

**STATE BAR COURT
REVIEW DEPARTMENT**

In the Matter of

FRANK STERLING MITCHELL

A Member of the State Bar

[No. 88-O-14854]

Filed January 30, 1991

SUMMARY

Respondent was found culpable of misrepresenting his educational background on his resume, which was sent to various law firms, one of which granted respondent an interview. Respondent did not correct or attempt to correct his misrepresentations during the interview. Respondent's misconduct was aggravated by two other instances where respondent had sent a false resume to two other law firms and by respondent's having made untruthful statements in response to interrogatories propounded by the State Bar in the disciplinary matter. The hearing judge recommended that respondent be suspended for two years, stayed, with probation for two years and actual suspension for six months. (Hon. Christopher W. Smith, Hearing Judge.)

Respondent requested review of the hearing judge's recommendation, arguing that no actual suspension should be imposed. The review department concluded that, with limited exceptions, the hearing judge's findings of fact and conclusions of law were supported by the record. However, because the review department attached more weight to respondent's mitigating evidence than did the hearing judge, and because of the lighter discipline imposed in factually similar cases, the recommended discipline was found to be excessive. The review department recommended that respondent be suspended for one year, stayed, with probation for one year and sixty days actual suspension. The review department also revised the hearing judge's recommended conditions of probation to delete the requirement of a probation monitor, and eliminated the requirement that respondent comply with rule 955, California Rules of Court.

COUNSEL FOR PARTIES

For Office of Trials: Ronald E. Magnuson

For Respondent: Frank Sterling Mitchell, in pro. per.

HEADNOTES

- [1] **106.20 Procedure—Pleadings—Notice of Charges**
 106.40 Procedure—Pleadings—Amendment
 139 Procedure—Miscellaneous
 151 Evidence—Stipulations

Where parties stipulated to waive any variance between facts set forth in stipulation and allegations of notice to show cause, stipulated facts which were not charged in original notice could be considered even though notice had not been amended.

- [2 a, b] **130 Procedure—Procedure on Review**
 135 Procedure—Rules of Procedure
 166 Independent Review of Record

Rule 453 of the Transitional Rules of Procedure provides that in all cases brought before it, the review department, like the Supreme Court, must independently review the record. The review department accords great weight to findings of fact made by the hearing judge which resolve issues pertaining to testimony, but the review department may make findings, conclusions and recommendations that differ from those made by the hearing judge. The issues raised or addressed by the parties on review do not limit the scope of the issues to be resolved by the review department.

- [3] **802.30 Standards—Purposes of Sanctions**

The review department's overriding concern is the same as that of the Supreme Court: the preservation of public confidence in the profession and the maintenance of high professional standards.

- [4] **801.30 Standards—Effect as Guidelines**
 1091 Substantive Issues re Discipline—Proportionality

In determining the appropriate degree of discipline to recommend, the review department starts with the Standards for Attorney Sanctions for Professional Misconduct, which serve as guidelines. It also considers whether the recommended discipline is consistent with or disproportional to prior decisions of the Supreme Court on similar facts.

- [5 a-e] **221.00 State Bar Act—Section 6106**
 611 Aggravation—Lack of Candor—Bar—Found
 760.12 Mitigation—Personal/Financial Problems—Found
 833.10 Standards—Moral Turpitude—Suspension
 833.40 Standards—Moral Turpitude—Suspension
 1091 Substantive Issues re Discipline—Proportionality

Where respondent misrepresented his educational background in his resume, these actions were dishonest, and some period of actual suspension was warranted. Where respondent's misconduct extended over a three-year period, and was aggravated by his misrepresentations in discovery responses in the disciplinary proceeding, and where respondent had personal problems but they did not fully explain his misconduct, a 60-day actual suspension, with one year of probation, was appropriate to recognize the seriousness of the misconduct, the mitigating circumstances, and the sanction imposed in previous cases.

