, and the stipulation contained all of the conditions of probation.
4. Notice of the order was duly and properly served upon respondent in the matter prescribed by California Rule of Court 8.532(a) at respondent's address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1.
5. The Supreme Court order became effective on November 24, 2007 and remained in full force and effect at all times thereafter.

6. As a term and condition of probation, respondent was required to submit quarterly reports, and complete Ethics School, as follows:

“Respondent must submit written quarterly reports to the Probation Unit 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.”

“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.”

“Within one (1) year of the effective date of 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.”

7. On November 29, 2006, the State Bar Office of Probation mailed letter to respondent reminding respondent of the obligation to comply with the terms of his probation, including filing quarterly reports, keeping probation apprised of his probation compliance in the underlying criminal matter, and completing ethics school.

8. At all times pertinent hereto, respondent had notice of and was aware of the October 25, 2007 Supreme Court order. Respondent has remained on probation at all times since November 25, 2007.

9. Respondent willfully violated these probation conditions by failing to timely file the quarterly reports that were due no later than January 10, 2007, April 10, 2007, July 10, 2007, October 10, 2007 and January 10, 2008. Further, respondent failed to attend Ethics School, failed to pass the test given

at the end of an Ethics School session, and failed to provide proof of attendance to the Office of Probation in the prescribed time period.

10. On April 3, 2009, respondent filed all back quarterly reports concerning the time period from January 10, 2007 through April 10 2009. Respondent still has not completed Ethics School.

Case No. 08-C-11462:

11. Respondent violated Business and Professions Code §6068(a) by failing to support all laws, as follows:

12. On June 1, 2007, respondent was driving a vehicle in San Joaquin County when he twice punched his passenger and co-habitant, Cheryl Adlebush, causing her to bleed from her nose. There was a restraining order in place directing respondent to have no contact with Ms. Adlebush. Respondent was arrested for violations of Penal Code § 273.6, violation of a restraining order and Penal Code § 273.5, inflicting corporal injury on a cohabitant.

13. On June 12, 2007, the San Joaquin County District Attorney's Office filed a criminal complaint against respondent, alleging one misdemeanor count of PC § 273.5, and one misdemeanor count of Penal Code § 166(c)(1), contempt of court for violation of restraining order.

14. On January 7, 2008, respondent pled guilty to misdemeanor violations of Penal Code § 242, simple battery, and Penal Code § 166(c)(1), and was sentenced to three years of summary or court probation with sixty days county jail.

15. On May 28, 2008 and June 6, 2008, 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 violations of Penal Code §§ 242 and 166(a)(1) involved moral turpitude or other misconduct warranting discipline.

16. Notice of the order, in the form of a Notice of Hearing on Conviction, was duly and properly served upon respondent on June 10, 2008 by the State Bar Court in the manner prescribed by California Rule of Court 8.532(a) at respondent's address as maintained by the State Bar in accordance with Business and Professions Code section 6002.1.

17. Respondent received notice of this proceeding but willfully failed to participate in the proceeding.

18. On October 20, 2008, the State Bar Court struck respondent's response to the Notice of Disciplinary Charges in Case No. Case 08-O-19589 and entered his default in that case and case 08-C-11462.

19. On November 18, 2008 respondent filed a motion to have his defaults set aside.

20. On December 3, 2008 respondent filed a Proposed Response to the Notice of Hearing on Conviction.

21. On December 22, 2008 the State Bar Court set aside respondent's default and accepted respondent's Proposed Response to the Notice of Hearing on Conviction for filing.

CONCLUSIONS OF LAW

By failing to timely file the quarterly reports that were due no later than January 10, 2007, April 10, 2007, July 10, 2007, October 10, 2007 and January 10, 2008, by failing to attend Ethics School, failing to pass the test given at the end of an Ethics School session, and failing to provide proof of attendance to the Office of Probation in the prescribed time period, respondent violated Business and Professions Code, section 6068(k) by failing to comply with all conditions attached to any disciplinary probation.

Further, when he struck Cheryl Adelbush without justification or excuse, and used such force and violence against her, respondent violated Business and Professions Code § 6068(a) by failing to support the laws of the state of California.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(6), was June 30, 2009.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of June 30, 2009, the prosecution costs in this matter are \$5,996.10. 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.

AUTHORITIES SUPPORTING DISCIPLINE.

Rule Proc. of Cal. State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct (hereafter "standard __," or std. __," or collectively "the standards") 1.7, regarding the Effect of Prior Discipline, provides "(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." Although respondent has been disciplined in two prior cases, the prosecutions were nearly contemporaneous and respondent was not on probation in either of the cases at the time the misconduct for which he was disciplined occurred.

Standard 2.6 suggests disbarment or suspension (depending on the gravity of the offense or the harm to the victim) for culpability of a member of a violation of Business and Professions Code sections 6068. Section 6068(k) provides that it is the duty of an attorney to comply with all conditions attached to any disciplinary probation.

