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STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO

|   |   |                                   |
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| In the Matter of                              | ) | Case Nos. 16-O-14788 (16-O-15249; |
|   | ) | 16-O-18196; 17-O-04207)-LMA       |
| DEREK WILLIAM ST. PIERRE,                     | ) |                                   |
|   | ) | DECISION AND ORDER OF             |
|   | ) | INVOLUNTARY INACTIVE              |
|   | ) | ENROLLMENT                        |
| <u>A Member of the State Bar, No. 200131.</u> | ) |                                   |

Respondent Derek William St. Pierre (Respondent) was charged with violating the Business and Professions Code<sup>1</sup> and the State Bar Rules of Professional Conduct. He failed to participate, either in person or through counsel in this proceeding, and his default was entered. The Office of Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>2</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>3</sup>

<sup>1</sup> All statutory references are to the Business and Professions Code.

<sup>2</sup> Except as otherwise indicated, all references to rules are to this source.

<sup>3</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, the court must deny the petition for disbarment, vacate the

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, 1999, and has been a member of the State Bar of California since that time.

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

On August 21, 2017, the State Bar filed and properly served a notice of disciplinary charges (NDC) on Respondent at his membership-records address by certified mail, return receipt requested. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) On August 21, 2017, the State Bar also sent a courtesy copy of the NDC to Respondent at his membership-records address by first-class mail, regular delivery. On August 31, 2017, the United States Postal Service (Postal Service) returned both the service copy of the NDC and the courtesy copy of the NDC to the State Bar as undeliverable.

Thereafter, the State Bar undertook the following actions in an attempt to provide Respondent with actual knowledge of the present disciplinary proceeding. On August 31, 2017, the State Bar sent an email to Respondent at his membership-records email address. In that email, the State Bar notified Respondent that it had filed disciplinary charges against him and provided Respondent with the case number. On August 31, 2017, and again on September 19, 2017, the State Bar attempted to contact Respondent by telephoning Respondent at his membership-records telephone number. On both occasions, the State Bar received a recording stating that the number was not working.

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default, and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

On September 1, 2017, the State Bar called Respondent's cell phone and left a voicemail message for Respondent notifying him that it filed an NDC against him on August 21, 2017; that the copies of the NDC that were sent to Respondent at his membership-records address were returned as undeliverable; and that his failure to respond to the NDC could result in his disbarment. On September 1, 2017, the State Bar also performed an Internet search for Respondent on LexisNexis.

On September 19, 2017, the State Bar sent a second email to Respondent at his membership-records email address. In that second email, the State Bar notified Respondent that it intended to seek the entry of his default because he had not filed a response to the NDC. On September 20, 2017, the State Bar performed an Internet search for Respondent on Google.com. Thereafter, the State Bar attempted to contact Respondent at a new telephone number and new email address that it located for Respondent during one of its Internet searches.

Respondent failed to file a response to the NDC. On September 22, 2017, the State Bar filed and properly served a motion for entry of default on Respondent at his membership-records address by certified mail, return receipt requested. Thereafter, the Postal Service returned the motion to the State Bar marked: "Return to Sender, Unable to Forward." The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence from the assigned State Bar Deputy Trial Counsel declaring the additional steps the State Bar took in an attempt 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 for entry of default, and his default was entered on October 11, 2017. The order entering default was properly served on Respondent at his membership-records address by certified mail, return receipt requested. The court also

ordered Respondent's involuntary enrollment as an inactive member of the State Bar of California under section 6007, subdivision (e), effective three days after service of the order. 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 90 days to file motion to set aside default].)

On February 9, 2018, the State Bar filed and properly served a petition for disbarment on Respondent at his membership-records address by certified mail, return receipt requested. That same day, the State Bar also sent a courtesy copy of the petition for disbarment to Respondent at his membership-records address by first-class mail, regular delivery. As required by rule 5.85(A), the State Bar reported in the petition that: (1) Respondent had failed to contact the State Bar after he contacted it on August 17, 2016, which was before Respondent's default was entered on October 11, 2017; (2) there are no other disciplinary matters or investigations pending against Respondent; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund has not paid out any claims resulting from Respondent's conduct.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on March 7, 2018.

