FILED DECEMBER 29, 2011

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **JAMES VINCENT REISS** **Member No. 128020** A Member of the State Bar.	)	Case No.: **11-TE-18592-DFM** **DECISION AND ORDER OF INACTIVE ENROLLMENT (BUS. & PROF. CODE SECTION 6007, SUBDIVISION (c)(1))**

INTRODUCTION

This matter is before the court on the verified application of the Office of the Chief Trial Counsel of the State Bar of California (State Bar) to enroll respondent **James Vincent Reiss** (Respondent), Member No. 128020, as an involuntary inactive member of the State Bar pursuant to Business and Professions Code section[1] 6007, subdivision (c) and rule 5.226 of the Rules of Procedure of the State Bar of California (Rules of Procedure).

Section 6007, subdivision (c), authorizes the court to order an attorney's involuntary inactive enrollment on a finding that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public. In order to find that an attorney's conduct poses a threat of harm, the following three factors must be shown: (1) the attorney has caused or

[1] Future references to section(s) are to this source.

is causing substantial harm to his clients or the public; (2) the injury to the attorney's clients or the public in denying the application will be greater than any injury that would be suffered by the attorney if the application is granted or, alternatively, there is a reasonable likelihood that the harm will continue;[2] and (3) there is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter. (See also *Conway v. State Bar* (1989) 47 Cal.3d 1107; *In the Matter of Mesce* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 658, 661.)

After reviewing and considering this matter, including each of the above three elements, the court finds that Respondent's conduct poses a substantial threat of harm to his clients and the public, as defined by section 6007, subdivision (c). Accordingly, Respondent is ordered enrolled as an involuntary inactive member of the State Bar pursuant to section 6007, subdivision (c).

PROCEDURAL HISTORY

On December 9, 2011, the State Bar filed a verified application seeking Respondent's involuntary inactive enrollment pursuant to section 6007, subdivision (c). Respondent was given notice of this proceeding pursuant to rule 5.226 of the Rules of Procedure. The application is based on matters not yet the subject of disciplinary charges pending in the State Bar Court.

On December 13, 2011, Respondent filed a verified response to the application.

A hearing was held on December 21, 2011. The Office of the Chief Trial Counsel was represented by Deputy Trial Counsel Cynthia Reed. Respondent was represented by James R. DiFrank. At that hearing the court granted in part and denied in part Respondent's motion to strike portions of the evidence attached to the State Bar's application. In addition, the court received in evidence at the hearing bank records of Citizens Business Bank, maintained by it for the client trust account (CTA) maintained by Respondent for the period from March 1, 2009

[2] But where the evidence establishes a pattern of behavior, including acts likely to cause substantial harm, the burden of proof shifts to the attorney to show that there is no reasonable likelihood that the harm will reoccur or continue.

through June 30, 2011 (together with an authenticating declaration from the custodian of records of the bank). The matter was submitted for decision on December 21, 2011.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact are based on the declarations and accompanying exhibits of Sandra Chapman, Robert Kern, and David Sermos, submitted by the State Bar with its application[3]; on the bank records received in evidence by the court at the hearing of this matter; and on Respondent's response to application, including its attachments.

Jurisdiction

Respondent was admitted to the practice of law in California on June 17, 1987, and has been a member of the State Bar at all relevant times.

Required Notice of the Proceeding

Respondent was given notice of this proceeding pursuant to rule 5.226 of the Rules of Procedure.

Chapman Matter

In June 2007, Sandra M. Chapman (Chapman) and her son, Eric Hooper (Hooper), hired Respondent to handle the probate of the estate of Chapman's deceased son, Mark, and to represent them in litigation filed by Mark's former wife, Lisa Hughes-Hooper (Hughes-Hooper).

Hughes-Hooper and Mark were involved in a dissolution action at the time of his death but were still married when he died. The litigation arose out a claim by Hughes-Hooper that she was entitled to set aside a change by Mark of the designated beneficiary of a $1 million life insurance policy issued on his life. Hughes-Hooper had previously been the sole beneficiary of the life insurance policy on his life. Mark named Chapman as the sole beneficiary during the pendency of the dissolution action. Hughes-Hooper alleged in the litigation that this change of

[3] Based on the content of these declarations and their supporting exhibits, the court finds these declarations to be credible.

beneficiaries violated a restraining order issued in the dissolution action and that, because Mark died before the dissolution had been finalized or the marital property had been formally divided, she was still entitled to her marital/community property rights in the policy proceeds. Hughes-Hooper was represented in the litigation by attorney Robert Kern. The civil action was filed in the Los Angeles Superior Court.

