

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case Nos.: **12-O-12411-DFM** (12-O-12954;
) 12-O-12958)
ADAM RANALD FAIRBAIRN,)
)
Member No. 168204,) **DECISION AND ORDER OF**
) **INVOLUNTARY INACTIVE ENROLLMENT**
) **(Bus. & Prof. Code, § 6007, subd. (c)(4).)**
A Member of the State Bar.)

INTRODUCTION¹

In this original disciplinary proceeding, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charges Respondent **ADAM RANALD FAIRBAIRN** (Respondent) with a total of ten counts of misconduct involving three separate client matters. For the reasons set forth below, the court finds that Respondent is culpable on all 10 counts and that the appropriate level of discipline for the misconduct is disbarment.

PERTINENT PROCEDURAL HISTORY

The State Bar filed the 10-count notice of disciplinary charges (NDC) in this matter on December 28, 2012. Respondent filed a response to the NDC on February 4, 2013.

On April 8, 2013, Respondent filed his resignation from membership in the State Bar of California with disciplinary charges pending. Respondent's resignation is now pending before

¹ Unless otherwise indicated, all references to rules are to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code unless otherwise indicated.

the review department in case number 13-Q-11868. (See Cal. Rules of Court, rule 9.21; Rules Proc. of State Bar, rule 5.420 et Seq.)

On April 29, 2013, the parties filed a stipulation as to facts, conclusions of law, and admission of documents (Stipulation). In the Stipulation, the parties stipulate to facts establishing Respondent's culpability for the misconduct charged in all 10 counts in the NDC.

On May 3, 2013, the case was called for trial. The State Bar was represented by Deputy Trial Counsel Agustin Hernandez. Respondent acted as counsel for himself. At trial, the parties submitted a supplemental stipulation as to facts and admission of documents (Supplemental Stipulation), which was admitted into evidence as exhibit 30. In the Supplemental Stipulation, the parties stipulate to the aggravating and mitigating circumstances.

In both the Stipulation and the Supplemental Stipulation, Respondent admits the truth of the stipulated facts and admits culpability for the charged misconduct. Thus, the only issue for the court to determine is the appropriate level of discipline. The court took the matter under submission for decision on May 3, 2013.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on Respondent's response to the NDC, the stipulations of undisputed facts previously filed by the parties, and the documentary and testimonial evidence admitted at trial.

Jurisdiction

Respondent was admitted to the practice of law in California on December 14, 1993, and has been a member of the State Bar of California since that time.

Respondent's MPRE Suspension

On November 24, 2010, the Supreme Court filed an order in *In re Adam Ranald Fairbairn on Discipline*, case number S186393 (State Bar Court case numbers 06-C-13231;

07-O-11040 [consolidated]) (*Fairbairn I*), placing Respondent on two years' stayed suspension and two years' probation on conditions, including nine months' (actual) suspension with credit given for the period he was on interim suspension following his criminal conviction (§ 6102, subd. (a)). In that same order, the Supreme Court also ordered, Respondent to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the order. The effective date of the Supreme Court's November 24, 2010, order was December 24, 2010. (Cal. Rules of Court, rule 9.18(a).) Accordingly, Respondent was required to take and pass the MPRE no later than December 24, 2011.

Respondent failed to take and pass the MPRE before the December 24, 2011, deadline. As a result, on January 17, 2012, the State Bar Court Review Department filed an order suspending Respondent from the practice of law in the State of California beginning on February 6, 2012, and continuing until he passes the MPRE.

On January 17, 2012, the Review Department properly served its MPRE suspension order on Respondent by first class mail at Respondent's latest address shown on the official membership records of the State Bar of California. Respondent stipulated that he received that order. Respondent received the MPRE suspension order not long after the Review Department mailed it to Respondent on January 17, 2012, and well before February 6, 2012. (Cf. Evid. Code, § 641 ["A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail."]) Thus, not long after January 17, 2012, Respondent had actual knowledge that, beginning on February 6, 2012, he would be suspended from the practice of law until he passed the MPRE and provides proof of his passage to the Review Department.

