

SUPREME COURT OF THE STATE OF CALIFORNIA

California Supreme Court Case No. S2528404

State Bar Court Case No. 13-O-1778506

CHARLES DODGSON, Member No. 999999,

A Member of the State Bar,

Petitioner,

v.

THE STATE BAR OF CALIFORNIA,

Respondent.

FROM THE STATE BAR COURT OF CALIFORNIA

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**PETITION TO VACATE DEFAULT AND REMAND TO STATE BAR  
COURT FOR FURTHER PROCEEDINGS; MEMORANDUM OF  
POINTS & AUTHORITIES IN SUPPORT THEREOF; REQUEST FOR  
JUDICIAL NOTICE; DECLARATION OF PETITIONER CHARLES  
DODGSON; PROPOSED ANSWER TO NOTICE OF DISCIPLINARY  
CHARGES; ORDER OF STATE BAR COURT**

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## **I. INTRODUCTION**

For most of his career, Petitioner Charles Dodgson (“Petitioner”) has been a pillar of the legal community, serving primarily the underserved.

Unfortunately, Petitioner fell into a deep depression following a personal physical assault, and the resulting mental health challenges led him to fail in his duties to the profession and his clients. His inability to cope with his then-undiagnosed depression caused him to fail to respond to the State Bar and State Bar Court action, and those events have led him to this Court seeking relief from the natural consequence.

Since his default in State Bar Court, Petitioner has entered treatment for depression and post-traumatic stress disorder. He is currently on California State Disability due to his inability to work, in law or otherwise, as he tends to his health. The failings that led to his NDC are resolvable, and he is doing all that is within his power to regain his health and ability to practice.

Petitioner does not deny that he failed to competently serve his clients. He simply asks that he be permitted to resolve the underlying State Bar Court charges on their merits rather than by default. It is Petitioner’s position that upon resolution on the merits, the appropriate sanction would be less than disbarment, making this petition and his requested resolution a worthwhile use of court resources.

## **II. PETITION FOR RELIEF FROM DEFAULT AND FOR REMAND TO STATE BAR COURT FOR FURTHER PROCEEDINGS**

This is a petition for an order remanding this matter under California Rules of Court 8.54 and 9.17. Petitioner is an attorney and Member of the State Bar of California; Respondent is the State Bar of California, a public

corporation which operates as the administrative arm of the Court in attorney discipline matters.

**A. Why Relief is Necessary**

Petitioner is facing the Draconian consequence of disbarment by default if this matter is not remanded. Though Petitioner takes full responsibility for not responding at the State Bar Court level, he submits that the evidence presented here establishes that he was suffering from severe depression and post-traumatic stress disorder, at the time undiagnosed and untreated but now being addressed. He was physically and mentally incapable of responding. The law favors resolution on the merits, and evidence in the record and applicable law establishes that the appropriate sanction for Petitioner had he participated below would have been short of disbarment. This Court now holds jurisdiction over the matter following transmittal of the State Bar Court’s recommendation for disbarment by default. Only this Court’s granting of Petitioner’s petition can prevent the unjust result of disbarment by default.

**B. Chronology of Pertinent Events**

Petitioner was admitted to practice in 1972 and had a discipline-free record until the events of 2013 through 2016 disrupted his life and career.

December 1972	Petitioner admitted to the State Bar of California
March 2013	Petitioner opens solo legal practice
April 2013	Petitioner suffers physical assault
July 2013	Petitioner is fired by complaining witness
September 2013	Complaining witness re-hires Petitioner; Petitioner attempts to handle litigation matter
January 2014	Petitioner fails to appear at complaining witness’s deposition; Petitioner unresponsive for two weeks

March 2014	Petitioner placates complaining witness and continues representation
July 2014	Petitioner finally fired by complaining witness
September 2014	Petitioner is investigated by State Bar (and fails to respond)
December 18, 2014	NDC filed against Petitioner
October 2015	State Bar Court enters default against Petitioner
December 2015	Friends intervene on Petitioner's behalf and encourage counseling
January 2016	Petitioner enters counseling
April 2016	Petitioner addresses State Bar Court default and seeks relief

As is plain from a review of the chronology, the issues Petitioner had with the complaining witness and the State Bar are inextricably intertwined with the difficulties he suffered in his personal life. His seeking of remand from this Court comes on the heels of beginning his recovery. The remand effort, and indeed Petitioner's entire recovery, was initiated by his devoted attorney friends, and the conditions which underlie Petitioner's original default still plague him and make this effort to seek review at this Court difficult.

**III. MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PETITION FOR RELIEF FROM DEFAULT AND FOR REMAND TO STATE BAR COURT FOR FURTHER PROCEEDINGS**

In support of his petition to vacate the default, Petitioner provides the following memorandum of points and authorities.

