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DEC 17 2013

STATE BAR COURT  
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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

**PUBLIC MATTER**

In the Matter of

**MILTON KERLAN, JR.,**

**Member No. 39719,**

A Member of the State Bar.

) Case No.: **12-N-16026-DFM**

) **DECISION AND ORDER OF**  
) **INVOLUNTARY INACTIVE**  
) **ENROLLMENT**

Respondent Milton Kerlan, Jr. (Respondent) was charged with willfully disobeying or violating a court order requiring compliance with California Rules of Court, rule 9.20. When he failed to file a timely response in this proceeding, his default was entered. The Office of the Chief Trial Counsel (State Bar) then filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC) and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)



In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to practice law in California on January 4, 1967, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On December 11, 2012, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, addressed to his membership records address. The NDC notified Respondent that his failure to file a timely response to the NDC would result in a disbarment recommendation. (Rule 5.41.)

Respondent had actual notice of the proceedings. On December 14, 2012, Respondent confirmed receipt of the NDC served earlier by the State Bar. On January 22, 2013, Respondent participated in a status conference held before the court. On January 24, 2013, the assigned deputy trial counsel called Respondent to inquire if Respondent intended to file a response to the NDC. Respondent informed the deputy trial counsel that he would not be filing a response to the NDC.

Despite having actual notice of this proceeding, Respondent failed to file a response to the NDC. On January 31, 2013, the State Bar filed and properly served a motion for entry of default on Respondent by certified mail, return receipt requested, to his membership records address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to Respondent and reflecting that Respondent had actual knowledge of this proceeding. (Rule 5.80.) The motion also notified Respondent that if he did not timely

move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on February 22, 2013. The order entering the default was properly served on Respondent at his membership records address by certified mail, return receipt requested. The order was returned to the State Bar Court by the United States Postal Service as "UNCLAIMED" and "UNABLE TO FORWARD." The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On September 11, 2013, the State Bar filed and properly served the petition for disbarment on Respondent by certified mail, return receipt requested, to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) Respondent has not contacted the State Bar since February 5, 2013, when Respondent left a voicemail message to the assigned deputy trial counsel; (2) there are no other disciplinary matters pending against Respondent; (3) Respondent has five prior records of discipline; and (4) the Client Security Fund has paid \$6,666.67 on one reimbursement claim filed against Respondent. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision in mid-October 2013.

Respondent has five prior records of discipline:<sup>3</sup>

- (1) Pursuant to a Supreme Court order filed on June 8, 1998, Respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for two years subject to conditions. Respondent stipulated in that prior disciplinary matter to culpability

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<sup>3</sup> The court takes judicial notice, pursuant to Evidence Code section 452, subdivision (d), that Respondent had five prior records of discipline, admits the relevant records into evidence, and directs the Clerk to include copies in the record of this case.

and discipline for gross negligence in the operation of his law office (five matters) and failing to cooperate with a State Bar investigation (three matters).

- (2) Pursuant to an order of the State Bar Court filed on October 1, 2003, Respondent was publicly reprovved with conditions for failing to comply with probation conditions, and failing to obey a court order. Respondent entered into a stipulation in this prior disciplinary matter.
- (3) Pursuant to a Supreme Court order filed on June 6, 2008, Respondent was suspended for three years and until he provides proof of his rehabilitation, fitness to practice and learning and ability in the general law, the execution of which was stayed, and he was placed on probation for five years, subject to conditions, including an actual suspension of 90 days. Respondent stipulated in the prior disciplinary matter to culpability and discipline for (1) failing to promptly refund unearned advanced fees paid by his client in one client matter, and (2) failing to comply with reprovral conditions and moral turpitude due to misrepresentations in probation reports.
- (4) Pursuant to a Supreme Court order filed on May 17, 2012, Respondent was suspended for three years, execution of which was stayed, and he was placed on probation for four years, subject to conditions, including that he be suspended for a minimum of the first two years of probation and until he provides proof of his rehabilitation, fitness to practice and learning and ability in the general law. Respondent stipulated in the prior disciplinary matter to culpability and discipline for failing to comply with reprovral conditions, and failing to comply with all conditions attached to a disciplinary probation.
- (5) Pursuant to a Supreme Court order filed on August 30, 2012, and amended on September 13, 2012, Respondent's probation was revoked and he was suspended from the practice of law for a minimum of three years and until he provides proof of his rehabilitation, fitness to practice and learning and ability in the general law. The court found that Respondent failed to comply with certain conditions attached to his earlier disciplinary probation.

#### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of Respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) The factual allegations in the NDC support the conclusion that Respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of

discipline. (Rule 5.85(E)(1)(d).) Respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by failing to file a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of the May 17, 2012, Supreme Court order requiring compliance with California Rules of Court, rule 9.20.

### **Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied and Respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) Respondent had actual notice of this proceeding as Respondent confirmed receipt of the NDC, appeared at a status conference, and called the deputy trial counsel regarding this matter;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC, deemed admitted by the entry of the default, support a finding that Respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, Respondent failed to participate in this disciplinary proceeding. Given the number of times that Respondent has previously been disciplined by this court and as set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

### **RECOMMENDATION**

#### **Disbarment**

The court recommends that Respondent **Milton Kerlan, Jr.**, State Bar number 39719, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

**California Rules of Court, Rule 9.20**

The court also recommends that Respondent be ordered to comply with the requirements of 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**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being 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 **Milton Kerlan, Jr.**, State Bar number 39719, 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. (Rule 5.111(D).)

Dated: December 16, 2013

  
DONALD F. MILES  
Judge of the State Bar Court

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); 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 December 17, 2013, I deposited a true copy of the following document(s):

### DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

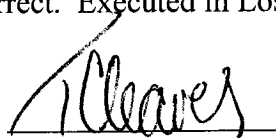
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**MILTON KERLAN, JR.**  
**1550 W ASHLAN AVE APT 138**  
**FRESNO, CA 93705**

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

**KELSEY BLEVINGS, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 17, 2013.

  
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Tammy Cleaver  
Case Administrator  
State Bar Court