Penn Mutual had issued the policy and was also named as a defendant in the action. In November and December 2008, Kern and Respondent negotiated a deal with counsel for Penn Mutual, whereby Penn Mutual would divide the $1,000,000 proceeds of the policy equally between the two competing parties and then pay the funds, plus accrued interest, to the respective attorneys for the two parties. Penn Mutual was then to be released from any further liability under the policy and be dismissed from the lawsuit. The agreement further provided that, once the funds were received by the two attorneys, the money was to be maintained by each attorney in his client trust account and was not to be paid out unless and until there was either a further agreement between the parties or a court order. Settlement and release documents were prepared and executed by Kern, Respondent, Penn Mutual, Hughes-Hooper, and purportedly Chapman. Two checks, each for $534,356.64, were then issued and delivered by Penn Mutual to Respondent and Kern. The check delivered to Respondent was made payable to "Sandra M. Chapman and Reiss & Johnson."

Chapman was completely unaware of the above agreement or any arrangement whereby Respondent would receive any funds from the insurer. She did not sign the settlement/release agreement and she did not endorse the check for the policy proceeds.[4]

[4] These statements by Chapman in her declaration, attached to the State Bar's application, have not been disputed or contradicted by Respondent in his verified response to the application.

Instead of being told of the above arrangement, Respondent told Chapman that Penn Mutual had deposited the insurance proceeds with the court for safe-keeping through an interpleader process commenced in December 2008. He even provided Chapman with a fabricated order that had purportedly been filed by the Los Angeles court, which both acknowledged that Penn Mutual had deposited the $1,000,000, together with $63,973.04 accrued interest, with the court and dismissed Penn Mutual from the action. No such order was ever issued by the Los Angeles Superior Court.

As noted, under the terms of the agreement reached by Respondent with Kern and Penn Mutual, Respondent was to deposit in his CTA the funds being distributed to him by Penn Mutual and maintain those funds in his trust account until there was either a further agreement between the parties or a court order. So such further agreement or court order occurred until early 2011. Notwithstanding that fact, none of the funds remained in Respondent's client trust account until that time. In the bank records for the CTA received in evidence, the balance of the CTA on February 27, 2009 was down to $174,485. By the end of the following month, the balance was further reduced to $10,442. Several days later, on April 2, 2009, the balance was only $178, although money was constantly being deposited and disbursed from the account for other client matters.

The insurance litigation trial commenced on November 29, 2010 and ended on December 1, 2010. At that time, the court urged the attorneys for the parties to enter negotiations. These negotiations resulted in a settlement agreement being reached between Kern and Respondent, ostensibly on behalf of their respective clients, in January 2011. By the terms of this agreement, Hughes-Hooper was entitled to receive the half of the $1,000,000 insurance proceeds that attorney Kern had previously received. In addition, the agreement stated, "That from the one-half of the insurance proceeds held in the trust accounts of Reiss & Johnson, the attorney for

Sandra and Eric, the sum of two hundred thousand dollars ($200,000.00) shall be paid to Lisa within 20 business days of the execution of this settlement agreement, and the balance of which, including any accrued income or interest, shall be paid to Sandra."[5] The settlement agreement went on to deal with a resolution of disputed issues involved in the probate and included (1) an assignment by Chapman and Hooper of any interest that they might have in the business operated by Mark, (2) an agreement by Chapman and Hooper to hold Hughes-Hooper harmless for any claims made in the probate proceeding and/or the estate proceeding, and (3) a general release by them of Hughes-Hooper of any and all other claims not resolved by the agreement.

Settlement documents were prepared[6] and purportedly signed by Chapman and the other parties on January 21, 2011. The lawsuit, including Chapman's cross-complaint seeking to perfect her entitlement to all of the insurance proceeds, was dismissed by the court on that same date. In fact, Chapman had never told by Respondent of this agreement, never agreed to it, did not sign what appears to be her signature on the agreement, and did not know that her cross-complaint had been dismissed.