- [6] **221.00 State Bar Act—Section 6106**
 833.30 Standards—Moral Turpitude—Suspension

Although respondent's acts of dishonesty did not occur during the actual practice of law, but rather while respondent was seeking employment as a lawyer, respondent's willingness to use false and misleading means in the employment process was a matter of serious concern.

- [7] **113 Procedure—Discovery**
 611 Aggravation—Lack of Candor—Bar—Found
Respondent's deceit in his responses to the State Bar's interrogatories seriously aggravated his misconduct, and might perhaps constitute a greater offense.
- [8] **113 Procedure—Discovery**
 142 Evidence—Hearsay
 145 Evidence—Authentication
Respondent's answers to State Bar's interrogatories could be relied on as party admissions even though not verified, and were adequately authenticated when examiner identified them while introducing them at trial, and respondent did not object.
- [9 a, b] **760.12 Mitigation—Personal/Financial Problems—Found**
Hearing judge should not have entirely discounted respondent's testimony regarding family problems, on ground that no causal connection was established by expert testimony between personal problems and misconduct. The Supreme Court has often considered lay testimony of emotional problems as mitigation. It was readily conceivable that respondent's concern for his wife and unborn child and his ability to support them would cloud his judgment as he stated it did, and be directly responsible for some of his misconduct; accordingly, review department gave such evidence more weight than did hearing judge.
- [10] **801.30 Standards—Effect as Guidelines**
The Standards for Attorney Sanctions for Professional Misconduct are guidelines, not inflexible mandates.
- [11] **172.15 Discipline—Probation Monitor—Not Appointed**
Where the only active steps required by the recommended conditions of probation were the submission of approximately four quarterly reports directly to the probation department, the review department revised the hearing judge's recommended conditions of probation, which included assignment of a probation monitor, because it did not consider a probation monitor necessary.
- [12] **175 Discipline—Rule 955**
Compliance with rule 955 of the California Rules of Court (requiring notification of clients and other interested parties of the attorney's suspension) is not usually ordered where the period of actual suspension is less than ninety days.
- [13] **204.90 Culpability—General Substantive Issues**
 221.00 State Bar Act—Section 6106
An attorney's deliberate use of dishonesty to further attempts to gain employment, particularly as a lawyer, is very serious. An attorney is not just another job-holder or job-seeker. Attorneys in this state are charged with high duties of honesty and professional responsibility. Any act of dishonesty by an attorney is an act of moral turpitude, and ground for serious professional misconduct, whether or not arising in the course of attorney-client relations; an attorney's dishonesty in seeking to further his or her career is simply inexcusable. An attorney's statements in a resume, job interview or research paper should be as trustworthy as that professional's representation to a court or client.

ADDITIONAL ANALYSIS

Culpability

Found

221.11 Section 6106—Deliberate Dishonesty/Fraud

Not Found

213.15 Section 6068(a)

220.15 Section 6103, clause 2

Aggravation

Found

521 Multiple Acts

541 Bad Faith, Dishonesty

561 Uncharged Violations

Declined to Find

588.50 Harm—Generally

Mitigation

Found but Discounted

710.33 No Prior Record

740.31 Good Character

Discipline

1013.06 Stayed Suspension—1 Year

1015.02 Actual Suspension—2 Months

1017.06 Probation—1 Year

Probation Conditions

1022.50 Probation Monitor Not Appointed

1024 Ethics Exam/School

OPINION

NORIAN, J.:

We review the recommendation of a hearing judge of the State Bar Court that respondent, Frank Sterling Mitchell, be suspended from the practice of law for a period of two years, with that suspension stayed and respondent placed on probation for two years, subject to certain conditions, including actual suspension for six months. The recommendation is based on the hearing judge's findings that respondent misrepresented his educational background on his resume, which was sent to various law firms, one of which granted him an interview. In the interview respondent did not correct or attempt to correct the misrepresentation. The misconduct was aggravated by two other instances where respondent sent a false resume to two other law firms and a third instance where he made untruthful statements in response to State Bar interrogatories.

