

ORIGINAL

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State Bar Court of California
Hearing Department

Counsel For The State Bar

Lee Ann Kern
Deputy Trial Counsel
1149 South Hill Street
Los Angeles, California 90015
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Bar # 156623

Case Number (s)
07-O-13513

(for Court's use)

FILED

JUN 12 2008

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER

A. Bryan Diaz, Jr., Esq.
in pro per
6445 La Cumbre Road
Somis, California 93066

Bar # 219905

Submitted to: Settlement Judge

In the Matter Of:

A. Bryan Diaz, Jr.

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND
DISPOSITION AND ORDER APPROVING

ACTUAL SUSPENSION

☐ PREVIOUS STIPULATION REJECTED

Bar # 219905

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 **June 3, 2002**.
- (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 **15** 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".

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

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- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (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.

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- (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

D. Discipline:

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of **two (2) 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 (3)**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

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Actual Suspension

(3) X Actual Suspension:

- (a) **X** Respondent must be actually suspended from the practice of law in the State of California for a period of **six (6) 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) **X** If Respondent is actually suspended for two years or more, he must remain actually suspended until he 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) **X** During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) **X** 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) **X** 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) **X** 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.

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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: .

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- (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:**

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Actual Suspension

Attachment language begins here (if any):

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF **A. BRYAN DIAZ**

CASE NUMBER(S): **07-O-13513**

FACTS AND CONCLUSIONS OF LAW.

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

COUNT ONE: Business and Professions Code section 6106 (Misrepresentation)

1. In or about July 2007, Respondent applied for a job at Bowman and Brooke, LLP, and submitted his resume in connection with his job application. In his resume, Respondent set forth his work experience. In particular, Respondent stated in his resume that from November 2003 to May 2007, Respondent worked as a real estate/construction litigation associate at Sheppard, Mullin, Richter & Hampton LLP (Sheppard Mullin) in San Francisco, California.

2. In his resume, Respondent further claimed that as a litigation associate at Sheppard Mullin, Respondent had the following specific work experience:

- Member of the Litigation Department and the Construction and Real Estate practice groups.
- Participated in all phases of litigation, including discovery, dispositive motions, depositions, and settlement negotiations.
- Currently represent the following clients:
- Fortune 500 company in a real estate property dispute where claimed damages exceeds \$15M.
- Developer in a breach of real estate contract dispute where claimed damage exceeds \$2M.
- Major Title Company in a fraud claim where the claim damages exceed \$500,000.
- Prominent Contractor/Developer in a construction defect claim where the claim damages exceed \$10M.
- Served as litigation counsel for the City of Gilroy on various public work contract disputes. Successfully drafted and argued various discovery and dispositive motions on behalf of the City of Gilroy.
- Represent and advise owners, developers, contractors, and subcontractors on a wide variety of construction-related issues.
- Responsible for tendering all third-party claims made against firm's business clients to their respective insurance carriers for defense and indemnity.
- Successfully settled several OSHA violations on behalf of subcontractor cited after an on-the-job death.
- Successfully negotiated a real estate transaction for a prominent developer.

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3. In the same resume, Respondent stated that during the summer of 2000, Respondent was a summer associate at Winston and Strawn in Chicago, Illinois, and that an offer of permanent employment was extended to him. Respondent further stated that while at Winston and Strawn, Respondent was assigned to the tax department with duties that included legal research and analysis of international tax planning matters.
6. At the time Respondent provided his resume to Bowman and Brooke, LLP, Respondent knew that the statements set forth in the resume were false in that Respondent was never employed by either Sheppard Mullin or Winston and Strawn and all representations made by respondent with regard to both employers and the work experience he claims to have had at each were false.
7. The statements were material because Respondent sought to obtain a position as an attorney based upon the false statements in his resume.
8. Respondent made the statements wilfully and knowing that the statements were false and/or misleading and with an intent to deceive.
9. **LEGAL CONCLUSION:** By misrepresenting in the resume he provided to Bowman Brooke, LLP that he was a litigation associate at Sheppard Mullin and that he was a summer associate at Winston and Strawn, Respondent committed acts involving moral turpitude, dishonesty or corruption, in wilful violation of Business and Professions Code section 6106.

