# PUBLICMATTER



STATE BAR OF CALIFORNIA OFFICE OF THE CHIEF TRIAL COUNSEL **JAYNE KIM, No. 174614** 2 ACTING CHIEF TRIAL COUNSEL 3 PATSY J. COBB, No. 107793 DEPUTY CHIEF TRIAL COUNSEL STATE BAR COURT CLERK'S OFFICE 4 ALAN B. GORDON, No. 125642 LOS ANGELES ASSISTANT CHIEF TRIAL COUNSEL 5 KRISTIN L. RITSEMA, No. 149966 SENIOR TRIAL COUNSEL CYNTHIA REED, No. 232326 6 DEPUTY TRIAL COUNSEL 7 1149 South Hill Street Los Angeles, California 90015-2299 8 Telephone: (213) 765-1204 9 10 STATE BAR COURT 11 HEARING DEPARTMENT - LOS ANGELES 12 Case No. 11-O-14067 In the Matter of: 13 14 JAMES VINCENT REISS, NOTICE OF DISCIPLINARY CHARGES No. 128020, 15 16 A Member of the State Bar 17 **NOTICE - FAILURE TO RESPOND!** 18 IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE 19 WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL: 20 (1) YOUR DEFAULT WILL BE ENTERED; 21 (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW: 22 (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION 23 AND THE DEFAULT IS SET ASIDE, AND; (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE. 24 SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN 25 ORDER RECOMMENDING YOUR DISBARMENT WITHOUT FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ., 26 RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA. 27

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The State Bar of California alleges:

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# **JURISDICTION**

1. James Vincent Reiss ("Respondent") was admitted to the practice of law in the State of California on June 17, 1987, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California.

## FACTS COMMON TO ALL COUNTS

- 2. In 2007, Sandra Chapman ("Chapman") hired Respondent to represent her in probate proceedings for the estate of her son Mark Hooper ("Mark"). Mark died on May 15, 2007. Chapman's son Eric Hooper ("Eric") was named executor of Mark's estate.
- 3. On June 11, 207, Chapman and Eric signed a written retainer agreement with Respondent.
- 4. In September 2008, Chapman's former daughter-in-law Lisa Hughes-Hooper ("Hughes-Hooper") commenced a civil action claiming entitlement to \$1,000,000 in insurance proceeds, plus interest that went to Chapman due to a beneficiary change in a new life insurance policy held by Mark. Hughes-Hopper was Mark's beneficiary on a prior life insurance policy until February 5, 2007, when that policy expired and he changed the beneficiary from his wife (while their divorce was pending) to his mother on a new policy
- 5. The civil action, *Hughes-Hooper v. Penn Mutual Life Insurance Co. et al*, LASC Case No. KC 053809 (hereinafter "the insurance litigation") was assigned to The Honorable Dan Thomas Oki. Respondent filed an answer on behalf of Chapman, and appeared on her behalf in court. He also represented her at trial.

#### **COUNT ONE**

Business and Professions Code, section 6106 [Moral Turpitude – Falsely Simulating Client Signature on Agreement with Penn Mutual Life Insurance Company]

- 6. Respondent willfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:
  - 7. The allegations of paragraphs two through five are incorporated by reference.

8. On November 13, 2008, in the insurance litigation, Respondent and legal counsel for Hughes-Hooper, Robert L. Kern, Esq. ("Attorney Kern"), agreed with Penn Mutual Life that they would split the policy proceeds and hold them on behalf of their clients until further 3 4 agreement or court order. 9. Without Chapman's knowledge, permission or consent, in December 2008, 5 Respondent signed an agreement simulating Chapman's signature pursuant to which Respondent 6 and Attorney Kern each received \$534,356.64 from Penn Mutual Life in exchange for Penn 7 8 Mutual's dismissal from the lawsuit. 9 10. Chapman had not authorized Respondent to sign her name to any document. 11. By falsely simulating Chapman's signature on an agreement with Penn Mutual Life 10 without her knowledge, permission or consent, Respondent committed an act involving moral 11 12 turpitude, dishonesty or corruption. 13 COUNT TWO Business and Professions Code, section 6106 14 [Moral Turpitude - Misrepresentation to Client 15 By Falsifying Court Order 12. Respondent willfully violated Business and Professions Code, section 6106, by 16 committing an act involving moral turpitude, dishonesty or corruption, as follows: 17 13. The allegations of Count One are incorporated by reference. 18 14. Respondent told Chapman that Penn Mutual would provide the insurance proceeds to 19 the Court (the Honorable Judge Oki) to be held while the insurance litigation was pending. In 20