Respondent requested review of the hearing judge's recommendation, arguing that no actual suspension should be imposed. The examiner, in reply, asserts that the recommended discipline is appropriate and supported by the record.

Based on our independent review of the record, we have concluded that, with the exceptions discussed *post*, the hearing judge's findings of fact and conclusions of law are supported by the record and we adopt them as our own. However, because we attach more weight to the respondent's mitigating evidence than did the hearing judge and in light of relevant case law, the recommended discipline is excessive and we modify the decision accordingly. With this modification, we recommend that respondent be suspended for a period of one year, with execution of that suspension stayed and respondent placed on probation for a period of one year with conditions, including sixty days actual suspension.

We also slightly revise the hearing judge's recommended conditions of probation to reflect our modifications to the recommended discipline.

BACKGROUND

Respondent received a bachelor of arts degree from Pepperdine University and a juris doctor degree from Western State University. He was admitted to the practice of law in California in December of 1982 and has no prior record of discipline. A one-count notice to show cause was filed on July 28, 1989, alleging that in or about August of 1988, respondent authorized the distribution of his resume to potential legal employers knowing that the resume contained a false statement indicating that he had graduated from the University of Southern California School of Law (USC). The notice further alleged that respondent had an interview in August of 1988 with the law firm of Monteleone and McCrory, at which he did not correct or attempt to correct the false statement. These acts were alleged to be in violation of Business and Professions Code sections 6068 (a), 6103 and 6106.¹

On August 24, 1989, respondent filed an answer denying the allegations. On September 11, 1989, the parties filed a stipulation to facts and culpability (stipulation), reserving their rights to present evidence at trial on the issue of the appropriate degree of discipline to be recommended. Trial was held on November 22, 1989. The hearing judge's decision was filed on February 20, 1990.

FACTS

The stipulated facts reveal that in August of 1988 respondent prepared a resume which falsely indicated that he was enrolled in a masters program at USC.² In addition, the resume stated that respondent had a juris doctor degree but the name of the law school was left blank on the resume. The placement

1. All further references to statutes are to the Business and Professions Code, unless otherwise noted. Section 6068 describes the duties of an attorney which include, under subsection (a), the duty to support the Constitution and state and federal laws. Section 6103 provides, in relevant part, that any violation of an attorney's duties constitutes cause for disbar-

ment or suspension. Section 6106 provides, in relevant part, that the commission of any act involving moral turpitude, dishonesty, or corruption constitutes cause for disbarment or suspension.

2. All of the resumes in question are attached to the stipulation.

of the juris doctor degree on the resume was such that it would lead the average reader to believe that respondent had obtained his law degree from USC, instead of from Western State University. Respondent gave the resume to an employment service. The service prepared a new resume explicitly showing respondent to hold a law degree from USC. Respondent was provided a copy of that resume and did not correct the false statement. The new resume was sent to the law firm of Monteleone and McCrory in August of 1988 which resulted in an employment interview. Respondent did not attempt to correct the false statement at the interview.

The stipulation also reveals that in February 1989 respondent was using a resume that indicated he had an undergraduate degree from Pepperdine University and a juris doctor degree. Again, the school from which he obtained the law degree was left blank but the placement of the juris doctor degree on the resume was such as to lead the reader to conclude that respondent had obtained his law degree from Pepperdine University.³ [1 - see fn. 3] Respondent's current resume clearly indicates that he obtained his law degree from Western State University.

The parties stipulated that the above acts were in wilful violation of sections 6068 (a), 6103 and 6106. The hearing judge found respondent culpable, consistent with the stipulated facts above, and concluded he violated sections 6068 (a) and 6106. (Decision, pp. 4-5.)

Both oral and documentary evidence was presented at trial on the issues of aggravation and mitigation. In aggravation (decision, pp. 6-9), the hearing judge found that in 1987, respondent submitted a resume to the law firm of Chase, Rotchford, Drucker and Bogust (Chase, Rotchford). That resume falsely stated that respondent was enrolled in a

masters program at USC and listed his law degree in such a manner as to mislead the reader into concluding that he had obtained the degree from USC. Respondent was given an employment interview wherein he represented that he had graduated from USC law school. Respondent was hired by the firm and worked there for approximately a year. Following his employment at Chase, Rotchford, respondent sent his resume and a cover letter to the law firm of Cummins and White. That resume also indicated that he had obtained his law degree from USC.

