

DEC 10 2003

STATE BAR COURT
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THE STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

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In the Matter of)
DUDLEY RANDALL KERR,)
Member No. 167402,)
A Member of the State Bar.)

Case No. 03-N-03165-RAH
DECISION INCLUDING DISBARMENT
RECOMMENDATION AND ORDER OF
INVOLUNTARY INACTIVE
ENROLLMENT

INTRODUCTION

This matter was initiated by the Office of the Chief Trial Counsel of the State Bar of California ("OCTC") alleging that Respondent Dudley Randall Kerr failed to comply with rule 955, California Rules of Court ("CRC 955") as ordered by the Supreme Court. OCTC was represented by William F. Stralka. Respondent did not participate either in person or by counsel.

For the reasons stated below, it is recommended that Respondent be disbarred.

PROCEDURAL HISTORY

The Notice of Disciplinary Charges ("NDC") was filed and properly served on Respondent on August 25, 2003, by certified mail, return receipt requested, at the address shown on the official membership records of the State Bar ("official address"). (Business and Professions Code section 6002.1(c)¹; Rules 60(b) and 583, Rules Proc. of State Bar ("rule(s)").) Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.) This correspondence was returned as undeliverable by the United States Postal

¹Unless otherwise stated, all future references to "section(s)" are to the California Business and Professions Code.

1 Service ("USPS") with the notation "Return to sender. Attempted, not known." The envelope
2 also bore a handwritten notation stating "moved."

3 On August 28, 2003, the State Bar Court properly served Respondent by first-class mail,
4 postage prepaid at his official address with notice scheduling a status conference on September
5 22, 2003. This correspondence was returned as undeliverable.

6 Respondent did not appear at the September 22 status conference. On September 23,
7 2002, Respondent was properly served at his official address with a post-status conference order
8 indicating that the Court would entertain a motion for entry of Respondent's default. This
9 correspondence was returned as undeliverable.

10 Respondent did not file a response to the NDC. On September 24, 2003, OCTC filed and
11 properly served on Respondent a motion for entry of default by certified mail, return receipt
12 requested, at his official address. (Rule 200(a), (b).) The motion advised Respondent that OCTC
13 would seek minimum discipline of disbarment if he was found culpable. (Rule 200(a)(3).)

14 Respondent did not respond to the default motion. Orders entering Respondent's default
15 and involuntarily enrolling him inactive were filed and properly served on him on October 15,
16 2003, by certified mail, return receipt requested at his official address. This document advised
17 Respondent, among other things, that he was enrolled inactive pursuant to section 6007(e)
18 effective three days after service of the order. The signed return receipt notes delivery of this
19 correspondence on October 27, 2003.

20 The case was submitted for decision on November 3, 2003, after OCTC waived hearing
21 and filed a brief regarding discipline.

22 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

23 The Court's findings are based on the allegations contained in the NDC as they are
24 deemed admitted and no further proof is required to establish the truth of those allegations.
25 (Section 6088; Rule 200(d)(1)(A).) The findings are also based upon matters admitted into
26 evidence or judicially noticed.

27 Respondent was admitted to the practice of law in California on December 13, 1993, and
28 has been a member of the State Bar at all times since.

1 On May 23, 2003, the California Supreme Court filed an order ("May 23, 2003, order") in
2 Supreme Court case number S113866 (State Bar Court nos. 01-O-04082; 02-O-10959 (Cons.))
3 imposing discipline on Respondent including the following: one year stayed suspension; actual
4 suspension of 90 days and until he complied with rule 205, Rules Proc. of State Bar. If his actual
5 suspension reached two years or more, he was to comply with standard 1.4(c)(ii), Standards for
6 Attorney Sanctions for Professional Misconduct. The Supreme Court further ordered
7 Respondent to comply with CRC 955, subdivisions (a) and (c), within 30 and 40 days,
8 respectively, after the effective date of the May 23, 2003, order. The May 23, 2003, order was
9 effective on June 22, 2003. (Rule 953(a), Cal. Rules of Court.) Respondent was to comply with
10 CRC 955(a) no later than July 22, 2003, and with CRC 955(c) no later than August 1, 2003.