### **Prior Record of Discipline**

Respondent has been disciplined on one prior occasion.

#### **State Bar Court case No. 15-O-11188**

Pursuant to a Supreme Court order filed on April 28, 2016, Respondent was placed on one year's stayed suspension and one year's probation on conditions, but no actual suspension. In that matter, Respondent stipulated to violating section 6106's proscription of acts involving moral turpitude by falsely reporting to the State Bar under penalty of perjury that he had fully complied with his Minimum Continuing Legal Education requirements when he knew or was

grossly negligent for not knowing that he had not completed any of the required 25 hours of education.

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

Upon entry of a 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. 16-O-14788 (Ramirez Matter)**

Count One – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by failing to challenge the costs charged against the client's family trust by the trustee.

Count Two – Respondent willfully violated section 6068, subdivision (m) (failure to communicate), by failing to respond promptly to three written and several telephonic reasonable status inquiries that his client made between April 13 and July 25, 2016.

Count Three – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by constructively terminating his employment on April 6, 2016, when he failed to take any action on behalf of his client after the client told him that she wanted to challenge the trustee's charges and by failing to inform the client of his withdrawal from employment.

Count Four – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate), by failing to provide a substantive response to three letters that he received from the State Bar requesting a response to allegations of misconduct in the Ramirez matter.

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**Case No. 16-O-15249 (Martinez Matter)**

Count Five – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to remove a conviction from his client’s criminal record.

Count Six – Respondent willfully violated section 6068, subdivision (m) by failing to respond promptly to 20 telephonic reasonable status inquiries made by his client between August 2015 and August 2016.

Count Seven – Respondent willfully violated section 6068, subdivision (i) by failing to provide a substantive response to two letters that he received from the State Bar requesting a response to the allegations of misconduct made against him in the Martinez matter.

**Case No. 16-O-18196 (Toumi Matter)**

Count Eight – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to file a complaint against an insurance company and by failing to contact that same insurance company for his client.

Count Nine – Respondent willfully violated section 6068, subdivision (m) by failing to respond promptly to one written and several telephonic reasonable status inquiries made by his client between October 3 and December 12, 2016.

Count Ten – Respondent willfully violated rule 3 700(D)(1) of the State Bar Rules of Professional Conduct (failing to release a file in accordance with client’s request) by failing to promptly return his client’s file in accordance with the client’s request after the termination of Respondent’s employment.

Count Eleven – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to promptly refund, upon Respondent’s termination of employment on about December 7, 2016, any part of the \$1,000 advanced fee he received from his client, none of which he earned.

Count Twelve – Respondent willfully violated section 6068, subdivision (i) by failing to provide a substantive response to two letters that he received from the State Bar requesting a response to the allegations of misconduct made against him in the Toumi matter.

Count Thirteen – Respondent willfully violated section 6068, subdivision (j) (failure to update membership-records address), by failing to notify the State Bar of his change address within 30 days after he moved from his membership-records address in about March 2017.

**Case No. 17-O-04207 (Probation Matter)**

Count Fourteen – Respondent willfully violated section 6068, subdivision (k) (duty to comply with probation conditions), when he failed to comply with all of the conditions of his probation by not filing a final probation report by May 28, 2017, and by not providing proof that he attended the State Bar Ethics School by May 28, 2017.

**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) reasonable diligence was used to notify Respondent of the proceeding 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 Respondent’s default, support a finding that Respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate 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 Derek William St. Pierre, State Bar number 200131, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

### **Restitution**

The court also recommends that Respondent be ordered to make restitution to Abdelaziz Toumi in the amount of \$1,000, plus 10 percent interest per year from December 7, 2016. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

### **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 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

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**ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Derek William St. Pierre, State Bar number 200131, 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 by mail (rule 5.111(D)).

Dated: March 29 2018.

  
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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 Court Specialist 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 March 29, 2018, 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:

DEREK W. ST. PIERRE  
LAW OFC DEREK ST PIERRE  
1934 DIVISADERO ST  
SAN FRANCISCO, CA 94115

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

DUNCAN C. CARLING, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 29, 2018.



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Bernadette Molina  
Court Specialist  
State Bar Court