

ORIGINAL

State Bar Court of California
Hearing Department
Los Angeles

Counsel For The State Bar Jean Cha Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1000	Case Number (s) 04-O-14531 07-H-11827-RAP	(for Court's use) <div align="center"> FILED FEB 13 2008 <i>WOC</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div>
Bar # 228137 Counsel For Respondent Jason Kerlan, Esq. P.O. Box 975 Fresno, CA 93714 (559) 259-5959	<div align="center" data-cs="2" data-kind="parent">PUBLIC MATTER</div> <div data-kind="ghost"></div>	
Bar # 183897 In the Matter Of: Milton Kerlan, Jr. Bar # 39719 A Member of the State Bar of California (Respondent)	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **January 4, 1967**.
- (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 **16** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."



- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☐ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - ☒ costs to be paid in equal amounts prior to February 1 for the following membership years: **For the following two billings cycles following the effective date of the Supreme Court Order.** (hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - ☐ costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☒ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☒ State Bar Court case # of prior case **01-O-04925**
 - (b) ☒ Date prior discipline effective **October 21, 2003**
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code sections 6068(k) and 6103, Respondent failed to submit proof to the Office of Probation that Respondent had paid the restitution related to prior discipline.**
 - (d) ☒ Degree of prior discipline **Public Reprimand, 5-year term with restitution.**
 - (e) ☒ If Respondent has two or more incidents of prior discipline, use space provided below.

State Bar Court Case No. 94-O-13646 et al. Effective July 8, 1998, Rules of Professional Conduct, rule 3-110(A), Respondent was grossly negligent in the operation of his law office; Business and Professions Code section 6068(i), Respondent failed to respond to a State Bar investigation. Discipline: 1-year stayed suspension, 2-years probation with conditions involving restitution.

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

Additional aggravating circumstances:

n/a

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.

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

- (4) ☒ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.

Respondent has demonstrated remorse by making attempts to cure the noncompliance with reproof conditions by submitting corrected quarterly reports and becoming current with his restitution obligations.

- (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.

Respondent has suffered from multiple medical problems including major depressive disorder which is now being controlled by medications. Respondent is under the direct care and supervision of his treating physician for the past five years and continues to be under his care. See page 11.

- (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.

In March 17, 2003, Respondent's residence was destroyed in a fire and all his personal belongings were lost. See page 11.

- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances

Please see the Mitigating Circumstances section, infra, at page 10 - 11.

D. Discipline:

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of **3 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 **5 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 **90 days**.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct

- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) ☒ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) ☒ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
☐ No Ethics School recommended. Reason: _____
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

(10) ☒ The following conditions are attached hereto and incorporated:

☐ Substance Abuse Conditions

☒ Law Office Management Conditions

☒ Medical Conditions

☐ Financial Conditions

F. Other Conditions Negotiated by the Parties:

(1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**

☐ No MPRE recommended. Reason:

(2) ☒ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

(3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

(4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:

(5) ☐ **Other Conditions:**

Attachment language begins here (if any):

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

In the Matter of MILTON KERLAN, JR., 39719
Case Numbers 04-O-14531 & 07-H-11827 – RAP

Respondent Milton Kerlan, Jr. was admitted to the practice of law in the State of California on January 4, 1967, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

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, and has otherwise committed acts of misconduct warranting discipline.

