(Do not write above this line.)

State Bar Court of California Hearing Department San Francisco ACTUAL SUSPENSION		kwiktag ® 237 304 028
Counsel For The State Bar **Jennifer Roque** **Deputy Trial Counsel** **180 Howard Street** **San Francisco, CA 94105** **(415) 538-2452** Bar # **282441**	Case Number(s): **11-C-18557-LMA**	For Court use only PUBLIC MATTER FILED APR 26 2018 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent **Jan Van Dusen** **1501 Magnolia St** **Oakland CA 94607-2226** **(510) 689-6541** Bar # **142700**		
In the Matter of: **JAN ELIZABETH VAN DUSEN** Bar # **142700** A Member of the State Bar of California (Respondent)	Submitted to: **Settlement Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING **ACTUAL SUSPENSION** ☐ PREVIOUS STIPULATION REJECTED	

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 **December 11, 1989**.

(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 **14** 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: . (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 [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

(1) ☒ **Prior record of discipline**

(a) ☒ State Bar Court case # of prior case **15-O-10868 (see page 11; Exhibit 1)**

(b) ☒ Date prior discipline effective **Pending**

(c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Business and Professions Code section 6103**

(d) ☒ Degree of prior discipline **One-year stayed suspension**

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.

(2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.

(3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.

(4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.

(5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.

(6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.

(7) ☐ **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.

(8) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See page 11**

(9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

(10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.

(11) ☐ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.

(12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.

(13) ☐ **Restitution:** Respondent failed to make restitution.

(14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.

(15) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. 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 likely to recur.

(2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.

(3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or `to the State Bar during disciplinary investigations and proceedings.

(4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous 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 with a good faith belief that was honestly held and objectively reasonable.

(8) ☒ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental 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 the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct. **See page 11**

(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 extraordinarily 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. **See page 11**

(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:

D. Discipline:

(1) ☒ **Stayed Suspension:**

(a) ☒ Respondent must be suspended from the practice of law for a period of **five (5) years**.

i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) 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 **five (5) 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 **four (4) years**.

i. ☒ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), 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 present learning and ability in the general law, pursuant to standard 1.2(c)(1), 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 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: **Respondent was ordered to attend Ethics School in her prior discipline (State Bar Case no. 15-O-10868).**

(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:

(Do not write above this line.)

☐ Substance Abuse Conditions ☐ Law Office Management Conditions

☒ Medical Conditions ☐ 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.**

☒ No MPRE recommended. Reason: **Respondent was ordered to take the MPRE in her prior discipline (State Bar Case no. 15-O-10868).**

(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: **September 12, 2014**.

(5) ☐ **Other Conditions:**

(Do not write above this line.)

In the Matter of: Jan Elizabeth Van Dusen	Case Number(s): 11-C-18557-LMA

Medical Conditions

a. ☐ Unless Respondent has been terminated from the Lawyer Assistance Program ("LAP") prior to respondent's successful completion of the LAP, respondent must comply with all provisions and conditions of respondent's Participation Agreement with the LAP and must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and respondent's compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. However, if respondent has successfully completed the LAP, respondent need not comply with this condition.

b. ☒ Respondent must obtain psychiatric or psychological help/treatment from a duly licensed psychiatrist, psychologist, or clinical social worker at respondent's own expense a minimum of **4** times per month and must furnish evidence to the Office of Probation that respondent is so complying with each quarterly report. Help/treatment should commence immediately, and in any event, no later than thirty (30) days after the effective date of the discipline in this matter. Treatment must continue for days *or* months *or* **five** years *or*, the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the treating psychiatrist, psychologist, or clinical social worker determines that there has been a substantial change in respondent's condition, respondent or Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 5.300 of the Rules of Procedure of the State Bar. The motion must be supported by a written statement from the psychiatrist, psychologist, or clinical social worker, by affidavit or under penalty of perjury, in support of the proposed modification.

c. ☒ Upon the request of the Office of Probation, respondent must provide the Office of Probation with medical waivers and access to all of respondent's medical records. Revocation of any medical waiver is a violation of this condition. Any medical records obtained by the Office of Probation are confidential and no information concerning them or their contents will be given to anyone except members of the Office of Probation, Office of the Chief Trial Counsel, and the State Bar Court, who are directly involved with maintaining, enforcing or adjudicating this condition.

Other:

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JAN ELIZABETH VAN DUSEN

CASE NUMBER: 11-C-18557-LMA

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that the facts and circumstances surrounding the offense for which she was convicted involved moral turpitude.

Case No. 11-C-18557-LMA

PROCEDURAL BACKGROUND

1. On October 18, 2012, a felony complaint (Information) was filed in the Alameda County Superior Court, Case No. SCR169934, charging respondent with seven counts of violating Penal Code 597(b) [Animal Cruelty], a felony.

2. On July 25, 2014, respondent was convicted by bench trial of Count One – a violation of Penal Code section 597(b) [Animal Cruelty], a felony. The court also denied respondent's request to reduce the felony to a misdemeanor pursuant to Penal Code section 17(b). The court then suspended the imposition of sentence and placed respondent on probation for a period of five years. Respondent was ordered to serve one day in jail or a work release program, pay restitution; be subject to search and seizure conditions; continue or enter mental health treatment for a period of three years; complete 200 hours of community service not related to caring for animals; and not own, possess or care for any animal within ten years of the conviction, among other conditions.

3. On July 31, 2014, respondent filed a Notice of Appeal with the First Appellate District Court.

4. On September 15, 2016, the First Appellate District Court of Appeal issued its decision, affirming the felony animal cruelty conviction.

5. On November 8, 2017, the Review Department of the State Bar Court issued an order referring the matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds the facts and circumstances surrounding the felony violation of which respondent was convicted involved moral turpitude or other misconduct warranting discipline.

FACTS:

6. At all relevant times, respondent's home was located in Oakland, California.

7. In 2009, Oakland Animal Services ("OAS") received a complaint about respondent alleging that she kept a large number of cats in her home. Thereafter, OAS visited respondent's house and found that she had approximately 50 cats. The cats appeared clean and well cared for. OAS took no action at that time.

8. In 2010, OAS received new complaints against respondent, and returned and found that respondent had acquired more cats. At that time, respondent had approximately 70 cats. Some of the cats appeared unhealthy, and OAS was concerned about ringworm, giardia and Feline Immunodeficiency Virus (FIV). Respondent consented to OAS taking custody of several of the healthier, tamer cats for adoption.

9. On March 27, 2010, respondent signed an agreement with Megan Webb ("Webb"), Director of OAS, promising she would not take in more cats. Respondent was also given the following guidelines from an OAS veterinarian: there should be no more than 60 cats; the cats should be kept in groups of 10 to reduce infection disease and stress; each should have "one meter triangulated" of space between food, water and bedding; each should receive deworming medication and vaccinations; and special procedures should be followed in response to giardia and ringworm outbreaks. Respondent understood the guidelines.

10. In the fall of 2011, OAS received another complaint which alleged that respondent was taking on new cats in breach of her agreement. When contacted by OAS, respondent admitted she took in seven new cats in June 2011. OAS took no action at that time.

11. On October 4, 2011, respondent asked cleaner James Foley ("Foley") to help clean her home. Respondent described her home to Foley as "a house of horrors."

12. On October 23, 2011, Foley arrived to clean respondent's home and observed at least 60 to75 cats living inside the residence, as well as several dogs. Foley observed the litter boxes appeared not to have been changed for weeks, and there were "feces everywhere"—some dry, some fresh, some liquid. The feces covered the floor, cages, and litter boxes. Many cats were sitting in their own feces, and appeared skinny and weak. Some cats were barely moving and appeared to be dying. Ammonia from the cat urine stung Foley's eyes and caused such an overwhelming smell that Foley had to step outside periodically to catch breaths of fresh air.

13. Foley took 18 digital photographs of respondent's home, which were submitted to OAS.

14. On October 23, 2011, Oakland police officers went to respondent's house in response to a complaint regarding smell, but respondent would not let them in to inspect her home. The officers contacted Webb, who was able to speak to respondent on the telephone. Webb asked to schedule an inspection, but respondent refused to allow OAS to inspect her home at that time. Thereafter, Webb contacted the Oakland Police Department, reporting a possible animal abuse case, and provided Foley's photographs to Sergeant Thomas. Webb informed Sgt. Thomas that the police department would need to obtain a search warrant to seize the cats for their own safety as respondent was not cooperative with OAS and would not allow an inspection of her home.

