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7 Respondent, Self-Represented

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IN THE STATE BAR COURT OF THE STATE BAR OF CALIFORNIA
HEARING DEPARTMENT

In the Matter of:

JAN ELIZABETH VAN DUSEN,
No. 142700,

A Member of the State Bar.

Case No. 11-C-18557

ANSWER TO NOTICE OF HEARING
ON CONVICTION

Member Jan Van Dusen ("Van Dusen") responds to the State Bar of California's ("State Bar") Notice of Hearing on Conviction ("Notice") as follows:

ANSWER

**THIS COURT NOT AUTHORIZED TO DECIDE PUNISHMENT BEFORE
TERMINATION OF STATE AND FEDERAL HABEAS REVIEW**

1. Under Business and Professions Code § 6102(e), no hearing may take place to decide my punishment until my conviction has become final:

Except as provided in subdivision (c), if after adequate notice and opportunity to be heard (**which hearing shall not be had until the judgment of conviction has become final** or, irrespective of any subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence), the court finds that the crime of which the attorney was convicted, or the circumstances of its commission, involved moral turpitude, it shall enter an order disbaring the attorney or suspending him or her from practice for a limited time, according to the gravity of the crime and the circumstances of the case; otherwise it shall dismiss the



1 proceedings. In determining the extent of the discipline to be
2 imposed in a proceeding pursuant to this article, any prior
discipline imposed upon the attorney may be considered.

3 2. I have currently served more than three years of my five-year probation
4 sentence.

5 3. My conviction is not final, nor will it be final until the conclusion of my state
6 and federal habeas petitions. *Stephens v. Toomey*, 51 Cal.2d 864, 869 (1959): “A judgment is
7 **not final if there still remains some legal means of setting it aside.** There may be ways to
8 avoid its execution, such as a general pardon, but a judgment in an ordinary criminal case, such
9 as we have here, becomes final when all available means to avoid its effect have been
10 exhausted.” *Stephens v. Toomey* has not been overruled.

11 4. My skeleton habeas petition was timely filed with the California Supreme Court
12 on November 30, 2017. I advised the court that this was merely a skeleton petition that I intend
13 to amend and supplement, and that I also intend to file exhibits to support all allegations in my
14 habeas petition, as quickly as possible. My habeas petition was filed within the one-year
15 deadline set forth in 28 U.S.C. 2244(d), which was necessary in order to protect my right to
16 federal habeas review. *Id.* I have advised the state bar on multiple occasions that I intended to
17 file these petitions.

18 5. My petition was filed despite constant interference by the State Bar of
19 California, which required me to litigate a meritless complaint against me, case 15-O-10868.
20 The court refused to stay case 15-O-10868 until I had filed my habeas petition and supporting
21 documents. I also litigated in an unsuccessful attempt to vacate the bar’s unconstitutional
22 interim suspension of my license, so that I could support myself.

23 6. Either my state or my federal habeas petition is likely to be successful because
24 of the numerous serious constitutional violations committed by various parties to my
25 prosecution. For example, a series of emails withheld by the prosecution for more than a year
26 despite an order compelling production, and finally obtained by my then-attorney via a
27 California Public Records Act request, proves that my conviction was a result of a campaign by
28 principals of several nonprofits to seize my animals when no legal grounds for such a seizure

1 existed. The emails also prove that several members of this conspiracy finally recruited my
2 kennel cleaner to set me up for a seizure after their 18 month harassment campaign failed to
3 find grounds for seizure. I repeatedly demanded that this information be presented at trial, but
4 due to ineffective assistance of counsel it was not. To date, four federal judges have stated that
5 this pre-existing conspiracy to seize my animals, if proven, necessarily calls into question my
6 criminal conviction.

7 7. For another example, prosecutors also withheld from me evidence in their
8 possession which proved that the “confidential informant” on whose statements the search
9 warrant was based, was acting as a police agent at the time. Not only was this evidence
10 withheld, but prosecutors suborned perjury to conceal the informant’s police agency. The
11 defense could not effectively challenge this perjury at trial because of the withheld documents
12 (digital copies of the search warrant photographs, showing when the photographs were taken,
13 as well as the chain of custody of these emailed photographs, both of which would prove when
14 they were taken). The photographs were taken immediately after I refused Oakland police
15 officers access to my home. Police notified the animal impound director, who notified the
16 person attempting to set me up, who called my cleaner and told him to get over to my house
17 and take pictures (of the mess he had created by pulling no-shows immediately before a trial).
18 He did so. Prosecutors used this withheld evidence at trial but *never* produced it to me or my
19 attorneys, *to this day*, even though it has been in their possession since 2011. They initially
20 claimed the evidence was lost, before “finding” it at the start of my first trial. Hard copies of
21 these photographs were used at court but never produced to the defense, nor was the digital
22 information ever produced to the defense or used at court.

