

# PUBLIC MATTER

FILED

APR 26 2016

1 STATE BAR OF CALIFORNIA  
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STATE BAR COURT CLERK'S OFFICE  
SAN FRANCISCO

## STATE BAR COURT

### HEARING DEPARTMENT - SAN FRANCISCO

12 In the Matters of:	)	Case No. 14-O-04029
13 DAVID ALAN SHAFER,	)	
14 No. 86436,	)	
15 And	)	Case No. 14-O-06411
16 STUART JAY FURMAN,	)	<b>NOTICE OF DISCIPLINARY</b>
17 No. 98981,	)	<b>CHARGES</b>
17 Members 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:**

- 21 (1) YOUR DEFAULT WILL BE ENTERED;
- 22 (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU WILL NOT BE PERMITTED TO PRACTICE LAW;
- 23 (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;
- 24 (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.



1 The State Bar of California alleges:

2 JURISDICTION

3 1. DAVID ALAN SHAFER ("respondent") was admitted to the practice of law in the  
4 State of California on May 5, 1979, was a member at all times pertinent to these charges, and is  
5 currently a member of the State Bar of California.

6 2. STUART JAY FURMAN ("respondent") was admitted to the practice of law in the  
7 State of California on December 1, 1981, was a member at all times pertinent to these charges,  
8 and is currently a member of the State Bar of California.

9 COUNT ONE

10 Case Nos. 14-O-04029 and 14-O-06411  
11 Business and Professions Code, section 6106  
12 [Moral Turpitude-Elder Abuse]

13 3. Between in or about October 2013 and in or about April 2014, respondents engaged  
14 in the elder abuse of Lewis Grauss, a vulnerable client, and thereby committed acts involving  
15 moral turpitude, dishonesty or corruption in willful violation of Business and Professions  
16 Code, section 6106, by doing the following:

- 17 A. Permitting non-attorney Edward Cotney to practice law regarding Mr. Grauss's  
18 trust and estate matters;
- 19 B. Failing to communicate directly with Mr. Grauss about his trust and estate  
20 needs;
- 21 C. Failing to explain to Mr. Grauss the nature and significance of the trust and  
22 estate documents they prepared;
- 23 D. Failing to obtain an evaluation of Mr. Grauss's mental competency;
- 24 E. Communicating only with Mr. Grauss's daughter, Dale Masters, and Mr.  
25 Cotney concerning Mr. Grauss's trust and estate matters;
- 26 F. Permitting Ms. Masters to utilize a power of attorney to take control of Mr.  
27 Grauss's medical care and financial affairs;
- 28 G. Permitting Ms. Masters to act under the power of attorney when they were on  
notice that Mr. Grauss objected to providing Ms. Masters with a power of  
attorney and to obtaining Veterans Affairs benefits;

- 1 H. Arranging for the transfer of Mr. Grauss's assets into an irrevocable trust;
- 2 I. Instructing Chase Bank to cease providing banking privileges to Mr. Grauss;
- 3 J. Instructing attorney Clara Yang to cease taking action on Mr. Grauss's behalf
- 4 because they represented Mr. Grauss;
- 5 K. Providing Ms. Masters with instructions on how to deplete Mr. Grauss's funds;
- 6 L. Advising Ms. Masters to seek a conservatorship over Mr. Grauss;
- 7 M. Refusing to provide Mr. Grauss with a copy of his client file;
- 8 N. Forcing Mr. Grauss to file a petition to revoke the irrevocable trust;
- 9 O. Forcing Mr. Grauss to oppose the conservatorship filed by Ms. Masters; and
- 10 P. Forcing Mr. Grauss to hire another attorney to regain control over his financial
- 11 and medical affairs.