Another aggravating circumstance found by the hearing judge was that respondent made untrue statements in his response (exh. 2) to State Bar interrogatories (exh. 1). The interrogatories were served on respondent after he had stipulated to culpability and sought information regarding the existence of aggravating and mitigating circumstances, including information of other instances of use of the false resumes that were not charged in the notice to show cause.⁴

Interrogatory number four asked respondent if he had advised Chase, Rotchford, either orally or in writing, that he had obtained his law degree from USC. Respondent denied making such a representation, which the judge found to be untruthful. Interrogatory number 12 asked respondent to provide the names and addresses of all firms and organizations to whom he had stated by resume or otherwise that he obtained his law degree from USC. Respondent denied making any such statements and denied knowledge of the identity of any firm that received his resume. The hearing judge found this to be false. As indicated above, the record shows that at the time respondent answered this interrogatory he had previously stipulated with the examiner that he knew that his resume falsely showed that he had a USC law degree and that one specific firm, Monteleone and McCrory, had received such a resume.

3. [1] The notice to show cause does not charge respondent with the use of this February 1989 resume. Ordinarily, "If the evidence produced before the hearing panel shows the attorney has committed an ethical violation that was not charged in the original notice, the State Bar must amend the notice to conform to the evidence adduced at the hearing." (*Van Sloten v. State Bar* (1989) 48 Cal.3d 921, 929.) However, the parties

specifically waived any variance between the stipulated facts and the allegations contained in the notice to show cause. (Stipulation, p. 2.) Especially in these circumstances, we need not consider any issue of notice amendment.

4. The interrogatories were served on respondent on September 21, 1989. The stipulation was filed on September 11, 1989.

In sum, the hearing judge found the following aggravating circumstances: multiple acts of wrongdoing (standard 1.2(b)(ii), Standards for Attorney Sanctions for Professional Misconduct [Trans. Rules Proc. of State Bar, div. V; "standard(s)"]); misconduct surrounded by dishonesty (standard 1.2(b)(iii)); and lack of candor to the State Bar during the discovery phase (standard 1.2(b)(vi)).

In mitigation (decision, pp. 5-6), respondent was admitted to practice law in California in December of 1982 and has no record of prior discipline. Respondent had been in practice somewhat less than six years prior to the time he sent his resume to Monteleone and McCrory and approximately five years at the time he sent his resume to Chase, Rotchford. The hearing judge accorded little weight to respondent's blemish-free record because of the short duration of respondent's practice of law prior to the misconduct. (See standard 1.2(e)(i); *Smith v. State Bar* (1985) 38 Cal.3d 525, 540 [six years of practice at time of misconduct].)

Respondent testified that he had sent approximately 100 to 200 resumes (presumably listing Western State University as his law school) and received no responses, not even a phone call.⁵ (R.T. p. 19.) Respondent met a person at a fund-raiser in late 1986 or early 1987 who operated an employment agency and who attributed the lack of response to his law school. (R.T. p. 15.) That person suggested he leave the name of his law school blank on the resume as a means of obtaining an interview and at the interview, respondent could inform the prospective employer of his law school. (*Id.*) In June of 1987, respondent's wife lost a child in the eighth month of pregnancy, which he attributed to worry over finances and he was very concerned about obtaining employment so he could support his family. (R.T. pp. 19-20.) At the time respondent left Chase, Rotchford (1988), his wife was again pregnant and he was concerned that his unemployment would lead to the loss of another child, so he again made use of the false resumes. (*Id.*) The hearing judge did not accord these personal problems much weight as respondent did not present any expert evidence establishing that the problems

were directly responsible for the misconduct. (See standard 1.2(e)(iv).)