23 8. These are just two of the denials of due process on which my habeas petition is
24 based. There are many more.

1 **IF MY CONVICTION IS NOT SET ASIDE ON HABEAS REVIEW,**
2 **THIS COURT ONLY HAS AUTHORITY TO ACT IF MY**
3 **OFFENSE INVOLVED DISHONESTY OR MORAL TURPITUDE**

4 **No Specific Intent to Deceive, Defraud, Steal, or Make or Suborn a False Statement**

5 13. *After my conviction becomes final*, after state and federal habeas review,
6 according to Business and Professions Code § 6102(c), I am to be summarily disbarred if
7 convicted of a felony and an “element of the offense is the specific intent to deceive, defraud,
8 steal, or make or suborn a false statement, or involved moral turpitude.” This is clear as mud,
9 especially as there is probably no felony in California with a required finding of specific intent
10 to commit moral turpitude. This 6102(c) is also an unconstitutional deprivation of the
11 member’s due process rights, as there is no provision for a hearing. But let’s focus on the
12 portion of that badly written sentence before the phrase, “or involved moral turpitude.”

13 14. It has not even been alleged that I deceived, defrauded, stole, or made or
14 suborned a false statement. (My prosecutors were doing all the suborning of false statements.)
15 None of those things was an element of the crime with which I was charged. On the contrary, I
16 openly ran a cat rescue household with between 50 and 100 cats, and even cared for more than
17 100 cats for a short time, which is exactly why I was targeted. I did not conceal what I was
18 doing, and what I was doing was not only legal but altruistic. It was my chosen form of
19 charity.

20 15. I was basically convicted of having a dirty house *for four days* while caring for a
21 large group of feral cats. (This was during a diarrhea outbreak that had hit other rescue
22 households as well.) During these four days, I was in trial in another county and temporarily
23 staying near the court in Martinez. Obviously I was unavailable to personally clean my rescue
24 household either during the trial or during trial preparations immediately before trial. After my
25 cleaner pulled two no-shows in a row and alerted his co-conspirators, a friend agreed to clean
26 up the mess my hired cleaner had caused, plus keep up with the daily cleaning while I was in
27 trial. This friend and the cleaners she hired to help were all paid by me. They worked
28 diligently to clean up the mess until they were barred by police from entering my house on the
morning of the seizure. Emails reveal that authorities knew of the cleanup and raced to seize

1 my animals before my cleaners could finish the job. (There is no statutory authority to seize
2 without a prior hearing where the allegedly poor conditions are being remedied.)

3 **My Conviction Did Not Involve Moral Turpitude**

4 16. As to moral turpitude, there was no evidence of this in my case. The
5 prosecution mainly contended that I was a hoarder without putting on any psychologist or
6 psychiatrist testimony, after the court had denied my request for a hoarding expert and after my
7 next attorney refused even to ask for such an expert based on the court's prior denial. And
8 even if I were a hoarder, hoarding does not constitute moral turpitude.

9 17. In *People v. Mangal Singh Sanghera*, 6 Cal.App.5th 365, 377 fn. 3 (3d Dist.
10 2016), citing *People v. Castro (1985) 38 Cal.3d 301, 306*, moral turpitude is defined as "a
11 readiness to do evil." *Id.* Beginning one month before my client's trial, I attempted to arrange
12 for cleaning prior to and during that trial, unfortunately hiring my kennel cleaner who had been
13 compromised by his involvement with the conspiracy to seize my animals. I was of course
14 unaware of this secret conspiracy at that time.

15 18. When my kennel cleaner pulled two successive no-shows on the weekend while
16 I was preparing for trial set to being Monday, I hired replacement cleaners to clean up the mess
17 and continue with daily cleaning until I could personally take over again after trial concluded.

18 19. From the beginning of my client's trial, I was in daily contact with my cleaners.
19 I was also in contact with the Oakland animal impound, regarding an agreed inspection to be
20 conducted after trial concluded.

21 20. It is unlikely that anyone could conclude a "readiness to do evil" from these
22 facts.

23 **ALTHOUGH THE STATE BAR COURT HAS NO AUTHORITY UNDER SECTION**
24 **6102 TO IMPOSE PUNISHMENT ABSENT A FINDING OF MORAL TURPITUDE,**

25 **MY CONVICTION DID NOT INVOLVE THE PRACTICE OF LAW**

26 21. Business and Professions Code § 6102(e) requires the state bar court to dismiss
27 its case against me if my conviction involves neither deceit-fraud-theft-perjury nor moral
28 turpitude:

1 [I]f after adequate notice and opportunity to be heard the
2 court finds that the crime of which the attorney was convicted, or
3 the circumstances of its commission, involved moral turpitude, it
4 shall enter an order disbaring the attorney or suspending him or
5 her from practice for a limited time, according to the gravity of
6 the crime and the circumstances of the case; **otherwise it shall**
7 **dismiss the proceedings.**

8 Section 6102 provides no authority to impose punishment in the absence of these specific
9 requirements, although the state bar has apparently imposed such punishment in the past,
10 routinely.