Respondent took and passed the March 2012 MPRE. On April 25, 2012, the Review Department filed an order terminating Respondent's MPRE suspension on April 25, 2012. In

sum, Respondent was suspended from the practice of law from February 6, 2012, until April 25, 2012. During that time, Respondent was not only disqualified and precluded from acting as an attorney, but he was also precluded from attempting to practice law and from advertising or holding himself out as practicing law or as entitled to practice law. (§ 6126, subd. (b).)

Case No. 12-O-12411 (Allgone Matter)

In 2012, Respondent was the attorney of record for Allgone, LLC; Per Anderson; Al Siamon; and Chidinma Eziyi, who were the defendants in a lawsuit that Morgan Callanan filed against them in the San Diego County Superior Court (Callanan lawsuit). Attorney Christopher G. Sabol was the attorney of record for plaintiff Callanan.

On February 6, 2012, Respondent and Attorney Sabol held a meet-and-confer conference by telephone regarding a discovery dispute and to schedule the defendants' depositions. Attorney Sabol told Respondent that he would send Respondent another copy of plaintiff's discovery requests, and Respondent told Sabol that Respondent would review the discovery requests and coordinate the scheduling of defendants' depositions.

On February 7, 2012, Attorney Sabol sent Respondent an email with plaintiff's discovery requests attached to it. In his email to Respondent, Attorney Sabol stated that he would file a motion to compel if Respondent did not provide him with adequate supplemental responses to Callanan's discovery requests by February 20, 2012.

On February 21, 2012, Respondent and Attorney Sabol held a second telephonic meet-and-confer conference regarding a discovery dispute. During that second conference, Respondent deliberately lied to Sabol when Respondent told Sabol that Respondent "was going to be suspended from the practice of law that day or in the coming days due to his failure to timely take and pass the MPRE." When Respondent made that statement, Respondent knew that he had been suspended from the practice of law since February 6, 2012. During that same

conference, Respondent “also informed [Sabol] that he would provide [him] the name and number of the defendants’ new attorney in [the Callanan] case.” Respondent did not, however, provide Sabol with the name and number of defendants’ new attorney. Instead, Respondent remained the attorney of record for defendants.

On March 5, 2012, because Respondent was still the attorney of record for defendants, Attorney Sabol called Respondent and conducted a third meet-and-confer conference over discovery. During that third conference, in exchange for Sabol postponing his filing of a motion to compel discovery against defendants, Respondent agreed (1) to accept email service of plaintiff’s notices of defendants’ depositions, which were depositions scheduled for March 16, 2012; (2) to immediately forward, to defendants, the discovery requests he received from Sabol on February 7, 2012; and (3) to telephone Sabol on March 6, 2012, to provide him with a date within seven days that he could expect to receive defendants’ discovery responses.

On March 12, 2012, defendants provided their discovery responses to Attorney Sabol. In their discovery responses, defendants were designated as appearing in propria persona. Nevertheless, Respondent remained defendants’ attorney of record and helped them prepare their discovery responses.

On April 4, 2012, even though Respondent remained defendants’ attorney of record, Respondent hired Attorney Aime Morris, a special appearance attorney, to represent defendants at an ex parte hearing on a motion to compel discovery that plaintiff Callanan filed against defendants.

During the ex parte hearing on April 5, 2012, the superior court judge noted that Respondent was suspended from the practice of law. Before the judge made that statement, Attorneys Sabol and Morris and plaintiff Callanan did not know that Respondent was suspended from practice.

Respondent's participation in the meet-and-confer conferences with Attorney Sabol and reviewing and editing discovery requests and defendants' discovery responses constitute the practice of law.

Respondent knew that he was suspended from the practice of law from February 6, 2012 through April 25, 2012.

