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9 STATE BAR COURT
10 HEARING DEPARTMENT – SAN FRANCISCO
11 ALTERNATIVE DISCIPLINE PROGRAM
12

13 **CONFIDENTIAL FILING**
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16 In the matter of:
17 CHARLES DODGSON,
18 No. 999999,
19 A Member of the State Bar.
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Case No. 13-O-1778506

RESPONDENT'S BRIEF RE LEVEL OF
DISCIPLINE

1 Pursuant to Rules of Procedure of the State Bar of California 5.384(B) and
2 5.38*(C), Respondent Charles Dodgson hereby submits this Brief re Level of
3 Discipline in support of his position on the appropriate “high” and “low” levels
4 of discipline to be articulated in his State Bar Court’s Alternative Discipline
5 Program (ADP) Agreement. This is a non-public document pursuant to Rule
6 5.388(C).

7 Respondent submits that the level of discipline ordered as an incentive for
8 successful completion of ADP should be a public reproof, and that the level of
9 discipline ordered as a disincentive for failure to complete ADP should be one
10 year probation, a stayed suspension of one year, and an actual suspension of 6
11 months. This high-low range is based on the conclusion that the appropriate
12 level of discipline at trial would be one year probation a one year stayed
13 suspension and an actual suspension of 90 days.

14 FACTS

15 The NDC is based upon Respondent’s failure to meet his duties to his
16 former client Randall Joseph. Respondent was retained by Mr. Joseph in May
17 2004 to represent him as a defendant in a civil action. Respondent failed in his
18 duties to Mr. Joseph, including failing to appear for his deposition, failing to
19 respond to a motion for summary judgment (which was granted against him),
20 failing to appeal the summary judgment ruling, failing to return unearned fees,
21 and failing to provide an accounting.

22 The NDC charges three counts of failure to perform competently, one
23 count of failure to return unearned fees, and one count of failure to provide an
24 accounting. Respondent has admitted the allegations in the NDC.

25 At the time of the misconduct, Respondent an alcoholic not yet in
26 recovery, and he abused alcohol on a daily basis.

27 Following Respondent’s failure to perform on Mr. Joseph’s behalf, new
28 counsel was hired and Mr. Joseph was able to appeal the summary judgment

1 ruling. On appeal, the ruling was overturned and Mr. Joseph was granted a trial
2 in the civil action. At trial, Mr. Joseph was permitted to present his entire
3 defense. The verdict at trial was in plaintiff's favor against Mr. Joseph.

4 Following Respondent's realization that he was an alcoholic, he sought
5 treatment. Upon gaining his sobriety, Respondent paid restitution to Mr. Joseph
6 of all fees Mr. Joseph had paid to Respondent. This restitution was paid prior to
7 any order of the State Bar Court to do so.

8 **THE LEVEL OF DISCIPLINE AT TRIAL WOULD LIKELY BE ONE YEAR**
9 **PROBATION WITH ONE YEAR STAYED SUSPENSION AND 90 DAY**
10 **ACTUAL SUSPENSION**

11 This Court must resolve all reasonable doubts in favor of Respondent.
12 *Alberton v. State Bar* (1984) 37 Cal.3d 1, 11. Discipline must be imposed in light of
13 the applicable attorney discipline standards and case law. *In re Silverton* (2005)
14 36 Cal.4th 81, 89-94; and see *In re Brown* (1995) 12 Cal.4th 205, 220.

15 In the ADP, the court must first determine the likely level of discipline that
16 would be imposed following trial in a regular proceeding. Only then can the
17 court determine the appropriate high and low levels of discipline to be imposed
18 under the respondent's ADP contract. "[T]he ADP provides a clear incentive of a
19 more lenient discipline to the participant to comply with the program terms,
20 while providing a disincentive for failure to comply in the form of more severe
21 discipline." *In re Geyer* (2007) 5 Cal. State Bar Ct. Rptr. 74, 77.

22 Discipline Standard 2.5(c) provides that discipline for failing to perform
23 legal services in a single client matter is reproof. Standard 2.15 provides that
24 suspension of three years or less or reproof is appropriate for violations of the
25 Rules of Professional Conduct not otherwise articulated in the Standards.

26 Respondent is entitled to mitigation credit under Standard 1.6(d) for the
27 impact his alcoholism had on his practice of law, because Respondent would
28 demonstrate at trial that his abuse of alcohol has ended and no longer poses a

1 risk that he will commit further misconduct.

2 [discuss case law as appropriate]

3 Respondent's drinking problem has been addressed. He is more than 2-
4 years sober and he completed a structured 8-week recovery program. Two years
5 of sobriety is considered the benchmark for rehabilitation from alcoholism, *In re*
6 *Leardo* (1991) 53 Cal.3d 1, 7-8. Respondent's sobriety is more reliable because he
7 completed the structured recovery program at Hazelden Betty Ford. *See Matter*
8 *of Bellicini* (2006) 4 Cal State Bar Ct Rptr 883, 892.

9 Given these authorities and the facts of this case, Respondent reasonably
10 asserts that a trial would result in an actual suspension of 90 days accompanied
11 by a one year stayed suspension and one year probation.

12 **RESPONDENT'S REQUEST FOR HIGH AND LOW DISPOSITIONS**

13 Given the aim of ADP to incentivize Respondent to complete ADP
14 successfully, *In re Geyer* (2007) 5 Cal. State Bar Ct. Rptr. 74, 77, Respondent
15 requests a low level of discipline of a public reproof. Respondent requests that
16 the high level of discipline be set as one year probation, a stayed suspension of
17 one year, and an actual suspension of 6 months.

18 Respectfully submitted,

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21 Dated: January 15, 2015

22 _____
23 Charles Dodgson
24 Respondent
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