The Cardenas Matter: Case No. 04-O-14531

FACTS

1. On May 13, 2004, Beatriz Cardenas (Cardenas) retained Respondent to undertake the criminal defense of her husband, Bernardo Rosas (Rosas). Respondent did not obtain a signed retainer agreement from Cardenas or Rosas for the representation, but Respondent did provide Cardenas a signed business card on which he wrote that he received \$1,000.00 from Cardenas for Rosas in advanced attorney fees. Respondent agreed to immediately work towards Rosas's release from custody and on his criminal defense.
2. On May 19, 2004, Respondent met with Cardenas and Cardenas paid Respondent \$5,000.00 in advanced attorney fees from Cardenas for Rosas. Respondent provided Cardenas a second signed business card on which he wrote that he received \$5,000.00 from Cardenas for Rosas in advanced attorney fees.
3. After his receipt of the \$6,000 advanced fees, in May 2004, Respondent met with Rosas while Rosas was in custody and Respondent researched the issues surrounding the criminal indictment. Respondent did not substitute into the criminal proceeding on behalf of Rosas and did not file any documents on Rosas's behalf.
4. A few weeks after hiring Respondent, Cardenas consulted with other counsel to possibly represent Rosas in the criminal proceeding and to find out what work Respondent had performed on Rosas's criminal proceeding. Other counsel met with Rosas at the detention center and determined that the cost of the representation would be beyond the amount Cardenas could afford. Other counsel informed Cardenas that Rosas received court-appointed counsel from the outset of the criminal proceeding. Based on this information, Cardenas and Rosas decided to fire Respondent.
5. In early June 2004, Cardenas contacted Respondent by telephone. She requested a refund of unearned advanced attorney fees paid to Respondent. It was only after the intervention of the State Bar that Respondent refunded the sum of \$3,000.00 to Cardenas on December 18, 2007, over three years later. Three-Thousand Dollars was a mutually agreed upon amount between Cardenas and Respondent.

6. Respondent did not earn all of the advanced fees paid by Cardenas on behalf of Rosas. Despite his receipt of the request for refund, Respondent did not refund any part of the \$6,000.00 advanced fees paid by Cardenas until December 18, 2007.

CONCLUSION OF LAW

7. By failing to refund promptly any of the unearned portion of the \$6,000.00 advanced fees to Cardenas, Respondent failed to refund promptly any part of a fee in advance that had not been earned in wilful violation of Rule of Professional Conduct 3-700(D)(2).

The Reprimand Violation Matter: Case No. 07-H-11827
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FACTS

8. On September 12, 2003, Respondent entered into a Stipulation Re: Facts, Conclusions of Law and Disposition ("Stipulation"), for a public reprimand, with conditions and restitution, with the State Bar of California in case no. 01-O-04925. The Hearing Department of the State Bar Court approved the Stipulation on October 1, 2003 and properly served it on Respondent on the same date. Respondent received the order, which became effective October 21, 2003.

9. Pursuant to the October 1, 2003 reprimand order, Respondent was ordered to comply with reprimand conditions for a period of five years: (1) to comply with the State Bar Act and Rules of Professional Conduct; (2) to report within ten (10) days to the Membership Records Office of the State Bar and to the 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; (3) to submit written quarterly reports to the Office of Probation each January 10, April 10, July 10 and October 10 of the condition period attached to the reprimand, certifying under penalty of perjury whether he has complied with the State Bar Act, Rules of Professional Conduct, and all conditions of the reprimand during the preceding calendar quarter and to file a final report containing the same information no earlier than twenty days prior to the expiration of the condition period attached to the reprimand and no later than the last day of said period; (4) to pay restitution to the Client Security Fund ("CSF") on behalf of Kimberly Jackson in the amount of \$6,666.67, plus 10% interest per annum accruing from November 18, 1998, within 54 months of the effective date of the disciplinary order, in monthly installments as specified in the attachment to the reprimand order, until paid in full, and provide proof of same to the Office of Probation; (5) to pay restitution to CSF on behalf of Irene Castellanos in the amount of \$5,000.00, plus 10% per annum accruing from September 30, 1994, within 54 months of the effective date of the disciplinary order, in monthly installments as specified in the attachment to the reprimand order, until paid in full, and provide proof of same to the Office of Probation; (6) restitution was to be paid monthly to CSF for both Kimberly Jackson and Irene Castellanos in minimum payments as follows: (a) Months 1 - 12: \$15 for each - (November 2003 - October 2004); (b) Months 13 - 24: \$40 for each - (November 2004 - October 2005); (c) Months 25 - 36: \$100 for each - (November 2005 - October 2006); (d) Months 37 - 48: \$ 150 for each - (November 2006 - October 2007; (e) the remainder must be paid completely by month 54: April 2008; and (f) to include satisfactory evidence of restitution in each quarterly report submitted to the Office of Probation.

