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

RELY BRIEF IN SUPPORT OF PETITION TO VACATE DEFAULT AND REMAND TO STATE BAR COURT FOR FURTHER PROCEEDINGS

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I. INTRODUCTION

Petitioner Charles Dodgson ("Petitioner") submits this reply brief in support of his petition for relief from the default and recommendation of disbarment entered in the State Bar Court.

The case law cited by the State Bar in opposition to Petitioner's petition does not require this Court to deny the petition; rather, the cases discussed in the State Bar's response highlight the significance of Petitioner's medical and emotional condition and the equity of setting aside the default and permitting Petitioner to proceed on the merits of his State Bar Court matter.

II. REPLY BRIEF 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 reply brief in response to the State Bar's Response.[1]

A. Petitioner Has Established Excusable Neglect Even Under the State Bar's Authorities

Contrary to the State Bar's contention in its Response, Petitioner has established that his failure to appear in the State Bar Court proceedings was due to excusable neglect. The cases cited by the State Bar do not impact the appropriate result.

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[1] The State Bar's first point in opposition to Petitioner's petition is that it relies upon material not presented in the court below. State Bar Response at 3-4. This argument ignores the fact that this is a petition for relief from a default proceeding in which Petitioner was unable to appear. There is no material presented to the State Bar Court upon which Petitioner could rely in establishing the merits of his petition.

As in Minick v. City of Petaluma (2016) 3 Cal.App.5th 15, Petitioner suffered from a severe medical impairment which prevented him from moving forward with his own defense in State Bar Court. Moreover, as in Minick, Petitioner was unaware of the extent of his impairment. Relief is appropriate.

1. Petitioner's Knowledge Of The State Bar Court Case Does Not Negate Excusable Neglect

The State Bar makes much of the fact that Petitioner was cognitively aware of the existence of the State Bar Court proceedings, as if that awareness negates the excusable nature of her neglect. Absence of actual knowledge is not required to demonstrate excusable neglect. Indeed, in Minick, relief was granted from the consequences of an attorney's poor lawyering on a motion to which he actually responded, but where the poor lawyering was found to be due to cognitive incapacity. Id. at 11. The court explained that "where, as here, 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." Id. at 13. There simply is no requirement in granting relief from Petitioner's default that he demonstrate a lack of awareness of the State Bar Court proceeding.[2]

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[2] The State Bar also refers to Minick as a case of "inadvertently overlooking." State Bar Response at 6. This is highly inaccurate given that there the lawyer actually opposed a motion but did so in such a poor fashion that relief was granted based upon his medical condition. This was far more than "inadvertently overlooking".

Petitioner's situation is very similar to that in Minick and not similar to the attorney in Transit Ads, Inc. v. Tanner Motor Livery, Ltd. (1969) 270 Cal.App.2d 275. While Transit Ads is an extremely useful authority for detailing the policy behind permitting relief here, the attorney in that case was not in Petitioner's situation. There the lawyer was on a diet and medication to lose weight, and his medical condition was not found to reach the level of an illness "so disabling that the neglect [in failing to respond] consisted only of acts or omissions of a kind which a reasonably prudent sole practitioner caught in similar circumstances would commit." Id. at 855. The lawyer did not submit any declaration or evidence of the identity of his doctor, the development of his condition, or why he failed to ask for help from an available backup attorney. Id. at 855-56. Petitioner has clearly provided ample support for his medical condition and incapacity, and his condition is such that by its very nature, it impedes his ability to defend himself.

2. Baca Does Not Address Excusable Neglect Under CCP § 473

The State Bar relies upon Baca v. State Bar (1990) 52 Cal.3d 294 to support its argument that Petitioner's knowledge of the State Bar Court proceedings precludes him from relief from the default based upon his medical condition, but that case is not nearly as instructive as the State Bar implies. Baca was not a § 473 motion. Rather, in Baca, the respondent sought to argue the merits of his underlying charges at the Supreme Court after failing to appear

in State Bar Court. Id. at 304-06. He also made multiple arguments of never having received proper notice from the State Bar, which this Court found not credible. Id. at 301-02. His mental health was not the main issue raised and it was most certainly not litigated as the basis for excusable neglect in failing to appear in State Bar Court. Ultimately the Supreme Court upheld disbarment due to "the seriousness of his actions and the lack of significant mitigating circumstances," not any reason related to his mental condition. Id. at 306.

3. Hearn Does Not Address An Attorney's Mental Or Physical Illness

The State Bar also relies on Hearn v. Howard (2009) 177 Cal.App.4th 1193 in support of its contention that Petitioner should be denied relief. Hearn is a case of denial of a § 473 motion where the defaulting party had no real basis for the motion in the first place. The party in that case made claims of lack of service which the court found not credible or supported by any evidence in the record, id. at 1205-07; it has nothing whatsoever to do with an attorney suffering so severely from post-traumatic stress disorder and depression that he is unable to handle basic details of self-care, let alone defense of a legal claim.

4. Petitioner's Matter Must Be Addressed On Its Own Merits

Finally, the State Bar attempts to equate Petitioner's situation to that of any attorney receiving notice of State Bar charges who would be "upset, feel ashamed and frustrated, become depressed, and have multiple reasons to avoid dealing with those charges." State Bar Response at 11. Such description belies

the seriousness of Petitioner's condition. He was not simply upset or frustrated, and he did not become depressed upon receiving the State Bar's charges. He suffered from psychological trauma as a result of a terrible physical attack; he became depressed so severely that he was literally unable to care for his own basic needs; he was diagnosed with post-traumatic stress disorder, which on its own illustrates the severity of his experiences; and he was unable to reach out for help until his friends staged an intervention to pull him from the depths of his illness. See Sutton Dec.

Petitioner does not seek relief from simply ignoring disciplinary proceedings; he seeks relief that is appropriate under § 473 for an attorney suffering from severe debilitating mental and emotional illness.

5. Petitioner Has Met the Appropriate Standard

The State Bar attempts to inject other standards into this review, but 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.

Petitioner has met the standard of showing that a reasonably prudent attorney in his condition would be unable to act in his own defense, and at such time as his friends and colleagues staged an intervention, he promptly acted to defend himself. His is exactly the situation contemplated by Transit Ads and Minick, and § 473 relief is appropriate here.

B. The State Bar Does Not Dispute That Petitioner's Discipline Under the Standards for Attorney Sanctions for Professional Misconduct is Likely to be Short of Disbarment

In its Response, the State Bar makes no statement whatsoever regarding Petitioner's likely sanction on the merits were this case to go forward. This admission validates Petitioner's prima facie showing that a different result would probably be reached if the default is set aside. See Transit Ads, *supra*, at 282.

Petitioner refers to his Petition for extensive discussion of the Standards for Attorney Sanctions for Professional Misconduct and their application to this case.

III. CONCLUSION

Petitioner respectfully submits that the merits of her petition remain intact and that he has adequately demonstrated that § 473 relief is appropriate here. He respectfully requests that this Court enter an order remanding this case for further proceedings at the State Bar Court.

February 20, 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 1,725 words as counted by Microsoft Word version 2013 word-processing program used to generate the brief.

February 20, 2017

Charles Dodgson