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State Bar Court of California
Hearing Department
Los Angeles

PUBLIC MATTER

Counsel For The State Bar Margaret P. Warren Bar # 108774	Case Number (s) 06-O-13019	(for Court's use) <div style="text-align: center; font-size: 1.5em; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 1.2em; font-weight: bold;">AUG 28 2008</div> <div style="text-align: center; font-size: 0.8em; font-weight: bold;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</div>
Counsel For Respondent Ellen R. Peck, Esq. 2410 Crestview Estates Place Escondido, CA 92027 Tel. (760) 480-2233 Bar # 88252	Submitted to: Assigned Judge	
In the Matter Of: Frank R. Wilson Bar # 185591 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

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 **December 16, 1996**.
- (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 **13** 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 &



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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
 - (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.
- (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. **Respondent's misconduct resulted in the California Court of Appeal, Fourth Appellate District, vacating the judgment in People v. McNeely and remanding the matter to the trial court for further proceedings consistent with the Court of Appeal's decision.**
- (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.
- (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

Respondent was candid and cooperative with the State Bar in these proceedings.

Respondent was admitted to the practice of law in the State of California on December 16, 1996 and has no prior record of discipline.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **eighteen (18) 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:

(b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of **two (2) 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 **forty-five (45) 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.
- (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 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- No MPRE recommended. Reason: _____
- (2) **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

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and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

- (3) **Conditional Rule 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 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:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: FRANK R. WILSON, CSB No. 185591

CASE NUMBER: 06-O-13019

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was August 5, 2008.

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes:

1. In the felony criminal matter entitled *People v. Donald McNeely*, case no. SCD 194654, filed in the San Diego County Superior Court, defendant Donald McNeely was charged with five (5) felony counts, to wit: unlawfully entering a building with intent to commit theft, in violation of Penal Code section 459, with the special allegation that said burglary was a burglary of an inhabited dwelling house within the meaning of Penal Code section 460 (Count 1); grand theft of personal property, in violation of Penal Code section 487(a) (Count 2); grand theft of personal property in violation of Penal Code section 487(a) (Count 3); residential burglary, in violation of Penal Code sections 459 and 460 (Count 4); and receiving stolen property, in violation of Penal Code section 496(a) (Count 5). Count 4 was dismissed prior to trial.

2. On February 28, 2006, prospective jurors for the *McNeely* trial were summoned to Department 37 of the San Diego County Superior Court for voir dire examination. One of the

prospective jurors, identified as Juror No. 8, was Respondent. Prior to commencing jury voir dire, the Court duly sought and obtained collectively from the prospective jury panel, including from Respondent, the perjury acknowledgment and agreement mandated by section 232 (a) of the Trial Jury Selection and Management Act (Title 3, Chapter 1 of the California Code of Civil Procedure.) Section 232 (a) provides:

Prior to the examination of prospective trial jurors in the panel assigned for voir dire, the following perjury acknowledgment and agreement shall be obtained from the panel, which shall be acknowledged by the prospective jurors with the statement "I do":

"Do you, and each of you, understand and agree that you will accurately and truthfully answer, under penalty of perjury, all questions propounded to you concerning your qualifications and competency to serve as a trial juror in the matter pending before this court; and that failure to do so may subject you to criminal prosecution."

3. During the February 28, 2006 voir dire examination in the *McNeely* trial, the prospective jurors, including Respondent, were asked by the Court to disclose (among other things) the following information:

[The Court:]: Number 1, we ask for your occupation as well as the occupations of all adults in your household. Whatever adult is living with you—whether it's a spouse or significant other or partner, mothers, fathers, siblings—we need to know all the occupations.

If we have retired folks in your household or you are, could you please tell us what the retired person did before retiring. And if we have college students in your household, could you please tell us what their major is in school or their job goal, what do they want to become.

Number 4 asks for whether you have any friends or relatives who are prosecutors, defense counsel, or in law enforcement. So if you know anyone such as Mr. Bennett—who's a district attorney—or a city attorney or U.S. attorney, we need to know. Or defense counsel such as Ms. Sanchez, or involved in law enforcement, any kind. That would be police, sheriffs, FBI agents, DEA agents, anything of the kind.

4. On December 31, 2005, Respondent had closed his law office, and on January 3,

2006, he had accepted the position of "Special Projects Manager" with San Diego Research Center, Inc., an advanced wireless communication technology firm. Respondent's duties as "Special Projects Manager" included the practice of law. In response to the voir dire question calling for the prospective juror's occupation, Respondent stated: "I'm a project manager for a technology company."

5. At no time during voir dire in the *McNeely* trial did Respondent disclose to the Court, the prosecution, or the defense, that he was an attorney by profession or that he was an active member of the State Bar of California.

