

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 12-N-13595-RAP
)	
EARL THOMAS DURHAM,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 74349,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Earl Thomas Durham (respondent) was charged with violating California Rules of Court, rule 9.20(c). Even though respondent had actual notice of the trial date in this consolidated proceeding, respondent failed to appear at the trial, and his default was entered. Thereafter, the Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney’s default is entered for failing to appear at trial, and if the attorney fails to have the default set aside or

¹ Unless otherwise indicated, all further references to rules are to the Rules of Procedure of the State Bar of California.

vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

In the instant case, the court concludes that all of 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 the practice of law in California on June 28, 1977, and has been a member of the State Bar since then.

Procedural Requirements Have Been Satisfied

On June 13, 2012, the State Bar filed and properly served upon respondent, by certified mail, return receipt requested, a notice of disciplinary charges (NDC) in case No. 12-N-13595. Respondent filed both an answer to the NDC and his rule 9.20 compliance declaration with the court on July 23, 2012.

Respondent participated in a status conference on August 7, 2012, at which time trial was set for October 15, 2012, at 9:30 a.m.

On August 15, 2012, the court filed an order setting forth the October 15, 2012 trial date in this matter. The order was properly served upon respondent by first-class mail, postage prepaid, at the address provided in his response to the NDC and which was also respondent's membership records address. (Rule 5.81(A).) The order was also emailed to respondent at an email address respondent provided to the court and the State Bar in a letter dated July 23, 2012.

Respondent participated in a settlement conference on September 10, 2012, and at the pretrial conference on October 2, 2012.

² 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).)

On October 15, 2012, the State Bar appeared for trial, but respondent did not. The court entered respondent's default in an order filed on October 15, 2012. The order was properly served upon respondent by certified mail, return receipt requested, at respondent's membership records address. (Rule 5.81(B).) The order notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed respondent on involuntary inactive status 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)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On March 29, 2013, the State Bar filed and properly served upon respondent the petition for disbarment. A courtesy copy of the petition was also served on respondent's counsel, Michael Hikmat Jabro, by certified mail, return receipt requested. As required by rule 5.85(A), the State Bar reported in the petition that (1) the State Bar has not had any contact with respondent since his default was entered; however, on January 25, 2013, the assigned deputy trial counsel in this matter was contacted by telephone by attorney Michael Jabro. Attorney Jabro indicated that he now represented respondent and sought a stipulation or an agreement to set aside respondent's default and thereafter allow respondent to resign from the State Bar. That same day, the assigned deputy trial counsel received an email and an attached letter from Attorney Jabro indicating that his office was retained to represent respondent in this matter. The assigned deputy trial counsel contacted attorney Jabro by telephone on January 28, 2013, and informed him that she would not stipulate or agree to set aside the default in this matter. Attorney Jabro was referred to rule 5.83 regarding upcoming deadlines; (2) there are no other disciplinary matters pending against respondent; (3) respondent has a record of prior discipline; and (4) the Client Security Fund has

not made any payments resulting from respondent's conduct. Respondent did not timely respond to the petition for disbarment or move to set aside or vacate his default. The case was submitted for decision on May 13, 2013.³

Respondent has a prior record of discipline.⁴ Pursuant to a Supreme Court order filed on November 2, 2011, respondent was suspended for one year, but execution of that suspension was stayed on conditions including that respondent be suspended for a minimum of 60 days and until the court grants a motion to terminate his suspension. If, however, respondent remained suspended for 90 days or more, he was also ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in subdivision (a) and (c) of that rule within 120 and 130 days, respectively, after the effective date of the Supreme Court's order. The court found in this prior disciplinary matter that respondent (1) engaged in the unauthorized practice of law; (2) committed acts of moral turpitude and dishonesty by holding himself out as entitled to practice law and by practicing law when he knew or should have known that he was not entitled to practice law; and (3) failed to obey a court order by violating the Supreme Court order suspending him from the practice of law for nonpayment of membership dues. Respondent's default was entered in this prior disciplinary matter for failing to file a response to the NDC.

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³ After receiving the court's Order Submitting Default Matter for Decision, respondent sent a letter to the court dated June 4, 2013. The letter was copied to the assigned deputy trial counsel in this matter, as well as the deputy trial counsel assigned to respondent's prior disciplinary matter. This letter will not be considered by the court as a motion to set aside the default, as a request to the court must be submitted to the court in the form of a pleading; the letter does not contain a declaration of service; and, even if the content of the letter were considered, the letter does not establish that the default resulted from respondent's mistake, inadvertence, surprise or excusable neglect.

⁴ The court admits into evidence the certified copy of respondent's prior record of discipline that is attached to the State Bar's March 29, 2013, disbarment petition.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Case Number 12-N-13595 (Rule 9.20 Matter)

Respondent willfully violated California Rules of Court, rule 9.20(c) (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 comply with the November 2, 2011 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 and actual notice of the trial date prior to the entry of the default;
- (3) the default was properly entered under rule 5.81; 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 adequate notice and opportunity, respondent failed to appear for trial in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Earl Thomas Durham be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

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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.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Earl Thomas Durham, State Bar Number 74349, 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: August 5, 2013

RICHARD A. PLATEL
Judge of the State Bar Court