Respondent also presented a letter from a state senator, attesting to respondent's good character. (Respondent's exh. C.) The hearing judge gave some weight to this evidence but noted that it was not an extraordinary demonstration of good character, attested to by a wide range of references. (Decision, p. 6; see standard 1.2(e)(vi).)

DISCUSSION

[2a] Rule 453 of the Transitional Rules of Procedure of the State Bar provides that in all cases brought before it, this review department, like the Supreme Court, must independently review the record. Although we accord great weight to findings of fact made by the hearing judge which resolve issues pertaining to testimony, we may make findings, conclusions and recommendations that differ from those made by the hearing judge. (Rule 453(a), Trans. Rules Proc. of State Bar.) Moreover, the issues raised or addressed by the parties on review do not limit the scope of the issues to be resolved by the review department. (*Id.*) [3] Our overriding concern is the same as that of the Supreme Court: the preservation of public confidence in the profession and the maintenance of high professional standards. (See standard 1.3; *Walker v. State Bar* (1989) 49 Cal.3d 1107, 1117.)

Respondent asserts that no actual suspension is warranted in this case. Other than the recommendation of actual suspension for his misconduct, respondent does not challenge the findings of fact or conclusions of law. Respondent's three-page brief on review cites no authority and offers little argument with regard to his assertions. He sets forth a brief description of the discipline allegedly imposed in other matters, without any indication of the source of this information or any surrounding facts and circumstances. Respondent's basic argument seems to be that any period of actual suspension will cause him severe financial hardship. The examiner's brief cites no case authority but asserts the discipline is appropriate under the standards.⁶

5. The record does not reveal when these resumes were sent.

6. The examiner argued at trial that one year probation with ninety days actual suspension was appropriate. (R.T. p. 35.)

[4] In determining the appropriate degree of discipline to recommend, we start with the standards which serve as our guidelines. (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) We must also consider whether the recommended discipline is consistent with or disproportional to prior decisions of the Supreme Court on similar facts. (See, e.g., *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-11.) [5a] In the present case we have concluded that respondent is culpable of misrepresenting his educational background in his resume. These actions are dishonest, as the hearing judge concluded. (See *In re Naney* (1990) 51 Cal.3d 186, 195.)

Standard 2.3 provides for actual suspension or disbarment for acts involving moral turpitude or dishonesty, depending upon the extent to which the victim of the misconduct is harmed or misled and depending on the magnitude of the misconduct and the degree to which it relates to the member's practice of law. [5b] Thus, some period of actual suspension is warranted under this standard.

Although not argued by respondent, we note that proof of "harm to the victim" (standard 2.3) was minimal. In fact, it does not appear that Monteleone and McCrory suffered any harm. The firm did not hire respondent and there is no other indication in the record that they were delayed or in any other way prejudiced by his deceit. Respondent was hired by Chase, Rotchford and Cummins and White, but nothing in the record indicates the role, if any, the misrepresentations played in the decisions to hire him. The record is also silent as to whether the misrepresentations caused any harm to clients while respondent worked at the firms, and as to the reasons for his departure from the firms.

[6] Respondent's acts did not occur during the actual practice of law. (See standard 2.3.) Yet they did occur while respondent was seeking employment as a lawyer. When we consider the purposes of attorney discipline (see *post*, p. 341), respondent's willingness to repeatedly use false and misleading means to secure a perceived advantage in the employment process is a matter of serious concern, despite the lack of misconduct during the "practice of law." (Cf. *In re Lamb* (1989) 49 Cal.3d 239 [dishonesty occurring during bar admission process].)

Other than its discussion as an aggravating circumstance in *In re Naney, supra*, 51 Cal.3d at 195, we are not aware of any published opinions of our Supreme Court with regard to the appropriate discipline for misrepresentations made in a resume. Other states' high courts have imposed discipline ranging from censure to 90 days actual suspension based on similar misconduct.

