

[LETTERHEAD]

October 27, 2016

Jack Smith  
Investigator  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105

Re: Charles Dodgson, Case No. 15-O-148465

Dear Mr. Smith:

I am in receipt of your letter dated October 16, 2016 regarding complaining witness Thomas Appleby. This letter, documents Bates numbered CD 001-025 and a CD recording of the June 12, 2012 and February 22, 2013 hearings in Mr. Appleby's immigration matter are being submitted to you as my written response. I provide this response with the understanding that Mr. Appleby and I never had an attorney-client relationship, and thus it is my position that no attorney-client privilege ever existed. Thus, I withhold no information on the basis of privilege.

### **Background**

At some point in approximately 2011, I hailed a cab in Oakland, California. The driver was Mr. Appleby. We struck up a conversation, and it turned out we are both from England. Mr. Appleby gave me his cell phone number, and in the coming months, we met up a handful of times. Mr. Appleby would drive me when I needed a taxi, and Mr. Appleby came to visit me and my mother in her apartment. It was at most a relationship of casual acquaintance.

Mr. Appleby knew from these occasional meetings that I am an attorney. Mr. Appleby is in the United States without legal documentation, so when he found himself in immigration trouble, he called me a few days before he had a hearing at the Immigration Court in San Francisco. I agreed to come to Immigration Court with Mr. Appleby to walk him through a single hearing as his friend, not as counsel. I did not agree to represent him at all, and certainly not on any ongoing basis. To the extent that my presence at Immigration Court with Mr. Appleby was interpreted as an appearance of counsel, it was clearly understood between Mr. Appleby and me that it was a one-time pro bono act by me and not the start of an ongoing representation.

I accompanied Mr. Appleby to court on June 12, 2012. I did not file a notice of appearance on behalf of Mr. Appleby, as explained in more detail below. I did speak with the court during the hearing, and unfortunately I did not articulate very well that I was there as a friend and not as counsel, so it did create a record that I was there on Mr. Appleby's behalf.

Despite my presence at the hearing, Mr. Appleby was directly advised by the court of the next hearing in his case and that he must appear for it. Mr. Appleby is a native English speaker, he demonstrated in the hearing his command of the English language, and he made a living driving English-speaking passengers as a cab driver, so there can be no doubt that he understood that he was to appear at the Immigration Court on February 22, 2013 at 8:30 a.m.

Following the June 2012 hearing, I had no further contact with Mr. Appleby until a brief exchange on LinkedIn in June 2013. In the intervening year, Mr. Appleby, perhaps in his effort to evade immigration authorities, no longer had the cell phone number I had used to reach him during our brief period of knowing each other and we had no contact. To me, Mr. Appleby simply fell off the grid.

In six brief LinkedIn messages spanning June 2013 to June 2015, it is clear that Mr. Appleby and I had completely fallen out of touch. In fact, other than those LinkedIn messages, we have had no contact since the June 2012 hearing. I have not even had a valid phone number for Mr. Appleby in all of these years. Mr. Appleby never once contacted me regarding his immigration matter after the June 2012 hearing. It thus goes without saying that Mr. Appleby never contacted me about the February 22, 2013 hearing, never asked me if I would be appearing with him at that hearing, never asked me what took place at that hearing if he had expected me Donrad to attend in his absence, never expressed any dissatisfaction with my supposed “representation” of him, nor made any other inquiries about the case. If Mr. Appleby had believed me to be representing him on his immigration matters, it is completely illogical for Mr. Appleby to have gone five years (during which time an active immigration case was pending) without contacting his lawyer.

Given that I had only gone to Immigration Court as Mr. Appleby’s friend (and this was known to Mr. Appleby), I had not filed a notice of appearance on Mr. Appleby’s behalf, Mr. Appleby had no further contact with me, and Mr. Appleby was well informed of his next obligation in his case, I did not file any documents with the Immigration Court regarding my supposed “representation.” Moreover, when I was ordered to inactive status by the State Bar Court in January 2013, I had no reason to contact Mr. Appleby to inform him of this fact because I had no reason to believe Mr. Appleby was my client. In fact, it is abundantly clear that both Mr. Appleby and I knew that I had only gone to court with Mr. Appleby as a one-time event.