11 22. My conviction was for running an animal rescue household negligently so that
12 animals were harmed. Of course I am not guilty of this, but even if I were, this has nothing to
13 do with the practice of law. The OCTC once argued in a previous filing in this same case that
14 because I was in trial in another county at the time of the seizure on which my criminal
15 prosecution was based, my conviction involved the practice of law. This is truly upside down
16 and backward reasoning.

17 23. The people who set me up for the seizure timed their actions to take place
18 immediately before and during my client's trial in Contra Costa County. They knew that my
19 first duty was to my client and they trusted that I would put my client's needs first, which I did.
20 They timed their actions so that I could not set everything else aside and clean my rescue
21 household myself after the cleaner contracted to clean and then pulled successive no-shows the
22 weekend immediately before trial.

23 24. Punishing me for the notoriety my case may have visited upon the state bar
24 essentially punishes the victim: any notoriety was the result of defamation published
25 nationwide about me by the Oakland animal impound director and those who acted in concert
26 with her, and by Alameda County prosecutors. Prosecutors are apparently immune from
27 prosecution for what they said about me and for most of what they did, including violations of
28 my constitutional right to basic due process. In any case, the state bar rarely punishes
prosecutors for their misconduct. Perhaps the state bar should punish prosecutors for defaming
members of the bar because such defamation also injures the state bar.

1 **STATE BAR COURT SHOULD VACATE UNCONSTITUTIONAL INTERIM**
2 **SUSPENSION IMMEDIATELY AND UNCONDITIONALLY**

3 25. It is possible that the state bar may finally understand that its interim suspension
4 rules and procedure are unconstitutional, and wish to limit its liability for depriving me of my
5 constitutional right to practice my profession. But the solution to the state bar's dilemma is not
6 to decide on a "punishment" while I am still exercising my right to obtain review of my unjust
7 conviction. Nor is it a solution to further disrupt my ability effectively to seek habeas relief.

8 26. The best way for the state bar to limit its liability to me, is to vacate my interim
9 suspension immediately and unconditionally.

10 **I AM NOT LIABLE FOR STATE BAR "COSTS" AND NONE SHOULD BE IMPOSED**

11 27. Business and Professions Code § 6102(e) requires the state bar court to dismiss
12 its case against me if my conviction involves neither deceit-fraud-theft-perjury nor moral
13 turpitude. *See* paragraph 21, above. Any reasonable examination of the facts will conclude
14 that my case involves none of the issues listed in section 6102.

15 28. Because my unconstitutional interim suspension is part of the state bar case
16 under section 6102, no costs may be assessed in connection with this either.

17 29. Even without considering Business and Professions Code § 6102, I am
18 obviously not liable for any alleged costs incurred by the state bar in connection with its interim
19 suspension of my license to practice law, because the state bar's actions were unconstitutional.

20 30. Nor am I financially able to pay costs in any event. For one thing, I have no
21 ability to pay. More importantly, the state bar should be estopped from seeking payment of any
22 kind from me after its own (unconstitutional) actions destroyed my ability to practice law or
23 work in a law office in any capacity, depriving me of 20-plus years of work experience.

24
25 Dated: December 26, 2017

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Jan Van Dusen

PROOF OF SERVICE
In the Matter of the Conviction of Jan Van Dusen
State Bar Court, Hearing Department, Case 11-C-18557

My address is 1501 Magnolia Street, Oakland, California 94607, in Alameda County. I am over the age of 18 years and I AM a party to this lawsuit. On the date given below, I served the following documents on the parties listed below by the method(s) indicated below.

Documents Served

• ANSWER TO NOTICE OF HEARING ON CONVICTION

- _____ By enclosing the documents in an envelope and depositing the envelope with the United States Postal Service in a sealed envelope with postage fully prepaid.
(with a courtesy copy transmitted by facsimile or email)
- _____ By shipping the documents via Express Mail, Federal Express, or a similar overnight delivery service for delivery the following business day.
- X By delivering/causing the documents to be delivered to the office of the party's counsel and left there with a person apparently in charge, or by leaving them in plain sight if no one is present with whom to leave the documents, or by depositing the documents in a delivery box or into a door or wall slot apparently intended for such use.
- _____ By handing/causing the documents to be handed to the persons listed below or, if the person refused to accept service, to be placed on a surface in the presence of the persons listed below.

Parties/Persons Served

Jennifer E. Roque
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I declare on penalty of perjury under California law that the foregoing is true.

Date: December 26, 2017



Jan Van Dusen