In *In the Matter of Michael Lavery* (1978) 90 Wn.2d 463 [587 P.2d 157], the attorney falsified his law school transcript to show a grade point average higher than he received and wrote bogus and extremely favorable letters of recommendation over photocopied signatures. The falsified documents were sent to prospective employers, one of which wrote back requesting more information. Lavery's reply enclosed altered letters of recommendation. Mitigation convinced the court that Lavery's actions were not corrupt but "only seriously misguided judgment." In a five-to-four decision, the Washington Supreme Court imposed 90 days actual suspension. The four dissenting justices would have imposed more severe discipline.

In *In the Matter of Ronald Norwood* (1981) 80 A.D.2d 278 [438 N.Y.S.2d 788], the attorney, applying for a job, submitted his resume which stated he had an undergraduate degree from Yale University when he was two credits short. He also stated to the employer under oath that he had filed income tax returns for the previous five years when in fact he had not for one of those years. Finding mitigation, the court ordered that Norwood be censured.

In *In re Theodore Hadzi-Antich* (D.C.App. 1985) 497 A.2d 1062 the attorney was publicly censured for submitting a resume to a prospective employer which falsely indicated that he had received high scholastic honors in law school and undergraduate school.

In *In re Anthony Lamberis* (1982) 93 Ill.2d 222 [443 N.E.2d 549] the attorney was censured for plagiarizing two published works in a thesis submitted to satisfy the requirement for an advanced law degree.

[5c] In contrast to the above cases, respondent's use of false resumes extended over an approximate three-year period, from 1987 to 1989. [7] In addition, respondent's deceit to the State Bar in his answers to the interrogatories is a serious factor in aggravation. (*Franklin v. State Bar* (1986) 41 Cal.3d 700, 710.) This deceit may constitute perhaps a greater offense. (See, e.g., *Chang v. State Bar* (1989) 49 Cal.3d 114, 128; *Olguin v. State Bar* (1980) 28 Cal.3d 195, 200.)

Interrogatory number four asked respondent if he advised Chase, Rotchford, orally or in writing, that he obtained his degree from USC. Respondent answered "No".⁷ [8 - see fn. 7] A Mr. Clark from the firm testified at trial. He conducted one of the two interviews. The hearing judge found that Clark testified that respondent told him during the interview that he had his degree from USC. (Decision, p. 8.)⁸ The hearing judge found Clark's testimony to be credible and concluded that the interrogatory responses were untruthful. (*Id.*) [2b] This finding of fact, which resolves an issue pertaining to testimony, is entitled to great weight. (Rule 453(a), Trans. Rules Proc. of State Bar.)

Interrogatory number 12 asked respondent to provide the names and addresses of all law firms to whom he may have stated by resume or otherwise that he obtained his degree from USC. Respondent answered that he did not make any such statements and that he did not know the identity of law firms that may have received the resume that was the subject of the action. Exhibit number six is a copy of an undated letter and resume respondent sent to Cummins and White. The resume clearly indicates that he graduated from USC law school with honors (*cum laude*). Respondent testified that his signature appeared at the bottom of the cover letter attached to the resume.

(R.T. pp. 16-17.) Nevertheless, respondent asserted that he answered interrogatory number 12 honestly because that resume was one prepared by the employment service and he did not recall sending it. (R.T. pp. 20-21, 40.) Even if respondent did not remember sending the resume, the blanket denial contained in his answer was untruthful, particularly in light of his admission in the stipulation just a few weeks earlier, that he knew this false resume—which he had approved—had been sent to Monteleone and McCrory.

Respondent's explanation for the underlying misconduct is also disturbing. He testified that he did not intend to deceive anyone. (R.T. p. 20.) He was merely attempting to get an interview at which time he would inform the employer of the true facts. (*Id.*) This explanation is troubling in light of his earlier stipulation, confirmed by his testimony (R.T. p. 21), that in the interview with Monteleone and McCrory, respondent made no attempt to correct the falsity of his resume. But even if, for the sake of argument, respondent's explanation is credited, in our opinion, it evidences a lack of understanding of the inherent dishonesty involved in circulating a knowingly false resume.