15. The purported court order has an illegible date and is marked "filed."

per annum for the total of \$1,063,973.04" was "deposited with the Clerk of the Court."

support of his verbal statements, Respondent provided Chapman with a signed court order of

interpleader which stated that "The sum of \$1,000,000.00 which accounts for the proceeds from

Life Insurance Policy No. 8581051 and the sum of \$63,973.04 in accrued interest at a rate of 4%

16. The purported court order was fabricated by Respondent.

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17. By providing a falsified court order to Chapman in order to mislead her into believing that insurance funds were deposited with the court, Respondent committed an act involving moral turpitude, dishonesty or corruption.

# **COUNT THREE**

Business and Professions Code, section 6106 [Moral Turpitude – Misappropriation of Client Funds]

- 18. Respondent willfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:
  - 19. The factual allegations of Counts One and Two are incorporated by reference.
- 20. On December 19, 2008, Respondent deposited the \$534,356.64 insurance company check into his Client Trust Account ("CTA") number ending 9423, raising the balance to \$575,410.41.
- 21. From December 19, 2008 through January 27, 2009, Respondent dispersed CTA funds to various individuals or entities but not to Chapman or on her behalf,
- 22. On December 31, 2008, Respondent paid another client Terri Walz ("Walz") \$100,000.00, which reduced his CTA balance to \$295,556.13.
- 23. On January 26, 2009, Respondent made another payment of \$100,000 to client Walz, reducing his CTA balance to \$135,379.79. Thus, by that date, Respondent misappropriated \$398,976.85 from the insurance proceeds entrusted to his care on behalf of Chapman in the insurance litigation.
- 24. On January 27, 2009, the CTA balance dipped by another \$20,000, raising the amount of misappropriation to \$418,976.85.
- 25. On March 11, 2009, the CTA balance dropped to \$6,372.20, for a misappropriation of \$527,984.44 from the insurance proceeds entrusted to his care on behalf of Chapman in the insurance litigation.
- 26. On April 2, 2009, the CTA balance dipped to \$178.10, for a misappropriation of \$534,178.54.

1	27. On February 26, 2010, the CTA balance was zero, completing the misappropriation		
2	of the entirety of the \$534,356.64 of the insurance proceeds entrusted to his care on behalf of		
3	Chapman in the insurance litigation.		
4	28. From December 2008 to February 2010, Respondent did not make any distributions		
5	to or on behalf of Chapman from the CTA		
6	29. By depleting and misappropriating the insurance funds provided to him by Penn		
7	Mutual Life Insurance on behalf of Chapman, Respondent committed acts involving moral		
8	turpitude, dishonesty or corruption.		
9	COUNT FOUR		
10 11	Business and Professions Code, section 6106 [Moral Turpitude – Falsely Simulating Client Signature on Settlement Agreement]		
12	30. Respondent willfully violated Business and Professions Code, section 6106, by		
13	committing an act involving moral turpitude, dishonesty or corruption, as follows:		
14	31. The factual allegations of Counts One through Three are incorporated by reference.		
15	32. In January 2011, after trial but before a decision was issued by Judge Oki,		
16	Respondent and Attorney Kern negotiated settlement of the insurance litigation.		
17	33. The result of these negotiations was a Confidential Settlement Agreement ("the		
18	Agreement") executed on January 21, 2011 and signed by Respondent, Attorney Kern, Hughes-		
19	Hooper and purportedly by Chapman and Eric.		
20	34. The terms of the Agreement affected Chapman's rights in the insurance litigation and		
21	the probate of Mark's estate. The Agreement included the following terms:		
22	• Hughes-Hooper was to receive the \$500,000.00 plus interest in the trust accounts		
23	held by Attorney Kern and \$200,000.00 from the funds held in trust by		
24	Respondent for Chapman;		
25	Chapman was to receive the balance of funds held by Respondent in trust;		
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27	Hughes-Hooper agreed to withdraw her contest to the will of Mark in the probate		
28	proceedings:		