Between February 6, 2012, and April 25, 2012, when Respondent participated in three meet-and-confer conferences with Attorney Sabol and when Respondent reviewed and edited defendants' discovery responses, Respondent knowingly practiced law and held himself out as entitled to practice law when he was not entitled to practice law.

Count One - (§ 6068, subd. (a) [Support Constitution and Laws of United States and California])

Section 6068, subdivision (a) requires that an attorney "support the Constitution and laws of the United States and of this state."

Section 6125 provides that only active members of the State Bar may lawfully practice law in California. And section 6126, subdivision (b) provides that it is a crime for an attorney who has been involuntarily enrolled inactive, suspended, or disbarred from practice or who has resigned from the State Bar with disciplinary proceedings pending (1) to practice or to attempt to practice law or (2) to advertise or hold himself or herself out as practicing or entitled to practice law. When an attorney violates either or both section 6125 and section 6126, the attorney has engaged in the unauthorized practice of law (UPL). Moreover, when an attorney violates either or both section 6125 and section 6126, the attorney also violates his or her duty, under section 6068, subdivision (a), to support the laws of this state. (E.g., *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, 236, 237; *In the Matter of Acuna* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 495, 506.)

UPL includes the mere holding out that one is entitled to practice law. (*Crawford v. State Bar* (1960) 54 Cal.2d 659, 666.) “[A]n attorney cannot expressly or impliedly create or *leave undisturbed the false impression* that he or she has the present or future ability to practice law when in fact he or she is or will be on suspension.” (*In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 91, italics added.)

By engaging in acts constituting the practice of law in the Allgone client matter between February 6, 2012, and April 25, 2012, while he was not entitled to practice law, Respondent held himself out as entitled to practice law and actually practiced law when he was not entitled to do so in willful violation of sections 6125 and 6126 and thereby failed to support the laws of this state in willful violation of section 6068, subdivision (a).

Count Two - (§ 6106 [Moral Turpitude])

Section 6106 provides, in part, that the commission of any act involving moral turpitude, dishonesty, or corruption constitutes cause for suspension or disbarment. The unauthorized practice of law, even in deliberate or knowing violation of sections 6125 and 6126, does not inherently involve moral turpitude or necessarily involve deception or misrepresentation. (*In the Matter of Trousil, supra*, 1 Cal. State Bar Ct. Rptr. at p. 239; see also *In the Matter of Heiner* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, 319.) “Violation of sections 6125 and 6126 appears to fall into the category of conduct which may or may not involve moral turpitude as defined by the Supreme Court precedent in attorney disciplinary proceedings.” (*In the Matter of Trousil, supra*, 1 Cal. State Bar Ct. Rptr. at p. 239.) Section 6106 does not “embrace within its ambit the bare essentials of a section 6125 violation.” (*Ibid.*)

By knowingly practicing law and holding himself out as entitled to practice law in the Allgone client matter when Respondent knew that he was not entitled to practice law,

Respondent committed an act involving moral turpitude, dishonesty, or corruption in willful violation of section 6106.

Count Three - (§ 6106 [Moral Turpitude])

By knowingly misrepresenting to Attorney Sabol on February 21, 2012, that he was entitled to practice law in the State of California, Respondent committed an act involving moral turpitude, dishonesty or corruption in willful violation of section 6106.

Moreover, the misconduct found under count three overlaps (i.e., is duplicative of) the misconduct found under count two because the misconduct found under both counts is Respondent's misrepresentations of his entitlement to practice law. Accordingly, the court does not give the section 6106 violation under count three any additional weight when determining the appropriate level of discipline.

Count Four - (§ 6068, subd. (i) [Failure to Cooperate])

Section 6068, subdivision (i), provides that an attorney has a duty to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney.

