

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-PM-12844-RAH (S162323)
)	
MILTON KERLAN, JR.)	ORDER GRANTING MOTION TO
)	REVOKE PROBATION; DISCIPLINE
Member No. 39719)	RECOMMENDATION; INVOLUNTARY
)	INACTIVE ENROLLMENT ORDER.
A Member of the State Bar.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent Milton Kerlan, Jr. did not participate in this proceeding although he was properly served with the motion to revoke probation by certified mail, return receipt requested, and by regular mail at his State Bar membership records address.

On June 6, 2008, the California Supreme Court filed an order, S162323, accepting the State Bar Court's discipline recommendation, including specified probation conditions, in case nos. 04-O-14531; 07-H-11827 (Cons.). It became effective on July 6, 2008 (Rule 9.18(a), California Rules of Court) and was properly served on respondent.¹ A copy of the stipulation and the State Bar Court's order approving same had previously been properly served on respondent's then-counsel, Jason Kerlan, on February 13, 2008.

¹In the absence of evidence to the contrary, the court finds that the Clerk of the Supreme Court performed his or her duty by transmitting a copy of the Supreme Court's order to respondent immediately after its filing. (Rule 8.532(a), Cal. Rules of Court; Evid. C. §664; *In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.)

On July 2 and August 1, 2008, the Office of Probation sent respondent reminder letters regarding the probation conditions, among other things, at his official address. Neither letter was returned as undeliverable or for any other reason. Moreover, on February 23, 2012, the Office of Probation sent respondent's counsel a reminder letter regarding the probation conditions.

The court finds by a preponderance of the evidence pursuant to Business and Professions Code section 6093, subdivisions (b) and (c) and rule 5.311, Rules Proc. of State Bar,² that respondent did not comply with the following probation conditions:

(a) During the period of probation, submitting a written report to the Office of Probation on January 10, April 10, July 10 and October 10 of each year or part thereof during which the probation is in effect stating under penalty of perjury that he has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report). Respondent did not submit the quarterly reports due on the 10th of July and October 2011, until July and October 11, 2011, respectively, and did not submit the ones due on the 10th of January and April 2012;

(b) During the period of probation, submitting a report from his treating psychiatrist indicating that respondent has been seen at least once per month and is complying with all treatment recommendations (psych report). Respondent did not submit psych reports to the Office of Probation for the 10th of April, July and October 2011; and January and April 2012;

(c) During the period of probation, provide to the probation monitor such reports as may be requested in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent has not furnished request reports to the probation monitor and has not fully cooperated with her. For example, respondent did not provide her with copies of certain quarterly reports or with contact information for his new therapist.

² Future references to section and rule are to the Business and Professions Code and Rules of Professional Conduct, respectively.

AGGRAVATING AND MITIGATING FACTORS

Respondent has four prior records of discipline. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,³ std. 1.2(b)(i).)⁴ In S162323, the discipline underlying the instant matter, respondent and the State Bar stipulated to culpability in one client matter for violating rule 3-110(A) (not performing competently - one count) and also for violating rule 1-110 and section 6106 (not complying with reproof conditions and making misrepresentations). Aggravation consisted of prior disciplinary records. Mitigating factors were candor and cooperation; remorse; emotional/physical difficulties; and severe financial stress. Effective July 6, 2008, discipline was imposed consisting of stayed suspension for three years and until respondent provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii); and five years' probation on conditions including 90 days' actual suspension.

In State Bar Court case nos. 11-H-10679; 11-O-10798 (Cons.), filed November 1, 2011, discipline has been recommended consisting of three years' stayed suspension and four years' probation on conditions including actual suspension for two years and until respondent provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii). Respondent and the State Bar stipulated to culpability of violations of section 6068, subdivision (k) and rule 1-110 (not complying with probation and reproof conditions, respectively). Aggravating factors included prior discipline and a pattern of misconduct. Mitigating circumstances included no harm; candor and cooperation;

³ Future references to standard or std. are to this source.

⁴ The court takes judicial notice of respondent's four prior disciplinary records discussed below and each is marked as an exhibit and admitted into evidence.

and severe financial stress. This disciplinary recommendation is not final as it is pending with the California Supreme Court but is considered a prior disciplinary record. (Rule 5.106(A)(2).)

