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State Bar Court of California Hearing Department Los Angeles ACTUAL SUSPENSION		
<p>Counsel For The State Bar</p> <p>Anand Kumar Deputy Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 (213) 765-1714</p> <p>Bar # 261592</p>	<p>Case Number(s): 12-O-11841-RAP</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 1.2em;">FILED</p> <p style="text-align: center;">NOV 28 2012 </p> <p style="text-align: center; font-size: 0.8em;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>B. Kwaku Duren 4716 Crenshaw Blvd. Los Angeles, CA 90043 (323) 290-6146</p> <p>Bar # 147789</p>	<p style="font-size: 1.5em;">PUBLIC MATTER</p>	
<p>In the Matter of: B. Kwaku Duren</p> <p>Bar # 147789</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted August 1, 1990.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 15 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: one (1) billing cycle immediately following the effective date of the Supreme Court order in this matter. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. See attachment, p. 11.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See attachment, p. 11.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.

- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

See attachment, pp. 11-12.

D. Discipline:

- (1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of two (2) years.

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

- (b) The above-referenced suspension is stayed.

- (2) **Probation:**

Respondent must be placed on probation for a period of two (2) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

- (3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of thirty (30) days.

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of

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information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input checked="" type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

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No MPRE recommended. Reason:

- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:**

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In the Matter of: B. Kwaku Duren	Case Number(s): 12-O-11841-RAP
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Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Carolyn A. Williams	\$8,000.00	March 1, 2012

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reprobation), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency
Carolyn A. Williams	\$1000.00 monthly for 8 months (payment to be made by cashier's check only)	Monthly (first payment due 30 days after effective date of Supreme Court disciplinary order)

- If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

- b. Respondent has kept and maintained the following:
- i. A written ledger for each client on whose behalf funds are held that sets forth:
 - 1. the name of such client;
 - 2. the date, amount and source of all funds received on behalf of such client;
 - 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 - 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 - 1. the name of such account;
 - 2. the date, amount and client affected by each debit and credit; and,
 - 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
- i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

7. On January 7, 2011, a case management conference was held. Respondent and all of the defendants appeared and the Court ordered all four demurrers to be heard on or about February 16, 2011 and that any opposition to the demurrers from Williams be filed no later than February 1, 2011.
8. Sometime in or about January 2011, Respondent and Williams had a telephone conversation, but Respondent failed to inform Williams about the pending demurrers or the February 16, 2011 hearing on the demurrers.
9. Respondent failed to timely file an opposition to any of the four demurrers on or before February 1, 2011. On February 3, 2011, Respondent belatedly filed an opposition to GreenPoint's demurrer. On February 14, 2011, Respondent belatedly filed an opposition to Marbury Park's demurrer.
10. On February 16, 2011, Respondent failed to appear at the hearing on the demurrers. At the February 16, 2011 hearing on the demurrers, the Court sustained all four demurrers without leave to amend and dismissed Williams' case against all four defendants in its entirety. In sustaining all four demurrers without leave to amend, the Court stated that it had not received any timely opposition from Respondent to the demurrers filed by Marbury Park, Bank of America et al., and CitiMortgage. Respondent was properly served with notice of the Court's ruling.
11. Thereafter, Respondent failed to timely inform Williams that her case had been dismissed against all of the defendants.
12. Respondent failed to earn the \$10,000.00 advance fees that he collected from Williams, because he did not provide any legal services of value to Williams.
13. Between April 2011 and the Fall of 2011, Williams made several attempts to call Respondent by phone and left voice messages for him requesting status updates about her case. Respondent received the messages, but did not respond.
14. On February 14, 2012, Williams visited Respondent's office to find out the status of her case. Respondent was not present so she spoke with Respondent's office clerk, who provided Williams with a copy of her case docket.
15. Between February 15, 2012 and February, 27, 2012, Williams re-visited Respondent's office and spoke with him about her case. When Williams spoke with Respondent, she learned for the first time that her case had been dismissed in its entirety in February 2011.
16. At the February 2012 meeting with Respondent, Williams requested a refund. Respondent denied Williams' request for a refund and failed to provide her with an accounting of the legal services he had provided on her behalf.
17. On November 7, 2012, Respondent belatedly refunded \$2,000.00 to Williams as a portion of the \$10,000.00 unearned advanced fees he received from her.