As noted, under the terms of the settlement agreement, Respondent, on behalf of Chapman, was obligated to pay to Hughes-Hooper $200,000 of the funds that had previously been paid to Respondent by Penn Mutual for safe-keeping. Under the terms of the agreement, these funds were to be transferred by Respondent to Hughes-Hooper on February 22, 2011. Respondent failed to make any payment on that date. Because Hughes-Hooper was anxious to receive her funds, Kern began placing calls to Respondent about the required payment. During their telephone conversations, Respondent told Kern that Chapman needed to sign off on his

[5] In its recitals, the settlement agreement stated that one half of the policy proceeds were then being held in Respondent's trust account. This was not true. Nonetheless, this document was approved as to content and signed by Respondent.

[6] At the request of Respondent, these settlement documents were modified during the drafting process to include language that the agreements would be confidential.

releasing the funds to Hughes-Hooper and he made other arguments why there needed to be a delay in the payment being made. Kern then gave Respondent notice that an ex parte motion was going to be filed and heard on March 9, 2011 to enforce the settlement agreement.[7]

On March 9, 2011, the day of the scheduled ex parte hearing, Kern received a phone call informing him that Respondent was waiting for Kern at the courthouse and had the required check for $200,000, in order to obviate the need for the filing of any ex parte application. Kern then went to meet with Respondent. At that March 9 meeting, Respondent gave Kern a post-dated check (dated March 11, 2011) for $200,000. The check was not issued on Respondent's client trust account at Citizens Business Bank, but instead was issued on Respondent's "General Account" at the Bank of the West. Two days later, when Kern personally presented the check to the Bank of the West for payment on March 11, 2011, the bank declined to honor the check, stating that there were insufficient funds in the account to cover the check.

Kern then gave notice to Respondent of his renewed intent to file an ex parte motion on March 14, 2011, to enforce the settlement. The papers he subsequently filed with the court complained that the money previously paid by Penn Mutual to Respondent "appears to have disappeared" and he asked that orders issue "to determine what happened to the assets and in particular the payment of sums due the plaintiff pursuant to the agreement, for orders for examination of the attorneys, requiring production of records relating to the deposit of the funds received from Penn Mutual Insurance Company, for interest, for payment of the principal amount, attorney's fees and expenses of the plaintiff in the amount of $10,000, for protective orders relating to the other assets subject to the agreement, and such other relief as the court may deem appropriate under the circumstances." Respondent did not notify Chapman of this motion.

[7] Under the terms of the agreement, the Superior Court retained jurisdiction to enforce the settlement.

On March 14, 2011, both Kern and Respondent appeared for the scheduled ex parte hearing. Respondent indicated to the court that there had been mix-ups with the bank and client problems and he stated that the funds were now at hand for immediate payment. The court then temporarily suspended the hearing, to allow the two attorneys to go to the Bank of the West where a cashier's check for $200,000 was delivered for the benefit of Hughes-Hooper. On returning to court, Respondent asked that the ex parte filings, including both the moving papers and Respondent's opposition, be withdrawn from the court file, in order to maintain the confidentiality of the settlement agreement, a request to which Kern agreed.[8] Respondent subsequently paid the attorney's fees billed by Kern in filing the ex parte application.

Although Respondent was representing to Kern and the court that Chapman had been a cause of the delay in the $200,000 payment being made, Chapman throughout this entire time (and for months thereafter) was completely ignorant that any agreement had been reached with Hughes-Hooper; that Hughes-Hooper was to receive any portion of the insurance proceeds and, in fact, had received more than half of them; and that the underlying litigation had been resolved. To the contrary, during this entire period and up to October of 2011, Respondent was reporting to Chapman that the litigation was ongoing and that a decision was in the process of being perfected by the court awarding Chapman all of the insurance proceeds. To substantiate these assurances, Respondent even provided Chapman with a fabricated court document that had been falsified to conceal the true state of affairs. His documented misrepresentations to Chapman included, *inter alia*, the following:

> On September 11, 2011, Chapman sent an email to Respondent, asking for a status report on the insurance litigation.[9] In her email, she specifically asked whether

[8] This stipulation to remove the previously filed documents is noted in the court's docket.