In about March 2012, plaintiff Callanan filed a complaint against Respondent with the State Bar. On April 23, 2012, a State Bar investigator mailed a letter to Respondent requesting that, no later than May 7, 2012, Respondent provide the State Bar with a written response to Callanan's complaint. On May 11, 2012, Respondent requested an extension of time until May 18, 2012, to provide such a written response. The State Bar investigator granted the extension, but Respondent never provided a written response or otherwise cooperated with the State Bar investigator. Accordingly, Respondent failed to cooperate and participate in a disciplinary investigation pending against him in willful violation of section 6068, subdivision (i).

Case No. 12-O-12954 (Trobisch Matter)

On December 19, 2011, Katie Trobisch employed Respondent to represent her in a marital dissolution matter in the Kern County Superior Court. Thereafter, at all relevant times, Respondent was Trobisch's attorney of record in the dissolution matter.

Between February 6, 2012, and about March 13, 2012, Respondent provided legal advice to Trobisch, facilitated and entered into agreements with opposing counsel, held himself out as eligible to practice law to Trobisch and opposing counsel, and failed to notify Trobisch of his ineligibility to practice law.

On March 13, 2012, Trobisch first learned that Respondent was suspended when Attorney George R. Horrigan, her former counsel, told her that Respondent was not entitled to practice law.

On March 13, 2012, Steve Gardner, Trobisch's fiancé, called Respondent and discussed Respondent's ineligibility status. Respondent admitted that he was ineligible to practice law and told Gardner that Attorney Kara Schacher would be Respondent's co-counsel on the Trobisch dissolution case.

On March 13, 2012, Gardner contacted Attorney Schacher and scheduled an in-person meeting with her at her office for March 20, 2012. On March 20, 2012, Trobisch and Gardner met with Attorney Schacher at her office. Respondent appeared at the meeting uninvited and insisted on being co-counsel with Schacher. Schacher refused to be co-counsel with Respondent because of his suspension. That same day, Trobisch terminated Respondent's employment and hired Schacher to represent her in her dissolution case.

Respondent's providing of legal advice to Trobisch and facilitating and entering into agreements with opposing counsel constitute the practice of law.

When Respondent provided legal advice to Trobisch and facilitated and entered into agreements with opposing counsel, Respondent knew that he was not entitled to practice law and knowingly practiced law and held himself out as entitled to practice law while he was not entitled to practice law.

Count Five - (§ 6068, subd. (a) [Attorney's Duty to Support Constitution and Laws of United States and California])

By engaging in acts constituting the practice of law and holding himself out as entitled to practice law in the Trobisch client matter between February 6, 2012, and about March 13, 2012, Respondent actually practiced law when he was not entitled to do so in willful violation of sections 6125 and 6126 and thereby failed to support the laws of this state in willful violation of section 6068, subdivision (a).

Count Six - (§ 6106 [Moral Turpitude])

By knowingly practicing law and holding himself out as entitled to practice law in the Trobisch client matter when Respondent knew that he was not entitled to practice law, while concealing that fact from others while he was doing so, Respondent committed an act involving moral turpitude, dishonesty, or corruption in willful violation of section 6106.

Case No. 12-O-12958 (Rianda Matter)

On January 13, 2012, Benjamin Rianda employed Respondent to represent him in a child custody matter in the Monterey County Superior Court (the Rianda case). Thereafter, at all relevant times, Respondent was Rianda's attorney of record in the custody matter.

On February 6, 2012, Respondent prepared, on behalf of Rianda, a motion to stay or dismiss or, in the alternative, to change venue and transfer action (Motion). On February 6, 2012, Respondent also prepared declarations for Rianda and Rianda's sister Sunny Wicks in support of the Motion.

On February 6, 2012, Respondent attempted to file the Motion, but the superior court rejected the Motion for filing due to incomplete paperwork.