[5d] Respondent's misrepresentations in his discovery responses aggravate the misconduct. Taken together with the misrepresentations in the resumes, clearly some period of actual suspension is warranted. We are not convinced, however, that respondent's misconduct warrants six months actual suspension. [9a] Respondent's testimony regarding the loss of one child and his wife's subsequent pregnancy was uncontroverted. The hearing judge discounted this testimony because no causal connection was established by expert testimony between the

7. [8] Respondent's answers to the interrogatories (State Bar exh. 2) are not verified as required by Code of Civil Procedure section 2030, subdivision (g). However, the answers need not be verified to constitute admissions of a party (Evid. Code, § 1220), provided they are respondent's answers. No evidence was proffered establishing the authenticity of the responses. (Evid. Code, §§ 1400-1401.) The examiner did identify the answers as respondent's when he sought their introduction into evidence at trial (R.T. p. 5) and respondent did not object (R.T. p. 6). The identification of the answers as respondent's, coupled with respondent's failure to object and respondent's

subsequent statements made at trial regarding the answers (R.T. pp. 38, 40) were sufficient to authenticate the responses by admission. (Evid. Code, § 1414.)

8. Clark had no specific recollection of the interview. (R.T. pp. 8-11.) Clark did, however, identify his handwritten notes on respondent's resume (exh. 5), which he testified represented responses by respondent to specific questions he asked during the interview. (R.T. pp. 8-11.) Those notes show that Clark wrote "USC" on the resume in the blank space next to the juris doctor degree. (See exh. 5.)

personal problems and the misconduct, as required by standard 1.2(e)(iv). [10] However, the standards are guidelines, not inflexible mandates. (See, e.g., *Edwards v. State Bar* (1990) 52 Cal.3d 28, 38.) [9b] The Supreme Court has often considered lay testimony of emotional problems as mitigation. (See, e.g., *Lawhorn v. State Bar* (1987) 43 Cal.3d 1357, 1364.) It is readily conceivable that respondent's concern for his wife and unborn child and his ability to support them would cloud his judgment, as he stated it did, and be directly responsible for some of his misconduct.

[5e] Although we accord this mitigation more weight than did the hearing judge, respondent's personal problems do not fully explain his use of false and misleading resumes, his refusal to correct the resume in the interview, or his deceit to the State Bar. The subsequent deceit to the State Bar indicates respondent has not truly recognized the wrongfulness of his actions and raises the specter that the misconduct will recur. Consequently, some period of actual suspension is warranted in order to achieve the purposes of attorney discipline as set forth in standard 1.3 (protection of the public, courts and legal profession; maintenance of high professional standards by attorneys; and preservation of public confidence in legal profession). Guided by these principles and the decisions of other states we have discussed above, 60 days actual suspension with one year probation appears more suited to achieve the purposes set forth in standard 1.3. This sanction recognizes the seriousness of the misconduct, including the misrepresentations in the discovery, the mitigating circumstances and the sanction deemed appropriate by existing case law.

We also modify the decision to delete the conclusion that respondent violated section 6068 (a). We do not find a factual basis for the section 6068 (a) violation on this record. (See *Middleton v. State Bar* (1990) 51 Cal.3d 548, 561-562.)

[11] As indicated above, we deem it appropriate to revise the hearing judge's recommended conditions of probation to reflect our modifications to the recommended discipline. The hearing judge recom-

mended that a probation monitor referee be assigned to monitor respondent's performance on probation. We do not consider a probation monitor referee necessary in this case as the only active steps the conditions of probation require are the submission of approximately four quarterly reports directly to the probation department. The staff of the probation department can more than adequately monitor respondent's compliance with this condition.

[12] The hearing judge also recommended that respondent be ordered to comply with rule 955 of the California Rules of Court (requiring notification of clients and other interested parties of the attorney's suspension). Compliance with this rule is not usually ordered where the period of actual suspension is less than 90 days. As we have modified the recommended period of actual suspension to 60 days, we do not consider compliance with the rule necessary.