When this matter came to my attention recently, I went to the Immigration Court to find to what documents existed under my name on Mr. Appleby’s docket. I discovered that there was a filing of a notice of appearance in the case, by it looks like I filed it on my own behalf (not on Mr. Appleby’s behalf), and it reflects my own home address. Odd as that filing appears, it is not an effective notice of appearance on behalf of Mr. Appleby. In addition, when Mr. Appleby failed to appear for his hearing in February 2013, the Immigration Court sent a copy of the court’s decision to me at a virtual office address (on Market Street in Oakland) that I never provided to the Immigration Court and which was not my address at that time. I do not know how this address came to be in the Immigration Court’s record, but the copy of the decision came after

Mr. Appleby failed to appear for the hearing of which he had full knowledge of his requirement to appear.

### **Responses to State Bar Allegations**

With this background, I address the State Bar's specific allegations as follows:

- 1. The State Bar's first allegation is that I was hired in February 2012 through February 2013 to assist in an immigration proceeding and he failed to perform services for which he was retained.**

I was never retained by Mr. Appleby at all. I was asked to come to Immigration Court for a single hearing to assist Mr. Appleby through that day. I was called on June 8, 2012 to come to a hearing on June 12, 2012. That was the entire duration of my involvement in Mr. Appleby's immigration case.

- 2. The State Bar alleges that I failed to advise Mr. Appleby of significant updates and to advise him of the necessity to appear at scheduled court hearings.**

The duty to keep clients reasonably informed of significant developments in their cases arises when an ongoing attorney-client relationship exists. Rule Prof. Conduct 3-500. Here, Mr. Appleby and I did not have an ongoing attorney-client relationship, and thus I had no obligation to Mr. Appleby regarding the immigration case.

Perhaps more importantly, I was never aware of any "updates" that Mr. Appleby was not simultaneously informed about. The only "update" was the scheduling of a court hearing on February 22, 2013, that scheduling having taken place on the record in Immigration Court in Mr. Appleby's presence on June 12, 2012. Mr. Appleby was advised on the record, in the courtroom by the Immigration Judge, and contemporaneously by me, of the hearing date and time and the requirement that he appear. There is no reasonable argument to be made that I failed to keep Mr. Appleby informed.

If I had come into information not also communicated to Mr. Appleby, I would have been at a loss to communicate it to him, as Mr. Appleby had changed his contact information and I had no current method to reach him. Mr. Appleby had, I believe, been successfully evading immigration authorities and his methods were also successful in preventing me from reaching him. So even if I had information to pass on to Mr. Appleby, which I did not, I would have been unable to do so.

**3. The State Bar alleges that I misrepresented to Mr. Appleby's current counsel that I never represented Mr. Appleby before the EOIR, File A055-198-601.**

As discussed above, I did not represent Mr. Appleby. I went to Immigration Court with Mr. Appleby as a friend, to assist him through the June 12, 2012 hearing. I did not articulate that I was there to assist Mr. Appleby and not as counsel, so the record does reflect my appearance as counsel. I did not recall the way the hearing record would reflect my presence in the courtroom when I informed Mr. Appleby's current counsel that I did not represent Mr. Appleby, so unfortunately I did not provide further explanation as would have been useful. I certainly did not misrepresent to counsel.

I did engage in correspondence through my own counsel with Mr. Appleby's current counsel regarding the allegations contained in this complaint. My attorney urged Mr. Appleby and his counsel not to file the instant complaint because there appears to be no evidence in support of it. My counsel repeatedly asked Mr. Appleby's counsel if there was any additional evidence of my supposed representation of Mr. Appleby, but nothing but what is produced here was ever forthcoming. Communications between counsel are produced here.

Mr. Appleby's counsel has pointed to a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court as evidence that I was representing Mr. Appleby. The document, a copy of which is enclosed in my document production, does not reflect Mr. Appleby's name anywhere in it. It is a notice of appearance by me on my own behalf, and it does reflect Mr. Appleby's case number (a correction from an earlier representation to Mr. Appleby's current counsel in which I had mistakenly believed the case number on the document was from my own personal immigration matter). Had I intended to file a notice of appearance on behalf of Mr. Appleby, I would have done so by stating that I was appearing on Mr. Appleby's behalf. I did not do so. I made as clear as possible that I was there on my own behalf, not as attorney for Mr. Appleby.