11 Upon filing of the May 23, 2003, order, the Office of the Clerk of the Supreme Court of
12 California sent Respondent a copy of the said order imposing discipline and directing his
13 compliance with CRC 955.²

14 A copy of the May 23, 2003, order also was attached to the NDC in the instant
15 proceeding.

16 As of August 25, 2003, Respondent had not filed with the State Bar Court the affidavit
17 required by CRC 955(c). He still has not done so.³ He has offered no explanation to this Court
18 for his failure to comply with CRC 955(c).

19 Based on the foregoing, it has been proved by clear and convincing evidence that
20 Respondent wilfully violated the May 23, 2003, order directing his compliance with CRC 955.⁴
21 This constitutes a violation of section 6103, which requires attorneys to obey court orders.

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24 ²See, rule 24(a), California Rules of Court, and Evidence Code section 664.

25 ³Pursuant to Evidence Code section 452(d), the Court judicially notices that its records
26 still do not contain a CRC 955(c) affidavit from Respondent.

27 ⁴"Wilfulness" in the context of CRC 955 does not require actual knowledge of the
28 provision which is violated. The Supreme Court has disbarred an attorney whose failure to keep
his official address current prevented him from learning that he had been ordered to comply with
CRC 955. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

1 **FINDINGS AND CONCLUSIONS AS TO MITIGATING CIRCUMSTANCES**

2 Respondent did not participate in these proceedings or present any mitigating
3 circumstances pursuant to standard 1.2(e), Rules of Procedure of the State Bar of California, Title
4 IV, Standards for Attorney Sanctions for Professional Misconduct, ("standards"). Since
5 Respondent bears the burden of establishing mitigation by clear and convincing evidence, the
6 Court has been provided no basis for finding mitigating factors.

7 **FINDINGS AND CONCLUSIONS AS TO AGGRAVATING CIRCUMSTANCES**

8 Respondent's prior discipline record is an aggravating circumstance. (Standard 1.2(b)(i).)
9 As previously discussed, in S113866, the Supreme Court imposed discipline including actual
10 suspension of 90 days and until he returned a client's file and complied with rule 205, among
11 other things. In two client matters, Respondent was found culpable of violating rules 3-110(A)
12 and 3-700(D)(1) of the Rules of Professional Conduct ("RPC"), and sections 6068(i) and (m). In
13 one of the client matters, he was also found culpable of wilfully violating RPC 3-700(A)(2).
14 Three aggravating factors were found: multiple acts of misconduct; client harm; and failure to
15 participate in the proceedings prior to the entry of default. No mitigating circumstances were
16 found because Respondent defaulted in this proceeding.

17 In S118196 (State Bar Court case no. 01-O-5000), effective October 22, 2003, the
18 Supreme Court imposed discipline consisting of one year stayed suspension and two years
19 probation with conditions for violating RPC 3-110(A) and section 6068(i) in one client matter.
20 In aggravation, his prior record of discipline was noted as were multiple acts of misconduct,
21 client harm and failure to participate in the proceeding prior to the entry of default. Again, no
22 mitigating circumstances were found since Respondent defaulted in this proceeding as well.⁵

23 Respondent demonstrated indifference toward rectification of or atonement for the
24 consequences of his misconduct by failing to comply with CRC 955(c) even after the NDC in the
25

26 ⁵The Court judicially noticed its records regarding Respondent's prior disciplinary
27 matters. OCTC did not submit copies of these documents although it is the better practice to do
28 so and despite the Court's prior admonition. (See, *In the Matter of Dudley Randall Kerr*, State
Bar Court case no. 01-O-05000-RAH, filed June 2, 2003, at footnote 9, pages 7 - 8.)