[9] The court notes that Chapman had been alerted by a State Bar investigator in May, 2011, about the possibility that Respondent was not telling her the truth about the status of either the insurance litigation or the status of the insurance proceeds. This was well before she made the various written inquiries to Respondent included in this chronology. There is no indication in

Respondent had received any of the insurance money yet and whether the trial judge had yet written his decision after the trial. In response, Respondent replied via email: "A lot is happening. Insurance case is moving toward conclusion without appeal as I think Lisa is finally out of money and patience. [Judge] Oki will issue final ruling in our favor on September 19 or 20. If Lisa continues on same course there will be no appeal and we will collect entire amount. All insurance monies waiting for release upon Oki filing decision. The only monies Lisa would be entitled to would be equity in the House which I am negotiating to paid [sic] through sale to Joe. I have been pushing Kern to the maximum and keeping the pressure on by a final ending to entire insurance litigation. In addition, we have handled the House and the remainder of the Estate as we discussed. I hope after this update you realize everything is moving toward a great final conclusion after a very long and complex litigation."

On September 21, 2011, Respondent emailed Chapman with the news: "The proposed decision and ruling was issued."

On October 7, 2011, Chapman sent a letter to Respondent, noting Respondent's prior report that a proposed decision had been issued and asking for a status report on the status of both the case and the insurance money. In her letter, she asked for documentation and an accounting of the status of the insurance proceeds since the time that the funds had been paid by Penn Mutual. On that same day, Respondent emailed a letter to Chapman, forwarding what was described as the "proposed Statement of Decision" by the trial judge in the insurance litigation. In this completely bogus proposed decision, the trial judge, Judge Oki, concluded that Chapman was entitled to all of the $1,000,000 insurance proceeds, plus all accrued interest, and that Lisa Hughes-Hooper's interest in other community property was limited to $100,000. Such an outcome to the litigation was, of course, completely contrary to the settlement agreement reached months before.

On October 11, 2011, Chapman again wrote to Respondent, seeking specifics regarding the status of the case. In her letter, she noted that the forwarded proposed decision was unsigned, undated, and did not include a filing date. She inquired whether it had now been filed. In this letter Chapman again asked for an accounting and documentation regarding the status and history of the money paid out by Penn Mutual. In response to this letter, Respondent wrote Chapman on October 13, 2011. In his letter, he falsely stated: "The proposed Statement of Decision was issued on September 20, 2011, the parties have waived any objections and have agreed to the language of the Proposed Decision and it will be deemed filed on October 14, 2011. We will file a Judgment and Notice of Entry of Judgment on October 14, 2011." He went on to say that he had "requested that any monies currently owed to Lisa Hughes-Hooper ($100,000 community interest in the Dalton property) be paid from probate monies or funds obtained from the

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the evidence provided to this court that Chapman ever disclosed to Respondent her discussion with the investigator or told him of the issues that had been raised by the investigator. Because of the possibility that Chapman's emails and other correspondence were motivated, at least in part, by a desire to build a record against Respondent in this anticipated proceeding, this court has elected not to give any of the factual statements made by Chapman in her correspondence to Respondent after May 2011 any weight for the truth of the matters asserted.

probate estate in November, 2011." Finally, with regard to Chapman's request for information regarding the status of the insurance funds, Respondent stated that he had "requested all of the accounting information concerning the insurance funds along with the documentation concerning the payment of the funds, interest earned.' He concluded with the assurance, "There have been no disbursements of these funds to date." [emphasis added.]

On October 18, 2011, Respondent sent to Chapman a letter and cashier's check in the amount of $388,392.40. The letter began with the statement that the payment was being made "pursuant to the initial settlement reached" in the Estate of Mark Hooper. The letter explained that the amount of the check was calculated by taking the "initial amount released ($500,000) and the accrued interest at 4% ($88,392.40) and then subtracting the $100,000 owed to Hughes-Hooper for the Dalton equity and an additional $100,000 for fees and costs owed to Respondent's firm. The letter concluded with the comment that Respondent was still proceeding with the remainder of the litigation concerning the Dalton Avenue property and Mark Anthony Glazing, Inc. [the business operated by Mark before his death]. This letter and payment neither reflects the prior settlement agreement nor the true state of affairs.

