

FILED

DEC 01 2015

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STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO

STATE BAR COURT

HEARING DEPARTMENT - SAN FRANCISCO

12 In the Matter of:) Case No.: 15-O-11732
 13 JAMES LYSTON EVERTTS,)
 14 No. 147768,) NOTICE 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
23 ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
24 FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
25 RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

The State Bar of California alleges:



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JURISDICTION

1. James Lyston Everetts ("respondent") was admitted to the practice of law in the State of California on August 8, 1990, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

COUNT ONE
Case No. 15-O-11732
Rules of Professional Conduct, rule 4-200(A)
[Illegal Fee]

2. Between in or about June 2, 2012 and in or about September 11, 2014, respondent charged and collected from Gail Colliver a fee of \$8,900 to perform legal services that was illegal because respondent collected the fee in advance of the order of the Probate Court judge in *Estate of Louis Robert Gorla*, Santa Clara County Superior Court case no. 1-12-PR-170967, which violated California Rules of Court, rule 7.700, in willful violation of the Rules of Professional Conduct, rule 4-200(A).

COUNT TWO
Case No. 15-O-11732
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

3. On or about June 2, 2012, Gail Colliver ("Colliver") employed respondent to perform legal services, namely to represent her as the executor of the estate in *Estate of Louis Robert Gorla*, Santa Clara County Superior Court case no. 1-12-PR-170967, which respondent intentionally, recklessly, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 3-110(A), by ceasing to work on the matter as of in or about October 2014.

COUNT THREE
Case No. 15-O-11732
Business and Professions Code, section 6068(m)
[Failure to Respond to Client Inquiries]

4. Respondent failed to respond promptly to repeated telephonic inquiries asking for reasonable status inquiries made by respondent's client, Gail Colliver, between in or about October 2014 and in or about February 23, 2015 that respondent received in a matter in which

1 respondent had agreed to provide legal services, in willful violation of Business and Professions
2 Code, section 6068(m).

3 COUNT FOUR

Case No. 15-O-11732

Rules of Professional Conduct, rule 3-700(A)(2)
4 [Improper Withdrawal from Employment]

5 5. Respondent failed, upon termination of employment, to take reasonable steps to avoid
6 reasonably foreseeable prejudice to respondent's client, Gail Colliver, by constructively
7 terminating respondent's employment in or about October 2014, by failing to take any action on
8 the client's behalf after providing the client the Preliminary Petition for Distribution in *Estate of*
9 *Louis Robert Gorla*, Santa Clara County Superior Court case no. 1-12-PR-170967 in or about
10 October 2014, and thereafter failing to inform the client that respondent was withdrawing from
11 employment, in willful violation of Rules of Professional Conduct, rule 3-700(A)(2).

12 COUNT FIVE

Case No. 15-O-11732

Rules of Professional Conduct, rule 3-700(D)(2)
13 [Failure to Refund Unearned Fees]

14 6. Between in or about June 2, 2012 and in or about September 11, 2014, respondent
15 charged and collected \$8,900 from a client, Gail Colliver, to represent her as the executor of the
16 estate in *Estate of Louis Robert Gorla*, Santa Clara County Superior Court case no. 1-12-PR-
17 170967. Respondent failed to complete the probate of the *Estate of Louis Robert Gorla* and
18 abandoned the client thereby rendering the services performed to be of no value, and therefore
19 earned none of the advanced fees paid. Respondent failed to refund promptly, upon respondent's
20 termination of employment in or about October 2014 any part of the \$8,900 fee to the client, in
21 willful violation of Rules of Professional Conduct, rule 3-700(D)(2).

