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State Bar Court of California Hearing Department Los Angeles			PUBLIC MATTER
Counsel For The State Bar Ashod Mooradian Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1004 Bar # 194283	Case Number (s) 06-C-13231; 07-O-11040 (Cons.)	(for Court's use) <div style="text-align: center; padding: 10px;"> FILED AUG 04 2010 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div> <div style="text-align: center; padding: 5px;"> <small>kwiktag® 018 039 761</small>  </div>	
Counsel For Respondent Michael G. Gerner A Professional Law Corporation 425 S. Beverly Dr., Suite 210 Beverly Hills, CA 90212 Bar # 65906	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED		
In the Matter Of: ADAM R. FAIRBAIRN Bar # 168204 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 December 14, 1993.
- (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 membership years: 2011 (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.
- (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.

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- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

None

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. See Stipulation Attachment, page 12, section "D", paragraph 1.
- (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. See Stipulation Attachment, page 12, section "D", paragraph 2.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct. See Stipulation Attachment, page 12, section "D", paragraph 3.
- (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

None.

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 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 nine (9) months [See infra., section F, paragraph 4].

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:

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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: November 24, 2008, ending October 9, 2009 [total of 10 months, 15 days].
- (5) **Other Conditions:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ADAM R. FAIRBAIRN

CASE NUMBER(S): 06-C-13231; 07-O-11040

A. PARTIES ARE BOUND BY THE STIPULATED FACTS, CONCLUSIONS OF LAW AND DISPOSITION.

The parties intend to be and are hereby bound by the stipulated facts, conclusions of law, and disposition contained in this stipulation. This stipulation as to facts and the facts so stipulated shall independently survive even if the conclusions of law and/or stipulated disposition set forth herein are rejected or changed in any manner whatsoever by the Hearing Department or the Review Department of the State Bar Court, or by the California Supreme Court.

B. WAIVER OF FINALITY OF CONVICTION (rule 607).

Pursuant to the *Rules of Procedure of the State Bar of California*, rule 607, the parties stipulate that the Court may decide the issues as to the discipline to be imposed even if the criminal convictions discussed herein are not final.

Respondent waives finality of his convictions and consents to the State Bar Court's acceptance of this Stipulation as to facts, conclusions of law and discipline in all respects as if the convictions were final, including the entry of findings consistent with this Stipulation, imposition of discipline, or entry of a recommendation as to the degree of the discipline to be imposed.

Respondent waives any right to challenge on the basis of a lack of finality of his convictions the State Bar Court's recommendation of discipline, if any, and the actual imposition of discipline, if any, by the State Bar Court or the California Supreme Court.

Respondent further waives any right he may have to seek review or reconsideration on the basis of any relief he may receive as a result of any appeal of, or petition regarding, the criminal convictions underlying any recommendation of and/or actual imposition of discipline by the State Bar Court or the California Supreme Court.

C. FACTS AND CONCLUSIONS OF LAW.

ADAM R. FAIRBAIRN ("Respondent") admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Facts Supporting Culpability:

Case# 06-C-13231:

1. In 2003, Respondent purchased a 2002 Chevy Avalanche ("vehicle"). The vehicle's purchase was financed through a loan from General Motors Acceptance Corporation ("GMAC").

2. By April 2006, Respondent had become delinquent on his vehicle payments to GMAC. During a telephone call in April 2006, Respondent was informed by a GMAC representative that if he did not cure his delinquency, a repossession order for his vehicle would be made. Respondent then immediately made a payment to cure his delinquency.

3. In June 2006, Respondent again became delinquent on his vehicle payments to GMAC and despite notice of past due payments he did not act to cure his delinquency.

4. On June 14, 2006, a California licensed repossession agency was given a repossession order from GMAC instructing them to repossess Respondent's vehicle. The repossession agency assigned two male employees ("repossession agents") to complete the repossession order. The repossession agents were driving a white tow truck that only bore the agency's license number and CA number on each side of the vehicle.

