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State Bar Court of California Hearing Department Los Angeles		
Counsel For The State Bar Jean Cha Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1000 Bar # 228137	Case Number (s) 05-O-05228-DFM	(for Court's use) <div style="text-align: center;"> FILED MAR - 5 2008 <small>STATE BAR COURT CLERK'S OFFICE LOS ANGELES</small> </div>
Counsel For Respondent Ellen A. Pansky, Esq. Pansky & Markle 1010 Sycamore Ave, #101 South Pasadena, CA 91030 (213) 686-7300 Bar # 77688	<div style="text-align: center; font-size: 2em;">PUBLIC MATTER</div>	
In the Matter Of: DOUGLAS M. BORTHWICK Bar # 176372 A Member of the State Bar of California (Respondent)		
Submitted to: Settlement Judge. 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 June 5, 1995.
- (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 11 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: **Costs to be paid in equal amounts prior to February 1 for the following two billing cycles following the effective date of the Supreme Court Order.**
(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. **see page 9.**
- (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.

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- (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:

N/A

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. **Respondent has met with the State Bar of California Office of Chief Trial Counsel on several occasions and expressed remorse.**
- (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. **see page 9.**
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances

see page 8.

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 **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 **SIXTY (60) 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 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:** N/A

Attachment language begins here (if any):

**ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

IN THE MATTER OF DOUGLAS M. BORTHWICK

CASE NUMBER: 05-O-05228-DFM

FACTS.

1. Respondent admits that the following facts are true and that he is culpable of willfully violating California Business and Professions Code section 6106 as follows:
2. In June 2003, Respondent began employment at Ahrens and Rosa, a Santa Ana, California firm.
3. On April 15, 2005, Ahrens and Rosa was downsizing its practice and allowed Respondent to resign his employment.
4. Although Respondent had employed a résumé writing service, Quest Career Marketing ("Quest") to assist him in preparing a new version of his résumé, it was not ready when he learned of an opening at the Law Offices of Robert B. Reeves. Wishing to apply as soon as possible, on May 17, 2005, Respondent submitted his old résumé to the Law Offices of Robert B. Reeves in response to that firm's advertisement for an attorney position without revising the dates underneath the description of his employment at Ahrens and Rosa.
5. The résumé submitted by Respondent on May 17, 2005 to the Law Offices of Robert B. Reeves, listed Respondent's employment with Ahrens and Rosa as "6/03 to present". In fact, as of the date the résumé was submitted, and for a period of one month, Respondent had not worked at Ahrens and Rosa.
6. Respondent was interviewed on May 26, 2005, nine days after he submitted his old résumé to the Law Offices of Robert B. Reeves.
7. Mr. Reeves and Derek Pakiz ("Pakiz"), an associate of the firm, separately interviewed Respondent.
8. Respondent did not, however, point out to either Mr. Reeves or to Mr. Pakiz that the dates of his employ with Ahrens and Rosa as stated on the résumé were outdated. The dates on the résumé were incorrect and, on its face, the résumé gave the false impression to the interviewers that Respondent was still employed.
9. After the interviews, on May 26, 2005, Respondent faxed his newly revised résumé, which he had now received from Quest, to Mr. Reeves's office. There is a confirmation that it was sent to a proper fax address. This new résumé did not include references to dates for Respondent's employments. The new résumé did reference a subsequent professional engagement above the reference to the prior employment at Ahrens and Rosa. The new résumé did not on its face clarify that Respondent no longer worked at Ahrens and Rosa.

10. Respondent was hired by the Law Offices of Robert B. Reeves.
11. After a short time, Respondent's employment with the office terminated in that neither employer nor employee found it a good fit.

CONCLUSION OF LAW.

By his gross negligence in presenting an obsolete résumé to a prospective employer and failing to take reasonable steps to correct the substantive and relevant fact that, he was no longer employed by Ahrens and Rosa at either the time he submitted the résumé, prior to his interviews, or at the time of his interview, Respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of California Business and Professions Code Section 6106.

DISMISSALS.

The parties respectfully request that the Court dismiss the alleged violations related and limited to references to the courts of practice referred to at paragraphs, 7, 8, and 16 of the Notice of Disciplinary Charges in the interest of justice.

MITIGATING CIRCUMSTANCES.

A ten-year period with no prior discipline is mitigating. (Standard 1.2(e)(i); *In re Young* (1989) 49 Cal.3d 257, 269.)

OTHER CIRCUMSTANCES RELEVANT TO THE DISPOSITION.