COUNT TWO: Business and Professions Code section 6106 (Misrepresentation)

10. In or about December of 2006, Respondent provided his resume, and other information about his work experience, to JM Associates, a legal search consulting firm, to be used by JM Associates in contacting prospective employers on behalf of Respondent for the purpose of placing Respondent as an attorney with the employer. In or about December 16, 2006, JM Associates submitted Respondent's resume to at least one potential employer, Sheppard, Mullin, in San Francisco, California.
11. In the resume Respondent submitted to JM Associates, Respondent stated that from 2005 to the present (December 2006) Respondent worked as a litigation associate for Berliner Cohen in San Jose, California.
12. Respondent's resume also stated that during the summer of 2000, Respondent worked as a summer associate for Winston and Strawn, in Chicago, Illinois, and that an offer of permanent employment was extended to him. Respondent's resume further stated that Respondent was assigned to the tax department at Winston and Strawn and that his duties included legal research and analysis of international tax planning matters.
13. At the time Respondent provided his resume, and other information about his work experience, to JM Associates, Respondent knew that the statements set forth in the resume were false in that Respondent worked for Berliner Cohen from February 21, 2006 to March 3, 2007, and not from 2005 to December 2006, as claimed. Respondent never worked for Winston and Strawn in Chicago and was not offered a permanent position with that firm.

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14. The statements were material because Respondent sought employment as an attorney based upon the false statements in his resume.
15. Respondent made the statements wilfully and knowing that the statements were false and/or misleading and with an intent to deceive.
16. **LEGAL CONCLUSION:** By misrepresenting his work experience to JM Associates and by knowingly providing them with a resume that contained false statements when he knew that JM Associates would submit that information to potential employers, Respondent committed acts involving moral turpitude, dishonesty or corruption, in wilful violation of Business and Professions Code section 6106.

COUNT THREE: Business and Professions Code section 6106 (Misrepresentation)

17. On August 21, 2007, D. Ronald Ryland, General Counsel for Sheppard Mullin, called Respondent at the number on his resume and spoke to him. During their conversation, Mr. Ryland questioned Respondent about his resume and the claim that Respondent had worked for Sheppard Mullin. Respondent said more than once during their conversation that the claim on his resume that he had worked for Sheppard Mullin was a "typo." Respondent told Mr. Ryland that he had intended his resume to reflect that he had applied for a job at Sheppard Mullin, and not that he had worked there.
18. At the time Respondent made the statements to Mr. Ryland, Respondent knew that the statements were false in that the information in his resume pertaining to his work experience at Sheppard Mullin was not the result of typographical errors as Respondent claimed, but were intentionally false statements. Respondent's claim to Mr. Ryland that he had intended his resume to reflect that he had applied to work at Sheppard Mullin, but had not worked there was also false.
19. The statements were material because they demonstrated that Respondent is untrustworthy even when confronted with an obvious lie that he had made in writing. Respondent intended to use his false statements about his prior work experience in seeking and gaining employment as an attorney in California.
20. Respondent made the statements wilfully and knowing that the statements were false and/or misleading and with an intent to deceive.
21. **LEGAL CONCLUSION:** By misrepresenting to D. Ronald Ryland that the claim on his resume that he had worked for Sheppard Mullin was a "typo" and that he had intended it to reflect that he had applied for a job at Sheppard Mullin, and not that he had worked there, Respondent committed acts involving moral turpitude, dishonesty or corruption, in wilful violation of Business and Professions Code section 6106.

COUNT FOUR: Business and Professions Code section 6106 (Misrepresentation)

22. Paragraphs 1 through 8 and 10 through 20 are incorporated herein by reference.
23. On or about January 16, 2008, a State Bar investigator wrote to Respondent and requested that Respondent respond in writing regarding the false resume he submitted to Bowman and Brooke, LLP.

