

# PUBLIC MATTER

1 STATE BAR OF CALIFORNIA  
 2 OFFICE OF CHIEF TRIAL COUNSEL  
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**FILED**

**JUN 30 2016**  
 STATE BAR COURT  
 CLERK'S OFFICE  
 LOS ANGELES

STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

12 In the Matter of: ) Case No. 14-O-05758-WKM  
 13 EARL NELSON FELDMAN, ) ~~PROPOSED~~ FIRST AMENDED NOTICE  
 14 No. 42125, ) OF DISCIPLINARY CHARGES  
 15 A Member of the State Bar. )

**NOTICE - FAILURE TO RESPOND!**

**IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL:**

- 19 (1) YOUR DEFAULT WILL BE ENTERED;
- 20 (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;
- 21 (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION AND THE DEFAULT IS SET ASIDE, AND;
- 22 (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE. SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN ORDER RECOMMENDING YOUR DISBARMENT WITHOUT FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ., RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.

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1 The State Bar of California alleges:

2 JURISDICTION

3 1. EARL NELSON FELDMAN ("Respondent") was admitted to the practice of law in  
4 the State of California on January 15, 1970, was a member at all times pertinent to these charges,  
5 and is currently a member of the State Bar of California.

6 COUNT ONE

7 Case No. 14-O-05758  
8 Business and Professions Code, section 6106  
[Moral Turpitude –Breach of Fiduciary Duty]

9 2. Between in or about 1997, and in or about 2015, Respondent was the sole trustee of  
10 the Maury and Lillian Novak Trust ("Novak Trust"). The Novak Trust is a trust created for  
11 charitable purposes. In his capacity as the trustee, Respondent owed a fiduciary duty to the  
12 beneficiaries of the trust to administer the trust solely in the interest of the beneficiaries.  
13 Between in or about 2012 and in or about 2013, Respondent claimed on the Novak Trust tax  
14 returns to have made approximately 75 donations, totaling \$535,757, on behalf of the Novak  
15 Trust. Instead, between in or about 2012 and in or about 2013, Respondent actually disbursed  
16 approximately \$882,600.49 to himself for his own personal use and made only four charitable  
17 donations, totaling \$25,000, thereby negating the purpose of the charitable trust. By failing to  
18 make the purported charitable donations, Respondent knowingly or with gross negligence failed  
19 to administer the Novak Trust solely in the interest of the beneficiaries in violation of his duties  
20 as trustee as codified in Probate Code section 16002, subsection (a). By knowingly or with gross  
21 negligence failing to make the purported charitable donations, and by disbursing \$882,600.49 of  
22 the Novak Trust's funds to himself for his own personal use, Respondent breached his fiduciary  
23 duty to the beneficiaries of the Novak Trust and thereby committed an act of moral turpitude,  
24 dishonesty, or corruption in violation of Business and Professions Code section 6106.

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COUNT TWO

Case No. 14-O-05758  
Business and Professions Code, section 6106  
[Moral Turpitude - Misrepresentation]

3. Between in or about 1997, and in or about 2015, Respondent was the sole trustee of the Maury and Lillian Novak Trust ("Novak Trust"). The Novak Trust is a trust created for charitable purposes. In his capacity as the trustee, Respondent owed a fiduciary duty to the beneficiaries of the trust to administer the trust solely in the interest of the beneficiaries. In or about 2012 and in or about 2013, Respondent, in his capacity as trustee of the Novak Trust, falsely reported in the Novak Trust's tax returns, which he submitted to the Internal Revenue Service, that Respondent made approximately 75 donations in the amount of \$535,757 to various charitable organizations on behalf of the Novak Trust, when Respondent knew or was grossly negligent in not knowing that the statements were false, because in or about 2012 and in or about 2013, Respondent knew that he made only four charitable donations in the amount of \$25,000 on behalf of the Novak Trust. By knowingly or with gross negligence making false representations in the Novak Trust's tax returns, in his capacity as trustee of the Novak Trust, Respondent committed an act(s) involving moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code, section 6106.

COUNT THREE

Case No. 14-O-05758  
Business and Professions Code, section 6106  
[Moral Turpitude - Misappropriation]

4. Between in or about 1997, and in or about 2016, Respondent was the sole trustee of the Maury and Lillian Novak Trust ("Novak Trust"). The Novak Trust is a trust created for charitable purposes. In his capacity as the trustee, Respondent owed a fiduciary duty to the beneficiaries of the trust to administer the trust solely in the interest of the beneficiaries. Between in or about 2012 and in or about 2014, Respondent received on behalf of the Novak Trust liquidated assets of the Novak Trust totaling \$1,402,000. Between in or about 2012 and in or about 2014, Respondent deposited the \$1,402,000 into the trust account for the Novak Trust at

1 Union Bank, account number XXXXXX3576 ("Novak Trust's Union Bank account")<sup>1</sup>. Between  
2 in or about 2012 and in or about 2014, Respondent issued checks from the Novak Trust's Union  
3 Bank account in the sum of \$1,266,037.49 made payable to himself that the beneficiaries of the  
4 Novak Trust were entitled to receive. Respondent used the funds for his own personal use.  
5 By issuing the checks from the Novak Trust's Union Bank account made payable to himself in  
6 the sum of \$1,266,037.49 for his own personal use, Respondent committed an act(s) involving  
7 moral turpitude, dishonesty or corruption in willful violation of Business and Professions Code,  
8 section 6106.

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10 **NOTICE - INACTIVE ENROLLMENT!**

11 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**  
12 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**  
13 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**  
14 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**  
15 **THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN**  
16 **INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE**  
17 **ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE**  
18 **RECOMMENDED BY THE COURT.**

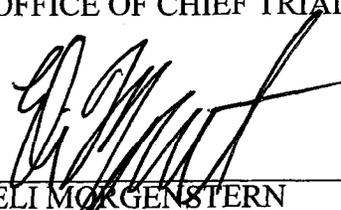
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20 **NOTICE - COST ASSESSMENT!**

21 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC**  
22 **DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS**  
23 **INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING**  
24 **AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND**  
25 **PROFESSIONS CODE SECTION 6086.10.**

26 Respectfully submitted,

27 THE STATE BAR OF CALIFORNIA  
28 OFFICE OF CHIEF TRIAL COUNSEL

29 DATED: June 16, 2016

30 By: 

31 ELI MORGENSTERN  
32 Deputy Trial Counsel

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38 <sup>1</sup> The full account number is omitted for privacy reasons.

DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): 14-O-05758

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, CA 90017-2515, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

MOTION TO AMEND NOTICE OF DISCIPLINARY CHARGES; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ELI D. MORGENSTERN; [PROPOSED] FIRST AMENDED NOTICE OF DISCIPLINARY CHARGES

- By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))
By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))
By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))
By Fax Transmission: (CCP §§ 1013(e) and 1013(f))
By Electronic Service: (CCP § 1010.6)

- (for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)
(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested, Article No.: 9414 7266 9904 2010 0658 76 at Los Angeles, addressed to: (see below)
(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS, Tracking No.: addressed to: (see below)

Table with 4 columns: Person Served, Business-Residential Address, Fax Number, Courtesy Copy to. Row 1: Earl Nelson Feldman, 14004 Mercado Dr Del Mar, CA 92014, Electronic Address, James Irwin Ham 1010 Sycamore Ave Unit 308 South Pasadena, CA 91030

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service (UPS). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: June 16, 2016

SIGNED: [Signature] JULI FINNILA Declarant