[13] Although we have reduced the recommendation of the hearing judge as noted, largely because of the only published opinions we have found in which similar conduct was the central aspect of the attorney's misconduct, we deem very serious an attorney's deliberate use of dishonesty to further attempts to gain employment, particularly as a lawyer. An attorney is not just another job-holder or job-seeker. For years, our Supreme Court has recognized the high duties of honesty and professional responsibility with which attorneys in this state are charged. (*Cannon v. State Bar* (1990) 51 Cal.3d 1103, 1115; *In re Rivas* (1989) 49 Cal.3d 794; *In re Lamb* (1989) 49 Cal.3d 239; *Stuart v. State Bar* (1985) 40 Cal.3d 838, 846-847; *Jackson v. State Bar* (1979) 23 Cal.3d 509, 514; *McKinney v. State Bar* (1964) 64 Cal.2d 194, 196-197; see also *Hulland v. State Bar* (1972) 8 Cal.3d 440, 449.) Since any act of dishonesty by an attorney is an act of moral turpitude, and ground for serious professional misconduct, whether or not arising in the course of attorney-client relations (Bus. & Prof. Code, § 6106), an attorney's dishonesty in seeking to further his or her career is simply inexcusable. An attorney's statements in a resume, job interview or research paper should be as trustworthy as that professional's representation to a court or client.

FORMAL RECOMMENDATION

For the foregoing reasons, we recommend that the Supreme Court order that respondent be suspended from the practice of law in this state for one (1) year; that execution of such order be stayed; and that respondent be placed on probation for one (1) year on the following conditions:

(1) That during the first sixty (60) days of said period of probation he shall be suspended from the practice of law in the State of California;

(2) That during the period of probation, he shall comply with the provisions of the State Bar Act and Rules of Professional Conduct of the State Bar of California;

(3) That during the period of probation, he shall report not later than January 10, April 10, July 10 and October 10 of each year or part thereof during which the probation is in effect, in writing, to the Office of the Clerk, State Bar Court, Los Angeles, which report shall state that it covers the preceding calendar quarter or applicable portion thereof, certifying by affidavit or under penalty of perjury (provided however, that if the effective date of probation is less than 30 days preceding any of said dates, he shall file said report on the due date next following the due date after said effective date):

(a) in his first report, that he has complied with all provisions of the State Bar Act, and Rules of Professional Conduct since the effective date of said probation;

(b) in each subsequent report, that he has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period;

(c) provided, however, that a final report shall be filed covering the remaining portion of the period of probation following the last report required by the foregoing provisions of this paragraph certifying to the matters set forth in subparagraph (b) hereof;

(4) During the period of probation, respondent shall maintain on the official membership records of the State Bar, as required by Business and Professions Code section 6002.1, his current office or other address for the State Bar purposes and all other information required by that section. Respondent shall report to the membership records office of the State Bar all changes of information as prescribed by said section 6002.1;

(5) That, except to the extent prohibited by the attorney client privilege and the privileges against self-incrimination, he shall answer fully, promptly and truthfully to the Presiding Judge of the State Bar Court, or designee, at the respondent's office or an office of the State Bar (provided, however, that nothing herein shall prohibit the respondent and the Presiding Judge, designee from fixing another place by agreement) any inquiry or inquiries directed to him personally or in writing by said Presiding Judge or designee, relating to whether respondent is complying, or has complied, with these terms of probation;

(6) That the period of probation shall commence as of the date on which the order of the Supreme Court herein becomes effective; and

(7) That at the expiration of said probation period, if he has complied with the terms of probation, said order of the Supreme Court suspending respondent from the practice of law for a period of one (1) year shall be satisfied and the suspension shall be terminated.

We further recommend that respondent be required to take and pass the Professional Responsibility Examination within one (1) year of the effective date of the Supreme Court order and furnish satisfactory proof of such to the Probation Department of the State Bar Court.

We concur:

PEARLMAN, P.J.
STOVITZ, J.