On January 19, 2012, on the application of Rianda's former wife, the superior court filed an order to show cause (OSC) regarding child custody and visitation; shorten the time for Rianda

to file a responsive declaration to the OSC to February 2, 2012; and set the OSC for a hearing on February 9, 2012. Respondent received proper and timely notice of the OSC, the February 2, 2012, deadline for filing a response to the OSC; and the February 9, 2012, OSC hearing. Respondents, however, failed to notify Rianda of the OSC, the response filing deadline, or the OSC hearing. Moreover, Respondent failed to file a response to the OSC for Rianda or to appear at the OSC hearing. Nor did Rianda file a response or attend the OSC hearing.

At the OSC hearing on February 9, 2012, the superior court awarded primary physical child custody to Rianda's former wife. The superior court's temporary orders in the OSC order became the court's final order.

On February 22, 2012, Respondent notified Rianda that Respondent had not been entitled to practice law since February 6, 2012. Respondent also represented to Rianda that he would be reinstated to practice law on February 24, 2012. Prior to February 22, 2012, Respondent had not disclosed his suspension to Rianda.

On February 28, 2012, Respondent was substituted out as Rianda's attorney of record in the custody matter, and Attorney William Ausman was substituted in Respondent's place as Rianda's attorney of record in the custody matter.

Respondent's preparation and attempted filing of the Motion and supporting declarations constitute the practice of law.

Count Seven - (§ 6068, subd. (a) [Duty to Support Constitution and Laws of United States and California]

By engaging in acts constituting the practice of law in the Rianda client matter between February 6, 2012, and February 28, 2012, while Respondent was not entitled to practice law, Respondent held himself out as entitled to practice law and actually practiced law when he was not entitled to do so in willful violation of sections 6125 and 6126 and thereby failed to support the laws of this state in willful violation of section 6068, subdivision (a).

Count Eight - (§ 6068, subd. (m) [Failure to Communicate])

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services. By failing to inform Rianda of the OSC hearing date and the deadline to file a response to the OSC and by not informing Rianda until February 22, 2012, that he was suspended from the practice of law, Respondent failed to keep a client reasonably informed about significant developments in matters with regard to which the attorney has agreed to provide legal services in willful violation of section 6068, subdivision (m).

Count Nine - (§ 6106 [Moral Turpitude])

By knowingly practicing law and holding himself as entitled to practice law in the Rianda client matter when Respondent knew that he was not entitled to practice law, while concealing that fact from others while he was doing so, Respondent committed an act involving moral turpitude, dishonesty, or corruption in willful violation of section 6106.

Count Ten - (§ 6106 [Moral Turpitude])

At no time, did Respondent inform opposing counsel or the superior court in the custody matter that he was not entitled to practice law from February 6, 2012, until April 25, 2012. Moreover, by preparing, signing, and attempting to file the Motion with the court and by preparing the supporting declarations, Respondent intended opposing counsel and the court to believe that he was entitled to practice law when he was not entitled, thereby making misrepresentations to opposing counsel and the court. On February 22, 2012, when Respondent represented to Rianda that he would be reinstated to practice law on February 24, 2012, Respondent knew that he would not and could not be reinstated on February 24, 2012, because, at that point, Respondent had not even taken the March 2012 MPRE. By knowingly

misrepresenting his status with the State Bar of California to opposing counsel and the superior court, Respondent committed an act involving moral turpitude, dishonesty, or corruption in willful violation of section 6106.

Moreover, the misconduct found under count ten overlaps the misconduct found under count nine because the misconduct found under both counts is Respondent's misrepresentation of his entitlement to practice law. Accordingly, the court does not give the section 6106 violation under count ten any additional weight when determining the appropriate level of discipline.

Aggravating Circumstances

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)² The court finds the following with respect to alleged aggravating factors.

Prior Record of Discipline (Std. 1.2(b)(i))

Respondent has two prior records of discipline.