5. On June 14, 2006, the repossession agents located Respondent's vehicle parked on the driveway of Respondent's home.

6. The repossession agents then entered Respondent's property and drove up the driveway. At no time did the repossession agents exit their tow truck or attempt to communicate their presence to Respondent who was at home.

7. Then, Respondent came out of his home holding a rifle and confronted the repossession agents yelling, "Get off my property" to the repossession agents. When the repossession agents did not appear to respond Respondent continued to scream for the repossession agents to get off his property and fired a shot into the air.

8. Shortly thereafter, the repossession agents had "hooked up" his vehicle and raised it in the air a few feet off the ground.

9. Respondent fired another shot into the air and then moved within 15 feet of the tow truck while still holding his rifle.

10. At this point, the repossession agents identified themselves as agents of GMAC and informed Respondent that they were there to retake possession of Respondent's vehicle pursuant to GMAC's repossession order. The repossession agents also told Respondent that they were presently on the telephone with the Police and reporting Respondent's actions.

11. Despite the repossession agent's explanation of who they were and why they were there, Respondent again stated that he wanted them to unhook his vehicle and get off his property. After this, the repossession agents unhooked Respondent's vehicle and exited the property.

12. Once the two men were a safe distance from Respondent's home the repossession agents again called the Police to report what had occurred. The Police instructed the repossession agents to remain at their location and wait for the arrival of police officers.

13. About an hour after the repossession agents left his property, Respondent called the police and reported that two men had attempted to steal his vehicle. Respondent also stated that the men had claimed to be repossession agents. The police informed Respondent that they had received a report from the repossession agents that shots had been fired.

14. When the police arrived at Respondent's home about an hour later, they took possession of Respondent's rifle and arrested Respondent.

15. No person or property was injured during the above-described events that occurred on June 14, 2006.

16. On June 15, 2006, Respondent contacted GMAC regarding his delinquency and immediately thereafter paid his past due balance in full.

17. On September 19, 2006, Respondent was charged in a six count criminal complaint with two felony counts of Penal Code section 245(a)(2) [Assault with a Firearm] (one for each repossession agent), one felony count of Penal Code section 246 [Shooting at an occupied vehicle], one felony count of Penal Code section 246.3 [discharge of a firearm with gross negligence and two misdemeanor counts of Penal Code section 417(a)(2) [Brandishing a Firearm]. The two felony counts of Penal Code section 245(a)(2) alleged two penalty enhancements pursuant to Penal Code section 12022.5(a) [Personal use of a firearm] and Penal Code section 667.5(c)(8) [Violent felony]. The two other felony counts were also alleged to be "serious" felonies pursuant to Penal Code section 1192.7(c)(8).

18. On October 7, 2008, after a jury trial, Respondent was found guilty of two felony violations of Penal Code section 245(a)(2) [Assault with a Firearm]. The jury also found true enhancements for each of these counts for "Personal use of a firearm" within the meaning of Penal Code section 12022.5(a). Respondent was also convicted of a felony violation of Penal Code section 246.3 [Discharge of a Firearm with Gross Negligence] and one misdemeanor violation of Penal Code section 417(a)(2) [Brandishing a Firearm].

19. On October 30, 2008, the Review Department of the State Bar Court ordered Respondent placed on interim suspension pending the final outcome of his criminal conviction. The interim suspension was effective November 24, 2008.

20. After his conviction, but prior to his formal sentencing Respondent was ordered to undergo an "in custody" ninety (90) day evaluation pursuant to Penal Code section 1203.03 to determine whether or not Respondent would be eligible for probation.

21. On April 27, 2009, due to a favorable Penal Code section 1203.03 report, the criminal court suspended the imposition of Respondent's sentence for five (5) years, subject to formal probation with standard conditions and including 365 days in custody in San Luis Obispo County Jail, with credit for time served.

22. On June 19, 2009, Respondent was transferred from custody in the county jail to home detention, with freedom to travel within San Luis Obispo County.