Sergeant Thomas reviewed the 18 photographs, and subsequently interviewed Foley who corroborated the conditions Sergeant Thomas observed in the photographs. Sergeant Thomas formed the opinion that respondent was unable to care for the safety and welfare of the cats currently living within her residence in Oakland, the cats were being kept in conditions that were unsafe, unsanitary and abusive, and obtained a search warrant for respondent's premises in Oakland.

15. On October 27, 2011, Sergeant Thomas executed a search warrant for a removal of multiple cats, dogs, animals and indicia located at respondent's premises in Oakland. A strong odor of cat urine (ammonia) could be smelled outside respondent's house. Inside respondent's home, the cats were kept in extremely unsanitary conditions, with very little to no food or water for the quantity of cats, the litter boxes were overflowing and it smelled of urine and feces. Dozens of cats were running through the home with the floors, walls and surfaces covered in animal feces.

16. Sergeant Thomas, along with a dozen other individuals from OAS and the SPCA, including Webb and veterinarian Jyothi Robertson, captured 93 live cats and two live dogs, then removed 11 dead cats from respondent's freezer, along with miscellaneous cat indicia. The capture and documentation took approximately four hours. The 93 cats seized were all examined at OAS. All required some medical treatment; ten required urgent medical care; seven had to be euthanized after an initial assessment; 11 had to be euthanized after initial treatment failed, for a total of 18 needing euthanasia. Fifty-eight cats had fleas, 44 had dental disease and 32 had respiratory infections.

17. On November 3, 2011, OAS veterinarian Robertson reported a summary of findings for respondent's criminal case. In her summary, she reported that all 11 of the dead cats which were removed from respondent's freezer were emaciated with significant muscle wasting. She noted this level of wasting commonly took "weeks to months to develop, so it is likely these animals were suffering for a long time." She noted that the dead "cats were suffering from preventable causes (such as parasitism, upper respiratory infection, dental disease) that are commonly seen in animal hoarding situations." As to the overall assessment of the live animals present in the household, Dr. Robertson's concluded that they "were living in conditions that were inhuman, leading to their unnecessary suffering and even death." Dr. Robertson further found that respondent's situation was "an animal hoarding situation where animals were clearly suffering and dying due to hazardous housing conditions, inadequate medical attention, and inappropriate overall husbandry."

18. On November 8, 2011, respondent was charged with one count of Penal Code 597(b) [Animal Cruelty], a felony.

CONCLUSIONS OF LAW:

19. The facts and circumstances surrounding the above-described violation did involve moral turpitude.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)): Respondent has one prior record of discipline. In Case No. 15-O-10868, which is still pending. While on interim suspension due to her felony conviction, respondent was ordered by the Review Department to comply with Rules of Court, rule 9.20. Respondent failed to comply with rule 9.20, by failing to provide notice of her interim suspension to the bankruptcy trustee in two pending Chapter 13 matters, failing to properly serve notice of her interim suspension on clients and opposing counsel in other state and federal cases, and failing to timely file and properly file proof of compliance with rule 9.20. Respondent received a one-year stayed suspension for a violation of Business and Professions Code section 6103. In aggravation, respondent committed multiple acts of misconduct. In mitigation, respondent lacked a prior record of discipline in the 25 years she had been in practice.

Harm (Std. 1.5(j)): By keeping more cats than was permitted by her agreement with OAS and not taking proper care of the cats, respondent cause significant harm and suffering to these helpless animals.

MITIGATING CIRCUMSTANCES.

Emotional Difficulties: As part of her criminal probation, respondent was ordered to attend 30 counseling sessions from April 2015 through April 2016. Respondent's treating psychologist opined that her criminal conviction was directly caused by her mental issues at the time. (*In the Matter of Deiering* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 552 [where mitigative credit was given when rehabilitation was not yet complete, but the attorney had taken steps towards rehabilitation and evidence was provided of a causal connection].)

Good Character (std. 1.6(f)): Respondent submitted ten character letters from people aware of the full extent of respondent's misconduct and attest to her integrity and professionalism. The reference letters are from friends and former clients.

Pretrial Stipulation: Respondent is entitled to mitigation for entering into a stipulation with the Office of Chief Trial Counsel prior to the filing of charges in the above referenced disciplinary matter, thereby saving State Bar Court time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. Of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1.) The standards help fulfill the primary purpose of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and, preservation of public confidence in the legal profession. (See std. 1.1; In re Morse (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (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.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) Any discipline recommendation that deviates from the Standards must include clear reasons for the departure. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or lesser than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, respondent was convicted of a felony in which the facts and circumstances surrounding the offense involved moral turpitude. Standard 2.15(b) applies and provides: "Disbarment is the presumed sanction for final conviction of a felony in which the facts and circumstances surrounding the offense involve moral turpitude, unless the most compelling mitigating circumstance clearly predominate, in which case actual suspension of at least two years is appropriate."

Standard 1.8(a) also applies because respondent has one prior record of discipline. Standard 1.8(a) provides: "If a member has a single prior record of discipline, the sanction must be greater than the previously imposed sanction unless the prior discipline was so remote in time and the previous misconduct was not serious enough that imposing a greater discipline would be manifestly unjust." Respondent's prior was serious and recent; however, it should be given minimal weight due to the fact it did not precede the conduct in this case. Nonetheless, it still is aggravating in that respondent failed to follow the orders of the Court to comply with rule 9.20 during her interim suspension in this matter.

To determine the appropriate level of discipline, consideration must also be given to the aggravating and mitigating circumstances. In aggravation, respondent caused significant harm and suffering to countless number of animals. Respondent is entitled to mitigation for entering into a pretrial settlement, good character, and emotional difficulties associated with her depression and anxiety disorder. In light of the compelling mitigation, discipline less than disbarment is appropriate. However, respondent's misconduct was serious and involved moral turpitude; therefore, a suspension of longer than two years is warranted.

Case law is instructive. In *In re Jensen* (Review Dept. 2013) 5 Cal. State Bar Ct. Rptr. 283, the Court recommended an attorney be actually suspended for 120 days for a misdemeanor child endangerment conviction where the attorney left his nine-month-old daughter alone in a hotel room bathroom for 40 minutes while she napped. In aggravation, the attorney had two prior records of discipline, where some of the misconduct in the second prior occurred prior to the first prior. In mitigation, the attorney performed extensive community service, was remorseful and cooperative. Respondent's conduct in this case is more serious than the attorney in *Jensen* because the respondent caused actual suffering and harm to dozens of cats, 18 of which had to be euthanized after their seizure from respondent's home. Further, respondent was on notice for *at least* a year prior that she was not to keep more than 60 cats and was

provided guidelines on how to house and care for a high number of cats, which significantly aggravates her conduct. Respondent was effectively the proximate cause of the debilitating health of many of the cats that were in possession through her failure to provide necessary medical care, which in turn subjected the animals to needless suffering and eventual death. This criminally negligent treatment of animals constitutes a breach of duty to society and a flagrant disregard of the law. As such, a four-year suspension with a requirement that respondent participate in weekly psychiatric treatment for a period of five years, is necessary to protect the public and the integrity of the profession alike.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of April 9, 2018, the discipline costs in this matter are $7,403. 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 MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT

Respondent may not receive MCLE credit for completion of State Bar Ethics School and/or any other educational course(s) to be ordered as a condition of reproval or suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: JAN ELIZABETH VAN DUSEN	Case number(s): 11-C-18557-LMA

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

4-9-2018	Jan Van Dusen	Jan Van Dusen
Date	Respondent's Signature	Print Name
Date	Respondent's Counsel Signature	Print Name
4-9-2018	[signature]	Jennifer Roque
Date	Deputy Trial Counsel's Signature	Print Name

In the Matter of: JAN ELIZABETH VAN DUSEN	Case Number(s): 11-C-18557-LMA

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.

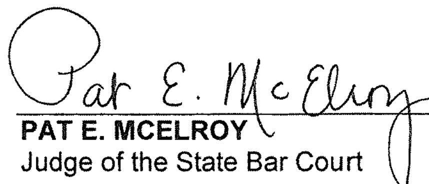
1. On page 2, par. B.(1)(b) Date prior discipline effective – Delete "Pending" and insert "March 2, 2018."

2. On page 2, par. B.(1)(d) Degree of prior discipline – Add "One year probation."

3. On p. 11, first paragraph, second line – Delete "which is still pending."

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.)**

April 26, 2018
Date



PAT E. MCELROY
Judge of the State Bar Court

State Bar Court No. 15-O-10868

S246187

IN THE SUPREME COURT OF CALIFORNIA

En Banc

SUPREME COURT
FILED
JAN 31 2018
Jorge Navarrete Clerk
Deputy

In the Matter of JAN ELIZABETH Van DUSEN

The application for a stay is denied. The motion for relief from default is denied. The petition for review is denied.

