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FILED

JAN 13 2016

4 Respondent, Self-Represented

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

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

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In the Matter of:
JAN ELIZABETH VAN DUSEN,
No. 142700,
A Member of the State Bar.

Case No. 15-O-10868
ANSWER TO NOTICE OF
DISCIPLINARY CHARGES

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

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ANSWER

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1. Pursuant to *Code of Civil Procedure* § 431.30, Van Dusen admits the allegations of the following paragraphs of the Notice: 1.
2. Pursuant to *Code of Civil Procedure* § 431.30(b), Van Dusen denies the allegations of the following paragraphs of the Notice: 2, 3, 4.

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AFFIRMATIVE DEFENSES

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3. This Notice was filed with knowledge of its falsity, in violation of basic ethics and State Bar rules.
4. This Notice was filed in order to gain an advantage in a civil case or cases, and/or to assist others in doing so, in violation of basic ethics and State Bar rules.
5. The State Bar rule or rules Van Dusen is alleged to have violated are vague and confusing such that a reasonable person would not know what is required, and in fact Van

1 Dusen did not know. Van Dusen reasonably concluded that she was required to notify the
2 courts and opposing counsel in her cases that had not been resolved and were therefore
3 “pending,” which is what she did, promptly. Van Dusen had no idea that she was required to
4 notify courts and opposing counsel in other attorneys’ cases with which her name might
5 possibly be associated or might once have been associated. Nor did Van Dusen know in 2014
6 that her name was still listed as of counsel in either of the two cases mentioned in the State
7 Bar’s Notice.

8 6. The State Bar’s interpretation of its rules and of Business & Professions Code
9 sections violates California law, which requires that words be given their common or ordinary
10 dictionary meanings whenever possible. *See also* California Civil Code § 3542.

11 7. The State Bar’s enforcement and failure to update the requirement that
12 members, including Van Dusen, serve the required notifications via U.S. mail, return receipt
13 requested, violates California law, specifically California’s Maxims of Jurisprudence, which
14 require that when the reason for a rule ceases, so should the rule. California Civil Code § 3510.
15 *See also* Civil Code § 3532. The requirement apparently predates the facsimile machine, the
16 Internet, electronic case filing, and email. In federal cases, all parties are required to agree to
17 notification via the Electronic Case Filing system; thus ECF notice is actual notice. State
18 courts appear to be moving in this direction. Currently in state cases, proof of service by
19 regular mail and either email or facsimile is universally accepted at court as actual,
20 instantaneous notice. Service by certified mail, return receipt requested, is an anachronism and
21 caused significant financial hardship to Van Dusen.

22 8. The two cases in which the State Bar contends Van Dusen failed to notify courts
23 and opposing counsel of her interim suspension, belonged to a colleague and not to Van Dusen.
24 Van Dusen’s temporary, 9-month involvement in those cases ended in March 2013, at which
25 point the colleague had agreed to substitute her out of his cases. Van Dusen’s “failure” to
26 supervise a colleague whose competence to file substitutions she had no reason to question,
27 does not constitute gross negligence, or even negligence. It was merely an oversight. At the
28 time, Van Dusen was approaching imminent trial of her criminal matter – and co-writing
motions in that matter – as well as handling her own substantial case load.

1 9. The State Bar “investigation” and prosecution of this Notice was intended to
2 interfere with, and did in fact interfere with, Van Dusen’s *habeas corpus* petition and with her
3 ability to defend herself in ongoing proceedings in her criminal matter.

4 10. The Notice was filed after the State Bar prosecutor refused an offer to settle for
5 the discipline recommended by the Early Neutral Evaluation judge for the alleged¹ failure to
6 notify.

7 11. The Notice was filed due to Van Dusen’s refusal to sign a settlement agreement
8 containing multiple false statements.

9 12. This Notice was filed in order to raise funds for the State Bar by the assessment
10 of so-called “costs,” which are not true costs of suit recoverable in civil cases in California.

11 13. The “investigation” that preceded the filing of this Notice was likewise
12 undertaken in order to raise funds for the State Bar by the assessment of so-called “costs.”

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14 Dated: ~~December~~ ^{January} 13, 2016

Jan Van Dusen

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28 ¹ Due to her receipt of the State Bar’s initial allegations on a holiday weekend immediately before the mediation hearing, and due to her work schedule, Van Dusen had no opportunity to file a response to the charges; therefore, the mediation judge had only the State Bar’s false allegations before her at the hearing.

PROOF OF SERVICE
In the Matter of Jan Van Dusen
State Bar Court, Hearing Department, Case 15-O-10868

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

Documents Served

- ANSWER TO NOTICE OF DISCIPLINARY CHARGES

_____ By enclosing the documents in an envelope and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business 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. (shipping 9/28)

 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.

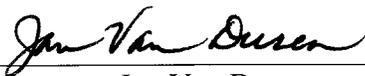
_____ By handing/causing the documents to be handed to the persons listed below or, if the person refused to accept service, to be placed on a surface in the presence of the persons listed below.

Parties/Persons Served

Robert Henderson
Office of Chief Trial Counsel
State Bar of California
180 Howard Street
San Francisco, CA 94105-1639
Tel 415-538-2385 (D); -2200 (main)
Fax 415-538-2220

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

Date: January 13, 2016



Jan Van Dusen