On October 20, 2011, Chapman emailed Respondent to both inquire and complain about the October 18 letter and payment. In her letter she inquired about there being any "initial settlement." She also challenged the 4 percent interest figure and again asked for an accounting. She then inquired why $100,000 was being taken out of the funds owed to her to pay a community property obligation owed by Mark's estate. Finally, she inquired about the appropriateness and nature of the additional legal fee of $100,000. On November 8, 2011, Respondent sent Chapman a cashier's check for an additional $100,000, together with a cover letter promising that the documents Chapman had requested would be coming by separate letter. Whether that letter was ever sent by Respondent is unknown to the court.

Findings Regarding Required Section 6007, Subdivision (c)(2) Factors

Section 6007, subdivision (c)(2) sets forth the following three factors for determining whether an attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or the public. All of these three factors must be found by clear and convincing evidence:

1. The attorney has caused or is causing substantial harm to his clients or the public;

2. The attorney's clients or the public are likely to suffer greater injury if the involuntary inactive enrollment is denied than the attorney is likely to suffer if it is granted, or that there is a reasonable likelihood the harm caused by the attorney will reoccur or continue; and

3. That it is reasonably probable that the State Bar will prevail on the merits of the underlying disciplinary matter.

All three of these factors are found by this court, based on clear and convincing evidence, to be present here.

Respondent Has Caused Substantial Harm His Clients

Respondent's misconduct caused substantial harm to his clients, Chapman and Hooper. Respondent entered into two separate contracts on their behalf without their approval or knowledge, in which their rights have been released, certain legal obligations (including hold-harmless obligations) were created, and Chapman's lawsuit seeking to establish her right to all of the $1,000,000 of insurance proceeds was dismissed. Given that Respondent represented to Chapman throughout this time that she was going to be awarded all of the $1,000,000 insurance proceeds, and all accrued interest on that amount since Mark's death, his decision to dismiss her rights must be viewed as a considerable loss. Further, while Chapman became contractually entitled in January 2011 to receive well in excess of $300,000 of the funds previously entrusted to Respondent, Respondent did not notify her of that fact or release any money to her until October 2011, a substantial period of delay. The loss of use of such a large amount of money for such a long time is not an insignificant harm.

Likelihood that Harm Will Continue

Respondent represented to Chapman that she has been awarded $1,000,000, plus substantial accrued interest thereon, by the Los Angeles Superior Court. In October he paid her $388,000 toward that entitlement. In November, he paid her another $100,000. Under the terms of what he has represented, he needs to come up with more than another $600,000 to conceal his misrepresentation.

Respondent's conduct in fabricating false court records and making false and unachievable representations regarding the outcome of the litigation make clear that he is desperate to conceal his prior misappropriation of the Penn Mutual funds and is willing to resort

to irrational and unethical means to seek to avoid or delay the disclosure of his misdeeds. Even in his verified response to this application he has not acknowledged his misconduct, although he has admitted the January 2011 agreement settling the insurance litigation.

The source of the payments that have been paid by Respondent to Hughes-Hooper and Chapman is highly suspect. It is clear that he misappropriated the funds from Penn Mutual that had been entrusted to him for maintenance in his client trust account. By the end of February 2010, the balance of the CTA was effectively zero. Later, when Respondent had contractually committed himself to paying $200,000 to Hughes-Hooper, he failed to pay her on time and then provided her with a post-dated check that bounced. All of these factors strongly indicate that Respondent did not have the funds available to pay even the $200,000 that was due, let alone the remaining $300,000-plus owed to Chapman. Nevertheless, within several days, Respondent had come up with the money to pay Hughes-Hooper, and by November he had located an additional $488,000 to pay Chapman, $388,000 in October and $100,000 in November. That these funds were misappropriated from funds belonging to other clients is clear and convincing. That such misappropriations will continue in the future is unacceptably high and certainly more than likely.

In addition to the above, the court finds that Respondent's conduct demonstrates a pattern of behavior, including acts likely to cause substantial harm. Accordingly, the burden of proof shifts to Respondent to demonstrate that there is no reasonable likelihood that the harm will reoccur or continue. (Section 6007, subdivision (c)(2)(B).) There is no clear and convincing evidence that Respondent has met his burden under Section 6007, subdivision (c)(2)(B).

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Reasonable Probability that State Bar Will Prevail in Disciplinary Action against Respondent

Pursuant to section 6007, subdivision (c)(2)(C), the court finds that there is a reasonable probability that the State Bar will prevail as to at least the following charges[10]:

Section 6106 [Moral Turpitude-Misrepresentation]

Section 6106 states, in part, that the commission of any act involving moral turpitude, dishonesty, or corruption constitutes cause for disbarment or suspension.