The court orders that Jan Elizabeth Van Dusen, State Bar Number 142700, is suspended from the practice of law in California for one year, execution of that period of suspension is stayed, and she is placed on probation for one year subject to the following conditions:

1. Jan Elizabeth Van Dusen must comply with the other conditions of probation recommended by the Review Department of the State Bar Court in its Decision filed on December 8, 2017; and
2. At the expiration of the period of probation, if Jan Elizabeth Van Dusen has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

Jan Elizabeth Van Dusen must also take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

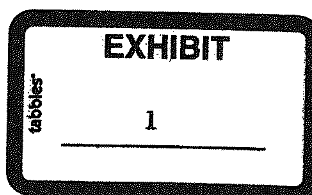
Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.
Witness my hand and the seal of the Court this 6 day of March 20 18

Month

By: ______________
Deputy

CANTIL-SAKAUYE
Chief Justice



FILED
DEC 08 2017
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of JAN ELIZABETH VAN DUSEN, A Member of the State Bar, No. 142700.	Case No. 15-O-10868 OPINION

Jan Elizabeth Van Dusen seeks review of a hearing judge's decision finding her culpable of one count of failing to obey a Review Department interim suspension order in a criminal conviction matter. In pertinent part, the Review Department's order required Van Dusen to comply with rule 9.20(a) and (c) of the California Rules of Court and notify all clients and cocounsel in pending matters of her suspension, as well as any court and opposing counsel or unrepresented adverse parties in pending litigation, and file a declaration showing her full compliance.[1] The hearing judge found that Van Dusen failed to: provide the necessary notice to the bankruptcy trustee (trustee) in two pending Chapter 13 matters; properly serve the notice on clients and opposing counsel in other state and federal cases; and timely and properly file proof of compliance. After weighing these multiple acts against her 25 years of discipline-free law practice, the judge recommended a 30-day actual suspension.

On review, Van Dusen raises a number of challenges and asks that we exonerate her and dismiss this disciplinary proceeding. Most pointedly, she argues that she had no notification duties in the two bankruptcy matters because they were neither her "pending" cases, nor were

[1] All further references to rules are to the California Rules of Court unless otherwise noted.

they "litigation" for purposes of rule 9.20. The Office of Chief Trial Counsel of the State Bar (OCTC) does not appeal and requests that we affirm the hearing judge.

We independently review the record (rule 9.12) and find that Van Dusen's bankruptcy cases were subject to rule 9.20. They involved active petitions to the bankruptcy court for legal redress, where Van Dusen was the attorney of record, and she was therefore required to notify the court and the assigned trustee of her suspension. While she failed to do so, we find that she made attempts, albeit unsuccessful, to fulfill her notification requirements and to timely file her compliance declaration. Her efforts, combined with her extensive legal career spanning more than two decades with no discipline, merit significant mitigation and a departure from the presumed sanction of actual suspension. We find that a one-year stayed suspension with conditions, rather than the 30-day actual suspension recommended by the hearing judge, is appropriate discipline that protects the public, the profession, and the courts.

I. FACTUAL[2] AND PROCEDURAL BACKGROUND

A. Interim Suspension Order and Rule 9.20 Compliance

Van Dusen was admitted to the practice of law in California on December 11, 1989. On August 5, 2014, this court ordered that she be suspended from the practice of law, effective August 20, 2014, due to her felony conviction for violating Penal Code section 597, subdivision (b) (cruelty to animals), and that she comply with rule 9.20(a) and (c) within 30 and 40 days, respectively, after the effective date of her suspension.[3]

[2] The factual background is based on trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).)

[3] See Business and Professions Code, section 6102; rule 9.10(a) (State Bar Court authorized to impose interim suspension in criminal conviction matters). All further references to sections are to the Business and Professions Code unless otherwise noted.

On August 15, 2014, before the suspension took effect, Van Dusen filed a request to vacate the interim suspension order. Ultimately, this court denied the request, but postponed the effective date of the order to September 12, 2014. We adopt as unchallenged the hearing judge's finding that Van Dusen's rule 9.20(a) and (c) compliance dates were October 12, 2014, and October 22, 2014, respectively.

Van Dusen subsequently filed three compliance declarations. The first, which was timely filed on October 3, 2014, indicated that she had complied with all of her obligations and served notice of her suspension on opposing counsel and adverse parties by certified or registered mail. The second, filed on November 17, 2014, after the due date, was an amendment that purported to correct an "error" in the first filing. In it, Van Dusen stated that she had e-filed her notices in her federal court cases and "mail-served" in her state court cases.

The Office of Probation of the State Bar (Probation) rejected the filing on the basis that Van Dusen was not specific with her reference to the "error." A week later, Probation sent Van Dusen a follow-up letter explaining in more detail that, according to the information she provided, she had not satisfied rule 9.20 because the rule requires that notices be served by registered or certified mail. (See rule 9.20(b).) Probation also informed her that she was late since her completed declaration had been due by October 22, 2014. On December 1, 2014, Van Dusen filed her third and final declaration stating that she had fully complied with rule 9.20 and had served all of her notices by certified or registered mail.

At trial, Van Dusen testified that she contacted Probation before filing any of her compliance declarations to seek clarification as to whether rule 9.20 applied to bankruptcy cases, and was told that since it did apply, she should serve "everybody" in those cases. Although Van Dusen disagreed that bankruptcy qualified as "litigation" for rule 9.20 purposes, she notified everyone in what she believed to be all of her pending bankruptcy cases. She admits, however,

that she did not notify the trustee and the bankruptcy court of her suspension in two Chapter 13 bankruptcy matters. As discussed below, she did not think that these two matters were her cases at the time.

B. *Querida* Matter

On January 19, 2012, attorney Tracy Wood filed a Chapter 13 bankruptcy petition on behalf of the debtor in *In re Querida* (*Querida* matter).[4] Approximately five months later, Wood was suspended from the practice of law. On June 20, 2012, Van Dusen formally substituted into the case. Both Van Dusen and Wood testified that Wood resumed control of the *Querida* matter when his suspension ended on March 21, 2013. However, no substitution form was filed at that time, and Van Dusen remained counsel of record.[5] Nearly two years later, the trustee contacted Van Dusen about the case. On January 27, 2015, Van Dusen sent the trustee's office an email regarding the trustee's request to speak with the debtor. In the email, Van Dusen disclosed that she was suspended from the practice of law: "Of course permission is granted. Your office may speak to any of my former clients who are without representation currently, as I am not authorized to represent them at this time."

On February 3, 2015, Van Dusen formally substituted out of the case. On March 2, 2015, the bankruptcy court closed the *Querida* matter based on the trustee's motion to dismiss for the debtor's failure to complete the plan payments. On November 29, 2015, Wood filed a

[4] United States Bankruptcy Court, Northern District, Case No. 12-40504.

[5] At trial, Leonidas Spanos, the staff attorney to the trustee, testified that an attorney who substitutes into a case remains counsel of record until he or she formally files a pleading to withdraw or substitute out. On review, Van Dusen objects to this as "improper opinion evidence" from a "non-expert." We note that she did not object at trial, and Spanos's testimony is consistent with the bankruptcy court's local rule, which provides: "Counsel may not withdraw from an action until relieved by order of Court after written notice has been given reasonably in advance to the client and to all other parties who have appeared in the case." (U.S. Dist. Ct., Local Civ. Rules, Northern Dist. Cal., rule 11-5(a); U.S. Dist. Ct., Local Bankr. Rules, Northern Dist. Cal., rule 1001-2(a) [local civil rule 11-5(a) applies to bankruptcy cases]; see also Rules Proc. of State Bar, rule 5.156; Evid. Code, § 452, subd. (e)(2) [rules of court can be judicially noticed].)

"Correction and Clarification Regarding 2013 De Facto Substitution of Attorney," stating that a substitution of attorney was "inadvertently" omitted and that he exclusively represented the debtor from March 21, 2013, until the close of the case.