The Immigration Court entered my name in its records as Mr. Appleby's attorney of record, but in so doing the court noted an address on Market Street in Oakland that was not listed on my notice of appearance document nor on my State Bar record. It was a virtual office location where I occasionally rented space. It was not a permanent address, I did not receive mail at that address, and I do not know where the Immigration Court got the address.

The irregularity of this address appearing in the Immigration Court records seems to be of no real consequence in terms of Mr. Appleby's case. Mr. Appleby was present in court when the February 22, 2013 hearing date was set, and he was well advised that he had to appear on that date at 8:30 a.m. The physical notice of the new hearing date was

provided at court. The only document that appears to have been sent to me at the Market Street address was a copy of the decision of the Immigration Court following Mr. Appleby's failure to appear on February 22, 2013. Thus, it does not appear that my non-receipt of the one piece of mail had any impact on the case.

**4. The State Bar alleges that I failed to inform Mr. Appleby that I was suspended from the practice of law during the "representation."**

Again, I was never representing Mr. Appleby, and I most certainly was not representing him when I was ordered inactive in January 2013. I had no obligation to inform Mr. Appleby of my status. Moreover, I had not been in contact with Mr. Appleby for many months by that point, and I had no way to contact Mr. Appleby even if I was so obligated.

**5. The State Bar also alleges that I represented Mr. Appleby while suspended.**

I performed no services for Mr. Appleby other than accompanying Mr. Appleby to court as a friend in June 2012. I was not ineligible to practice until January 2013, and there was no contact whatsoever between Mr. Appleby and me for many months prior to my inactive status (and other than the LinkedIn messages discussed above, for years afterward). I absolutely did not represent Mr. Appleby while suspended.

**Response to State Bar's Document Requests**

In response to the State Bar's specific list of document requests, I state as follows.

**1. A detailed explanation of the work you performed and all services you provided in Complainant's case.**

I attended Immigration Court with Mr. Appleby as a friend on June 12, 2012. I accompanied Mr. Appleby into court, spoke to the court during the hearing, and ensured that Mr. Appleby understood what had transpired and when the next date was that Mr. Appleby needed to come to court. That was the entire extent of my involvement with Mr. Appleby's immigration case.

**2. Billing statements reflecting fees charged, and refunds of any unearned fees.**

There are no billing statements, as no fees were charged, no monies collected, no refunds to be made, as Mr. Appleby was never my client. There is also no retainer agreement, as Mr. Appleby never hired me. There was no contract between us for legal services.

**3. Complainant's entire file, including emails, pleadings, and other documents.**

There is no file to produce. I never represented Mr. Appleby. I never had an email or physical address for Mr. Appleby. We did become connected on LinkedIn, and our six brief LinkedIn messages are produced here.

After receiving notice from Mr. Appleby's current counsel that Mr. Appleby intended to file a State Bar complaint, I went to the Immigration Court in search of records of the case. I obtained what I was told was the entire court file, which consists of a handful of pages. Those documents are produced here along with audio recordings obtained from the court of the June 12, 2012 and February 22, 2013 hearings in Mr. Appleby's case.

**4. Any other documents or statements that you feel would assist the State Bar in evaluating this Complaint.**

Simply put, I befriended Mr. Appleby and tried to help a fellow Englishman, to give him guidance and comfort one time for a limited duration in a desperate situation where he had to appear in Immigration Court. I went on short notice to help my buddy and that was it. I never took on the representation of Mr. Appleby and we had no ongoing contact.

Now that Mr. Appleby faces deportation, he is throwing every possible argument at his case, including ineffective assistance of counsel in which I have become a scapegoat. In order to make such an argument in Immigration Court, Mr. Appleby was compelled to file this complaint. It is baseless.

I never took on counsel's obligations under the Rules of Professional Conduct with respect to Mr. Appleby. This investigation should be closed with no further action.

If any further information would be helpful, please contact me directly.

Sincerely,

Charles Dodgson