

**PUBLIC MATTER**

**FILED**

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**OCT 11 2016**

**STATE BAR COURT OF CALIFORNIA**

**STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO**

**HEARING DEPARTMENT – LOS ANGELES**

In the Matter of	)	Case No.: <b>15-O-12259-LMA</b>
	)	
<b>B. KWAKU DUREN,</b>	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
<b>Member No. 147789,</b>	)	<b>ENROLLMENT</b>
	)	
<u>A Member of the State Bar.</u>	)	

In this matter, respondent B. Kwaku Duren (Respondent) was charged with three counts of misconduct involving a single client matter. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of Chief Trial Counsel of the State Bar of California (State Bar) 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 90 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(F)(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 this state on August 1, 1990, and has been a member since then.

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

On February 25, 2016, the State Bar properly filed and served an NDC on Respondent by certified mail, return receipt requested, at his membership records address.<sup>3</sup> The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

In addition, Respondent had actual notice of this proceeding. On March 29, 2016, the State Bar spoke with Respondent by telephone. The State Bar reminded Respondent that his response to the NDC was overdue and informed him that the State Bar would soon be seeking his default. The State Bar also advised Respondent that the ultimate consequence of default is disbarment. Respondent explained to the State Bar that he did not intend to participate in this proceeding, despite the potential outcome.

Respondent subsequently failed to file a response to the NDC. On March 30, 2016, the State Bar filed and properly served a motion for entry of Respondent's default. The motion included a supporting declaration of reasonable diligence by the deputy trial counsel declaring the additional steps taken to provide notice to Respondent. (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

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<sup>3</sup> The State Bar did not indicate whether a signed return receipt for the NDC was received from Respondent. (See rule 5.80(B).)

was entered on April 15, 2016. The order entering default was served on Respondent at his membership records address by certified mail, return receipt requested. 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 also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On July 28, 2016, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with Respondent since the default was entered; (2) Respondent has other disciplinary matters pending; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from Respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on August 23, 2016. On September 29, 2016, this matter was reassigned to the undersigned judge, but remained under submission.

Respondent has been disciplined on one prior occasion. Pursuant to a Supreme Court order filed on April 10, 2013, Respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for two years subject to conditions including his suspension from the practice of law for 30 days. In this prior discipline, Respondent stipulated that he, in a single client matter, failed to: (1) perform legal services with competence; (2) promptly refund unearned fees; (3) provide an accounting; and (4) inform his client of significant developments.

#### **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.) As set

forth below in greater detail, 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(F)(1)(d).)

**Case No. 15-O-12259 – The Reddy Matter**

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) by failing to respond to discovery requests, failing to meet and confer, failing to respond to motions to compel, and failing to appear on his client’s behalf at the hearing regarding the motions to compel.

Count Two – Respondent willfully violated rule 1-320(A) of the Rules of Professional Conduct (sharing fees with a non-lawyer) by willfully sharing legal fees with a person who is not a lawyer.

Count Three – Respondent willfully violated Business and Professions Code section 6103 (failure to obey a court order) by failing to comply with a September 12, 2013 order compelling discovery and ordering payment of sanctions in *Reddy v. Siva, et al.*, Los Angeles County Superior Court case No. VC060823.

**Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(F) 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 the proceedings prior to the entry of his default;
- (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. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

### RECOMMENDATIONS

#### Disbarment

The court recommends that respondent B. Kwaku Duren 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 B. Kwaku Duren, State Bar number 147789, 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: October 11, 2016

  
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LUCY ARMENDARIZ  
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 San Francisco, on October 11, 2016, 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 San Francisco, California, addressed as follows:

B. KWAKU DUREN  
LAW OFFICE OF B. KWAKU DUREN  
420 N POINSETTIA AVE  
COMPTON, CA 90221

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

WILLIAM S. TODD, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on October 11, 2016.



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Mazie Yip  
Case Administrator  
State Bar Court