12 COUNT TWO

13 Case Nos. 14-O-04029 and 14-O-06411  
14 Business and Professions Code, section 6068(a)  
15 [Breach of Fiduciary Duty]

16 4. Between in or about October 2013 and in or about April 2014, respondents  
17 breached the common law fiduciary duties they owed Mr. Grauss, thereby violating section  
18 6068(a), by doing the following:

- 18 A. Permitting non-attorney Edward Cotney to practice law regarding Mr. Grauss's
- 19 trust and estate matters;
- 20 B. Failing to communicate directly with Mr. Grauss about his trust and estate needs;
- 21 C. Failing to explain to Mr. Grauss the nature and significance of the trust and estate
- 22 documents they prepared;
- 23 D. Failing to obtain an evaluation of Mr. Grauss's mental competency;
- 24 E. Communicating only with Mr. Grauss's daughter, Dale Masters, and Mr. Cotney
- 25 concerning Mr. Grauss's trust and estate matters;
- 26 F. Permitting Ms. Masters to utilize a power of attorney to take control of Mr.
- 27 Grauss's medical care and financial affairs;
- 28 G. Permitting Ms. Masters to act under the power of attorney when they were on
- notice that Mr. Grauss objected to providing Ms. Masters with a power of
- attorney and to obtaining Veterans Affairs benefits;

- 1 H. Arranging for the transfer of Mr. Grauss's assets into an irrevocable trust;
- 2 I. Instructing Chase Bank to cease providing banking privileges to Mr. Grauss;
- 3 J. Instructing attorney Clara Yang to cease taking action on Mr. Grauss's behalf  
4 because they represented Mr. Grauss;
- 5 K. Providing Ms. Masters with instructions on how to deplete Mr. Grauss's funds;
- 6 L. Advising Ms. Masters to seek a conservatorship over Mr. Grauss;
- 7 M. Refusing to provide Mr. Grauss with a copy of his client file;
- 8 N. Forcing Mr. Grauss to file a petition to revoke the irrevocable trust;
- 9 O. Forcing Mr. Grauss to oppose the conservatorship filed by Ms. Masters; and
- 10 P. Forcing Mr. Grauss to hire another attorney to regain control over his financial  
11 and medical affairs.

12 COUNT THREE

13 Case Nos. 14-O-04029 and 14-O-06411  
14 Business and Professions Code, section 6068(a)  
15 [Financial Abuse]

16 5. Between in or about October 2013 and in or about April 2014, respondents violated  
17 Welfare and Institution Code section 15610.30, when their conduct, which was a substantial  
18 factor in the harm caused to 93 year-old Lewis Grauss, assisted Ms. Dale Masters's taking, for a  
19 wrongful use, of Mr. Grauss's property, thereby violating section 6068(a), as follows:

- 20 A. Permitting non-attorney Edward Cotney to practice law regarding Mr. Grauss's trust  
21 and estate matters;
- 22 B. Failing to communicate directly with Mr. Grauss about his trust and estate needs;
- 23 C. Failing to explain to Mr. Grauss the nature and significance of the trust and estate  
24 documents they prepared;
- 25 D. Failing to obtain an evaluation of Mr. Grauss's mental competency;
- 26 E. Communicating only with Mr. Grauss's daughter, Dale Masters, and Mr. Cotney  
27 concerning Mr. Grauss's trust and estate matters;
- 28 F. Permitting Ms. Masters to utilize a power of attorney to take control of Mr. Grauss's  
medical care and financial affairs;

- 1 G. Permitting Ms. Masters to act under the power of attorney when they were on notice  
2 that Mr. Grauss objected to providing Ms. Masters with a power of attorney and to  
3 obtaining Veterans Affairs benefits;
- 4 H. Arranging for the transfer of Mr. Grauss's assets into an irrevocable trust;
- 5 I. Instructing Chase Bank to cease providing banking privileges to Mr. Grauss;
- 6 J. Instructing attorney Clara Yang to cease taking action on Mr. Grauss's behalf because  
7 they represented Mr. Grauss;
- 8 K. Providing Ms. Masters with instructions on how to deplete Mr. Grauss's funds;
- 9 L. Advising Ms. Masters to seek a conservatorship over Mr. Grauss;
- 10 M. Refusing to provide Mr. Grauss with a copy of his client file;
- 11 N. Forcing Mr. Grauss to file a petition to revoke the irrevocable trust;
- 12 O. Forcing Mr. Grauss to oppose the conservatorship filed by Ms. Masters; and
- 13 P. Forcing Mr. Grauss to hire another attorney to regain control over his financial and  
14 medical affairs.

