

1 CHARLES DODGSON (SBN 999999)  
2 123 Main Street  
3 Walnut Creek, CA 94507  
4 Ph: (510) 555-1212  
5 Fx: (415) 555-1212  
6 *charles@dodgsonlaw.com*

6 Respondent Pro Se

7 STATE BAR COURT OF CALIFORNIA  
8 HEARING DEPARTMENT – SAN FRANCISCO  
9

11 In the Matter of  
12 CHARLES DODGSON,  
13 No. 999999,  
14 A Member of The State Bar

Case No. 13-O-1778506

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

16 Respondent Charles Dodgson hereby moves the State Bar Court, pursuant to Rules of  
17 Procedure 5.85(E) and 5.83, for an order setting aside the default and inactive enrollment order of  
18 April 17, 2016 (“Order of Default”) because Respondent’s failure to timely respond to the Notice  
19 of Disciplinary Charges (“NDC”) in this matter and his failure to file a motion to set aside the  
20 Default Order within 90 days thereof were due to excusable neglect. Respondent respectfully  
21 requests the opportunity to be heard on the merits of the NDC.

22 **FACTS**

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

25 Respondent has been a member of the California State Bar for 22 years. He has one prior  
26 discipline case stemming from events in client matters which coincide in time with the events  
27 underlying the current NDC. Had this complaint been brought sooner, it likely would have been  
resolved with his prior discipline case. During the period of time in which all misconduct in both

1 discipline cases took place, he labored under severe emotional distress which made the practice of  
2 law and the handling of the discipline matters very difficult.

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

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

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

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

17 Respondent does not recall whether he received the NDC or the Order of Default, but he  
18 posits that even had he received them, in the midst of the family crisis he would have been unable  
19 to respond to them appropriately or effectively.

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

### 22 ARGUMENT

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

#### 27 A. This Motion is Timely and Meets All Technical Requirements

This Motion is timely filed. The Order Entering Default and Order Enrolling Inactive (Rule  
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. Respondent did not file a motion to set aside the default within 90 days of service of the  
Default Order as permitted by Rule 5.83(C). Pursuant to Rule 5.85, the State Bar then filed its

1 Petition for Disbarment After Default on July 22, 2016 and served Respondent by mail on that  
2 same date. Pursuant to Rule 5.85(E), Respondent has 20 days after service of the State Bar’s  
3 Petition for Disbarment (plus an additional five days for service by mail) to file this Motion,  
4 making December 2, 2016 the deadline for filing and service. See Rule 5.83(E); Rule 5.28; and  
5 Matter of Navarro (1990) 1 Cal State Bar Ct Rptr 192, 196(fn.2).

6 The other formal requirements of Rule 5.83 have been met. A verified proposed response  
7 to the Notice of Hearing is attached at Exhibit A hereto, pursuant to Rule 5.83(E). Respondent’s  
8 Declaration in Support of this Motion contains the required showings set forth in Rule 5.83(D)(1)-  
9 (3) and Rule 5.83(F)(1)-(4).

10 B. Respondent Has Established Good Cause

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

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

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

20 Because the law strongly favors trial and disposition on the merits, any doubts in  
21 applying section 473<sup>1</sup> must be resolved in favor of the party seeking relief from  
22 default ... a trial court order denying relief is scrutinized more carefully than an  
23 order permitting trial on the merits.

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

25 (1) Failure to Timely Respond to the NDC

26 Respondent did not file a timely response to the NDC because he does not recall receiving  
27 it, and it is not reasonable for him to have filed a response if he did not have the document. As set  
28 forth in his declaration, had he received it, he would have taken action (whatever action his

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<sup>1</sup> Rule 5.83(C) states that this Motion must be based on mistake, inadvertence, surprise or 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.

1 stressful situation permitted him to take) to address it. He would not have ignored it. His  
2 membership record did have his current address. Without doubt, Respondent acted in good faith  
3 when he did not respond, as he was not holding onto the NDC and choosing not to respond.