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- Hughes-Hooper agreed to resign as Co-Special Administrator in the probate
   proceeding concerning and Mark's estate and that Eric would become Executor;
- Hughes-Hooper was to receive full ownership of a business/corporation which she
   and Mark had operated during their marriage;
- Hughes-Hooper agreed to waive her community property interest and other rights
   (which would include family allowance and probate homestead and otherwise) in
   the estate proceeding and in certain real property;
- Chapman was to receive title to the real property; and
- Each of the parties agreed to waive any and all other claims against the others
- 35. Respondent simulated Chapman's signature on the Agreement without her knowledge, permission or consent.
  - 36. Respondent did not tell Chapman about the Agreement.
- 37. After the terms were negotiated and shortly before signing, Respondent asked Attorney Kern if the Agreement could be treated as confidential.
- 38. Hughes-Hooper had not asked for such designation and Chapman had no knowledge of the Agreement; Respondent made that request in the process of his negotiations.
- 39. By falsely simulating Chapman's signature on a settlement agreement that disposed of her rights in the insurance litigation (and the probate litigation) without her knowledge, permission or consent, Respondent committed an act involving moral turpitude, dishonesty or corruption.

#### **COUNT FIVE**

Business and Professions Code, section 6106 [Moral Turpitude – Misrepresentation to Superior Court]

- 40. Respondent willfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:
  - 41. The factual allegations of Counts One through Four are incorporated by reference.

[Moral Turpitude – Misrepresentation to Client]

- 52. Respondent willfully violated Business and Professions Code, section 6106, by committing an act involving moral turpitude, dishonesty or corruption, as follows:
  - 53. The factual allegations of Counts One through Five are incorporated by reference.
- 54. On June 9, 2011, Chapman and Eric met with Respondent, at which time Respondent told her that Judge Oki had released one-half of the insurance proceeds which would be available immediately.
- 55. Respondent and Chapman communicated about the probate case in July 2011, and communicated about the insurance litigation in September, October and November 2011.
- 56. In written correspondence and electronic mail, Chapman made repeated requests for information about the status of the insurance litigation as well as when she would receive the one-half of the proceeds purportedly authorized for release by Judge Oki.
- 57. At no time did Respondent tell Chapman that the case was dismissed as a result of the January 21, 2011 Agreement.
- 58. Respondent made numerous false statements and misrepresentations that the insurance litigation was still pending and that the court would be issuing a ruling.
- 59. On October 7, 2011, Respondent mailed to Chapman a "proposed Statement of Decision" (hereinafter "proposed court order") that he stated had been issued by Judge Oki.
- 60. In a letter dated October 13, 2011, Respondent told Chapman that the parties would have 20 days to prepare objections to the proposed court order and 60 days after that in which to file an appeal. In this same letter, Respondent further indicated his intent to "file a Judgment and Notice of Entry of Judgment on October 14, 2011" and informed Chapman that "I have requested all of the accounting information concerning the insurance funds along with the documentation concerning the payment of the funds, interest earned. There have been no disbursements of these funds to date."
- 61. Respondent's verbal and written representations to Chapman were intentionally false and misleading as Respondent knew that he had settled the insurance litigation (and related aspects of the probate litigation) without Chapman's knowledge, permission or consent.

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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 THE CHIEF TRIAL COUNSEL

Bv: Cystle lls

Cynthia Reed

Deputy Trial Counsel

# **DECLARATION OF SERVICE BY CERTIFIED MAIL**

**CASE NUMBER: 11-0-14067** 

I, the undersigned, over the age of eighteen (18) years, whose business address and place of employment is the State Bar of California, 1149 South Hill Street, Los Angeles, California 90015, 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 Los Angeles, 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 <u>certified mail on Respondent James</u> <u>Vincent Reiss only, return receipt requested, Article No.: 7196 9008 9111 0443 4632</u>, at Los Angeles, on the date shown below, addressed to:

James Vincent Reiss	Michael G. Gerner	James DiFrank
Reiss & Johnson	MGG, A Prof Law Corp	12227 Philadelphia St
10535 Foothill Blvd #410	425 S Beverly Dr Ste 210	Whittier, CA 90601-3931
Rancho Cucamonga, CA 91730 Respondent, Served Via Certified Mail, Return Receipt Requested	Beverly Hills, CA 90212  Courtesy Copy sent via U.S. First Class mail	Courtesy Copy sent via U.S. First Class mail

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 Los Angeles, California, on the date shown below.

DATED: February 14, 2012

Charles C. Bagai