Standard 3.4 provides that final conviction of a crime which does not involve moral turpitude inherently or in the facts and circumstances surrounding the crime's commission but which does involve other misconduct warranting discipline shall result in a sanction appropriate to the nature and extent of the misconduct found to have been committed by the member.

Case Law

The purposes of imposing professional discipline are: the protection of the public, courts and the legal profession; the maintenance of high professional standards by attorneys, and the preservation of public confidence in the legal profession. *In re Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192

The primary goals of disciplinary probation are the protection of the public and the rehabilitation of the attorney. *In re Marsh* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 291, 299.

Similar cases can indicate appropriate discipline. (*In re Morse, supra*, 11 Cal.4th at pp. 207-208; *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311.)

Respondent's initial default in this matter should be considered in aggravation. Such "lack of participation substantially distinguishes this case from [published cases which might otherwise appear comparable] and indicates that far more severe discipline is required to achieve the purposes of attorney discipline set forth in standard 1.3" *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 581

For violation of the terms and conditions of probation, a violation of probation significantly related to the attorney's prior misconduct merits the greatest degree of discipline, especially where the violation raises serious concerns about the need for public protection or shows the probationer's failure to undertake rehabilitative steps. *In re Hunter* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 63, 78.

An attorney, with one prior disciplinary action for which he was on probation, who, in connection with this probation, failed to file three quarterly probation reports and pass the MPRE, and picked up a new disciplinary matter, with no mitigating factors, was disbarred, with the court stating "[w]e have no reason to believe that petitioner can or will comply with another probationary period here, even if coupled with an actual suspension. *Barnum v. State Bar* (1990) 52 Cal.3d 104, 112-13.

An attorney, with one prior disciplinary action for which he was in probation, who, in connection with this probation, failed to file his first quarterly probation report, failed to contact his probation officer, and defaulted in the probation violation proceedings, caused the court to note that these were "two of the very first steps required of respondent under the probation conditions. Thus, respondent's probation violations

involve his failure to even begin to take steps to rehabilitate himself.” The court noted the presence of aggravating factors, the absence of mitigating factors and concluded that the “imposition of the entire period of the stayed suspension is the appropriate discipline in this matter.” *In re Hunter, supra*, 3 Cal. State Bar Ct. Rptr. at 78. In this case, respondent has two separate one year stayed suspensions.

A six-month actual suspension for an attorney convicted of violating Penal Code sections 273.5 and 245(a) (infliction of corporal injury on a cohabitant). The convictions were felonies that had been reduced to misdemeanors, and respondent in that case spent 90 days in jail. *In re Otto* (1989) 48 Cal.3d 970

In *In re Carr* (1988) 46 Cal.3d 1089, 1091, a respondent came before the court with two driving under the influence convictions, and was currently under suspension for earlier criminal convictions for drug possession and failure to answer questions from his State Bar probation monitor. The California Supreme Court upheld and imposed the discipline recommended by the review department, six months actual suspension.

The discipline recommended and agreed upon by the parties in this matter, suspension, is appropriate here for the following reasons: (1) respondent’s initial default, compounded with his default in a prior disciplinary matter, is extremely serious and cannot be overlooked, despite his success in getting the default set aside; (2) respondent’s failure to file quarterly probation reports for two years is also serious, although respondent has, since his default was set aside, filed all back quarterly reports; (3) respondent was on probation in two prior disciplinary cases, with two years suspension stayed, at the time of the conduct that underlies these cases; (4) respondent committed the same type of crime, with the same victim, and violated a restraining order, in the criminal case; (5) since respondent engaged in this matter, he has been forthright, candid and cooperative; (6) respondent has, since his default was set aside, admitted his wrongdoing and indicated that he did not wish to try this matter, but rather resolve it without trial, saving the State Bar and Judicial resources.

In the Matter of
Garold L. Neely
State Bar No. 189557

Case number(s):
08-O-10589; 08-C-11462-PEM

Substance Abuse Conditions

- a. ☒ Respondent must abstain from use of any alcoholic beverages, and shall not use or possess any narcotics, dangerous or restricted drugs, controlled substances, marijuana, or associated paraphernalia, except with a valid prescription.
- b. ☒ Respondent must attend at least 15 meetings per month of:
- ☐ Alcoholics Anonymous
 - ☐ Narcotics Anonymous
 - ☐ The Other Bar
 - ☒ Other program **Respondent must complete the Intensive Outpatient Program ("IOP") and Aftercare through St. Joseph's Behavioral Health Center, located at 2510 North California St., Stockton, CA 95204. The IOP is a six week program encompassing four three hour sessions per week relating to substance abuse, one fifty minute session per week relating to mental health issues, and additional "twelve step" meetings weekly. The Aftercare component will last one year (fifty two weeks) and consists of one ninety minute meeting each week relating to substance abuse. After the IOP is complete, respondent is to continue meeting weekly with a counselor at St. Joseph's Behavioral Health Center regarding mental health issues for the duration of the probationary period, or until the counselor submits a recommendation to probation stating that treatment is successful and no longer necessary. All sessions with the St. Joseph's Behavioral Health Center will be counted towards the fifteen meetings per month; however, if the staff at St. Joseph's Behavioral Health Center believes that more than fifteen meetings per month are necessary to reach treatment goals, respondent must attend those meetings as a term and condition of his probation in this matter. Further conditions are set forth on the attachment herein.**

As a separate reporting requirement, Respondent must provide to the Office of Probation satisfactory proof of attendance during each month, on or before the tenth (10th) day of the following month, during the condition or probation period.