23. On June 25, 2009, Respondent filed a "Notice of Appeal" of his conviction in this matter with the California Court of Appeal. This appeal remains pending through the present date.

24. On September 24, 2009, Respondent completed his custody without negative incident or violation.

25. On September 25, 2009, Respondent filed a motion to vacate his interim suspension in the Review Department. The State Bar, in its response, did not object to a termination of Respondent's interim suspension.

26. On October 9, 2009, the Review Department stayed Respondent's interim suspension and returned him to active status. The length of Respondent's interim suspension was ten (10) months and fifteen (15) days.

27. On November 6, 2009, Respondent filed his waiver of finality of conviction and requested that the Review Department refer the matter to the Hearing Department of the State Bar Court for a hearing.

28. On December 11, 2009, the Review Department referred this matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding Respondent's conviction involved moral turpitude or other misconduct warranting discipline.

Case# 07-O-11040:

1. In March 2004, Steven Rossi employed Respondent to represent him in a real estate dispute.

2. On April 19, 2006, Respondent filed a civil complaint on Rossi's behalf, but did not serve the defendant.

3. At the time of filing, the court notified Respondent that the initial status conference would be conducted on August 22, 2006.

4. When the initial status conference was conducted on that date, Respondent failed to appear. The court then set an Order to Show Cause Re: Dismissal ("OSC") hearing for September 29, 2006.

5. On September 12, 2006, Respondent filed a Declaration in which he acknowledged his failure to appear at the initial status conference, and also filed an ex parte application requesting that the OSC hearing be delayed in order to facilitate the service of defendants in the case. In addition, on September 12, 2006, Respondent served the complaint on defendants.

6. The court granted Respondent's ex parte request, and rescheduled the OSC hearing for November 9, 2006.

7. On September 12, 2006, the court mailed notice of the November 9, 2006 OSC hearing to Respondent, who received it. Respondent filed his proof of service with the court on or about September 20, 2006.

8. The court then again continued the date of the OSC, this time re-calendaring the hearing for November 28, 2006. The court clerk mailed notice of the re-calendared OSC hearing to Respondent on November 13, 2006, which Respondent received.

9. On November 28, 2006, defendants filed their response to the complaint. Respondent did not appear at the November 28, 2006 OSC hearing. The court dismissed the complaint without prejudice and mailed Respondent notice of the dismissal. Respondent received the notice.

10. Respondent did not inform Rossi of the dismissal.

11. Rossi learned of the dismissal of his case, and of Respondent's non-appearances, when he visited the court to review the court file. After learning this information, Rossi immediately terminated Respondent's legal representation. Ultimately, Rossi re-filed his case in propria persona on February 8, 2007.

Conclusions of Law:

Case# 06-C-13231:

12. The facts and circumstances surrounding Respondent's conviction for violation of Penal Code section 245(a)(2) [Assault with a Firearm against M.K.], a felony, involved other misconduct warranting discipline pursuant to Business and Professions Code, sections 6101 and 6102.

13. The facts and circumstances surrounding Respondent's conviction for violation of Penal Code section 245(a)(2) [Assault with a Firearm against T.B.], a felony, involved other

misconduct warranting discipline pursuant to Business and Professions Code, sections 6101 and 6102.

14. The facts and circumstances surrounding Respondent's conviction for violation of Penal Code §246.3 [Discharge of Firearm with Gross Negligence], a felony, involved other misconduct warranting discipline pursuant to Business and Professions Code, sections 6101 and 6102.

15. The facts and circumstances surrounding Respondent's conviction for violation of Penal Code §417(a)(2) [Drawing or Exhibiting a Firearm], a misdemeanor, involved other misconduct warranting discipline pursuant to Business and Professions Code, sections 6101 and 6102.