10. On October 8, 2003, a Probation Deputy of the Office of Probation of the State Bar of California wrote a letter to Respondent reminding him of the terms and conditions of the reprobation. The Probation Deputy specifically informed Respondent of the obligation to file quarterly reports beginning January 10, 2004, and to submit proof of the monthly payment of restitution beginning November 10, 2003. Enclosed with the letter were, among other things, copies of the relevant portions of the Stipulation setting forth the conditions of the reprobation, a quarterly report instruction sheet, a quarterly report form, and an information sheet regarding submitting proof of payment of restitution. Respondent received this letter.

11. Respondent did not timely file the quarterly reports that were due no later than January 10, 2004, April 10, 2004, July 10, 2004, October 10, 2004, January 10, 2005, April 10, 2005, July 10, 2005 and October 10, 2005.

12. On October 1, 2005, Respondent entered into a Stipulation Re: Modification of Reprobation Order with the State Bar of California as to the restitution conditions ("modification order"), which was approved on October 12, 2005.

13. Pursuant to the October 12, 2005 modification order, Respondent was ordered to comply with the following modified conditions, as well as all previous conditions: (1) to make restitution to CSF on behalf of Kimberly Jackson in the principal amount of \$6,667.67, plus 10% interest per annum from November 18, 1996, in minimum monthly payments as follows: (a) beginning with the October 2005 reporting period, Respondent shall make minimum quarterly payments of \$200.00; (b) beginning with the October 2006 reporting period, Respondent shall make minimum quarterly payments of \$500.00; (c) Respondent shall complete all restitution no later than 30 days prior to the termination of his reprobation period, and shall provide satisfactory proof of completion with his final report; (2) to make restitution to CSF on behalf of Irene Castellanos in the principal amount of \$5,000.00, plus 10% interest per annum from September 30, 1994, in minimum monthly payments as follows: (a) beginning with the October 2005 reporting period, Respondent shall make minimum quarterly payments of \$200.00; (b) beginning with the October 2006 reporting period, Respondent shall make minimum quarterly payments of \$500.00; (c) Respondent shall complete all restitution no later than 30 days prior to the termination of his reprobation period, and shall provide satisfactory proof of completion with his final report; (3) to provide sufficient evidence of restitution payments in each quarterly report submitted to the Office of Probation.

14. On December 14, 2005, a Probation Deputy in the Office of Probation mailed a letter to Respondent informing him of his obligations under the modification order regarding restitution payments. The letter further reminded Respondent that the obligations of his original probation were still in effect, including the obligation to file quarterly reports on or before January 10, April 10, July 10, and October 10, of every year during the reprobation period. Respondent received this letter.

15. Respondent did not timely file the quarterly reports that were due January 10, 2006, April 10, 2006, July 10, 2006, October 10, 2006, and January 10, 2007.

16. On March 21, 2007, a Probation Deputy in the Office of Probation mailed a letter to Respondent. The letter reminded Respondent of his obligation to submit quarterly reports on or before January 10, April 10, July 10, and October 10, of every year during the reprobation period.

17. The letter requested that Respondent resubmit his quarterly reports due April 10, 2004, July 10, 2004, October 10, 2004, January 10, 2005, April 10, 2005, and October 10, 2005, which had been submitted untimely. They were also defective in that only fax copies had been received by the Office of Probation. The Office of Probation had not received reports with original signatures. The letter also advised that the October 10, 2005 quarterly report was defective because it had been signed early, on September 2005, and did not cover the entire quarterly period.
18. On April 20, 2007, a Probation Deputy in the Office of Probation mailed a letter to Respondent regarding his obligation to submit quarterly reports on or before January 10, April 10, July 10 and October 10, of every year during the period of the reprobation. The letter also reminded Respondent to resubmit the reports that were due April 10, 2004, July 10, 2004, October 10, 2004, January 10, 2005, April 10, 2005, and October 10, 2005, because those reports were defective when submitted. It also requested that Respondent resubmit his January 10, 2007 quarterly report, which had been rejected as defective because Respondent had not checked the appropriate boxes on the form. Respondent received this letter.
19. Respondent did not re-file the April 10, 2004, July 10, 2004, October 10, 2004, January 10, 2005, April 10, 2005, October 10, 2005, and January 10, 2007 quarterly reports that had been rejected as defective until October 1, 2007.
20. From November 21, 2003 through August 21, 2005, Respondent either did not make the restitution payments to CSF regarding Kimberly Jackson and Irene Castellanos, or he made them untimely.
21. Respondent did not timely submit proof of restitution paid. On some occasions, he represented that he had made payments when he knew, or in the absence of gross negligence, should have known that he had not in fact made those payments.

