

PUBLIC MATTER

FILED

SEP 06 2016

STATE BAR COURT OF CALIFORNIA

STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case Nos.: 15-O-11466-PEM; 15-O-11732
)	(Cons.)
JAMES LYSTON EVERTTS,)	
)	
Member No. 147768,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT
_____)	

Respondent James Lyston Evertts (respondent) was charged with 16 counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ He failed to participate, either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.²

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of disciplinary charges

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to this source.



(NDC) and the attorney fails to have the default set aside or vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.³

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in California on August 8, 1990, and has been a member since then.

Procedural Requirements Have Been Satisfied

On December 1, 2015, the State Bar properly filed and served the first notice of disciplinary charges on respondent (First NDC) in case No. 15-O-11732 by certified mail, return receipt requested, to his membership records address. On December 29, 2015, the State Bar properly filed and served the second notice of disciplinary charges on respondent (Second NDC) in case Nos. 15-O-11466 by certified mail, return receipt requested, to his membership records address. The two NDCs notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The mailings were returned as undeliverable. Courtesy copies of the First NDC and Second NDC were also sent to respondent by regular first class mail to his membership records address. The mailings were also returned as undeliverable.

On February 5, 2016, the State Bar attempted to reach respondent by telephone at his official membership records telephone number but was unsuccessful. On the same day, the State Bar attempted to contact respondent by calling him at an alternate telephone number and left a

³ If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

message. The State Bar also contacted a former client and opposing counsel contained in the file but they did not have any other contact information for respondent. The State Bar sent an email to respondent but it was bounced back as undeliverable. Finally, the State Bar sent another email to respondent at an alternative email address contained in the file, informing him that his response to the NDC was past due and that a motion for entry of default would be filed. To date, respondent has not contacted the State Bar.

Respondent failed to file a response to the two NDCs. The two matters were consolidated on January 25, 2016.

On February 5, 2016, the State Bar properly filed and served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar supervising senior trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on February 23, 2016. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. He has remained inactively enrolled since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].)

On June 1, 2016, the State Bar properly filed and served the petition for disbarment on respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) there has been no contact with respondent since his default

was entered; (2) there is one investigation pending against respondent; (3) respondent has no record of prior discipline; and (4) the Client Security Fund has one pending claim as a result of respondent's misconduct.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on June 29, 2016.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

First NDC

Case Number 15-O-11732 (Colliver Matter)

Count 1 – Respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (charging and collecting an illegal fee) by charging and collecting an illegal fee of \$8,900 from a client, Gail Colliver, in advance of a probate court order.

Count 2 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform legal services with competence) by ceasing to perform any legal services as of October 2014 on behalf of his client in a probate matter.

Count 3 – Respondent willfully violated section 6068, subdivision (m) (failure to respond to reasonable client status inquiries and to inform client of significant development), by failing to respond promptly to client's status inquiries.

Count 4 – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the rights of his client when he constructively terminated his employment in October 2014, including failing to inform his client that he was withdrawing from employment.

Count 5 – Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failure to return unearned fees) by failing to return any portion of the \$8,900 unearned attorney fees, upon the termination of his employment in October 2014.

Count 6 – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) by failing to maintain a balance of \$401 in a client trust account on behalf of his client.

Count 7 – Respondent willfully violated section 6106 (moral turpitude) by dishonestly or grossly negligently misappropriating \$338.88 of client funds that the client was entitled to receive on October 6, 2014.

Count 8 – Respondent willfully violated section 6068, subdivision (i) (failure to cooperate with the State Bar in a disciplinary investigation), by failing to provide a substantive response to the State Bar's April 24, 2015 and May 12, 2015 letters.

Count 9 – Respondent willfully violated section 6068, subdivision (j) (failure to update membership address), by failing to notify the State Bar of the change in his address when he vacated his office in June 2015.

Second NDC

Case Number 15-O-11466 (Sparacino Trust Matter)

Count 1 – Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by ceasing to work on a trust matter on behalf of his client, the Anthony Sparacino Trust, as of May 2013.

Count 2 – Respondent willfully violated section 6068, subdivision (m), by failing to respond promptly to the status inquiries of a beneficiary of the Sparacino Trust.

Count 3 – Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct by failing to take reasonable steps to avoid reasonably foreseeable prejudice to the client and beneficiaries when he constructively terminated his employment in May 2013, including failing to inform them that he was withdrawing from employment.

Count 4 – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct by failing to maintain a balance of \$530,034.97 in a client trust account on behalf of his client.

Count 5 – Respondent willfully violated section 6106 by dishonestly or grossly negligently misappropriating \$425,000 of client funds on June 25, 2012.

Count 6 – Respondent willfully violated section 6068, subdivision (i), by failing to provide a substantive response to the State Bar's April 23, 2015 and May 8, 2015 letters.

Count 7 – Respondent willfully violated section 6068, subdivision (j), by failing to notify the State Bar of the change in his address when he vacated his office in June 2015.

Disbarment Is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied, and respondent's disbarment is recommended. In particular:

(1) The NDCs were properly served on respondent under rule 5.25;

(2) Reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default;

(3) The default was properly entered under rule 5.80; and

(4) The factual allegations in the NDCs, deemed admitted by the entry of the default, support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends his disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent **James Lyston Evertts**, State Bar number 147768, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Restitution

The court also recommends that respondent be ordered to make restitution to the following payees:

1. Gail Colliver in the amount of:
 - a. \$8,900 plus 10 percent interest per year from October 1, 2014, and
 - b. \$338.88 plus 10 percent interest per year from October 6, 2014; and
2. Anthony Sparacino Trust in the amount of \$425,000 plus 10 percent interest per year from June 25, 2012.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

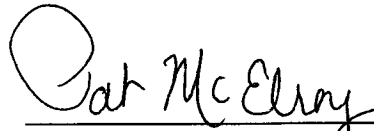
Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders **James Lyston Evertts**, State Bar number 147768, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: September 7, 2016


PAT McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE

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

I am a Case Administrator 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 San Francisco, On September 7, 2016, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

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 San Francisco, California, addressed as follows:

JAMES L. EVERTTS
1999 S BASCOM AVE STE 7
CAMPBELL, CA 95008

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

Treva R. Stewart, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on September 7, 2016.


Laurretta Cramer
Case Administrator
State Bar Court