There is no doubt that the law favors resolution on the merits, both in civil litigation and in State Bar disciplinary matters. In looking at the facts and

circumstances of a particular case, State Bar Court cases are evaluated under Code of Civil Procedure § 473's standard for relief from a default. Petitioner respectfully submits that the evidence presented here provides good cause under § 473 (and thus under State Bar rules) for this court to vacate the default and remand to the State Bar Court for further proceedings.

**A. Public Policy Favors Resolution on the Merits**

The policy of the law is to favor trial on the merits. That is just as true in State Bar disciplinary matters as it is in civil matters. Rules of Procedure of the State Bar of California 5.83 governs motions for relief from default in State Bar Court cases. Subsection (d) specifies that a “member may move to set aside a default because of mistake, inadvertence, surprise, or excusable neglect. Those grounds will be interpreted under Code of Civil Procedure § 473.” Thus, the law interpreting § 473 outside the State Bar Court context remains directly relevant here.

The Review Department of the State Bar Court stated in In the Matter of Navarro:

Under section 473, “[i]t is the policy of the law to favor, whenever possible, a hearing on the merits. Appellate courts are much more disposed to affirm an order when the result is to compel a trial on the merits than when the default judgment is allowed to stand. [Citation.]” (Shamblin v. Brattain, *supra*, 44 Cal.3d 474, 478.) The Supreme Court has repeatedly stated the importance of the policy favoring disposition on the merits. “[B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default [citations]... Therefore, a trial court order denying relief is scrutinized more carefully than an order permitting trial on the merits. [Citations.]” (Elston v. City of Turlock (1985) 3 Cal.3d 227, 233.

In the Matter of Navarro (Rev. Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192, 198.

The policy favoring resolution of Petitioner's discipline matter on the merits weighs in favor of remand.

**B. Petitioner's Failure to Participate Below was Due to Excusable Neglect**

In evaluating whether an attorney has committed excusable neglect in the context of § 473 due to a medical condition, the Court of Appeal recently articulated that "where . . . the court finds a wholesale disintegration of the attorney's professional capacity because of a medical crisis, the availability of relief for excusable neglect is within the court's sound discretion." Minick v. City of Petaluma (2016) 3 Cal.App.5th 15, 31. That discretion is "to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice." Transit Ads, Inc. v. Tanner Motor Livery, Ltd. (1969) 270 Cal.App.2d 275, 278-79.

Transit Ads, supra, is a 1969 case recently cited in Minick, supra, which examined in great detail the issue of an attorney whose health stood in the way of his professional duties. There the Court of Appeal held that it had been an abuse of discretion to set aside a default based upon an attorney's failings, as the attorney committed inexcusable neglect, id. at 287-88; however, the standard set in that case is one clearly met by Petitioner here.

The Transit Ads court held that the appropriate review is to "examine the nature of the illness as described and then consider if the illness was so



disabling that the neglect consisted only of acts or omissions of a kind which a reasonably prudent sole practitioner caught in similar circumstances would commit.” Id. at 286. “Illness of counsel which actually disables him from timely compliance with the statutory rules of procedure constitutes excusable neglect if he moves promptly for relief as soon as his disability terminates or attenuates to the extent that a reasonable man under similar conditions would take action for relief.” Id. at 280.

Here Petitioner’s illness was debilitating depression and post-traumatic stress disorder brought on by a deeply personal physical attack; upon experiencing an intervention and receiving treatment for his illness, Petitioner promptly filed the present petition within his statutory period to seek relief from the default. In other words, he was utterly unable to act during the period of the State Bar Court action and did nothing – just as most any sole practitioner lacking support and suffering from severe depression and PTSD would likely do; but, he acted promptly as soon as his network of supporting attorney friends intervened and provided him with the ability to do so.

Presented herewith are declarations of Petitioner, a very close personal friend who is also a Member of the State Bar in good standing, and a statement from Petitioner’s treating psychologist. These statements clearly establish that Petitioner has suffered extremely serious physical and psychological trauma. This evidence clearly demonstrates that the trauma was such that Petitioner was

actually disabled and unable to participate in the State Bar investigations or State Bar Court proceedings. Being unable to care for himself in the most basic of ways, he surely could not attend to the State Bar matters. These impacts of his trauma also led him to be unable to effectively represent clients, leading to the State Bar complaint in the first place. (Petitioner does not dispute that his condition was such that he was unable to handle his professional and personal affairs, and as he recovers he does not seek relief from inactive status.)