Case# 07-O-11040:

16. By not appearing at the initial status conference, not appearing at the OSC hearing, and by not re-filing Rossi's complaint after it had been dismissed without prejudice, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence, willfully violating Rules of Professional Conduct, rule 3-110(A)

17. By not informing Rossi that the court had dismissed his complaint, Respondent willfully failed to keep a client reasonably informed of significant developments in a matter in which Respondent had agreed to provide legal services, willfully violating Business and Professions Code, section 6068(m).

D. FACTS SUPPORTING MITIGATION.

1. Respondent has no prior record of discipline. The earliest misconduct herein occurred in June 2006, at a time when Respondent had been practicing law for over twelve (12) years without any imposition of discipline.

2. Respondent cooperated to the extent that he stipulated to facts, conclusions of law and level of discipline.

3. Respondent's good character is attested to by over two dozen persons from both the legal and general communities, including attorneys, civic leaders, religious leaders, clients, business associates, neighbors, friends and family.

E. AUTHORITIES SUPPORTING DISCIPLINE.

Applicable Standards:

Standard 1.6 states that the appropriate sanction for professional misconduct is set forth in the *Standards* for the particular act of misconduct. In addition, if "...two or more acts of professional misconduct are found or acknowledged in a single disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the sanction imposed shall be

Attachment

the more or most severe of the different applicable sanctions.”¹ Finally, the sanction to be imposed may be greater or lesser, depending on the existence of aggravating or mitigating circumstances.²

Standard 2.4(b) states that culpability “...of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending upon the extent of the misconduct and the degree of harm to the client.”

Standard 2.6 states that culpability “...of a member of a violation of any of the following provisions of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3: (a) Sections 6067 and 6068...”

Standard 3.4 states that the final “...conviction of a member of a crime which does not involve moral turpitude inherently or in the facts and circumstances surrounding the crime’s commission but which does involve either misconduct warranting discipline shall result in a sanction as prescribed under part B of these *Standards* appropriate to the nature and extent of the misconduct found to have been committed by the member.

Aggravating & Mitigating Circumstances:

Standard 1.2(b) provides for a greater degree of sanction set forth in the standards where aggravating circumstances exist. There are no aggravating circumstances in this matter.

Standard 1.2(e) provides for a more lenient degree of sanction than set forth in the standards where mitigating circumstances exist. In this matter there are three (3) mitigating circumstances. First, pursuant to Standard 1.2(e)(i), Respondent has no prior record of discipline. The earliest misconduct herein occurred in June 2006, at a time when Respondent had been practicing law for over twelve (12) years without any imposition of discipline. Second, pursuant Standard 1.2(e)(v), Respondent cooperated to the extent that he stipulated to facts, conclusions of law and level of discipline. Third, pursuant to Standard 1.2(e)(vi), Respondent’s good character is attested to by over two dozen persons from both the legal and general communities, including attorneys, civic leaders, religious leaders, clients, business associates, neighbors, friends and family.

Caselaw:

In *Matter of Burns*,³ an attorney, who was also a reserve police officer, fired his 9mm semi-automatic handgun, which he was allowed to carry, at another vehicle on a freeway in the course of a “road rage” situation between the attorney in *Burns* and the driver of the other vehicle. Although the attorney in *Burns* shot at the right passenger door the bullet instead

¹ See *Standard 1.6*.

² See *Standard 1.6(a)* and (b).

³ (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 406.

entered the right rear window striking and seriously injuring a minor female passenger causing her to lose several teeth and part of her gum.

The attorney in *Burns* was charged with two felony counts, shooting at an occupied motor vehicle [*Penal Code*, § 246], with the allegation that he intended to inflict great bodily injury upon a person not an accomplice [*Penal Code*, § 12022.7] and assault with a firearm [*Penal Code*, § 245(a)(2)], with the allegation that he discharged a firearm at an occupied motor vehicle which caused great bodily injury to the person of another [*Penal Code*, § 12022.5(b)].