Fairbairn I

Respondent's first prior record of discipline is the Supreme Court's November 24, 2010, order in *Fairbairn I* placing Respondent on two years' stayed suspension and two years' probation with conditions, including nine months' suspension with credit given for the period of his interim suspension following his conviction. The Supreme Court imposed that discipline on Respondent in accordance with a stipulation regarding facts, conclusions of law, and disposition that Respondent entered into with the State Bar and which was approved by the State Bar Court in an order filed on August 4, 2010, in case numbers 06-C-13231 and 07-O-11040 (consolidated).

² All further references to standard(s) or std. are to this source.

The stipulation in *Fairbairn I* establishes that, on June 14, 2006, Respondent had an altercation with two auto repossession agents from General Motors Acceptance Corporation who attempted to repossess Respondent's Chevy Avalanche because Respondent was delinquent on his vehicle payments. On October 7, 2008, after a jury trial, Respondent was convicted on two felony counts of violating Penal Code section 245(a)(2) (assault with a firearm – one count for each of the two repossession agents); one felony count of violating Penal Code section 246.3 (discharge of a firearm with gross negligence); and one misdemeanor count of violating Penal Code section 417(a)(2) (brandishing a firearm). In addition, the jury found true enhancements for each of the assault with a firearm convictions for Respondent's "personal use of a firearm" within the meaning of that term under Penal Code section 12022.5(a).

Respondent stipulated that each of his four convictions involved other misconduct warranting discipline. In addition, Respondent stipulated that, in a single client matter, he failed to competently perform legal services (rule 3-110(A)) and failed to keep the client reasonably informed of significant developments (§ 6068, subd. (m)).

The mitigation in *Fairbairn I* was no prior record of discipline after 12 years' practice; cooperation with State Bar by stipulating to misconduct; and Respondent's good character, which was attested to by more than two dozen individuals. There was no aggravating circumstance in *Fairbairn I*.

Fairbairn II

Respondent's second prior record of discipline is the Supreme Court's November 19, 2012, order in *In re Adam Ranald Fairbairn on Discipline*, case number S205219 (State Bar Court case number 09-O-16751) (*Fairbairn II*) placing Respondent on three years' stayed suspension and three years' probation on conditions, including a two-year minimum suspension continuing until Respondent pays restitution with interest for an illegal \$10,000 legal fee and

until Respondent establishes his rehabilitation, fitness to practice, and learning in the law in accordance with standard 1.4(c)(ii).

In *Fairbairn II*, Respondent was found culpable, in a single client matter, of illegally collecting a \$10,000 advanced fee from one of the beneficiaries of a decedent's will (rule 4-200(A)) and of engaging in an act involving moral turpitude, dishonesty, or corruption (§ 6106) by knowingly misrepresenting to the beneficiary that the beneficiary either had to pay Respondent \$10,000 in advanced attorney's fees or to transfer to Respondent's client one-third of the beneficiary's portion of the decedent's estate in order for the decedent's will to be probated.

Respondent's misconduct in *Fairbairn II* was aggravated because it was surrounded by bad faith and overreaching. Respondent engaged in a scheme with the executor of the decedent's estate to violate the probate statutes regarding the amount of fees and the means of obtaining fees in probate proceedings. The remaining aggravation in *Fairbairn II* was Respondent had one prior record of discipline, the beneficiary suffered significant harm because Respondent has not refunded the \$10,000 illegal fee. In mitigation, Respondent demonstrated good character and community involvement.

Mitigating Circumstances

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) The court finds the following with respect to alleged mitigating factors.