4 In Matter of Peterson (1990) 1 Cal State Bar Ct Rptr 83, the Review Department of this  
5 court found that a blatant violation of an attorney's duty to keep his address up to date in State Bar  
6 records did not warrant setting aside of a default for failure to receive an NDC. In contrast, in  
7 Matter of Morone, *supra*, the Review Department held it was an abuse of discretion to deny a  
8 motion for relief from default where the respondent had shown that he was preoccupied with an  
9 acute illness of his mother, and otherwise, did not contradict the State Bar's rendition of facts and  
10 took responsibility for his failings. Here, the circumstances underlying Respondent's failure to  
11 respond to the NDC bear far more resemblance to the facts in Morone than they do to the facts in  
12 Peterson. In addition, Respondent does not contradict the State Bar's rendition of the facts as  
13 stated in Deputy Trial Counsel Sherrie McLetchie's November 7, 2016 Declaration; though the  
14 State Bar likely did send the NDC, Respondent simply did not receive it.

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

#### 18 (2) Failure to File Motion to Set Aside Within 90 Days

19 The reasonableness and good cause extend to Respondent's failure to file a motion to set  
20 aside the default within 90 days of its entry.

21 Again, Respondent does not recall receiving the Order of Default, and the fact that he does  
22 not currently have a service copy of that document supports his position that he did not receive it.  
23 More importantly, the same facts that underlie the reasonableness of his failure to file a timely  
24 response to the NDC also support the reasonableness of his failure to timely seek to set aside the  
25 default.

26 As set forth in Respondent's Declaration, he actually received the Petition for Disbarment  
27 filed in this case on November 19, 2016; this Motion is filed on December 2. He acted promptly  
and with full force and effort as soon as he received actual notice of this proceeding. This again  
supports Respondent's statement that he did not receive the Order of Default or NDC, as when he  
did receive a critical document in this case, he acted promptly to address it.

Rule 5.83(D)(3) requires that the circumstances which prevented Respondent from filing a  
timely motion to set aside be compelling and beyond Respondent's control. Respondent  
respectfully submits that the extreme nature of the personal life circumstances which prevented

1 Respondent from being aware of these proceedings are indeed compelling and beyond his control,  
2 and not receiving the Order of Default prevented him from taking any action to set it aside.

3 Respondent acted very quickly to file this Motion once he became aware of the Order of  
4 Default by way of receiving the Petition for Disbarment. His good faith and prompt action warrant  
5 this court exercising its discretion to allow him to respond to the NDC on the merits.<sup>2</sup>

### 6 CONCLUSION

7 Respondent not having received the NDC, and Respondent not having received the Order of  
8 Default to permit him to file a motion to set aside within 90 days thereof, Respondent respectfully  
9 submits that good cause exists to set aside the Order of Default and allow this matter to proceed on  
10 its merits. As the law favors giving Respondent the opportunity to be heard on the merits,  
11 Respondent respectfully submits that this Motion should be granted.

12 Respectfully submitted:

13 Date: \_\_\_\_\_

14  
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16 \_\_\_\_\_  
17 Charles Dodgson  
18 Respondent Pro Se  
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22 \_\_\_\_\_  
23 <sup>2</sup> Setting aside the Order of Default and allowing Respondent to respond to the NDC on its  
24 merits is not a fruitless effort. At the present stage, Respondent faces disbarment by default. If the  
25 State Bar were to prove at trial the allegations contained in the NDC, actual suspension is a very  
26 reasonable possibility for the appropriate sanction. The charges in the NDC fall under Standards  
27 2.5, 2.7, and 2.8(a) of the Standards for Attorney Sanctions for Professional Misconduct, each of  
which state that disbarment or actual suspension would be appropriate. Respondent has in  
aggravation under Standard 1.5 a prior record of discipline, but in mitigation under Standard 1.6 a  
good faith (and reasonable) belief in the settlement by his client and extreme emotional difficulties  
impacting his practice. Of course Respondent may also prove additional mitigation at trial. Thus,  
disbarment is not a foregone conclusion upon the merits of the NDC even when taken at face value.  
Setting aside the default and allowing Respondent to move forward on the merits is no waste of  
judicial resources.