C. *Nguyen* Matter

On September 28, 2012, Van Dusen filed a Chapter 13 bankruptcy petition on behalf of the debtors in *In re Nguyen* (*Nguyen* matter),[6] who were referred to Van Dusen by one of Wood's colleagues. Van Dusen last appeared in the case on March 20, 2013, and thereafter all appearances were made by Wood. Wood testified that he tried to file a substitution of counsel in March 2013, but the court returned it, and Wood failed to notify Van Dusen that the filing was unsuccessful. We adopt the hearing judge's finding that Van Dusen believed she had been substituted out of the *Nguyen* matter, and that unbeknownst to her, a substitution of attorney was never filed. (See *McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032 [great weight given to hearing judge's credibility determinations].) Nevertheless, the docket reflects that Van Dusen remained counsel of record for the duration of the case, and the trustee and court treated her as such. On March 25, 2015, the trustee's office sent Van Dusen an email advising her of pending action against the debtors. Van Dusen wrote back that day, stating: "I am suspended but by copy of this email am forwarding to Tracy Wood to handle. It would be best to advise the debtor(s) as well, however."

On April 8, 2015, the bankruptcy court closed the *Nguyen* matter based on the trustee's motion to dismiss for the debtors' failure to complete the plan payments. On March 12, 2016, Wood filed a "Correction and Clarification Regarding 2013 De Facto Substitution of Attorney," stating that a substitution of attorney "may have inadvertently" been omitted and that he exclusively represented the debtors from March 21, 2013, until the close of the case.

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[6] United States Bankruptcy Court, Northern District, Case No. 12-47975.

D. Notice of Disciplinary Charges (NDC)

On December 23, 2015, OCTC filed an NDC against Van Dusen, charging her with violations of: section 6106 (moral turpitude—misrepresentation as to rule 9.20 compliance) (count one); section 6068, subdivision (d) (seeking to mislead a judge) (count two); and section 6103 (failure to obey a court order) (count three).

Following a two-day trial on September 6 and 7, 2016, the hearing judge issued her decision on November 22, 2016. The judge found Van Dusen culpable of count three only and recommended a 30-day actual suspension. The judge dismissed the remaining two counts, finding Van Dusen acted with an honest but mistaken belief that she was no longer counsel of record in the *Querida* and *Nguyen* matters. OCTC does not challenge the dismissals, which we adopt as supported by the record. Thus, the sole issue before us as to culpability is whether Van Dusen willfully violated section 6103[7] by failing: (1) to comply with rule 9.20(a) with respect to the *Querida* and *Nguyen* matters;[8] and (2) to timely file a rule 9.20(c) compliance declaration.

II. CULPABILITY

A finding of willfulness for purposes of section 6103 requires only that Van Dusen knew what she was doing or not doing and that she intended either to commit the act or to abstain from committing it. (*In the Matter of Maloney and Virsik* (2005) 4 Cal. State Bar Ct. Rptr. 774, 787.) Bad faith is not a necessary element of a section 6103 violation. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 41, 47.)

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[7] Section 6103 provides, in relevant part, that willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

[8] Specifically, OCTC charged Van Dusen with failing to notify the bankruptcy trustee in the *Querida* and *Nguyen* matters of her suspension and failing to file the notice required by rule 9.20(a)(4) with the bankruptcy court. The hearing judge did not address whether Van Dusen filed the notice with the court, but unrelatedly addressed whether Van Dusen properly served clients and opposing counsel in other state and federal matters by registered or certified mail. We analyze culpability as charged and do not reach service of process issues.

The Review Department's August 2014 interim suspension order required Van Dusen to comply with rule 9.20(a) and (c). In pertinent part, she was obligated under the order to:

> Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties of the . . . suspension . . . and consequent disqualification to act as an attorney after the effective date of the . . . suspension . . . , and file a copy of the notice with the court, agency, or tribunal before which the litigation is pending for inclusion in the respective file or files.

(Rule 9.20(a)(4).)

Van Dusen received her suspension order and knew she had a duty to comply with these notification requirements and timely file proof of her compliance. Although she provided notice in her other cases, including bankruptcy matters, she failed to do so in the *Querida* and *Nguyen* matters. In defense of her noncompliance, Van Dusen offers multiple arguments.

First, Van Dusen argues that the *Querida* and *Nguyen* matters were no longer her cases in August 2014. But the dockets reflect that she was counsel of record in the *Querida* matter from June 20, 2012, to February 3, 2015, and in the *Nguyen* matter from September 28, 2012, to April 8, 2015. Van Dusen may have turned over control of these cases to Wood in March of 2013, but she officially remained counsel of record since no substitution of attorney forms were successfully filed at that time. Furthermore, there is no evidence that she took any action to review the dockets in these cases or otherwise followed up on her substitution attempts.

Second, she argues that these matters were "basically settled" and therefore not "pending." We disagree. The dockets show continued activity in both cases through 2014 and into 2015. Although some periods of dormancy may have occurred while the debtors made regular plan payments, this does not vitiate the pendent nature of the underlying bankruptcy petitions. To this point, the debtors in both cases ceased making plan payments in early 2015, after which the trustee contacted Van Dusen to notify her of pending action against the debtors.

Third, Van Dusen contends that Chapter 13 bankruptcy matters are not "litigation." She maintains that the definition of "litigation" under rule 9.20 is limited to contested civil matters, and that Chapter 13 bankruptcy petitions are generally nonadversarial and more akin to transactional matters. Similarly, Van Dusen argues that the trustees are not "opposing counsel" or "adverse parties" within the meaning of the rule. We do not parse the rule in this way, and instead read it in consonance with well-established canons of statutory construction:

> The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.] In order to determine this intent, we begin by examining the language of the statute. [Citations.] But '[i]t is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend.' [Citations.] Thus, '[t]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.' [Citation.]

(*People v. Pieters* (1991) 52 Cal.3d 894, 898–899.)

Moreover, a wide variety of factors may illuminate the lawmakers' purpose and design, '"such as context, the object in view, the evils to be remedied, . . . [and] public policy. . . .' [Citations.]" (*Walters v. Weed* (1988) 45 Cal. 3d 1, 10.)

Using these guiding principles, we reject Van Dusen's argument and find that the plain language of rule 9.20 contemplates situations beyond traditional civil court actions, as the rule broadly extends to any litigation matter pending in a "court," "agency," or other "tribunal." More importantly, the Supreme Court (the author of rule 9.20)[9] has made its intent behind the rule clear: "In every case, [it] performs the critical prophylactic function of ensuring that *all concerned parties*—including clients, cocounsel, opposing counsel or adverse parties, and any tribunal in which litigation is pending—learn about an attorney's discipline." (*Lydon v. State Bar* (1988) 45 Cal. 3d 1181, 1187, emphasis added [discussing former rule 955, renumbered as

[9] Rule 9.20 was "adopted by the Supreme Court under its inherent authority over the admission and discipline of attorneys and under subdivisions (d) and (f) of section 18 of article VI of the Constitution of the State of California." (Rule 9.2.)

rule 9.20].) "Failure to comply with the rule causes serious disruption in judicial administration of disciplinary proceedings . . . designed to protect the public, the courts, and the legal profession." (*Durbin v. State* Bar (1979) 23 Cal.3d 461, 468.)

Given this broad construction, and reading the rule in harmony with the Supreme Court's overarching goal of public protection, we find that "litigation" is most certainly pending when an attorney avails himself or herself of the adjudicative functions of a court, seeking legal redress on behalf of a client. Van Dusen's argument that bankruptcy is not "litigation" within the meaning of rule 9.20 ignores the salient point that the trustee and the bankruptcy court have their own interests in managing cases and court resources. As such, her failure to notify them of her inability to appear and represent clients undermines the very purpose of the rule.

Van Dusen's focus on the nonadversarial circumstances of Chapter 13 bankruptcy cases is similarly misplaced. Although such proceedings may generally be suited for mutual accord, the potential always exists for them to become adversarial. In fact, the trustee in both the *Querida* and *Nguyen* matters *did* become adverse once the debtors ceased making plan payments.

Under these circumstances, and given Probation's directive to Van Dusen to provide the required notifications in her bankruptcy cases, Van Dusen should have taken every possible action to ensure that "all concerned parties" were apprised of her suspension—which she did not do in the *Querida* and *Nguyen* matters.

Fourth and finally, Van Dusen argues that she timely filed a compliance declaration and that any subsequent late-filed amendments should be excused. This argument fails. Although she timely filed her first declaration on October 3, 2014, she knew it was not accurate and did not file a conforming declaration until December 1, 2014. Given the strict nature and enforcement of rule 9.20 requirements, Van Dusen was obligated to timely file a compliant declaration, but she failed to do so. (See *Lydon v. State Bar*, *supra*, 45 Cal.3d at p. 1187 [no distinction between

"substantial" and "insubstantial" violations of former rule 955(c)]; *Shapiro v. State Bar* (1990) 51 Cal.3d 251, 258–259 [late-filed declaration found to be willful violation of rule despite attorney's confusion about rule requirements and his offer of evidence of misdirection by Probation monitor].)