- c. ☒ Respondent must select a license medical laboratory approved by the Office of Probation. Respondent must furnish to the laboratory blood and/or urine samples as may be required to show that Respondent has abstained from alcohol and/or drugs. The samples must be furnished to the laboratory in such a manner as may be specified by the laboratory to ensure specimen integrity. Respondent must cause the laboratory to provide to the Office of Probation, at the Respondent's expense, a screening report on or before the tenth day of each month of the condition or probation period, containing an analysis of Respondent's blood and/or urine obtained not more than ten (10) days previously.
- d. ☒ Respondent must maintain with the Office of Probation a current address and a current telephone number at which Respondent can be reached. Respondent must return any

(Substance Abuse Conditions form approved by SBC Executive Committee 10/16/2000. Revised 12/16/2004; 12/13/2006.)

call from the Office of Probation concerning testing of Respondent's blood or urine within twelve (12) hours. For good cause, the Office of Probation may require Respondent to deliver Respondent's urine and/or blood sample(s) for additional reports to the laboratory described above no later than six hours after actual notice to Respondent that the Office of Probation requires an additional screening report.

- e. ☒ Upon the request of the Office of Probation, Respondent must provide the Office of Probation with medical waivers and access to all of Respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court who are directly involved with maintaining, enforcing or adjudicating this condition.

ATTENDANCE AT ABSTINENCE-BASED SELF-HELP GROUP.

Respondent shall attend at least fifteen (15) meetings per month of an abstinence-based self-help group of his own choosing, including *inter alia*, Alcoholics Anonymous, Narcotics Anonymous, LifeRing, S.M.A.R.T, S.O.S. Other self-help maintenance programs are acceptable if they include: (i) a subculture to support recovery (meetings); and (ii) a process of personal development that does not have financial barriers. (See O'Conner v. Calif. (C.D. Calif. 1994) 855 F. Supp. 303 [No first amendment violation where probationer given choice between AA and secular program].) The program called "Moderation Management" is not acceptable because it allows the participant to continue consuming alcohol.

Before respondent attends the first self help group meeting, he shall contact the Office of Probation and obtain approval for the program that he has selected. Thereafter, on a quarterly basis with his quarterly and final written reports, respondent shall provide documentary proof of attendance at the meetings of the approved program to the Office of Probation, in a form acceptable to the Office of Probation.

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Medical Conditions

- a. ☐ Unless Respondent has been terminated from the Lawyer Assistance Program ("LAP") prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.

- b. ☒ Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of 4 times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for ~~n/a days or n/a months or n/a years or~~ the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

- c. ☒ Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

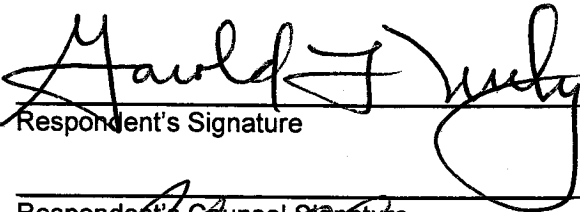
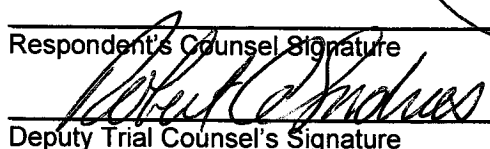
Mental Health Conditions contained in the "Substance Abuse Conditions" attachment are incorporated by reference as if fully set forth herein.

(Do not write above this line.)

In the Matter of Garold L. Neely Bar No. 189557	Case number(s): 08-O-10589; 08-C-11462-PEM
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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 Fact, Conclusions of Law and Disposition.

<u>7/3/09</u> Date	 Respondent's Signature	<u>Garold L. Neely</u> Print Name
<u>7/10/09</u> Date	 Respondent's Counsel Signature	<u>Robert A. Endries</u> Print Name
	<u>Deputy Trial Counsel's Signature</u>	<u>Print Name</u>

(Do not write above this line.)

In the Matter Of
Garold L. Neely
Bar No. 189557

Case Number(s):
08-O-10589; 08-C-11462-PEM

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 page 5, the "x" in the box next to "ii" of paragraph "3(a)(ii)" is deleted.

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 9.18(a), California Rules of Court.)**

July 17, 2009

Date


Pat E. McElroy
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 July 21, 2009, 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
LAW OFC GAROLD L NEELY
PO BOX 32243
STOCKTON, CA 95213**

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

ROBERT ENDRIES, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on July 21, 2009.


Laurretta Cramer
Case Administrator
State Bar Court