CONCLUSIONS OF LAW:

18. By failing to timely file an opposition to any of the four demurrers on Williams' behalf and failing to appear at the February 16, 2011 hearing on the demurrers on Williams' behalf, Respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in willful violation of Rules of Professional Conduct, rule 3-110(A).
19. By failing to promptly refund any part of the \$10,000.00 advance unearned fees that he collected from Williams, Respondent failed to refund promptly any part of a fee paid in advance that has not been earned in willful violation of Rules of Professional Conduct, rule 3-700(D)(2).
20. By failing to provide Williams with an accounting at the time he denied her request for a refund, Respondent failed to render appropriate accounts to Williams regarding all funds coming into Respondent's possession in willful violation of Rules of Professional Conduct, rule 4-100(B)(3).
21. By failing to promptly inform Williams about the demurrers to the original complaint, the demurrers to the amended complaint, his failures to file any timely opposition to the demurrers to the amended complaint, the scheduled February 16, 2011 hearing on the demurrers, his failure to attend the February 16, 2011 hearing on the demurrers, or that her case had been dismissed in its entirety without leave to amend at the February 16, 2011 hearing on the demurrers, Respondent failed to keep a client reasonably informed of significant developments in which Respondent had agreed to provide legal services in willful violation of Business and Professions Code, section 6068(m).

ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

Harm: Respondent received \$10,000.00 in advance fees from Williams, which she paid while she was in financial distress and which required her to use retirement savings. Thereafter, Respondent performed no legal services of value for Williams and has yet to make complete restitution to her. Respondent's misconduct caused significant harm to his client, which constitutes an aggravating circumstance. (See Std. 1.2(b)(iv); *In the Matter of Bouyer* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 404, 417 [failure to make restitution is an aggravating factor].)

Multiple Acts of Wrongdoing: Respondent's current misconduct evidences multiple acts of wrongdoing as described above, which have resulted in four distinct violations of the Rules of Professional Conduct and Business and Professions Code and constitute an aggravating circumstance. (See Std. 1.2(b)(ii); *In the Matter of Valinoti* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 498, 555.)

ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline: Although Respondent's current misconduct is serious, at the time of the misconduct, Respondent had more than twenty years of practice without discipline, which is entitled to mitigation. (See *In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 49 [attorney with seventeen years of discipline-free practice entitled to mitigation despite serious

misconduct]; see also *Edwards v. State Bar* (1990) 52 Cal.3d 28, 38-39 [mitigative credit given to attorney with twelve years of practice without discipline despite serious misconduct].)

Pro Bono Activities: During his legal practice, Respondent has participated in numerous pro bono activities for the benefit of the public and the legal profession. For example, he served on the Los Angeles Unified School District Redistricting Commission in 2002. He worked as an Attorney Settlement Officer for the Alternative Dispute Resolution Program for the United States District Court in the Central District California in 2004, 2007, 2008, 2009, and 2010. In 2006, Respondent served on an Alternative Dispute Resolution Neutral panel for the Los Angeles County Superior Court. Moreover, in 2010 and 2012, Respondent served as a volunteer fee arbitrator in the State Bar of California's Mandatory Fee Arbitration Program. In 2009 and 2010, Respondent served as a volunteer Executive Director on the Board of Directors for a non-profit organization called Community Services Unlimited, Inc., dedicated to the development of local education programs and he currently serves on the Board of Directors for the California Community Economic Development Association. In 2010, Respondent was also selected as the Best Legal Community Activist by the Reparations United Front of Southern California. (See *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359 [performance of civic service and charitable work is entitled to mitigation as evidence of good character under standard 1.2(e)(vi)]; see also *Porter v. State Bar* (1990) 52 Cal.3d 518, 529.)

Cooperation with State Bar: Additionally, Respondent has cooperated with the State Bar by entering into a stipulated settlement for the matter described herein at an early stage without the need of a trial to resolve this matter. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [mitigative credit given where attorney admitted facts and culpability in order to simplify the disciplinary proceedings].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct provide a "process of fixing discipline" pursuant to a set of written principles to "better discharge the purposes of attorney discipline as announced by the Supreme Court." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, Introduction (all further references to standards are to this source).) The primary purposes of disciplinary proceedings and of the sanctions imposed are "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession." (*In re Morse* (1995) 11 Cal.4th 184, 205; std 1.3.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) Any discipline recommendation different from that set forth in the applicable standards should clearly explain the reasons for the deviation. (*Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

Respondent admits to committing four acts of professional misconduct. Standard 1.6 (a) requires that where a Respondent acknowledges two or more acts of misconduct, and different sanctions are prescribed by the standards that apply to those acts, the sanction imposed shall be the more or most

severe prescribed in the applicable standards. The most severe sanction applicable to Respondent's misconduct is found in standard 2.2(b) which applies to his failure to render an appropriate accounting to Williams.

Standard 2.2(b) provides that culpability of a member of commingling of entrusted funds or property with personal property or the commission of another violation rule 4-100, Rules of Professional Conduct, none of which offenses result in the willful misappropriation of entrusted funds or property shall result in at least a three month actual suspension from the practice of law, irrespective of mitigating circumstances. Here, Respondent failed to provide Williams with an appropriate accounting at the time she requested a refund.