For the foregoing reasons, we find the record clearly and convincingly demonstrates that Van Dusen violated the Review Department's August 2014 interim suspension order.[10] She willfully failed to notify the trustee and the bankruptcy court in the *Querida* and *Nguyen* matters of her suspension and failed to promptly file an accurate and complete rule 9.20 declaration.

III. VAN DUSEN'S DUE PROCESS AND EVIDENTIARY CLAIMS

In addition to contesting culpability, Van Dusen raises several due process challenges on review, contending she did not receive a fair trial. We have examined each of these arguments and dismiss them for lack of merit.[11]

First, contrary to her contention, State Bar Court judges do not have an inherent financial bias in the outcome of disciplinary cases, as their salaries are not funded by disciplinary costs. (*In the Matter of Rubens* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 468, 474 [State Bar Court judges' salaries are set by statute and derive from annual attorney membership dues, not from costs assessed after imposition of discipline].)

Next, we reject Van Dusen's argument that the disciplinary trial violated the maxim of "*[n]emo judex in causa sua* (no one should serve as judge in his own cause)" because, as she alleges: (1) the State Bar Court is a partisan, captive court of the State Bar; (2) the State Bar Court is not empowered to adjudicate facial or as-applied rule challenges; and (3) rule 9.20 is a

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[10] Clear and convincing evidence leaves no substantial doubt and is sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.)

[11] We focus on Van Dusen's primary arguments in this opinion, but have reviewed all of her contentions and reject as meritless any that are not specifically addressed herein.

product of the State Bar Court and the Supreme Court, and, thus, both tribunals are unqualified to resolve disputes regarding the rule. As a matter of well-settled law, no intrinsic bias exists by virtue of the State Bar Court's placement within the umbrella organization of the State Bar. (*In the Matter of Acuna* (1996) 3 Cal. State Bar Ct. Rptr. 495, 500 [State Bar Court is modeled after courts of record and not improperly controlled by other parts of agency].) And, adjudicators are generally afforded a presumption of impartiality (*Haas v. Cty. of San Bernardino* (2002) 27 Cal. 4th 1017, 1025), which Van Dusen offers no evidence to rebut. Further, the State Bar Court is an arm of the Supreme Court, empowered to make disciplinary recommendations. The Supreme Court, however, retains the ultimate, inherent, and plenary judicial authority over the regulation of the practice of law in California. (*In re Attorney Discipline System* (1998) 19 Cal.4th 582, 599–600; *In re Rose* (2000) 22 Cal.4th 430, 448 [Supreme Court's plenary review provides opportunity to litigate substantive and due process claims].)

Finally, we disagree with Van Dusen's contention that the hearing judge erred by failing to admit into evidence an American Bankruptcy Institute Journal article. We find no abuse of discretion. (*In the Matter of Aulakh* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 690, 695 [abuse of discretion standard generally applies to procedural rulings].) While the article was not received into evidence, Van Dusen had the ability to, and did, discuss it in her trial testimony and cite to it in her briefs—therefore, she suffered no prejudice. (*In the Matter of Johnson* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 233, 241 [hearing judges have wide latitude in making evidentiary rulings and relief will not be granted without showing of actual prejudice].)

IV. AGGRAVATION AND MITIGATION

Standard 1.5 requires OCTC to establish aggravating circumstances by clear and convincing evidence; standard 1.6 requires Van Dusen to meet the same burden to prove

mitigation.[12] The hearing judge found one factor in aggravation (multiple acts) and one in mitigation (no prior record of discipline). Van Dusen does not challenge either finding on review.

A. Multiple Acts of Wrongdoing (Std. 1.5(b))

Van Dusen's multiple acts of misconduct are an aggravating circumstance to which we assign moderate weight. She failed to notify the bankruptcy trustee of her suspension in the *Querida* and *Nguyen* matters; failed to file a copy of her notice with the bankruptcy court in the same two matters; and failed to timely submit her rule 9.20 compliance declaration. These multiple and discrete acts enhance what might otherwise be encompassed within a single charge under section 6103. (See *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646–647 [three instances of misconduct considered multiple acts].)

B. No Prior Record of Discipline (Std. 1.6(a))

The absence of any prior record of discipline over many years of practice, coupled with present misconduct which is not likely to recur, is a mitigating circumstance. (Std. 1.6(a).) Van Dusen has 25 years of discipline-free law practice. We find that such a lengthy career without discipline warrants significant weight in mitigation. (*Hawes v. State Bar* (1990) 51 Cal. 3d 587, 596 [more than 10 years of discipline-free practice entitled to significant mitigation].) Moreover, considering Van Dusen's attempts at rule 9.20 compliance, we find her present lapses were isolated acts not likely to recur. (See *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1029 [long record of no discipline is most relevant when misconduct is aberrational].)

V. ONE-YEAR STAYED SUSPENSION IS APPROPRIATE DISCIPLINE

The purpose of attorney discipline is not to punish the attorney, but to protect the public, the courts and the legal profession; to preserve public confidence in the profession; and to

[12] All further references to standards are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

maintain high ethical standards for attorneys. (Std. 1.1.) Our disciplinary analysis begins with the standards which, although not binding, are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 91–92.) The Supreme Court has instructed us to follow them whenever possible (*In re Young* (1989) 49 Cal.3d 257, 267, fn. 11), and to look to comparable case law for guidance. (See *Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310–1311.)

Van Dusen's misconduct falls under standard 2.12(a), which applies to a violation of a court order related to a member's practice of law and calls for sanctions ranging from disbarment to actual suspension. Standard 2.12(a) echoes the language of section 6103, which provides that "A willful . . . violation of an order of the court . . . constitute[s] [a] cause[] for disbarment or suspension." Case precedent also makes it clear that breach of a court order is considered serious misconduct that offends the ethical responsibilities an attorney owes to the courts. (*Barnum v. State Bar* (1990) 52 Cal.3d 104, 112 [violation of court order is serious misconduct].)

Although Van Dusen failed to fully obey the Review Department's order to comply with rule 9.20, we distinguish this situation from a violation of Supreme Court-ordered rule 9.20 compliance that encompasses a prior record of discipline, generally of a significant nature. (*In the Matter of Mitchell* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 332, 341 [rule 9.20 (formerly rule 955) compliance not usually ordered where actual suspension is less than 90 days].) By contrast, Van Dusen has no prior record of discipline, which renders the circumstances of her case less serious than a traditional rule 9.20 violation.

Accordingly, we find clear reasons here to depart from standard 2.12(a) and to recommend discipline less than actual suspension. (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5 [requiring clear reasons to deviate from standards].) While strict compliance with rule 9.20 is required under case law, we recognize that Van Dusen made attempts, albeit unsuccessful, to meet her obligations. She provided notice of her suspension to concerned

parties in her other cases, but failed to do so in just two bankruptcy matters where she erroneously believed she was no longer the attorney of record. She also timely filed her initial rule 9.20 declaration, which we note was inaccurate, but she subsequently amended it, and filed a final, conforming declaration within approximately two months. When we consider her shortcomings, which occurred over a relatively minor period of time, in juxtaposition to the significant backdrop of her 25 years of discipline-free law practice, we find that the net effect of Van Dusen's mitigating and aggravating factors justifies a departure from the standard. Her misguided and unsuccessful efforts at compliance with rule 9.20 do not relieve her of culpability as she desires, but we find they do support lesser discipline than called for in standard 2.12(a). For these reasons, we find that a one-year stayed suspension, together with our recommended conditions, is appropriate discipline that serves to protect the public, the courts, and the legal profession.

VI. RECOMMENDATION

For the foregoing reasons, we recommend that Jan Elizabeth Van Dusen be suspended from the practice of law for one year, that execution of that suspension be stayed, and that she be placed on probation for one year on the following conditions:

1. She must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation.

2. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including her current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, she must report such change in writing to the Membership Records Office and the State Bar Office of Probation.

3. Within 30 days after the effective date of discipline, she must contact the Office of Probation and schedule a meeting with her assigned probation deputy to discuss the terms and conditions of probation. Upon the direction of the Office of Probation, she must meet with the probation deputy either in person or by telephone. During the period of probation, she must promptly meet with the probation deputy as directed and upon request.