Cooperation with State Bar (Std. 1.2(e)(v))

Respondent is entitled to mitigation for entering into a stipulation of facts and conclusions of law prior to trial, thereby preserving State Bar Court time and resources. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 50.)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) As the review department noted more than 17 years ago in *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 419, even though the standards are not to be applied in a talismanic fashion, they are to be followed unless there is a compelling reason that justifies not doing so. (Accord, *In re Silverton* (2005) 36 Cal.4th 81, 91.) Second, the court looks to decisional law for guidance. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.6(a) provides that, when two or more acts of misconduct are found in a single disciplinary proceeding and different sanctions are prescribed for those acts, the recommended sanction is to be the most severe of the different sanctions. In the present proceeding, the most severe sanction for Respondent 's misconduct is found in standard 2.3, which provides:

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

Acts of moral turpitude by an attorney are grounds for suspension or disbarment even if no harm results. (*In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211,

220.) In each of the three client matters in the present proceeding, Respondent's UPL was found to involve moral turpitude, dishonesty, or corruption. Thus, the magnitude of Respondent's misconduct and its direct relation to his practice of law alone call for significant actual suspension, if not disbarment.

Also relevant in this proceeding is standard 1.7(b), which provides that when an attorney has two prior records of discipline, the degree of discipline in the current proceeding is to be disbarment unless the most compelling mitigating circumstances clearly predominate. Notwithstanding its unequivocal language to the contrary, disbarment is not mandated under standard 1.7(b) even if there are no compelling mitigating circumstances that predominate in a case. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507, citing *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781.) Instead, Standard 1.7(b) is applied "with due regard to the nature and extent of the Respondent's prior records. [Citation.]" (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 704.) When applying standard 1.7(b), significant weight is placed "on whether or not there is a 'common thread' among the various prior disciplinary proceedings or a 'habitual course of conduct' which justifies disbarment. [Citation.]" (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841.)

In the present matter, Respondent has been found culpable of engaging in UPL in three separate client matters (§§ 6068, subd. (a), 6125, 6126) and, in each of the three client matters, Respondent's UPL was found to involve moral turpitude, dishonesty, or corruption (§ 6106). In the present matter, Respondent has also been found culpable on one count of failing to communicate (§ 6068, subd. (m)) and one count of failing to cooperate in a State Bar disciplinary investigation (§ 6068, subd. (i)).

There is a common thread between the present proceeding and *Fairbairn II*. In the present proceeding, Respondent's UPL involved moral turpitude, dishonesty, or corruption

because, inter alia, Respondent repeatedly misrepresented his entitlement to practice law to opposing counsel and his clients (§ 6106). And, in *Fairbairn II*, Respondent's misconduct involved moral turpitude, dishonesty, or corruption because Respondent made misrepresentations to the beneficiaries of a decedent's will resulting in Respondent illegally collecting a \$10,000 advanced fee from one of the beneficiaries. These misrepresentations involved not only moral turpitude, but also dishonesty, and they warrant disbarment.

In addition, there is a common thread between the present proceeding and *Fairbairn I*. In both proceedings Respondent has been found culpable of failing to adequately communicate with his clients. The repeated violation of such a fundamental duty strongly suggests that Respondent will not or cannot conform his conduct to the strictures of the profession and also supports a disbarment recommendation in the present proceeding.

The court is unaware of any compelling reason that would justify its recommending less discipline than disbarment as provided for in standard 1.7(b). Moreover, the court did not arrive at its disbarment recommendation based solely on the mere number of Respondent's past disciplinary proceedings, but only after it carefully examined the substance and nature of Respondent's disciplinary history with due regard to the facts and circumstances of his present misconduct.

RECOMMENDED DISCIPLINE

Disbarment

The court recommends that Respondent **ADAM RANALD FAIRBAIRN**, State Bar member number 168204, be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of all persons admitted to practice in this state.

California Rules of Court, Rule 9.20

The court further recommends that Respondent **ADAM RANALD FAIRBAIRN** be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **ADAM RANALD FAIRBAIRN** be involuntarily enrolled as an inactive member of the State Bar of California effective three calendar days after the service of this decision and order of involuntary inactive enrollment by mail (Rules Proc. of State Bar, rule 5.111(D)).

Dated: July ____, 2013.

DONALD F. MILES
Judge of the State Bar Court