The above findings include many misrepresentations and acts of concealment by Respondent. These acts include both repeatedly lying to his client and others and fabricating and distributing false court documents. These are all acts involving moral turpitude and willful violations of the prohibition of section 6106.

Section 6106 [Moral Turpitude – Misappropriation]

An attorney's deliberate breach of a fiduciary duty to a client involves moral turpitude as a matter of law. (*In the Matter of Kittrell* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 195, 208.) "[A]n attorney's failure to use entrusted funds for the purpose for which they were entrusted constitutes misappropriation." (*Baca v. State Bar* (1990) 52 Cal.3d 294, 304.)

The Penn Mutual insurance proceeds were entrusted to Respondent to maintain in his trust account pending the resolution of the dispute between the parties as to who was entitled to have those funds. Although Penn Mutual and Hughes-Hooper were not Respondent's clients, Respondent owed to both them and his own client a fiduciary duty to maintain those funds in his trust account. He violated that duty completely, in willful violation of section 6106. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1033-1034; *In the Matter of Priamos* (Review Dept. 1998) 3

[10] The court has limited this analysis and decision to the statutes and rules cited by the State Bar in its application. (See Rules Proc. of State Bar, rule 5.226.) There are numerous other apparent rule violations reflected in the above findings of fact.

Cal. State Bar Ct. Rptr. 824, 829-830 [attorney's willful misappropriation of trust funds usually compels conclusion of moral turpitude].)

In addition, Respondent unilaterally withheld funds owed to Chapman on his claim of being entitled to them as additional legal fees. In the absence of client consent, an attorney may not unilaterally withhold entrusted funds even though he may be entitled to reimbursement. (*Most v. State Bar* (1967) 67 Cal.2d 589, 597; *Crooks v. State Bar* (1970) 3 Cal.3d 346, 358.) Withholding and appropriating client funds without client consent clearly supports a finding that an attorney misappropriated funds in violation of section 6106. (*Jackson v. State Bar* (1975) 15 Cal.3d 372, 380-381; see also *McKnight v. State Bar*, *supra*, 53 Cal.3d at pp. 1033-1034 [depriving client of rightful and timely access to funds by withholding them without authority represents clear and convincing proof of violation of § 6106]; and *In the Matter of Conner* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 93, 103 [fraudulent invoices and memoranda created after the fact to justify respondent's fees constitutes moral turpitude].)

Section 6106 [Moral Turpitude – Unauthorized Signature]

Respondent committed acts involving moral turpitude by signing his client's name to contracts without the authorization, consent, or knowledge of the clients.

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

Rule 4-100(A) of the Rules of Professional Conduct requires that "funds received or held for the benefit of clients" shall be deposited in a CTA. It is well-established that "an attorney has a 'personal obligation of reasonable care to comply with the critically important rules for the safekeeping and disposition of client funds. These duties are non-delegable. (*In the Matter of Blum* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 403, 411.) Under this non-delegable duty, an attorney must maintain client funds in the CTA until outstanding balances are settled. (*In the Matter of Bleecker* (Review Dept. 1990) 1 Cal State Bar Ct. Rptr. 113, 123.) The fact that the

balance of Respondent's CTA repeatedly fell below the amount required to be held in trust for his client supports a finding of willful misappropriation in violation of rule 4-100(A). (*Palomo v. State Bar* (1984) 36 Ca1.3d 785, 795-796 [trust account violation may be willful for disciplinary purposes when caused by "serious and inexcusable lapses in office procedure"].)

CONCLUSION

The court finds that each of the factors prescribed by Business and Professions Code section 6007, subdivision (c)(2) has been established by clear and convincing evidence and that Respondent's conduct poses a substantial threat of harm to his clients and the public. As a result of the findings and in view of the severity and ongoing nature of Respondent's misconduct, the court finds that the involuntary inactive enrollment of Respondent is merited and necessary for the protection of the public, the courts, and the legal profession.[11]

ORDER

Accordingly, except as expressly provided immediately below, **IT IS ORDERED** that respondent **James Vincent Reiss**, Member No. 128020, be enrolled as an involuntarily inactive member of the State Bar of California, pursuant to Business and Professions Code section 6007, subdivision (c), effective three days after service of this order by mail. (Rules Proc. of State Bar, rule 5.231.) State Bar Court staff is directed to give written notice of this order to Respondent and to the Clerk of the Supreme Court of California. (Bus. & Prof. Code, § 6081.)