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24. On or about January 31, 2008, Respondent provided his written response to the State Bar investigator. In his response, Respondent stated:

“Immediately upon submitting the offensive resume, I contacted the Ethics Hotline for advice. I was told that (1) I had not committed any ethical violations and (2) I should nevertheless contact the individuals involved to correct the problem.

Shortly after my hour-long conversation with the Ethics Advisor, I communicated with Mr. Ryland by telephone. I apologized for my lack of judgment and asked if, besides my apologize [sic], there was anything else I could do to correct the issue.

Shortly after interviewing with Sheppard, I was informed that my elderly mother, whom I have cared for both finally [sic] and emotionally, was due to expire. As such, I was desperate to find a job in Southern California.”

25. At the time Respondent provided the State Bar investigator with his response to the allegations of misconduct, Respondent knew that the statements set forth in his response were false in that the first two paragraphs imply that Respondent initiated contact with Mr. Ryland to correct the issues with his resume and that Respondent was forthcoming with Mr. Ryland that he had made false statements in his resume. In fact, Mr. Ryland initiated the telephone call to Respondent.

26. At the time Respondent provided the State Bar investigator with his response to the allegations of misconduct, Respondent knew that the statements in paragraph 3 of his response were false in that Respondent stated that after interviewing with Sheppard Mullin, he learned that his elderly mother was dying and that he desperately needed to find a job in Southern California. Respondent stated that that was the reason he prepared a resume that contained false information about his work experience. In fact, Respondent made misrepresentations in his resume to Sheppard Mullin (provided through JM Associates) prior to ever interviewing with Sheppard Mullin.

27. The statements were material because Respondent made misrepresentations in his response to a State Bar investigator who was investigating Respondent’s professional misconduct.

28. Respondent made the statements wilfully and knowing that the statements were false and/or misleading and with an intent to deceive.

29. LEGAL CONCLUSION: By misrepresenting to a State Bar investigator that Respondent had initiated contact with D. Ronald Ryland to correct the issues with his resume, that Respondent was forthcoming with Mr. Ryland that he had made false statements in his resume, and that after interviewing with Sheppard Mullin he falsified his resume for the purpose of obtaining a job in Southern California so that he could care for his ill mother, Respondent committed acts involving moral turpitude, dishonesty or corruption, in wilful violation of Business and Professions Code section 6106.

COUNT FIVE: Business and Professions Code section 6106 (Misrepresentation)

30. Paragraphs 10 through 20 are incorporated herein by reference.

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31. In or about December 2006, Respondent provided his resume and information about his work experience to Attorney Emily R. Friedman from JM Associates, a legal search consulting firm.

32. Respondent informed Ms. Friedman, either orally or in his resume, that he was a summer associate at Winston & Strawn in Chicago and received an offer to join the firm upon graduation in 2001. However, his father passed away and he moved to Ventura County to be closer to his family. Upon moving to California, he was recruited to serve as in-house counsel to West Coast Construction, a commercial and residential construction company in Ventura, and he worked at West Coast Construction until November 2005, when the company was sold.

33. At the time Respondent provided that information to Ms. Friedman, Respondent knew that the statements were false in that West Coast Construction was a family business. After Respondent's father passed away, Respondent incorporated the business as Surf Pacific Investment Properties, LLC. It was not true that upon moving to California after his father died, Respondent was recruited to serve as in-house counsel to West Coast Construction and remained there until the company was sold in November of 2005. In addition, Respondent submitted a resume to JM Consultants that claimed he had worked at Winston and Strawn when he had not worked there.

34. The statements were material because Respondent misrepresented his work experience to JM Associates, whom he knew would disseminate the information to prospective employers in the legal field.

35. Respondent made the statements wilfully, with reckless disregard for the truth, and knowing that the statements were false and/or misleading and with an intent to deceive.

36. **LEGAL CONCLUSION:** By misrepresenting to Attorney Emily R. Friedman from JM Associates that Respondent had worked for Winston & Strawn in Chicago and received an offer to join the firm upon graduation in 2001, that he was recruited to serve as in-house counsel to West Coast Construction, and that he worked at West Coast Construction until November 2005, when the company was sold, Respondent committed acts involving moral turpitude, dishonesty or corruption, in wilful violation of Business and Professions Code section 6106.