4. She 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, she must state whether she has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of her probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

5. Subject to the assertion of applicable privileges, she must answer fully, promptly, and truthfully, any inquiries of the Office of Probation that are directed to her personally or in writing, relating to whether she is complying or has complied with the conditions contained herein.

6. Within one year after the effective date of the discipline herein, she must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and she shall not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

The period of probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. At the expiration of the period of probation, if she has complied with all conditions of probation, the period of stayed suspension will be satisfied and that suspension will be terminated.

VII. PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that Van Dusen be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year of the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the Office of Probation within the same period. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

VIII. COSTS

We further recommend 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 section 6140.7 and as a money judgment.

HONN, J.

WE CONCUR:

PURCELL, P. J.

McGILL, J.

PUBLIC MATTER

FILED

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STATE BAR COURT CLERK'S OFFICE
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STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	Case No. **15-O-10868-PEM**
JAN ELIZABETH VAN DUSEN,	**DECISION**
A Member of the State Bar, No. 142700.	

Introduction[1]

In this contested disciplinary proceeding, respondent Jan Elizabeth Van Dusen is charged with three counts of professional misconduct: (1) misrepresenting compliance with California Rules of Court, rule 9.20; (2) seeking to mislead a judge; and (3) failing to obey a court order.

The court finds, by clear and convincing evidence, that respondent is culpable of one count of failing to obey a court order, but not culpable of the other two counts. In light of the nature of respondent's misconduct and the evidence in mitigation and aggravation, the court recommends that respondent be suspended from the practice of law in California for one year, that execution of suspension be stayed, and that respondent be placed on probation for one year subject to conditions, including an actual suspension of 30 days.

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

Significant Procedural History

The Office of Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC) on December 23, 2015. On January 13, 2016, respondent filed a response to the NDC.

Trial was held on September 6 and 7, 2016. The State Bar was represented by Acting Assistant Chief Trial Counsel Donald R. Steedman. Respondent represented herself. On September 7, 2016, following closing argument, the court took this matter under submission.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 11, 1989, and has been a member of the State Bar of California at all times since that date.

Facts

California Rules of Court, Rule 9.20, Compliance Declaration in Case No. 11-C-18557

On August 5, 2014, because respondent had been convicted of violating Penal Code section 597, subdivision (b) (cruelty to animals), a felony that may or may not involve moral turpitude, the Review Department of the State Bar Court ordered respondent suspended from the practice of law, effective August 20, 2014, pending final disposition of the proceeding, pursuant to Business and Professions Code section 6102 in case No. 11-C-18557. The court further ordered that respondent comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a)[2] and (c)[3] of that rule within 30 and 40 days, respectively, after the effective date of the suspension.

[2] In relevant part, rule 9.20, subdivision (a), provides that an attorney must: "Notify all clients being represented *in pending matters* and any co-counsel of his or her [suspension] and his or her consequent disqualification to act as an attorney after the effective date of the [suspension], and, in the absence of co-counsel, also notify the clients to seek legal advice elsewhere. [¶] . . . [¶] Notify opposing counsel *in pending litigation* or, in the absence of counsel, the adverse parties of the [suspension] and consequent disqualification to act as an attorney after the effective date of the [suspension], and file a copy of the notice with the court,

On August 15, 2014, respondent filed a Petition to Vacate Interim Suspension for Conviction of Penal Code Section 597(b) and for such Vacation to be Retroactive to the Date of Suspension. On August 20, 2014, the review department temporarily stayed the interim suspension, so that the full review department could act upon respondent's petition.

On the same day, August 20, 2014, the Office of Probation of the State Bar wrote to respondent, advising her that the effective date of her suspension was August 20, 2014, and that her rule 9.20 affidavit of compliance must be timely filed with the State Bar Court no later than September 29, 2014.

On August 28, 2014, after having considered the petition and finding no good cause, the review department denied respondent's petition and lifted the temporary stay of interim suspension. Accordingly, the review department changed the effective date of the suspension from August 20, 2014, to September 12, 2014, and ordered as follows:

> "Respondent is suspended from the practice of law, pursuant to our August 5, 2014 order, now effective September 12, 2014."

On September 29, 2014, the Office of Probation wrote to respondent, informing her that while the August 28, 2014 review department order changed the effective date of her interim suspension from August 20, 2014, to September 12, 2014, it did not see that the court altered the date for her to comply with rule 9.20. Therefore, the Office of Probation strongly encouraged respondent to file her rule 9.20 compliance declaration immediately.

On the contrary, this court finds that the change of the suspension date did alter the date of the rule 9.20 compliance. Under the August 28 order, the review department ordered

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agency, or tribunal before which the litigation is pending for inclusion in the respective file or files." (Italics added.)

[3] In relevant part, rule 9.20, subdivision (c), provides that, "[w]ithin such time as the order may prescribe after the effective date of the member's [suspension], the member must file with the Clerk of the State Bar Court an affidavit showing that he or she has fully complied with those provisions of the order."

respondent suspended effective September 12 pursuant to the August 5 order. And under the August 5 order, the review department "ordered that respondent comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of this suspension." Therefore, since the suspension date was changed to September 12, 2014, the date for respondent to comply with rule 9.20 would also be moved to October 12, 2014, and October 22, 2014, respectively, as those dates are within 30 and 40 days after September 12, 2014, the new effective date of the suspension.

After receiving the September 29 letter from the Office of Probation, respondent attempted to file the declaration on three separate occasions – in the months of October, November and December. Her third attempt was finally done correctly. First, on October 3, 2014, respondent's Rule 9.20 Compliance Declaration, dated September 21, 2014, was received by the State Bar Court Clerk's Office. Respondent's Compliance Declaration checked box 4 which stated: "I notified all opposing counsel or adverse parties...by certified or registered mail...of my disqualification to act as an attorney..."

Second, on November 17, 2014, respondent filed an Amendment to her October 3, 2014 Rule 9.20 Compliance Declaration, wherein she attempted to correct an "error" in her compliance declaration. In her Amendment, respondent stated that in her federal court cases she e-filed notice of her interim suspension as early as August 19, 2014, to opposing counsel, client creditors and whomever had requested notices. She also stated that she mail-served these notices on opposing counsel in her state court cases. She further stated that opposing counsel and parties in her state court cases all received actual notice.

On November 18, 2014, the Office of Probation rejected the Amendment because respondent did not specify the reference to an "error" and did not address all aspects of rule 9.20,

e.g, she did not state that the notice was provided by registered or certified mail, return receipt requested. On November 25, 2014, the Office of Probation sent respondent a follow-up letter with a detailed explanation as to why it rejected her Amendment. In the letter, the Office of Probation called respondent's attention to the fact that on its face her Amendment did not demonstrate full compliance with rule 9.20 because it did not state that the notice was provided by registered or certified mail, return receipt requested. The letter further noted that the due date was September 29, 2014, and that even if the August 28, 2014 court order changed the deadline based upon the effective date of the September 12, 2014 suspension, the rule 9.20 compliance declaration would have been due October 22, 2014. Thus, she was still not in compliance with the court order.

Finally, on December 1, 2014, respondent filed her Rule 9.20 Compliance Declaration with the State Bar Court in response to an August 28, 2014, review department order in case No. 11-C-18557, in which respondent stated:

"I notified all opposing counsel or adverse parties not represented by counsel in matters that were pending on the date upon which the order comply with rule 9.20 was filed by certified or registered mail, return receipt requested, of my disqualification to act as an attorney after the effective date of my suspension, disbarment, or the Supreme Court's acceptance of my resignation, and filed a copy of my notice to opposing counsel/adverse parties with the court, agency or tribunal before which litigation was pending for inclusion in its files."

Failure to Comply with Rule 9.20

1. Querida Matter

On January 19, 2012, attorney Tracy Wood (Wood) filed a bankruptcy petition on behalf of Marietta Querida in *In re Querida*, U.S. Bankruptcy Court, Northern District, case No. 12-40504 CN 13. He was listed as the attorney of record until June 20, 2012, when respondent

was substituted in as the attorney of record because Wood had been suspended from the practice of law. It should be noted that after she was substituted in there was never an appearance by her on the subsequent actions in the case until February 3, 2015, where respondent was formally substituted out of the case.

Wood testified that once his suspension was terminated, he took over the Querida matter in March 2013. It should also be noted that after December 28, 2012, respondent was never listed on the court docket. In fact, the only document respondent filed in the case was a substitution of attorney dated June 20, 2012, substituting herself in place of Wood.