In September 1991, the attorney in *Burns* pled no contest to violating *Penal Code* section 245(a)(2) and admitted the *Penal Code* section 12022.5(b) enhancement and the remaining charge and its enhancement were dismissed. The attorney in *Burns* was placed on three years of formal probation, on conditions including one year of county jail (which was recommended to be served in a work furlough program), restitution, and psychological counseling.

The Review Department ultimately recommended that the attorney in *Burns* receive two years stayed, two years probation and other terms. The Review Department noted that the attorney in *Burns* received a stayed suspension because he was receiving credit for the ten month period of interim suspension already imposed. The Review Department further noted that but for the prior imposition of this interim suspension, their discipline recommendation would have included a period of actual suspension the attorney in *Burns*.

F. PENDING PROCEEDINGS.

The disclosure date referred to on page two, paragraph A. (7) was July 13, 2010.

G. COSTS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed him that as of July 13, 2010, the estimated prosecution costs in this matter are approximately \$6,884.62. Respondent acknowledges that this figure is an estimate only. 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.

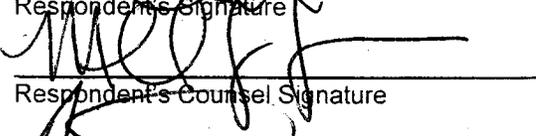
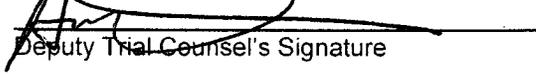
If Respondent fails to pay any installment within the time provided herein or as may be modified by the State Bar Court pursuant to section 6068.10, subdivision (c), the remaining balance of the costs is due and payable immediately and enforceable both as provided in Business and Professions Code, section 6140.7 and as a money judgment unless relief has been granted under rule 286 of the Rules of Procedure of the State Bar of California.

(Do not write above this line.)

In the Matter of ADAM R. FAIRBAIRN	Case number(s): 06-C-13231; 07-O-11040 (Cons.)
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

<u>7/15/2010</u> Date	 Respondent's Signature	<u>Adam R. Fairbairn</u> Print Name
<u>7-16-10</u> Date	 Respondent's Counsel Signature	<u>Michael G. GRENER</u> Print Name
<u>7-19-10</u> Date	 Deputy Trial Counsel's Signature	<u>ASHOD MOURADIAN</u> Print Name

(Do not write above this line.)

In the Matter Of ADAM R. FAIRBAIRN	Case Number(s): 06-C-13231; 07-O-11040 (Cons.)
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ORDER

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

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
 - The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
 - All Hearing dates are vacated.
1. Paragraph A(8) is modified to read: "costs to be paid in equal amounts prior to February 1, for the following membership years: 2011 and 2012." The following additional language will be added to that provision: "Respondent must also reimburse the Client Security Fund to the extent that the misconduct in this matter results in the payment of funds and such payment is enforceable as provided under Business and Professions Code section 6140.5. (Rules Proc. Of State Bar, rule 291.)"
 2. Page 6 is modified by, placing an "x" in the box preceding item F.(5) ("Other Conditions") and adding: "It is not recommended that respondent be ordered to comply with rule 9.20 of the California Rules of court because he has already done so on December 24, 2008, in connection with State Bar Court case no. 06-C-13231."

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.)**

8/4/10
Date



Judge of the State Bar Court
DONALD F. MILES

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on August 4, 2010, I deposited a true copy of the following document(s):

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

in a sealed envelope for collection and mailing on that date as follows:

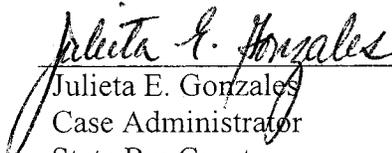
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

MICHAEL GALEN GERNER ESQ
MICHAEL G GERNER, A PROF LAW CORP
425 S BEVERLY DR STE 210
BEVERLY HILLS, CA 90212

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

Ashod Mooradian, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 4, 2010.



Julieta E. Gonzales
Case Administrator
State Bar Court