CONCLUSION OF LAW

22. By failing to timely file the required quarterly reports, failing to timely resubmit defective reports, by failing to pay or to timely pay restitution, by failing to timely submit proof of payment of restitution, and by making representations in those quarterly reports regarding restitution which he knew, or in the absence of gross negligence should have known were inaccurate, Respondent wilfully violated rule 1-110 of the Rules of Professional Conduct and California Business and Professions Code section 6106, respectively.

DISMISSALS

Case No.	Count	Alleged Violation
04-O-14531	ONE	Rules of Professional Conduct rule 3-110(A)
04-O-14531	THREE	Rules of Professional Conduct rule 4-100(B)(3)

MITIGATING CIRCUMSTANCES

In early 2003, Respondent began treatment for extreme depression, a high level of anxiety, diabetes, myocarditis (an inflammation of the hearth muscle), resulting in a permanent myopathy (damage to the heart muscle) and arterial fibrillation resulting in a decrease in cardiac output.

As a result of his multiple medical and personal problems Respondent had trouble concentrating and suffered from a progressive decrease in memory functioning. He had difficulty completing tasks; he suffered from headaches; he suffered from sleep disorders, including difficulty falling asleep, awakening in the middle of the night and sleeping only 3-4 hours a night. He has suffered from panic attacks. As a result, he was fatigued, worried, and lacked motivation. Effectively, these problems afflicted him from 2003 through and until mid-2007.

On March 17, 2003, Respondent's apartment building burned down and he lost all his possessions. On July 10, 2003, Respondent first started treating with Dr. Clark A. Feldman, who specializes in psychiatry and neurology. Dr. Feldman diagnosed Respondent with Major Depression without psychotic features at that time. Respondent's visits were only approximately once every 2-3 months at that period. Respondent was unable to receive all the medical care he needed because he then had no insurance and could not consistently see his providers, nor afford all the medications he needed. It was not until June 23, 2006 that he became eligible for Medicare. Since October 2006, he has been visiting Dr. Feldman at least once a month.

Until approximately mid 2007, Dr. Feldman was trying to balance the medication regimen in a way that best treated Respondent's conditions. At first, this was not entirely successful. Respondent was taking Wellbutrin 300 mg. for depression until August 2007. He was then prescribed Cymbalta 60 mg. for depression, as it also had the potential for reducing the nerve damage to his hands and feet from the diabetes. He has responded and is responding well to Cymbalta 60 mg., and his diabetes and heart condition are also under control from his consistent treatment and balance of medications. Respondent's doctor was able to balance the medication regimen in mid 2007. Respondent is currently taking the following medications: Byetta 10 mg.; Lisinopril 40 mg.; Digoxin .25 mg.; Coreg 12.5 mg.; Primidone 50 mg.; pironolactone 25 mg.; Sinvastatin 40mg.; Cozaar 25 mg.; Warfarin 5 mg.; Cymbalta 60 mg.;Ambien CR 12.5 mg.

The nature of the misconduct, the inability to follow-through or to handle paying bills, keeping appointments, or complying with the terms and conditions of his reproof, are related to the anxiety and depression.

Respondent's physical and mental states have improved because of medication which were successfully balanced in or about the Fall of 2007. He continues to be under consistent and regular medical and psychiatric care, which have brought his ability to function personally and professionally to a normal range.

SUPPORTING AUTHORITIES

The primary goals in assessing the proper level of discipline are the protection of the public, the courts and the integrity of the profession (Standard 1.2, *Standards for Attorney Sanctions for Professional Misconduct*; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Tarver v. State Bar* (1984) 37 Cal.3d 122, 133.)

The first count of Respondent's misconduct is that he failed to make a timely partial refund. In the second count, Respondent failed to comply timely or at all with conditions of his probation in connection with a reproof matter. Standard 1.6 prescribes that the sanctions shall be more or the most severe of the different applicable sanctions.