1 instant proceeding was filed. (Standard 1.2(b)(v).)

2 Respondent's failure to participate in proceedings prior to the entry of default is also an
3 aggravating factor. (Standard 1.2(b)(vi).) He has demonstrated his contemptuous attitude toward
4 disciplinary proceedings as well as his failure to comprehend the duty of an officer of the court to
5 participate therein, a serious aggravating factor. (*In the Matter of Stansbury* (Review Dept.
6 2000) 4 Cal. State Bar Ct. Rptr. 103, 109 - 110.)

7 **LEVEL OF DISCIPLINE**

8 The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to
9 protect the public, to preserve public confidence in the profession, and to maintain the highest
10 possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111;
11 *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

12 Respondent's wilful failure to comply with CRC 955(c) is extremely serious misconduct
13 for which disbarment is generally considered the appropriate sanction. *Bercovich v. State Bar*
14 (1990) 50 Cal.3d 116,131; rule 955(d), Cal. Rules of Court.) Disbarment has been consistently
15 imposed by the Supreme Court as the sanction for noncompliance with CRC 955. *Bercovich v.*
16 *State Bar* (1990) 50 Cal.3d at p. 131; *Lydon v. State Bar* (1988) 45 Cal.3d at p. 1188; *Powers v.*
17 *State Bar* (1988) 44 Cal.3d at p. 342.)

18 Respondent has demonstrated an unwillingness to comply with the professional
19 obligations and rules of court imposed on California attorneys although he has been given several
20 opportunities to do so. He failed to participate in this proceeding and did not comply with CRC
21 955(c). More importantly, Respondent's failure to comply with CRC 955 undermines its
22 prophylactic function in ensuring that all concerned parties learn about an attorney's suspension
23 from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d at p. 1187.)

24 Respondent's disbarment is necessary to protect the public, the courts and the legal
25 community, to maintain high professional standards and to preserve public confidence in the
26 legal profession. It would undermine the integrity of the disciplinary system and damage public
27 confidence in the legal profession if Respondent were not disbarred for his unexplained wilful
28 disobedience of the Supreme Court's order.

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DISCIPLINE RECOMMENDATION

IT IS HEREBY RECOMMENDED that Respondent Dudley Randall Kerr be DISBARRED from the practice of law in the State of California and that his name be stricken from the rolls of attorneys in this state.

It is also recommended that the Supreme Court order Respondent to comply with rule 955, paragraph (a), of the California Rules of Court within 30 calendar days of the effective date of the Supreme Court order in the present proceeding, and to file the affidavit provided for in paragraph (c) within 40 days of the effective date of the order showing his compliance with said order.

COSTS

The Court recommends that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10, and that those costs be payable in accordance with section 6140.7.

ORDER REGARDING INACTIVE ENROLLMENT

It is ordered that Respondent be transferred to involuntary inactive enrollment status pursuant to section 6007(c)(4). The inactive enrollment shall become effective three days from the date of service of this order and shall terminate upon the effective date of the Supreme Court's order imposing discipline herein or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: December 10, 2003



RICHARD A. HONN
Judge of the State Bar Court

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

I am a Case Administrator of the State Bar Court. 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 10, 2003, I deposited a true copy of the following document(s):

**DECISION INCLUDING DISBARMENT RECOMMENDATION AND
ORDER OF INVOLUNTARY INACTIVE ENROLLMENT, filed December 10,
2003**

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

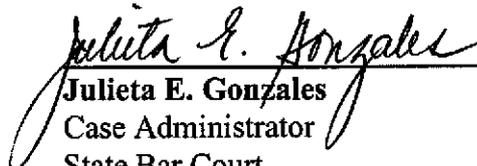
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

DUDLEY RANDALL KERR ESQ
#1-172
8205 SANTA MONICA BLVD
WEST HOLLYWOOD, CA 90046-5912

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

William F. Stralka, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 10, 2003.



Julieta E. Gonzales
Case Administrator
State Bar Court