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6 Respondent Pro Se

7 STATE BAR COURT OF CALIFORNIA
8 HEARING DEPARTMENT – SAN FRANCISCO
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10
11 In the Matter of
12 CHARLES DODGSON,
13 No. 999999,
14 A Member of The State Bar
15

Case No. 13-O-1778506

**RESPONDENT’S MOTION TO
SET ASIDE DEFAULT**

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17 Respondent Charles Dodgson hereby moves the State Bar Court, pursuant to Rules of
18 Procedure 5.85(E) and 5.83, for an order setting aside the default and inactive enrollment order of
19 April 17, 2016 (“Order of Default”) because Respondent’s failure to timely respond to the Notice
20 of Disciplinary Charges (“NDC”) in this matter was due to excusable neglect. Respondent
21 respectfully requests the opportunity to be heard on the merits of the NDC.

FACTS

22 These facts are based on Respondent’s Declaration in Support of Motion to Set Aside
23 Default (“Respondent’s Declaration”) and this court’s record of the proceedings in this matter.

24 Respondent has been a member of the California State Bar for 22 years. He has one prior
25 discipline case stemming from events in client matters which coincide in time with the events
26 underlying the current NDC. Had this complaint been brought sooner, it likely would have been
27 resolved with his prior discipline case. During the period of time in which all misconduct in both
discipline cases took place, he labored under severe emotional distress which made the practice of
law and the handling of the discipline matters very difficult.

1 As detailed and presented under penalty of perjury in Respondent's Declaration, the time
2 period involved in this alleged misconduct through to the present has been extremely difficult for
3 Respondent. The allegations of misconduct stem from actions in early 2013, firmly in the midst of
4 the extremely stressful times in Respondent's life.

5 In 2013, Respondent's sister unexpectedly moved from the small town in California where
6 the whole family lives to India, leaving behind her two children (whose father is not in their lives).
7 The small town is the kind of place where everyone knows each other, and where people gossip.
8 This situation caused stress for all members of Respondent's family. As the attorney in the family,
9 Respondent was relied upon by the family to try to control the fallout, which one person simply
10 could not do.

11 Respondent now lives with and is attempting to resolve extreme guilt brought on by not
12 being able to resolve the issues brought on by his sister's departure, as she has now since passed
13 away in India.

14 In the months leading up to Respondent's sister's death, the NDC was filed in this case.

15 Respondent does not recall whether he received the NDC, but he posits that even had he
16 received it, in the midst of the family crisis he would have been unable to respond to it
17 appropriately or effectively.

18 It is Respondent's intent to address the NDC on its merits. A copy of Respondent's verified
19 proposed response to the NDC is attached hereto as Exhibit A.

20 ARGUMENT

21 Respondent has met his burden for the granting of this Motion, having filed the Motion in a
22 timely fashion, having met all technical requirements for the Motion, and providing supporting
23 evidence demonstrating good cause as required by court rule. Respectfully, the Motion should be
24 granted.

25 A. This Motion is Timely and Meets All Technical Requirements

26 This Motion is timely filed. The Order Entering Default and Order Enrolling Inactive (Rule
27 5.80 – Failure to File Timely Response) (“Order of Default”) in this matter was filed and served by
mail on April 18, 2016, and was based on Respondent's failure to file a response to the NDC, Rule
5.80. This motion is filed within 90 days of service of the Default Order as permitted by Rule
5.83(C).

The other formal requirements of Rule 5.83 have been met. A verified proposed response
to the Notice of Hearing is attached at Exhibit A hereto, pursuant to Rule 5.83(E). Respondent's

1 Declaration in Support of this Motion contains the required showings set forth in Rule 5.83(D)(1)-
2 (3) and Rule 5.83(F)(1)-(4).

3 B. Respondent Has Established Good Cause

4 As set forth in Respondent's Declaration, there is good cause to grant this Motion.

5 Granting of this Motion is left to this Court's sound discretion. Navarro, supra, at 198
6 (interpreting the predecessor rule on setting aside a motion for default and holding that the rule's
7 reference (which remains in the current rule) to Section 473 of the Code of Civil Procedure for the
8 standard on a motion to set aside establishes an abuse of discretion standard for appellate review of
9 the trial court's determination); Matter of Morone (1990) 1 Cal State Bar Ct Rptr 207 (applying
abuse of discretion standard).

10 "The essential ingredients of good cause are reasonable grounds and good faith." In re
11 Marriage of Leonard (2004) 119 Cal.App.4th 546, 558 (internal citations and quotations omitted).

12 Because the law strongly favors trial and disposition on the merits, any doubts in
13 applying section 473¹ must be resolved in favor of the party seeking relief from
default ... a trial court order denying relief is scrutinized more carefully than an
order permitting trial on the merits.

14 Morone, supra, at 215 (citations and quotations omitted).

15 Respondent did not file a timely response to the NDC because he does not recall receiving
16 it, and it is not reasonable for him to have filed a response if he did not have the document. As set
17 forth in his declaration, had he received it, he would have taken action (whatever action his
18 stressful situation permitted him to take) to address it. He would not have ignored it. His
19 membership record did have his current address. Without doubt, Respondent acted in good faith
when he did not respond, as he was not holding onto the NDC and choosing not to respond.

20 In Matter of Peterson (1990) 1 Cal State Bar Ct Rptr 83, the Review Department of this
21 court found that a blatant violation of an attorney's duty to keep his address up to date in State Bar
22 records did not warrant setting aside of a default for failure to receive an NDC. In contrast, in
23 Matter of Morone, supra, the Review Department held it was an abuse of discretion to deny a
24 motion for relief from default where the respondent had shown that he was preoccupied with an

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26 ¹ Rule 5.83(C) states that this Motion must be based on mistake, inadvertence, surprise or
27 excusable neglect as interpreted under Code of Civil Procedure section 473. However, in civil law,
a summons and complaint are generally served by hand (CCP 415.10), so there generally is no
issue of whether the movant received the pleading. Here, the NDC was served by mail and actual
receipt is an issue.

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acute illness of his mother, and otherwise, did not contradict the State Bar’s rendition of facts and took responsibility for his failings. Here, the circumstances underlying Respondent’s failure to respond to the NDC bear far more resemblance to the facts in Morone than they do to the facts in Peterson. In addition, Respondent does not contradict the State Bar’s rendition of the facts as stated in Deputy Trial Counsel Sherrie McLetchie’s November 7, 2016 Declaration; though the State Bar likely did send the NDC, Respondent simply did not receive it.

Pursuant to the standards of Code of Civil Procedure § 473 and Marriage of Leonard, *supra*, Respondent has established good cause based upon the reasonableness of his failure to file a response to the NDC and his actions being at all times in good faith.

CONCLUSION

Respondent not having received the NDC and thus having failed to timely respond thereto, Respondent respectfully submits that good cause exists to set aside the Order of Default and allow this matter to proceed on its merits. As the law favors giving Respondent the opportunity to be heard on the merits, Respondent respectfully submits that this Motion should be granted.

Respectfully submitted:

Date: _____

Charles Dodgson
Respondent Pro Se