Notwithstanding the failure to render an appropriate accounting and the application of standard 2.2(b) here, the gravamen of Respondent's misconduct concerns his failure to perform on Williams' behalf and his failure to promptly refund the unearned fees to her. Accordingly, standards 2.4(b) and 2.10 apply to Respondent's violations of Rules of Professional Conduct, rules 3-110(A) and 3-700(D)(2) respectively.

Standard 2.4(b) provides that culpability of a member of wilfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of wilfully failing to communicate with a client shall result in reproof or suspension depending on the extent of the misconduct and the degree of harm to the client. Standard 2.10 provides that culpability of a member of wilful violation of any Rule of Professional Conduct not specified in the standards shall result in reproof or suspension according to the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set for the Standard 1.3. The extent of Respondent's misconduct includes four acts of misconduct over a fourteen-month period in a single client matter. As described above, the harm to his client is significant, because Williams received no legal services of value for her \$10,000.00 advance fee payment to Respondent—a payment she made from her retirement savings after her home had been foreclosed upon, and she has yet to receive a complete refund of the unearned funds.

While standards 2.4(b) and 2.10 call for a range of discipline consisting of reproof to suspension, standard 2.2(b) requires a three-month actual suspension. Under the current circumstances, there is a compelling justification and reason to deviate from standard 2.2(b) and impose lesser discipline. (See, *In re Silvertan, supra*, 36 Cal.4th at p. 92.) Standard 1.6(b)(ii) states that "a lesser degree of sanction ... shall be imposed or recommended" if mitigating circumstances are present and the purposes of imposing sanctions in standard 1.3 will still be properly fulfilled in light of the balance between aggravating and mitigating circumstances. As stated above, the essence of Respondent's instant misconduct is his failure to perform for Williams and promptly refund the unearned fees he collected from her, which resulted in serious harm vis-à-vis her loss of fees. The facts and circumstances show that the misconduct was isolated and limited to a single client matter and did not involve a client trust account violation. Accordingly, Respondent's current misconduct should be compared to other cases where an attorney failed to perform and promptly refund unearned fees in a single client matter.

In *In the Matter of Copren* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 861, the Hearing Department held that an attorney was culpable of failing to perform on behalf of her client in a single client matter and failing to promptly refund unearned fees. In particular, Copren failed to appear at a

bankruptcy hearing on her client's behalf to address a pending motion to dismiss after failing to file a necessary checklist to effectuate the Chapter 13 bankruptcy for which she was hired by the client. Copren also failed to refund the \$750.00 in advance fees she collected from the client. After Copren failed to appear for State Bar disciplinary proceedings, a default decision was entered against her and she was found culpable of failing to perform, failing to promptly refund unearned fees, as well as several other violations including improper client solicitation, failing to cooperate with a State Bar investigation and committing an act of moral turpitude (in violation of Business and Professions Code, section 6106). The Hearing Department and Review Department held that a 60-day actual suspension was an appropriate level of discipline for Copren finding in mitigation her lack of prior record of discipline over nine years, but finding in aggravation that her failure to refund the unearned fees constituted indifference and that she failed to participate in the disciplinary proceedings prior to entry of her default.

While Respondent's misconduct here concerned a failure to refund a greater amount of unearned fees than in *Copren*, the extent of Respondent's misconduct is less. He has been much more cooperative and responsive than Copren was in so far as Respondent has cooperated with the State Bar by agreeing to stipulate to the discipline at an early stage in the disciplinary proceedings, he has already repaid a portion of the funds to Williams, and unlike Copren, Respondent has not engaged in an act of moral turpitude. Moreover, Respondent is entitled to more mitigation than Copren given his lack of prior record of discipline over twenty years of practice (compared to Copren's nine years of practice) and his extensive body of pro bono work as discussed above. Therefore, the instant discipline for Respondent's misconduct should be less severe than in *Copren*.

Accordingly, a two (2) year stayed suspension and a two (2) year probation with conditions including a thirty (30) day actual suspension with a restitution obligation is an appropriate level of discipline for Respondent's misconduct described herein.

PENDING PROCEEDINGS.

The disclosure date referred to, on page 2, paragraph A(7), was November 5, 2012.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of November 9, 2012, the prosecution costs in this matter are approximately \$2,865.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT

Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of State Bar Ethics School, ordered as a condition of suspension here. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of:
B. Kwaku Duren

Case Number(s):
12-O-11841-RAP

ACTUAL SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

11-28-2012

Date



RICHARD A. PLATEL
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 Los Angeles, on November 28, 2012, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

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

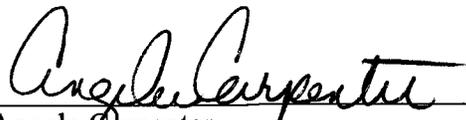
by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

B. KWAKU DUREN
B KWAKU DUREN & ASSOCIATES, PC
4716 CRENSHAW BLVD.
LOS ANGELES, CA 90043

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

ANAND KUMAR, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on November 28, 2012.



Angela Carpenter
Case Administrator
State Bar Court