Respondent herein has been subject to discipline in two prior matters. Under standard 1.7(b), a third discipline matter ordinarily warrants disbarment “unless the most compelling mitigating circumstances clearly predominate.” And as to whether the mitigation is sufficiently compelling, Respondent bears the burden by clear and convincing evidence (*In re Rubens* (1995) 3 Cal. State Bar Ct. Rptr. 468.) Also, Respondent must show direct causation between his emotional and physical disabilities and the misconduct (in this case delay in making a refund to one client, and complying with conditions of his reproof in the other) see, for example, *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310, 316; *In the Matter of Dierling* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552, 560.)

At the time Respondent’s prior discipline became effective in October 2003, his physical and emotional difficulties were at an early stage.

Based on Respondent’s presentation of mitigating circumstances corroborated by a doctor’s report, Respondent has, for the purposes of this stipulation, demonstrated sufficiently compelling mitigation. Thus, case law allows for deviation from the guidelines where to do otherwise would manifest an injustice. (See *In re Silverton* (2005) 36 Cal.4th 81; *In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980.)

In this case, the nature of the misconduct appears to be directly related to the medical and psychological conditions which beset Respondent, and which either have been successfully treated or are otherwise being managed by medication. Pursuant to the conditions attendant to this matter, Respondent will continue under the treatment of a psychiatrist unless and until the psychiatrist determines that it is no longer necessary and Respondent makes the appropriate motion for relief.

COSTS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of January 25, 2008, the costs in this matter are \$5,290.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

PENDING PROCEEDINGS

The disclosure date referred to, on page one paragraph A.(7), was January 25, 2008.

STATE BAR ETHICS SCHOOL

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

Medical Conditions

- a. ☐ Unless Respondent has been terminated from the Lawyer Assistance Program ("LAP") prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.
- b. ☐ Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of _____ times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for _____ days or months or _____ years or, the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

- c. ☒ Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

Respondent has been under psychiatric care from a duly licensed psychiatrist (Clark A. Feldman, M.D. CA Lic. No.: G32145, 337 S. Beverly Drive, Ste 211, Beverly Hills, CA 90212) at his own expense since July 10, 2003. He has seen this psychiatrist one time per month since October 2006. Respondent shall continue treatment with Dr. Feldman, once a month and shall furnish

evidence to the Office of Probation that he is so complying with each quarterly report. For example, a report from Dr. Feldman that Respondent has been seen at least once per month and that Respondent is complying with all treatment recommendations will suffice. Treatment must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in Respondent's condition, Respondent or the Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

If Respondent changes doctors for any reason, Respondent must first obtain approval of the new doctor from either the Office of Chief Trial Counsel or the Office of Probation of the State Bar of California.

(Do not write above this line.)

In the Matter of
Milton Kerlan, Jr., 39719

Case number(s):
04-O-14531 & 07-H-11827-RAP

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>2/2/08</u>	<u>Milton Kerlan Jr</u>	<u>Milton Kerlan, Jr.</u>
Date	Respondent's Signature	Print Name
<u>2/1/08</u>	<u>Jason Kerlan</u>	<u>Jason Kerlan</u>
Date	Respondent's Counsel Signature	Print Name
<u>2/4/08</u>	<u>Jean Cha</u>	<u>Jean Cha</u>
Date	Deputy Trial Counsel's Signature	Print Name

In the Matter Of
Milton Kerlan, Jr., 39719

Case Number(s):
04-O-14531 & 07-H-11827-RAP

ORDER

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

- ☐ The stipulated facts and disposition are APPROVED and the DISCIPLINE
RECOMMENDED to the Supreme Court.
- ☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth
below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.


The word "not" is stricken from paragraph A, sub. (3) [page 1], to make
clear that the 16 page count includes this order.

The following sentence is added at the bottom of the medical conditions:
"The approval by the state Bar of a proposed new doctor shall not be
unreasonably withheld."

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.)**

2/8/08

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 February 13, 2008, 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:

**JASON M KERLAN
P O BOX 975
FRESNO CA 93714**

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

JEAN CHA, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **February 13, 2008.**


Angela Owens-Carpenter
Case Administrator
State Bar Court