22 COUNT SIX

Case No. 15-O-11732

Rules of Professional Conduct, rule 4-100(A)
23 [Failure to Maintain Client Funds in Trust Account]

24 7. On or about September 11, 2014, respondent received from Elizabeth Romano, on
25 behalf of respondent's client, Gail Colliver, a \$401 check for costs. On or about September 12,
26 2014, respondent deposited the \$401 into respondent's client trust account at JPMorgan Chase,
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1 account no. 861075xxxx¹ on behalf of the client. Of this sum, the client was entitled to \$401.
2 Respondent failed to maintain a balance of \$401 on behalf of the client in respondent's client
3 trust account, in willful violation of Rules of Professional Conduct, rule 4-100(A).

4 COUNT SEVEN

5 Case No. 15-O-11732

6 Business and Professions Code, section 6106

7 [Moral Turpitude - Misappropriation]

8 8. On or about September 11, 2014, respondent received on behalf of respondent's
9 client, Gail Colliver, a check from Elizabeth Romano made payable to respondent in the sum of
10 \$401 for costs in *Estate of Louis Robert Gorla*, Santa Clara County Superior Court case no. 1-12-
11 PR-170967. On or about September 12, 2014, respondent deposited the \$401 into respondent's
12 client trust account at JPMorgan Chase, account no. 861075xxxx on behalf of the client. On or
13 about October 6, 2014, respondent dishonestly or grossly negligently misappropriated for
14 respondent's own purposes \$338.88 that respondent's client, was entitled to receive, and thereby
15 committed an act involving moral turpitude, dishonesty or corruption in willful violation of
16 Business and Professions Code, section 6106.

17 COUNT EIGHT

18 Case No. 15-O-11732

19 Business and Professions Code, section 6068(i)

20 [Failure to Cooperate in State Bar Investigation]

21 9. Respondent failed to cooperate and participate in a disciplinary investigation pending
22 against respondent by failing to provide a substantive response to the State Bar's letters of April
23 24, 2015 and May 12, 2015, which respondent received, that requested respondent's response to
24 the allegations of misconduct being investigated in case no. 15-O-11732, in willful violation of
25 Business and Professions Code, section 6068(i).

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¹ The full account number is not provided in an effort to protect the security of the account. It is available to the court upon request.

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COUNT NINE
Case No. 15-O-11732
Business and Professions Code, section 6068(j)
[Failure to Update Membership Address]

10. In or about June 2015, respondent vacated respondent's office at the address maintained on the official membership records of the State Bar and thereafter failed to comply with the requirements of Business and Professions Code section 6002.1, by failing to notify the State Bar of the change in respondent's address within 30 days, in willful violation of Business and Professions Code, section 6068(j).

NOTICE - INACTIVE ENROLLMENT!

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

NOTICE - COST ASSESSMENT!

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

Respectfully submitted,

THE STATE BAR OF CALIFORNIA
OFFICE OF CHIEF TRIAL COUNSEL

DATED: December 1, 2015

By: 
Robert A. Henderson
Supervising Senior Trial Counsel

DECLARATION OF SERVICE
BY CERTIFIED AND REGULAR MAIL

CASE NO.: 15-O-11732

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 180 Howard Street, San Francisco, California 94105, declare that I am not a party to the within action; that 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; that 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; that I am aware that on motion of 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; and that in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of San Francisco, on the date shown below, a true copy of the within

NOTICE OF DISCIPLINARY CHARGES

in a sealed envelope placed for collection and mailing as *certified mail, return receipt requested*, and in an additional sealed envelope as *regular mail*, at San Francisco, on the date shown below, addressed to:

Article No.: 9414 7266 9904 2042 4861 44

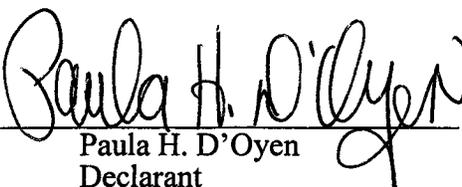
James L. Evertts
1999 S Bascom Ave., Ste. 7
Campbell, CA 95008

in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

N/A

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

DATED: December 1, 2015

Signed: 
Paula H. D'Oyen
Declarant