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6 Respondent Pro Se
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9 STATE BAR COURT
10 HEARING DEPARTMENT – SAN FRANCISCO
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14 In the matter of:
15 CHARLES DODGSON,
16 No. 999999,
17 A Member of the State Bar.
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Case No. 12-C-1775848
RESPONSE TO NOTICE OF
HEARING ON CONVICTION
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1 Respondent Charles Dodgson was involved in an isolated incident of
2 reckless driving over seven years ago. He pleaded nolo contendere to a
3 misdemeanor violation of California Vehicle Code § 23103.5(A). The conviction
4 was not a reportable offence under California Business & Professions Code
5 § 6068(o), nor did the conduct underlying the conviction involve moral turpitude
6 or warrant discipline of any kind.

7 **FACTS UNDERLYING THE CONVICTION**

8 On November 20, 2005, the week of Thanksgiving, Mr. Dodgson attended
9 a social event, and on the way home he was cited by the police for two
10 misdemeanor charges: (1) violation of Vehicle Code § 23152(A) (making it
11 unlawful for a person under the influence of drugs or alcohol to operate a motor
12 vehicle), and (2) violation of Vehicle Code § 23152(B) (making it unlawful for a
13 person with a blood alcohol level exceeding 0.08% to operate a motor vehicle). In
14 settlement of these charges, Mr. Dodgson pled nolo contendere to a
15 misdemeanor violation of Vehicle Code § 23103(A) (reckless driving) by way of a
16 plea agreement pursuant to Vehicle Code § 23103.5(A). As a result of Mr.
17 Dodgson's negotiated plea, the Court placed him on two years probation, fined
18 him \$1,063 plus \$135 to the State in fees, and ordered him to participate in the
19 first offender program. He successfully completed all ordered activities and
20 completed an alcohol education program.

21 Mr. Dodgson was not convicted for driving under the influence. For his
22 reckless driving conviction, no facts exist that would support a finding of moral
23 turpitude or of misconduct warranting discipline, and the State Bar cannot meet
24 its burden to show otherwise. This matter should not proceed beyond the initial
25 stage. Mr. Dodgson requests that the matter be dismissed.

26 **MR. DODGSON DID NOT COMMIT A REPORTABLE OFFENSE**

27 Business & Professions Code § 6068(o) requires attorneys to report to the
28 Bar certain violations of law. The only misdemeanor convictions that must be

1 reported are those “committed in the course of the practice of law, or in a
2 manner in which a client of the attorney was the victim, or a necessary element
3 of which, as determined by the statutory or common law definition of the
4 misdemeanor, involves improper conduct of an attorney, including dishonesty
5 or other moral turpitude, or an attempt or a conspiracy or solicitation of another
6 to commit a felony or a misdemeanor of that type.” (Bus. & Prof. Code
7 § 6068(o)(5).) The charging of a misdemeanor is never reportable; only
8 convictions of these certain misdemeanors trigger the statute’s reporting
9 requirement.

10 Mr. Dodgson was not required to report the conviction. His reckless
11 driving conviction did not relate to conduct committed in the course of
12 practicing law, nor was a client a victim of his conduct, nor did any element of
13 the crime involve moral turpitude, dishonesty, or an attempt or conspiracy or
14 solicitation of another to commit another crime. Ultimately, in an abundance of
15 caution, he did choose to self-report on December 14, 2012, leading to the matter
16 now before the Court.

17 **MR. DODGSON’S RECKLESS DRIVING CONVICTION**
18 **DOES NOT INVOLVE MORAL TURPITUDE**

19 Mr. Dodgson’s conviction did not involve moral turpitude. Moral
20 turpitude is a much-used but unclearly defined term. A review of the authorities
21 struggling to define and apply the term make clear that moral turpitude requires
22 a level of dishonesty and/or depravity not found in this simple reckless driving
23 conviction.

24 As discussed by the California Supreme Court:

25 “Moral turpitude” is an elusive concept incapable of precise general
26 definition. One dramatic exposition of the term was rendered by this
27 court in 1938, and has since been consistently followed: “an act of
28 baseness, vileness or depravity in the private and social duties

1 which a man owes to his fellowmen, or to society in general,
2 contrary to the accepted and customary rule of right and duty
3 between man and man.”

4 *In re Higbie* (1972) 6 Cal.3d 562, 569 [99 Cal.Rptr. 865, 493 P.2d 97] (quoting *In re*
5 *Craig* (1938) 12 Cal.2d 93, 97 (emphasis added)).

6 By way of example, crimes and conduct that have been deemed to involve
7 moral turpitude include insider trading, lying to government agencies, and
8 agreement with others to jointly lie to government agencies (*In re Chadwick* (1989)
9 49 Cal.3d 103 110-11 [260 Cal.Rptr. 538, 776 P.2d 240]); manslaughter and forgery
10 (*In re Gossage* (2000) 23 Cal.4th 1080, 1098 [99 Cal.Rptr.2d 130, 5 P.3d 186]);
11 perjury (*In re Kristovich* (1976) 18 Cal.3d 468, 472 [134 Cal.Rptr. 409, 556 P.2d
12 771]); grand theft (*In re Basinger* (1988) 45 Cal.3d 1348, 1358 [249 Cal.Rptr. 110.
13 756 P.2d 833]); and embezzlement (*In re Ford* (1988) 44 Cal.3d 810, 813 [244
14 Cal.Rptr. 476, 749 P.2d 1331]). The common thread to these types of crimes is that
15 they involve dishonest or morally depraved conduct. Further, the statute
16 allowing for sanction of attorneys committing acts of moral turpitude groups
17 them with “dishonesty” and “corruption”. (Bus. & Prof. Code, § 6106 (providing
18 “commission of any act involving moral turpitude, dishonesty or corruption” is
19 grounds for sanction).)