Nevertheless, as of December 1, 2014, respondent was the attorney of record in *In re Querida*. She did not formally withdraw as the attorney of record until February 2015. Moreover, respondent admitted that she did not notify Martha G. Bronitsky, the bankruptcy trustee, of her interim suspension in accordance with rule 9.20 in *In re Querida.*

2. Nguyen Matter

On September 28, 2012, respondent filed a bankruptcy petition on behalf of Son Nguyen and Olivia Nguyen (Nguyen) in *In re Nguyen*, U.S. Bankruptcy Court, case No. 12 47975 WJL 13. On March 30, 2013, when Wood's suspension ended, he was assigned the Nguyen matter and was the only attorney listed on the court docket. Wood testified that he tried to file a substitution of counsel at the time but it was returned. He also admitted that he never told respondent that he failed to file a substitution of counsel form prior to respondent's suspension. The court believes respondent's testimony that she thought a substitution had been filed. Thus, unbeknownst to respondent, a substitution of attorney was never filed in the Nguyen matter.

Therefore, as of December 1, 2014, respondent was the attorney of record in *In re Nguyen*, U.S. Bankruptcy Court, case No. 12-47975 WJL 13. Respondent admitted that she did

not notify Martha G. Bronitsky, the bankruptcy trustee, of her interim suspension in accordance with rule 9.20 in the Nguyen matter.

Conclusions

Count 1 – (§ 6106 [Moral Turpitude; Misrepresentation])

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

The State Bar alleged that respondent violated section 6106 on December 1, 2014, by stating that she had notified all opposing counsel and adverse parties in the Rule 9.20 Compliance Declaration when respondent knew or was grossly negligent in not knowing that the statements were false, as she had not notified the bankruptcy trustee in *In re Querida* and *In re Nguyen* and had not filed the notice in the court file as required by rule 9.20. Therefore, the State Bar alleged that respondent committed an act involving moral turpitude, dishonesty or corruption.

Respondent, on the other hand, contended that when she signed the Rule 9.20 Compliance Declaration under penalty of perjury, she truly thought that she no longer represented Querida as she had only represented Querida during Wood's suspension from the practice of law. When Wood resumed his practice, she transferred that case back to him. Her belief that she had transferred the case back to him is not unreasonable given that Wood filed the petition on behalf of Querida and that after June 20, 2012, her name was not in the docket until February 3, 2015, when Querida terminated her and replaced her with Wood. Respondent credibly testified that when she filed the declaration on December 1, 2014, she reasonably believed that as of March 20, 2013, Querida was no longer her client and that the Querida matter had been returned to Wood for more than a year before her interim suspension.

Respondent also contended that when she signed the Rule 9.20 Compliance Declaration under penalty of perjury, she also truly thought that she no longer represented Nguyen. While she admitted she filed the petition on behalf of Nguyen, the last time she had anything to do with the Nguyen matter was March 20, 2013. It is clear from the docket that March 20, 2013, was the last time respondent's name was listed on the docket. Thereafter, the docket only refers to Wood as the attorney for Nguyen. Again, respondent credibly testified that when she filed the declaration on December 1, 2014, she reasonably believed that as of March 20, 2013, Nguyen was no longer her client.

Although the review department order required respondent to notify all clients and opposing counsel, she did not do so. In *In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, where the attorney did not intend to deliberately defy a court order and did not have any dishonest or wrongful intent, and where his improper conduct was based on beliefs and understandings which, although not only mistaken but also objectively unreasonable, were honestly held, the court found that he did not commit acts involving moral turpitude. (See *Sternlieb v. State Bar* (1990) 52 Cal.3d 317.)

Similarly, respondent did not intentionally file a false affidavit that she had notified all opposing counsel or adverse parties in any pending matter. While the rule 9.20 compliance declaration was not accurate, she honestly believed, albeit mistakenly, that she no longer represented Querida and Nguyen. Reasonable doubts in proving a charge of professional misconduct must be resolved in the accused attorney's favor. (*Ballard v. State Bar* (1983) 35 Cal.3d 274, 291.)

Respondent's mistaken belief that she was no longer counsel of record in the *Querida* and *Nguyen* matters does not rise to the level of moral turpitude. Given respondent's strict duty to comply with rule 9.20, her failure to notify the clients or the opposing counsel in writing

regarding her suspension was unreasonable. Nonetheless, the court finds that she made an unintended, honest mistake. Such an honest but unreasonable violation of rule 9.20 does not, in itself, amount to moral turpitude.

Based on this evidence, the court finds that respondent's acts were not contrary to honesty and good morals or that she intentionally or grossly negligently made false statements in her compliance declaration. Therefore, there is no clear and convincing evidence that respondent's acts constituted moral turpitude in willful violation of section 6106.

Count 2 - (§ 6068, subd. (d) [Attorney's Duty to Employ Means Consistent with Truth])

Section 6068, subdivision (d), provides that an attorney has a duty to employ those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of law or fact.

As similarly alleged in count 1, the State Bar stated that respondent violated section 6068, subd. (d), on December 1, 2014, by declaring that she had notified all opposing counsel and adverse parties in the Rule 9.20 Compliance Declaration when respondent knew that the statement was false, as she had not notified the bankruptcy trustee in *In re Querida* and *In re Nguyen* and had not filed the notice in the court file. Therefore, the State Bar alleged that respondent sought to mislead the judge by such a false statement of fact.

Based on respondent's honest mistaken belief that she was no longer counsel of record in the Querida and Nguyen matters, as discussed in count 1, and she had no dishonest intent to deceive the court, there is no clear and convincing evidence that respondent sought to mislead the judge by her erroneous declaration in willful violation of section 6068, subdivision (d).

Count 3 - (§ 6103 [Failure to Obey a Court Order])

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the

attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

The State Bar alleged that respondent violated the review department court orders of August 5, 2014, and August 28, 2014, in case No. 11-C-18557: (1) by failing to notify the bankruptcy trustee in *In re Querida* and *In re Nguyen*; (2) by failing to file the notice as required by California Rules of Court, rule 9.20(a)(4); and (3) by failing to file a declaration of compliance with the State Bar Court by September 9, 2014.

Respondent argued that she did not violate rule 9.20 and therefore, did not violate section 6103. Among her contentions, she claimed that the Querida and Nguyen matters no longer belonged to her as they were returned to another attorney more than a year before her interim suspension. She contended that the bankruptcy cases were not litigation and were not pending. Also, she claimed that her notices of suspension to her clients and opposing counsel by regular mail service, e-filing and email were notification enough and that the Maxims of Jurisprudence govern the "obsolete" requirement of rule 9.20. Moreover, she contended that rule 9.20 is vague and violates due process. The court rejects respondent's arguments.

It is well settled that strict compliance with an attorney's obligations under rule 9.20 is required. (See *Lydon v. State* Bar (1988) 45 Cal.3d 1181, 1187.) All that is necessary for a willful violation of rule 9.20 is a general purpose or willingness to commit the act or make the omission. (*Durbin v. State Bar* (1979) 23 Cal.3d 461, 467.)

At trial, respondent admitted that she did not notify the bankruptcy trustee in the Querida and Nguyen matters. Her belief that Nguyen and Querida were not her clients at the time of the effective date of the review department court order is irrelevant to this charge. She should have checked the docket and made sure that she was no longer the attorney of record by filing proper substitution of counsel forms. The bankruptcy trustee testified that unless a party files a formal

substitution of counsel, the attorney remains as the attorney of record. When the docket indicated that she was the attorney of record, respondent should have notified the bankruptcy trustee of her suspension. And since the two matters had not been terminated at the time, they were still pending. Respondent did not file a substitution of attorney until February 3, 2015, in the Querida matter. And the Nguyen matter was not terminated until April 8, 2015.

Respondent contended that the cases were not "litigation" as they were not bankruptcy adversary proceedings, nor were any motions pending or likely to be filed at the time of her suspension. On the other hand, the bankruptcy trustee testified that bankruptcy proceedings could be defined as litigation because people's rights are adjudicated in bankruptcy proceedings. And that even after a plan is confirmed, there may be motions to modify the plan, which is a common occurrence. The court agrees with the bankruptcy trustee that the Querida and the Nguyen bankruptcy matters were in litigation.

As to her failure to notify some opposing counsel and clients by certified or registered mail, return receipt requested, of her disqualification to act as an attorney after the effective date of her suspension, respondent took it upon herself to determine that the requirement of registered certified mail is an outdated requirement. She argued that the requirement of rule 9.20 that notifications be by registered or certified mail, returned receipt requested, is nullified by the California Maxims of Jurisprudence since the advent of electronic mail and the federal courts' electronic filing system.

