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State Bar Court of California Hearing Department San Francisco DISBARMENT		
Counsel For The State Bar Laura Huggins Deputy Trial Counsel 180 Howard Street San Francisco, CA 94105 (415) 538-2537 Bar # 294148	Case Number(s): 16-N-16172-LMA	For Court use only PUBLIC MATTER FILED MAR 21 2017 <i>V.A.</i> STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Barry L. VanSickle 1207 1/2 Carney Ave Mankato, MN 56001 (507) 304-0996 Bar # 98645	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT DISBARMENT <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter of: BARRY L. VANSICKLE Bar # 98645 A Member of the State Bar of California (Respondent)		

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 **July 10, 1981**.
- (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 resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of (9) 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."

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- (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):
- ☒ Costs to be awarded to the State Bar.
 - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - ☐ Costs are entirely waived.
- (9) ORDER OF INACTIVE ENROLLMENT:
The parties are aware that if this stipulation is approved, the judge will issue an order of inactive enrollment under Business and Professions Code section 6007, subdivision (c)(4), and Rules of Procedure of the State Bar, rule 5.111(D)(1).

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 **12-O-14751**.
 - (b) ☒ Date prior discipline effective **06/12/2014**.
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **Rules of Professional Conduct, rules 3-110(A) and 3-700(D)(2)**.
 - (d) ☒ Degree of prior discipline **One year suspension, stayed, and two years' probation**.
 - (e) ☒ If respondent has two or more incidents of prior discipline, use space provided below:
See attachment, page 7.
- (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.

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- (8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.
- (9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10) ☐ **Lack of Candor/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.

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- (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.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances: Pre-trial Stipulation, see page 7.

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D. Discipline: **Disbarment.**

E. Additional Requirements:

- (1) **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.
- (2) ☐ **Restitution:** Respondent must make restitution to in the amount of \$ plus 10 percent interest per year from . If the Client Security Fund has reimbursed for all or any portion of the principal amount, respondent must pay restitution to CSF of the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Respondent must pay the above restitution and furnish satisfactory proof of payment to the State Bar's Office of Probation in Los Angeles no later than days from the effective date of the Supreme Court order in this case.
- (3) ☐ **Other:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: BARRY L. VANSICKLE

CASE NUMBER: 16-N-16172-LMA

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 16-N-16172-LMA

FACTS:

1. On April 29, 2016, the Supreme Court of California filed an Order ("Supreme Court Order") in Case No. S231413 (State Bar Case No. 15-O-12174), which became effective on May 29, 2016. Under the Supreme Court Order, respondent was ordered to comply with the rule 9.20 of the California Rules of Court. In particular, respondent was required to perform the acts specified in subdivisions (a) and (c) of rule 9.20 within thirty (30) and forty (40) calendar days, respectively, after the effective date of the Supreme Court Order.

2. On May 6, 2016, Probation Deputy Terese Laubscher ("Deputy Laubscher") sent respondent a courtesy letter explaining his probation terms. The letter reminded respondent of important dates and deadlines. Specifically, that the Supreme Court filed its discipline Order on April 29, 2016, that the Order would become effective May 29, 2016, and that respondent must file his rule 9.20 affidavit by July 8, 2016. Respondent received this letter.

3. On July 1, 2016, Deputy Laubscher spoke with respondent and reviewed his probation terms. Respondent was informed of the probation deadlines, and respondent confirmed that his mailing address and telephone number remained the same.

4. On July 8, 2016, respondent failed to file his rule 9.20 affidavit.

5. On July 29, 2016, Deputy Laubscher sent respondent a second courtesy letter notifying him that the July 8, 2016, rule 9.20 filing deadline had elapsed. The letter further informed respondent that a failure to file the required affidavit could result in the imposition of additional discipline. Respondent received this letter.

6. On October 3, 2016, respondent filed his rule 9.20 affidavit, which was 87 days late.

CONCLUSIONS OF LAW:

1. By filing his rule 9.20 affidavit with the clerk of the State Bar Court on October 3, 2016, which was 87 days past the July 8, 2016 deadline and thus untimely, respondent failed to file a declaration of compliance with California Rules of Court, rule 9.20 in conformity with the requirements

of rule 9.20(c), as required by Supreme Court order number S231413, in willful violation of California Rules of Court, rule 9.20.

AGGRAVATING CIRCUMSTANCES.

