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**JUL 05 2019**

**STATE BAR COURT  
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**STATE BAR COURT OF CALIFORNIA  
REVIEW DEPARTMENT**

**En Banc**

In the Matter of ) Case No. 16-O-16588  
)  
RICHARD GREGORY RUMERY, ) ORDER  
)  
State Bar No. 138101. )  
\_\_\_\_\_)

On April 26, 2019, respondent Richard Gregory Rumery's counsel filed a petition for interlocutory review of the hearing judge's order denying his motion to set aside default and an appendix in support of the petition. (Rules Proc. of State Bar, rule 5.150 [standard of review is abuse of discretion or error of law].) On May 3, 2019, we granted respondent's petition and ordered the Office of Chief Trial Counsel of the State Bar (OCTC) to file a response. On May 20, 2019, OCTC filed a response and on June 7, 2019, respondent filed a reply.

Respondent appeals from the hearing judge's April 2, 2019 order denying his motion to set aside his default. The hearing judge entered respondent's default after he failed to appear for trial on February 6, 2019. Respondent filed a timely motion to set aside default, under rule 5.83(C) of the Rules of Procedure, arguing surprise. He contended that he failed to attend trial due to a conflict from an unanticipated hearing in Tulare County Superior Court that he learned about on February 1, 2019. We had previously denied respondent's filing to review the Hearing Department's denial of his request to continue the trial to February 20, 2019.

Having considered respondent's petition on the merits, we find an abuse of discretion. We acknowledge that respondent failed to appear at trial with minimal notice to the hearing judge. Respondent had attempted to obtain a stay of the trial in the Review Department, and when he did not succeed, he notified the hearing judge on the day of trial (February 6, 2019) by telephone that neither he nor his counsel could attend due to an out-of-town appearance.

"Because the effects of a default may deny a disposition of the case on the merits irrespective of the charges or potential mitigation, we closely scrutinize orders denying relief from default and 'any doubts. . . must be resolved in favor of [the member seeking relief]'. " (*In the Matter of Carver* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 348, 354.) When respondent moves promptly to seek relief, a motion to set aside a default can be granted on "very slight evidence." (*Id.*, at pp. 354-355.) While we acknowledge that Respondent's late notification to the hearing judge was clearly neglectful, he did not abandon his case such that the ultimate sanction of disbarment is called for under our default procedures since relief from default is most appropriate in this case. (See *In the Matter of Navarro* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 192, 199 [judge violated discretion in denying motion for relief from default where record establishes respondent's mistake, inadvertence, surprise or excusable neglect]; Rules Proc. of State Bar, rule 5.150(K).)

Accordingly, we vacate the default order, effective upon the filing of this order, and remand this matter for trial.

**PURCELL**

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Presiding Judge

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on July 5, 2019, I deposited a true copy of the following document(s):

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in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

GREGORY T. FAYARD  
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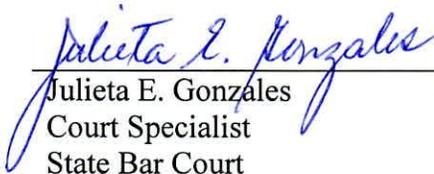
Peter A. Klivans at [Peter.Klivans@calbar.ca.gov](mailto:Peter.Klivans@calbar.ca.gov)

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Alex J. Hackert, Enforcement, Los Angeles

Peter A. Klivans, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on July 5, 2019.

  
\_\_\_\_\_  
Julieta E. Gonzales  
Court Specialist  
State Bar Court