Respondent cannot disregard court orders because she believes they are invalid or obsolete, even if she has a personal good faith reason to do so. (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 9, fn. 3 ["[r]espondent's belief as to the validity of the order is irrelevant to the section 6103 charge"].) The essential elements of a willful violation of section 6103 are: (1) knowledge of a binding court order; (2) knowledge of what the attorney

was doing or not doing; and (3) intent to commit the act or to abstain from committing it. (*In the Matter of Maloney and Virsik* (2005) 4 Cal. State Bar Ct. Rptr. 774, 787.)

Here, there is clear and convincing evidence that respondent knew about the review department orders, knew what she was doing, and yet, failed to comply with the orders. She had willfully failed to strictly comply with rule 9.20, as ordered by the review department. She omitted to notify the bankruptcy trustee of her suspension in the Querida and Nguyen matters; she failed to properly serve her notice to opposing counsel and clients by certified or registered mail, return receipt requested; and she failed to timely file a declaration of compliance with the State Bar Court by October 22, 2014. Instead, she did not properly file the Rule 9.20 Compliance Declaration until December 1, 2014, in her third attempt. Therefore, based on her failure to comply with rule 9.20, respondent failed to obey the review department court orders of August 5 and August 28, 2014, in willful violation of section 6103.

Aggravation[4]

Multiple Acts (Std. 1.5(b).)

Respondent's multiple acts of misconduct are considered in aggravation. She failed to notify the bankruptcy trustee about her suspension; she failed to properly serve her notice to opposing counsel and clients; and she failed to timely file the rule 9.20 compliance declaration.

Mitigation

No Prior Record (Std. 1. 6(a).)

Respondent had an unblemished record with the State Bar for 25 years prior to the misconduct found in this case. Respondent is entitled to substantial mitigation for this extensive discipline-free period.

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[4] All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney but to protect the public, the courts, and the legal profession; to maintain the highest possible professional standards for attorneys; and to preserve public confidence in the legal profession. (Std. 1.1; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 2.12(a) provides that the presumed sanction for violation or disobedience of a court order related to the member's practice of law, the attorney's oath, or the duties required of an attorney under Business and Professions Code section 6068, subdivisions (a),(b),(d),(e),(f), or (h) is actual suspension or disbarment.

Respondent argues that she is not culpable of any misconduct.

The State Bar urges that respondent be actually suspended for one year, citing *Shapiro v. State Bar* (1990) 51 Cal.3d 251 in support of its recommendation.

In *Shapiro*, the attorney had timely notified clients and others of his suspension, but did not file an affidavit conforming to former rule 955(c) (rule 9.20) until five months after it was due. In the underlying disciplinary matter, the attorney was suspended for three years, stayed, and placed on probation for three years with a one-year actual suspension for his misconduct

involving two client matters. In weighing the discipline, the Supreme Court considered his long history of practice and the short period of time his misconduct spanned. Consequently, the Supreme Court imposed a one-year actual suspension along with a two-year stayed suspension and two-year probation for both the former rule 955 violation and his failure to perform services in one client matter.

Unlike the attorney in *Shapiro*, respondent's misconduct did not involve any malfeasance towards her clients. Her rule 9.20 violation was technical. She fully participated in the disciplinary process; her noncompliance did not involve dishonesty; respondent did not avoid compliance with the rule or attempt to take advantage of any individual's lack of knowledge of her suspension for an improper purpose; and she does not have a prior record of discipline in 25 years of practice. (See *Dahlman v. State Bar* (1990) 50 Cal.3d 1088; *Bercovich v. State Bar* (1990) 50 Cal.3d 116; *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287; *In the Matter of Pierce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 382.) Therefore, her misconduct warrants discipline much less than that of *Shapiro.*

The court finds these cases instructive.

In *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, the attorney filed the former rule 955 affidavit two weeks late but before disciplinary action was commenced. The attorney had notified his clients and complied with the requirements of former rule 955, subdivision (a). In aggravation, the attorney had two prior disciplines. In mitigation, the attorney participated in the disciplinary matter, cooperated with the State Bar, recognized his mistakes, and was working on rectifying his misconduct. The attorney was actually suspended for 30 days.

In *In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192, the attorney was found culpable of failing to comply with former rule 955 and violating the terms of his

disciplinary probation. The attorney had attempted to file his former rule 955 affidavit two weeks late. The attorney argued that he did not timely file his former rule 955 affidavit due to his beliefs that: (1) he was not required to file a former rule 955 affidavit because he had no clients and had no one to notify, and (2) he had already filed a former rule 955 affidavit in his first discipline and he had nothing to report. In aggravation, the attorney had two prior disciplines. In mitigation, the attorney had demonstrated recognition of wrongdoing, there was a lack of harm, and the attorney had engaged in pro bono activities. The attorney received, inter alia, an actual suspension of nine months.

Unlike the attorneys in *Friedman* and *Rose* with two prior records of discipline, here, respondent had practiced for 25 years without prior discipline. She was ordered to comply with rule 9.20 due to a conviction referral matter and has been on interim suspension since September 2014. She failed to comply with the review department court orders by failing to notify the bankruptcy trustee, by failing to properly serve the notices to opposing counsel and parties, and by failing to timely and properly file the rule 9.20 affidavit. After two unsuccessful attempts, she finally filed a proper declaration but missed the deadline by about two months. The attorneys in *Friedman* and *Rose* were late by two weeks.

"Given these circumstances, [the court] finds this rule [9.20] case is an appropriate one for imposition of a very modest sanction." (*In the Matter of Friedman, supra,* 2 Cal. State Bar Ct. Rptr. 527, 534.) Accordingly, in light of standard 2.12(a) and after balancing all relevant factors, including the underlying misconduct, the aggravating and mitigating factors, and the case law, the court concludes that a one year's stayed suspension and one year's probation with conditions, including a 30-day actual suspension, would be sufficient to protect the public and to preserve public confidence in the profession. "A 30-day suspension will serve to underline to

respondent the seriousness of [her] duties to comply with all aspects of court orders." (*Id.* at p. 535.)

Recommendations

It is recommended that respondent **Jan Elizabeth Van Dusen**, State Bar Number 142700, be suspended from the practice of law in California for one year, that execution of that period of suspension be stayed, and that respondent be placed on probation[5] for a period of one year subject to the following conditions:

1. Respondent Jan Elizabeth Van Dusen is suspended from the practice of law for the first 30 days of probation.

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.

3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.

4. Within 30 days after 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 of the conditions of respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

[5] The probation period will commence on the effective date of the Supreme Court order in this matter. (See Cal. Rules of Court, rule 9.18.)

6. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.

7. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

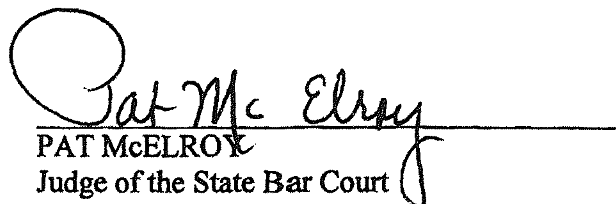
At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.



Dated: November 22, 2016

PAT McELROY
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 November 22, 2016, I deposited a true copy of the following document(s):

DECISION

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:

JAN E. VAN DUSEN
LAW OFFICE OF JAN VAN DUSEN
1501 MAGNOLIA ST
OAKLAND, CA 94607

☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

☐ by overnight mail at , California, addressed as follows:

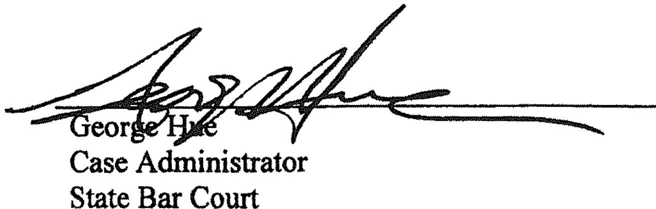
☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

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

Donald R. Steedman, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on November 22, 2016.



George Hue
Case Administrator
State Bar Court

The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST April 24, 2018
State Bar Court, State Bar of California,
Los Angeles

By ____________________
Clerk

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 April 26, 2018, 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 San Francisco, California, addressed as follows:

JAN E. VAN DUSEN
1501 MAGNOLIA ST
OAKLAND, CA 94607 - 2226

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

Jennifer E. Roque, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on April 26, 2018.

Vincent Au
Court Specialist
State Bar Court