

**Filed December 8, 2017**

**STATE BAR COURT OF CALIFORNIA**

**REVIEW DEPARTMENT**

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

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.<sup>1</sup> 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

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<sup>1</sup> 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<sup>2</sup> 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.<sup>3</sup>

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<sup>2</sup> 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).)

<sup>3</sup> 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).<sup>4</sup> 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.<sup>5</sup> 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

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<sup>4</sup> United States Bankruptcy Court, Northern District, Case No. 12-40504.

<sup>5</sup> 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)*,<sup>6</sup> 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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<sup>6</sup> 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<sup>7</sup> by failing: (1) to comply with rule 9.20(a) with respect to the *Querida* and *Nguyen* matters;<sup>8</sup> 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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<sup>7</sup> 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.

<sup>8</sup> 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)<sup>9</sup> 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

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<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

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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<sup>10</sup> 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.)

<sup>11</sup> 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.<sup>12</sup> 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

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<sup>12</sup> 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.