EXCEPTION: Respondent is currently in trial in San Bernardino Superior Court in a case entitled *A .J. Acosta Company, Inc. v. County of San Bernardino*, Case No. CIVSS803651 (the San Bernardino trial) and has been since before the hearing on this matter commenced. Because prohibiting Respondent from completing the trial portion of that case would result in

[11] While the court did consider the implementation of interim remedies in lieu of involuntary inactive enrollment, Respondent's repeated and ongoing acts of dishonesty demonstrate the inadequacy of such a remedy.

either prejudice to Respondent's client in that matter or in a mistrial of that case, to the prejudice of both the court and all parties in the case, the court finds that good cause exists, and the parties have agreed, that Respondent may be allowed time to finish the pending trial portion of that case. Accordingly, it is ORDERED that the San Bernardino trial is carved out of this order of involuntary inactive enrollment, but only until the earlier of the following occurs: (a) the trial court in that case has submitted the San Bernardino trial for decision; or (b) the close of business, January 13, 2011. After that period of exception has expired, this exception will terminate in its entirety and this order of involuntary inactive enrollment will apply in all respects to that case and the participants in it.

With regard to the San Bernardino trial, Respondent is ORDERED to notify his client(s) in that case, all other counsel in that proceeding, and the trial judge in that trial of this order and to provide the court and all such people, entities, and parties with a copy of this order. Such notification shall take place and be completed on or before Respondent's first appearance in that court after this order of involuntary inactive enrollment has become effective as to other matters, and the notification to the court shall be made on the record in that proceeding.

The above notification obligations are in addition to, and not in lieu of, the notification and other obligations set forth below. Further, the above exception does not operate, and should not be interpreted, to modify or have the effect of extending the calendar deadline for Respondent to comply with the obligations set forth below with regard to those participating in the San Bernardino trial. Rather, Respondent is ORDERED to comply with the obligations set forth below with regard to the persons, parties, entities, and court involved in the San Bernardino trial by the same calendar deadline as applies to all other clients and cases not subject to this exception and that would have applied to the San Bernardino trial had the above exception not been created.

IT IS FURTHER ORDERED as follows:

1. Within 30 days after the effective date of the involuntary inactive enrollment, Respondent must:

(a) Notify all clients being represented in pending matters and any co-counsel of his involuntary inactive enrollment and his consequent immediate disqualification to act as an attorney and, in the absence of co-counsel, notify the clients to seek legal advice elsewhere, calling attention to the urgency in seeking the substitution of another attorney or attorneys in his place;

(b) Deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled, or notify the clients and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to the urgency of obtaining the papers or other property;

(c) Provide to each client an accounting of all funds received and fees or costs paid, and refund any advance payments that have not been either earned as fees or expended for appropriate costs; and

(d) Notify opposing counsel in pending matters or, in the absence of counsel, the adverse parties of his involuntary inactive enrollment, and file a copy of the notice with the court, agency, or tribunal before which the matter is pending for inclusion in the respective file or files;

2. All notices required to be given by paragraph 1 must be given by registered or certified mail, return receipt requested, and must contain Respondent's current State Bar membership records address where communications may thereafter be directed to him;

3. Within 40 days of the effective date of the involuntary inactive enrollment, Respondent must file with the Clerk of the State Bar Court: (1) an affidavit containing Respondent's current State Bar membership records address where communications may thereafter be directed to him and stating that Respondent has fully complied with the provisions of paragraphs 1 and 2 of this order; and (2) copies of all documents sent to clients pursuant to paragraph 1(c) of this order; and

4. Respondent must keep and maintain records of the various steps taken by him in compliance with this order so that, upon any petition for termination of inactive enrollment,

proof of compliance with this order will be available for receipt into evidence. Respondent is cautioned that failure to comply with the provisions of paragraphs 1 - 4 of this order may constitute a ground for denying his petition for termination of inactive enrollment or reinstatement, or for imposing sanctions.

Dated: January _____, 2012

DONALD F. MILES
Judge of the State Bar Court