PENDING PROCEEDINGS.

The disclosure date referred to, on page one, paragraph A.(7), was April 29, 2008.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards:

The Supreme court gives the Standards "great weight," and will reject a recommendation consistent with the Standards only where the Court entertains "grave doubts" as to its propriety. (*In re Naney* (1990) 51 Cal.3d 186, 190; *In re Silvertown* (2005) 36 Cal. 4th 81, 91-92.) Although the Standards are not mandatory, it is well established that the Standards may be deviated from only when there is a compelling, well-defined reason to do so. See *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291; *Bates v. State Bar* (1990) 51 Cal.3d 1056, 1060, fn. 2. There is no compelling reason to deviate from the standards in the instant matter.

2.3 - Culpability of an act of moral turpitude, fraud, or intentional dishonesty toward a client shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed and depending upon the magnitude of the misconduct and the degree to which it relates to the member's acts within the practice of law.

Respondent's acts did not occur during the actual practice of law. However, they did occur while Respondent was seeking employment as a lawyer. Respondent repeatedly used false and misleading means to secure a perceived advantage in the employment process. Such conduct is a matter of serious concern, despite the lack of misconduct during the "practice of law". (See *In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332.)

Case Law:

In *Mitchell*, the attorney falsified his resume, received an invitation to at least one job interview based on the falsified resume, did not attempt to correct the misrepresentations during the interview, and gave untruthful responses to interrogatories propounded by the State Bar. The Hearing Department recommended six months actual suspension. The Review Department recommended 60-days actual suspension and gave more weight to Respondent's mitigation, which included the death of his child.

The Review Department found that Mitchell's deceit to the State Bar in his answers to the interrogatories was a serious factor in aggravation (*Franklin v. State Bar* (1986) 41 Cal.3d 700, 710.) and that it may constitute a greater offense than the other charged misconduct. (See, e.g., *Chang v. State Bar* (1989) 49 Cal.3d 114, 128; *Olguin v. State Bar* (1980) 28 Cal.3d 195, 200.)

In *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, Wyrick sought employment as an attorney and as a superior court arbitrator and failed to disclose his suspension from the practice of law on his job applications. Wyrick, who had a prior record of discipline, presented little evidence in mitigation of his misconduct. He received six months actual suspension.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of April 29, 2008, the costs in this matter are approximately \$1,983.00 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.

Respondent has entered into a stipulated disposition of the entire case and will therefore receive six units of Mandatory Continuing Legal Education credits upon satisfactory completion of State Bar Ethics School.

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(Do not write above this line.)

In the Matter of A. Bryan Diaz	Case number(s): 07-O-13513
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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.

5/8/08
Date

[Signature]
Respondent's Signature

Bryan Diaz
Print Name

5/15/08
Date

[Signature]
Respondent's Counsel Signature
[Signature]
Deputy Trial Counsel's Signature

LEE ANN KERN
Print Name

(Do not write above this line.)

In the Matter Of
A. Bryan Diaz

Case Number(s):
07-O-13513

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.

1. Paragraph A, subparagraph (3) is modified to read in pertinent part: "stipulation consists of 14 pages, not including the order".
2. Paragraph E, subdivision (1) is deleted, being replaced as set forth below.
3. Paragraph D, subdivision (1)(a)(i) is to be included in the stipulation. [see footnote below]¹ This provision reads: "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".

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.)**

Date

6/10/08


Judge of the State Bar Court

¹ By virtue of a typographical error, this subdivision is misnumbered on the stipulation form as "(1)(a)(l)". It should read "(1)(a)(i)".

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 June 12, 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:

- [X]** by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

A. BRYAN DIAZ JR
6445 LA CUMBRE RD
SOMIS, CA 93066

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

LEE ANN KERN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **June 12, 2008**.



Tammy R. Cleaver
Case Administrator
State Bar Court