In State Bar Court case no. 01-O-04925, respondent and the State Bar stipulated to culpability of violations of sections 6068, subdivision (k) and 6103 (noncompliance with probation conditions). Aggravation consisted of one prior disciplinary record. Mitigating factors were candor and cooperation and severe financial stress. The public reproof with conditions of five years' duration was effective October 22, 2003.

In S069081 (94-O-13646; 94-O-13650; 94-O-13652; 94-O-14374; 96-O-06375; 94-O-18405; 94-O-18455; 95-O-10619 (Cons.)), respondent and the State Bar stipulated to culpability in five client matters for violating rule 3-110(A) (not performing competently - five counts) and section 6068, subdivision (i) (not cooperating with State Bar investigation - three counts). No aggravating factors were found. Mitigating factors included candor and cooperation; remorse; and good faith. Discipline consisting of one year's stayed suspension and two years' probation was imposed effective July 8, 1998.

Respondent engaged in multiple acts of misconduct. (Std. 1.2(b)(ii).)

Respondent significantly harmed the administration of justice as his noncompliance with the probation conditions made it more difficult for the State Bar to appropriately monitor him in seeking to insure the protection of the public and the courts. (Std. 1.2(b)(iv).)

Further, he demonstrated indifference toward rectification of or atonement for the consequences of his misconduct by not complying despite reminders from the Office of Probation. (Std. 1.2(b)(v).)

It is respondent's burden to establish mitigating factors, but, since he did not participate in this proceeding, none is found.

DISCUSSION

The extent of the discipline to recommend is dependent, in part, on the seriousness of the probation violation and respondent's recognition of the misconduct and the efforts to comply with the conditions. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.) Having considered these factors and the Office of Probation's contentions, the court believes that actual suspension for three years and until respondent complies with standard 1.4(c)(ii) is sufficient to protect the public in this instance. Respondent was aware of the terms and conditions of his disciplinary probation, yet did not comply with them despite reminders from Office of Probation. Accordingly, the motion to revoke probation is GRANTED.

DISCIPLINE RECOMMENDATION

The court recommends that the probation of respondent Milton Kerlan, Jr., previously ordered in Supreme Court case matter S162323 (State Bar Court case nos. 04-O-14531; 07-H-11827 (Cons.)), be revoked; that the previous stay of execution of the suspension be lifted, and that respondent is suspended from the practice of law for a minimum of three years, and that he will remain suspended until he provides proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law before suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)⁵

It is also recommended that the Supreme Court order respondent to comply with rule 9.20(a) of the California Rules of Court within 30 calendar days after the effective date of the Supreme Court order in the present proceeding and to file the affidavit provided for in rule

⁵ This level of discipline is the maximum possible consistent with rule 5.312, Rules Proc. of State Bar, and is the court's disciplinary recommendation whether or not the disciplinary recommendation pending in State Bar Court case nos. 11-H-10679; 11-O-10798 (Cons.) is accepted by the Supreme Court. (Rule 5.106(E).)

9.20(c) within 40 calendar days after the effective date of the order showing respondent's compliance with said order.⁶

Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

It is not recommended that respondent be ordered to successfully complete the Multistate Professional Responsibility Examination as he was ordered to do so in Supreme Court order S192444 (State Bar Court case nos. 04-O-14531; 07-H-11827 (Cons.))

COSTS

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER REGARDING INACTIVE ENROLLMENT

Respondent is involuntarily enrolled inactive pursuant to Business and Professions Code section 6007, subdivision (d). The requirements of section 6007, subdivision (d)(1) have been met: Respondent was subject to a stayed suspension, was found to have violated probation conditions, and it has been recommended that respondent be actually suspended due to said violations.

IT IS THEREFORE ORDERED that respondent Milton Kerlan, Jr. be involuntarily enrolled as an inactive member of the State Bar of California pursuant to Business and

⁶Respondent is required to file a rule 9.20(c) affidavit even if he has no clients. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 130.)

Professions Code section 6007, subdivision (d). This enrollment shall be effective three days following service of this order.

IT IS ALSO ORDERED that his inactive enrollment be terminated as provided by Business and Professions Code section 6007, subdivision (d)(2).

IT IS RECOMMENDED that respondent's actual suspension in this matter commence as of the date of his inactive enrollment pursuant to this order. (Business and Professions Code section 6007, subdivision (d)(3).)

Dated: June _____, 2012

RICHARD A. HONN
Judge of the State Bar Court