Prior Record of Discipline (Std. 1.5(a)):

1. State Bar Case No. 12-O-14751 (Supreme Court Case No. S216890): Respondent was disciplined for violations of Rules of Professional Conduct, rule 3-110(A) [failure to perform with competence] and rule 3-700(D)(2) [failure to return unearned fees]. The Supreme Court suspended respondent for one year, stayed the suspension, placed him on probation for a period of two years, and ordered respondent to make restitution. Discipline became effective June 12, 2014.
2. State Bar Case No. 13-O-17670 (Supreme Court Case No. S227047): Respondent was disciplined for a violation of Business and Professions Code section 6103 [willful disobedience of a court order]. The Supreme Court suspended respondent for two years, stayed the suspension, and placed him on probation for a period of two years subject to conditions, including a condition that respondent be actually suspended for a minimum of the first 90 days of probation and until he satisfied the judgment entered against him in U.S. Bankruptcy Court. Discipline became effective October 16, 2015.
3. State Bar Case No. 15-O-12174 (Supreme Court Case No. S231413): As a result of respondent's failure to pay restitution in Case No. 12-O-14751, respondent and the State Bar entered into a new stipulation, which alleged a violation of Business and Professions Code section 6068(k) [failure to comply with conditions of probation]. The Supreme Court suspended respondent for three years, stayed the suspension, and placed respondent on probation for a period of three years with two years' actual suspension and until respondent paid the restitution that was owed in State Bar Case No. 12-O-14751. Discipline became effective May 29, 2016.

MITIGATING CIRCUMSTANCES.

Pretrial Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*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]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

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. All further references to standards are to this source.) The standards help fulfill the primary purposes 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 disciplinary 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 less 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 the present case, rule 9.20 establishes the appropriate range of discipline. Rule 9.20(d) provides that a suspended member’s willful failure to comply with rule 9.20 requirements is cause for disbarment or suspension, and for revocation of any pending probation. Such failure may also be punished as a contempt or a crime.

Standard 1.8(b) states that disbarment is appropriate where a member has two or more prior records of discipline and actual suspension was ordered in any one of the prior matters. Under this standard, the only grounds for imposing discipline less severe than disbarment is in cases where the most compelling mitigating circumstances predominate or where the misconduct underlying the prior discipline occurred during the same time period as the current misconduct. (Std. 1.8(b).)

In *In the Matter of Esau* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr. 131, 133, the Review Department found that an attorney’s willful violation of a court order requiring his compliance with rule 9.20 was sufficient grounds for disbarment where the evidence in mitigation was not compelling. In *Esau*, the attorney filed his 9.20 affidavit 104 days past the deadline and presented evidence in mitigation at trial, which the Review Department deemed to be non-compelling. (*Id.* at pp. 135, 137.)

Here, respondent filed his 9.20 affidavit 87 days past the deadline. Disbarment is the appropriate discipline in light of respondent’s three prior records of discipline – two of which entailed actual suspension – and the absence of compelling mitigation.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of February 28, 2017, the discipline costs in this matter are \$7,609. 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.

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In the Matter of: BARRY L. VANSICKLE	Case number(s): 16-N-16172-LMA
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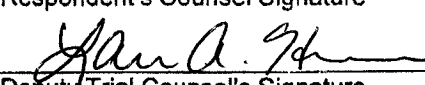
SIGNATURE OF THE PARTIES

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 and Conclusions of Law.

Respondent enters into this stipulation as a condition of his/her participation in the Program. Respondent understands that he/she must abide by all terms and conditions of Respondent's Program Contract.

If the Respondent is not accepted into the Program or does not sign the Program contract, this Stipulation will be rejected and will not be binding on Respondent or the State Bar.

If the Respondent is accepted into the Program, this Stipulation will be filed and will become public. Upon Respondent's successful completion of or termination from the Program, the specified level of discipline for successful completion of or termination from the Program as set forth in the State Bar Court's Confidential Statement of Alternative Dispositions and Orders shall be imposed or recommended to the Supreme Court.

<u>3/6/2017</u> Date	<u></u> Respondent's Signature	<u>Barry L. VanSickle</u> Print Name
<u>N/A</u> Date	<u>N/A</u> Respondent's Counsel Signature	<u>N/A</u> Print Name
<u>3/8/2017</u> Date	<u></u> Deputy Trial Counsel's Signature	<u>Laura Huggins</u> Print Name

(Do not write above this line.)

In the Matter of:
BARRY L. VANSICKLE

Case Number(s):
16-N-16172-LMA

DISBARMENT ORDER

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

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

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

Respondent BARRY L. VANSICKLE is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three (3) calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the Rules of Procedure of the State Bar of California, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Date

March 21, 2017


PAT E. 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 March 21, 2017, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
ORDER APPROVING; ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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

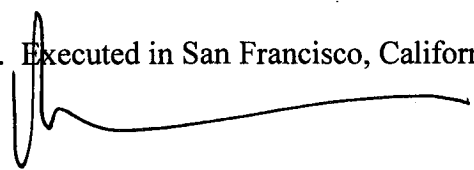
- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

BARRY L. VANSICKLE
1207 1/2 CARNEY AVE
MANKATO, MN 56001 - 2247

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

Laura A. Huggins, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 21, 2017.



Vincent Au
Case Administrator
State Bar Court