This is not a situation where Petitioner was unwilling or unable “to deal with the charges because of panic or emotional discomfort brought on by those charges,” which the State Bar Court Review Department has commented would not constitute excusable neglect. In the Matter of Morone (Rev. Dept. 1990) 1 Cal. State Bar Ct. Rptr. 207, 215. Rather, it is a Minick-type situation where Petitioner had indeed suffered “a wholesale disintegration of [her] professional capacity”, one which prevented him from acting on behalf of his clients (leading to the State Bar complaints) and wholly prevented him from acting on his own behalf in the investigations and disciplinary action.

At the State Bar Court level, the Review Department held it was an abuse of discretion to refuse to set aside a default where the respondent attorney had been preoccupied with his mother’s illness at the time of the State Bar Court proceedings. Morone, *supra*, 1 Cal. State Bar Ct. Rptr. Petitioner’s situation is far more severe than dealing with another person’s illness; he was completely

incapacitated and unable to attend in any way to the State Bar Court case. He has established excusable neglect.

**C. On the Merits, Petitioner's Discipline Under the Standards for Attorney Sanctions for Professional Misconduct is Likely to be Short of Disbarment**

Setting aside the default and allowing Petitioner to respond to the NDC on its merits is not a fruitless effort. As articulated in the civil context in Transit Ads, the party seeking to set aside a default must make a prima facie showing that "a different result would probably be reached" if the case were decided on the merits. Transit Ads, *supra*, at 282.

Here it is nearly certain that Petitioner would not be disbarred for the conduct set forth in the NDC, even if he stipulated to the NDC as written. (It is worth noting that Petitioner's verified response to the NDC filed herewith is largely an admission of the charges.)

At present, Petitioner faces disbarment by default. If the State Bar were to prove at trial the allegations contained in the NDC, actual suspension of under one year is a very reasonable possibility for the appropriate sanction even without considering factors in mitigation.

The charges in the NDC fall under Standards 2.5 and 2.8(b) of the Standards for Attorney Sanctions for Professional Misconduct, which state that sanctions ranging from disbarment to reproof would be appropriate.

Disbarment for failure to perform with competence is appropriate where such failure demonstrates a pattern of misconduct, but actual suspension is otherwise appropriate. Petitioner has a strong case to make at the State Bar Court that his conduct does not demonstrate a pattern of misconduct but rather demonstrates the completeness of his inability to act during the relevant time

period. When there are multiple instances of failure to perform but those instances do not demonstrate a pattern of misconduct, actual suspension is appropriate under Standard 2.5.

The charges for failure to cooperate in the State Bar's investigations warrant no more than a reproof under Standard 2.8(b).

The charges as written, even if admitted to in full, more likely warrant a suspension, not disbarment.

Moreover, Petitioner has evidence in mitigation to bring to trial. First and foremost is evidence of his depression and post-traumatic stress disorder during the period of the misconduct. Under Standard 1.6(d), Petitioner will most surely be entitled to mitigation credit. He will also present evidence of his lengthy discipline-free practice and his extraordinary good character (as alluded to already in the declarations provided herewith). The likelihood that this case would result in disbarment on the merits is extremely thin. Setting aside the default and allowing Petitioner to move forward on the merits is no waste of judicial resources.

**D. Petitioner Requests to Remain on Inactive Status During the Pendency of this Petition and Thus Poses No Risk to the Public**

Setting aside the default and allowing Petitioner to proceed on the merits in State Bar Court does not pose any risk whatsoever to the public. Petitioner is currently involuntarily inactive due to the default order, but he is not seeking relief from inactive status even upon setting aside the default. Petitioner can pose no threat to the public if he remains on inactive status.

#### IV. CONCLUSION

For the foregoing reasons, and based on the evidence provided herewith, Petitioner respectfully submits that public policy favors resolution of his disciplinary action on the merits, that he has adequately demonstrated that his failure to respond to the NDC in a timely fashion at the State Bar Court and his failure to move to set aside the default in a timely manner at the State Bar Court level were due to excusable neglect, and that setting aside the default is not a fruitless exercise because he is likely to achieve a result other than disbarment if permitted to answer to the NDC on the merits. He therefore respectfully requests that this Court enter an order remanding this case for further proceedings at the State Bar Court.

January 3, 2017

Respectfully submitted,

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Charles Dodgson  
*Petitioner*

**CERTIFICATE OF WORD COUNT**

Cal. Rules of Court, Rule 8.204(c)(1)

The text of this brief consists of 3,187 words as counted by Microsoft Word version 2013 word-processing program used to generate the brief.

January 3, 2017

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Charles Dodgson

**REQUEST FOR JUDICIAL NOTICE**

Pursuant to California Evidence Code §§ 452(d), 453 and 459, California Rule of Court 8.252, Petitioner Charles Dodgson requests that the Court take judicial notice of the record in the underlying State Bar Court action, Case No. 13-O-1778506. The record of that action has been lodged with this Court.

Respectfully submitted,

January 3, 2017

\_\_\_\_\_  
Charles Dodgson