6. Following voir dire examination, Respondent was not challenged by either the prosecution or the defense and was impaneled as a juror in the *McNeely* trial. On February 28, 2006, the Court admonished the impaneled *McNeely* jury, both orally and in writing. The oral admonition to the jury panel was, in pertinent part, as follows:

[The Court:] Please remember this admonition: Don't discuss anything that is transpiring inside this courtroom, not any of your impressions or what's happening, with each other or with anyone else. The only information that you all now can give outside this courtroom is where you are located and that you are a prospective juror in a criminal case, but nothing else. Please don't discuss anything about this case. . . . I'm going to advise you again not to discuss anything concerning this case with each other or with anyone else. And, again, of course you can tell whoever needs to know where you are located. We are, again, in Department 37. We're in the criminal court building. That's 220 West Broadway. So remind you of that [sic].

7. The written "Jury Admonition" given to each of the jurors in the *McNeely* trial read, in pertinent part, as follows:

DO NOT:

1. Discuss anything concerning this case with anyone, including fellow jurors. (Exception: You may reveal where you are assigned (Dept. 37,

Superior Court), the type of case (criminal), and your time commitment as a juror.)

.....
3. Express any opinion on the case until the matter is submitted to you for deliberations.

(Emphasis in original.)

8. The *McNeely* trial continued through March 1, 2, and 3, 2006. The *McNeely* jury was sent to deliberations on March 3, 2006 and reached a verdict on that same date.

9. At all relevant times herein, Respondent maintained an Internet website on which he published a “weblog,” or “blog” (Respondent’s “blog”) that consisted of Respondent’s personal commentary and observations on various topics. Respondent’s website and blog were accessible by any person or entity, anywhere in the world, having access to the Internet, free of charge and without any subscription, password, or other prerequisites to accessing and viewing the content of Respondent’s website and blog.

10. On March 2, 2006, when the *McNeely* trial was still in progress and no verdict had yet been reached by the jury, Respondent published the following remarks on his blog of that same date:

... [T]oday I was impaneled along with 12 others from the voter rolls of San Diego County in a felony theft and burglary trial in Department 37 of the old downtown courthouse, in the courtroom of the Honorable Laura Palmer Hammes, a stern, attentive woman with thin red hair and long, spidery fingers that as a grandkid you probably wouldn’t want snapped at you.

Nowhere do I recall the jury instructions mandating I can’t post comments in my blog about the trial. (Ha. Sorry, will do.) So, being careful to not prejudice the rights of the defendant—a stout, unhappy man by the first name of Donald . . .

Legal Conclusions:

11. By not disclosing during his voir dire examination as a prospective juror in a criminal trial the fact that he was an attorney by profession and an active member of the State Bar of California, Respondent failed to maintain the respect due to the courts of justice and judicial officers, in wilful violation of section 6068(b) of the California Business and Professions Code.

12. By identifying in his March 2, 2006 blog the specific crimes with which the defendant in the *McNeely* case had been charged; identifying by name the judge presiding over the trial; and identifying the defendant in the trial by defendant's first name, Respondent failed to support the laws of the State of California, in wilful violation of Business and Professions Code section 6068(a), by violating the duty of jurors not to converse among themselves, or with anyone else, on any subject connected with the trial, in violation of section 1122 of the California Penal Code.

AUTHORITIES SUPPORTING DISCIPLINE.

Standard 1.3 of the Standards for Attorney Sanctions for Professional misconduct provides, in pertinent part:

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.

Standard 2.6 provides that culpability of a member of a violation of section 6068(a) of the Business and Professions Code

shall result in disbarment or suspension depending on the gravity of the offense or the

harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3 [.]

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.

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In the Matter of Frank R. Wilson, CSB No. 185591	Case number(s): 06-O-13019
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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.

08-22-08

Date



Respondent's Signature

Frank R. Wilson

Print Name

08-23-08

Date



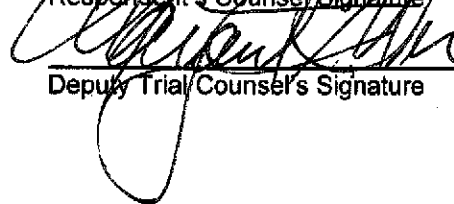
Respondent's Counsel Signature

Ellen R. Peck

Print Name

08-25-08

Date



Deputy Trial Counsel's Signature

Margaret P. Warren

Print Name

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In the Matter Of Frank R. Wilson, CSB No. 185591	Case Number(s): 06-O-13019
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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.

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.)

08-27-07

Date



Judge of the State Bar Court

RICHARD A. PLATEL

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 Los Angeles, on August 28, 2008, 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 Los Angeles, California, addressed as follows:

ELLEN R. PECK
2410 CRESTVIEW ESTATES PL
ESCONDIDO, CA 92027

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

Margaret P. Warren, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 28, 2008.


Johnnie Lee Smith
Case Administrator
State Bar Court