Respondent has presented character letters from a variety of individuals in the community attesting to their respective faith in Respondent and his overall honesty. For purposes of this stipulation only, these letters bear upon the disposition agreed to by the parties.

Respondent acknowledges that there were inaccuracies in his résumé and that he should have taken the appropriate measures to prevent any reasonable misunderstanding of its content, accuracy, and substance of the substance in his résumé. Respondent now understands that he should have updated his résumé before submitting it to a potential employer.

AUTHORITIES SUPPORTING DISCIPLINE.

Where there is a violation of Business and Professions Code section 6106, disbarment or actual suspension is appropriate depending on the extent to which the victim is harmed or misled and depending on the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the

practice of law. (Standard 2.3.) The purposes of sanctions for 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 1.3.) In order to properly fulfill the purposes of lawyer discipline, we must review the nature and extent of the facts and circumstances surrounding the misconduct. Here, Respondent submitted a résumé for employment that contained inaccurate information, on its face. The employer would not be able to ascertain its inaccuracy on its face. The résumé was submitted and on its basis Respondent received the benefit of interviews. Respondent's two interviews resulted in Respondent obtaining legal employment.

Sixty days actual suspension was imposed where an attorney falsified his résumé, received an invitation to at least one job interview based on the falsified résumé, did not attempt to correct the misrepresentations during the interview, and gave untruthful responses to interrogatories propounded by the State Bar. *In the Matter of Frank Sterling Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332. While Mr. Mitchell's conduct was arguably worse because there was evidence that he submitted the same résumé to at least two other firms and there were untruthful responses to State Bar interrogatories, Mr. Mitchell was given credit for more mitigation than is present in this matter, including the loss of a child. Also, in the *Mitchell* circumstance, the attorney was not hired.

In this case, Respondent was hired. The employer expended resources in interviewing and hiring the Respondent. A résumé is a critical tool in that evaluation. Then, the employment did not work out. As was said in *Mitchell*, in part, "An attorney's statements in a résumé, job interview or research paper should be as trustworthy as that professional's representation to a court or client." (*Ibid.* at 341.) The legal profession depends on the candor and honesty of peers to allow for a smooth civil exchange built on trust and the honor system. When an attorney abuses that trust, the entire system is harmed. There was harm in this case.

In the case of *In the Matter of Wyrick* (Review Department 1992) 2 Cal. State Bar Ct. Rptr. 83, Respondent omitted to disclose that he had been on suspension to at least three potential employers. Given his prior and the three instances, this member received six months actual suspension. Omissions of material fact constitute serious misconduct.

Accepting, for purposes of this stipulation, that the conduct of this member was grossly negligent, the fact remains that the information presented, on its face, created an inherently false impression. However, balancing the various elements of this case against both *Mitchell* and *Wyrick*, the disposition of a sixty-day actual suspension is appropriate.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was February 26, 2008.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of February 22, 2008, the estimated prosecution costs in this matter are approximately \$3,654.00. Respondent acknowledges that this figure is an estimate only and that it does not include State Bar Court costs which

will be included in any final cost assessment. 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.

STATE BAR ETHICS SCHOOL.

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

(Do not write above this line.)

In the Matter of
DOUGLAS M. BORTHWICKCase number(s):
05-O-05226-DFM

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.

2/25/08

Date
2/27/08Date
2/27/08

Date

Respondent's Signature

Respondent's Counsel Signature

Deputy Trial Counsel's Signature

Douglas M. Borthwick

Print Name

Ellen A. Pansky

Print Name

Jean Cha

Print Name

(Do not write above this line.)

In the Matter Of
DOUGLAS M. BORTHWICK

Case Number(s):
05-O-05228-DFM

ORDER

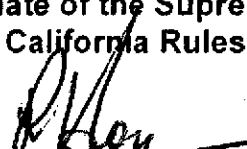
Finding the stipulation to be fair to the parties and that it adequately protects the public,
IT IS ORDERED that the requested dismissal of counts/charges, if any, is **GRANTED** without
prejudice, and:

- ☒ 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.)

3-4-08

Date



Judge of the State Bar Court

RICHARD A. HONN

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 March 5, 2008, I deposited a true copy of the following document(s):

**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION
AND ORDER APPROVING ACTUAL SUSPENSION**

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 ANNE PANSKY
PANSKY & MARKLE
1010 SYCAMORE AVE #101
SOUTH PASADENA, CA 91030**

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

JEAN CHA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **March 5, 2008.**



Tammy R. Cleaver
Case Administrator
State Bar Court