20 As applied in the context of attorney discipline, the California Supreme
21 Court has stated:

22 In evaluating conduct that may or may not involve moral turpitude,
23 we must recognize the purpose for which we have established the
24 “moral turpitude” standard: to ensure that the public, the courts,
25 and the profession are protected against unsuitable legal
26 practitioners. . . . The objective is not to impose punishment upon
27 members of the profession. To hold that an act of a practitioner
28 constitutes moral turpitude is to characterize him as unsuitable to
practice law.

1 *In re Higbie, supra*, 6 Cal.3d at 570 (emphasis added).

2 The California Supreme Court has further provided the following
3 guidance in defining moral turpitude as to attorney discipline:

4 Criminal conduct not committed in the practice of law or against a
5 client reveals moral turpitude if it shows a deficiency in any
6 character trait necessary for the practice of law (such as
7 trustworthiness, honesty, fairness, candor, and fidelity to fiduciary
8 duties) or if it involves such a serious breach of a duty owed to
9 another or to society, or such a flagrant disrespect for the law or for
10 societal norms, that knowledge of the attorney's conduct would be
11 likely to undermine public confidence in and respect for the legal
12 profession.

13 *In re Lesansky* (2001) 25 Cal.4th 11, 16 [104 Cal.Rptr.2d 409, 17 P.3d 764] (emphasis
14 added).

15 As to lawyers, failure to pay a tax when there is no intent to defraud is not
16 moral turpitude (*In re Higbie*, 6 Cal.3d at 568-71), nor is possession of an illicit
17 substance (*Id.* at 572), nor is wilfull failure to file a federal income tax return (*In re*
18 *Rohan* (1978), 21 Cal.3d 195, 200 [145 Cal.Rptr. 855, 578 P.2d 102] (finding,
19 however, that such a violation did warrant discipline)). Even two close-in-time
20 convictions for driving under the influence, including the second conviction
21 occurring while the defendant was on probation for the first, was not moral
22 turpitude. *In re Kelley* (1990) 52 Cal.3d 487, 494 [276 Cal.Rptr. 375, 801 P.2d 1126].

23 It is clear from the case law that Mr. Dodgson's conviction for reckless
24 driving does not rise to the level of moral turpitude. Moreover, all doubts as to
25 whether an act involved moral turpitude must be resolved in his favor. *In re*
26 *Higbie*, 6 Cal.3d at 569 (citing *Himmel v. State Bar* (1971) 4 Cal.3d 786). Thus it is
27 clear that no moral turpitude finding is appropriate here.
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1 **MR. DODGSON’S CONDUCT DOES NOT WARRANT DISCIPLINE**

2 The Court does have an inherent power to control the practice of law to
3 protect the profession and the public by sanctioning attorneys for “misconduct
4 warranting discipline.” See *In re Rohan, supra*, 21 Cal.3d at 198; *In re Kelley*, 52
5 Cal.3d at 495. However, even with this power, Mr. Dodgson’s conduct does not
6 give rise to sanctions.

7 In *In re Kelley*, the Court found it appropriate to sanction an attorney under
8 its inherent powers for her two driving under the influence convictions that were
9 within 31 months of each other, and the second conviction was during the
10 probation period for her first. The Supreme Court of California found that her
11 two convictions being so close in time and the circumstances surrounding them
12 were “indications of a problem of alcohol abuse”. *In re Kelley*, 52 Cal.3d at 495. It
13 also found that her second conviction while on probation for her first
14 “demonstrated a complete disregard for the conditions of her probation, the law,
15 and the safety of the public” and “a lapse of character and a disrespect for the
16 legal system that directly relate to an attorney’s fitness to practice law and serve
17 as an officer of the court.” *Id.*

18 Unlike Ms. Kelley, Mr. Dodgson does not have a problem with alcohol
19 abuse, nor does his behavior demonstrate a disregard for the courts or the law.
20 Rather, the Court in *Kelley* stated that “it would be unreasonable to hold
21 attorneys to such a high standard of conduct that every violation of law,
22 however minor, would constitute a ground for professional discipline,” and that
23 statement applies here to Mr. Dodgson. His lapse in judgment in 2005 does not,
24 like Ms. Kelley, “evidence a lack of respect for the legal system and an alcohol
25 abuse problem.” See *id.* at 496.

26 Here an isolated incident, the facts of which do not indicate any larger
27 problem with alcohol or disregard for the sanctity of the courts, simply does not
28 warrant any sanction whatsoever. The Court’s inherent authority to sanction is to

1 protect the public and the profession, and no protection is needed from
2 Mr. Dodgson.

3 **CONCLUSION**

4 In response to the Review Department's Order, no level of discipline is
5 appropriate for Mr. Dodgson as a result of his conviction for violation of Vehicle
6 Code § 23103.5 (reckless driving).

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8 Dated: February 25, 2013

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10 Charles Dodgson
11 Respondent
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