15 COUNT FOUR

16 Case Nos. 14-O-04029 and 14-O-06411  
17 Rules of Professional Conduct, rule 1-400(C)  
18 [Solicitation of a Prospective Client]

19 6. Between on or about October 16, 2013 and on or about October 30, 2013,  
20 respondents made a solicitation, or allowed one to be made on respondents' behalf by Edward  
21 Cotney, to Lewis Grauss, a prospective client, by communication delivered in person in the  
22 matter concerning respondents' availability for professional employment with a significant  
23 motive of pecuniary gain, in willful violation of the Rules of Professional Conduct, rule 1-  
24 400(C).

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COUNT FIVE

Case Nos. 14-O-04029 and 14-O-06411  
Rules of Professional Conduct, Rule 1-300(A)  
[Aiding the Unauthorized Practice of Law]

7. Respondents willfully violated Rules of Professional Conduct, rule 1-300(A), by aiding a person, non-attorney Edward Cotney, in the unauthorized practice of law, as follows:

- A. By allowing the distribution of flyers indicating that Cotney was qualified to provide legal advice regarding Veterans Affairs ("VA") benefits;
- B. By permitting Mr. Cotney to give a presentation that included legal advice regarding VA benefits;
- C. By permitting Mr. Cotney to meet with potential clients at a presentation and give legal advice;
- D. By relying upon Mr. Cotney to review the prospective clients' financial data and current estate planning documents to determine the nature and content of the clients' trusts and estates planning needs;
- E. By permitting Mr. Cotney to make legal recommendations to clients regarding trust and estate documents;
- F. By relying upon Mr. Cotney to finalize and review the legal significance of trust and estate documents with clients;
- G. By relying upon Mr. Cotney to be the conduit of attorney client communications between respondents and their clients;
- H. By failing to properly supervise Mr. Cotney's interactions with clients; and
- I. By permitting Mr. Cotney to engage in the practice of law.

COUNT SIX

Case Nos. 14-O-04029 and 14-O-06411  
Rules of Professional Conduct, rule 3-310(B)(1)  
[Conflict – Relationship with a Party Witness]

8. Between on or about October 30, 2013 and in our about April 2014, respondents continued representation of their client, Lewis Grauss, without providing written disclosure to the client that respondents had a business and professional relationship with a witness, namely Ms. Dale Masters, in Mr. Grauss's same matter, in willful violation of the Rules of Professional Conduct, rule 3-310(B)(1).

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COUNT SEVEN

Case Nos. 14-O-04029 and 14-O-06411  
Rules of Professional Conduct, rule 3-310(B)(3)  
[Conflict - Relationship with an Interested Person or Entity]

9. Between on or about October 30, 2013 and in or about April 2014, respondents continued representation of a client, Lewis Grauss, without providing written disclosure to the client that respondents had a business and professional relationship with a person, Dale Masters, respondents knew or reasonably should have known would be affected substantially by the resolution of the matter in that Mr. Grauss objected to Ms. Masters taking over control of his financial and medical affairs, in willful violation of the Rules of Professional Conduct, rule 3-310(B)(3).

COUNT EIGHT

Case Nos. 14-O-04029 and 14-O-06411  
Rules of Professional Conduct, rule 3-110(A)  
[Failure to Perform with Competence]

10. On or about October 30, 2013, Lewis Grauss employed respondents to perform legal services, namely advise him regarding his eligibility for Veterans Affairs benefits, which respondents intentionally, recklessly, or repeatedly failed to perform with competence, by permitting Mr. Grauss's daughter, Dale Masters, to take over control of his financial affairs, without Mr. Grauss's knowledge or permission, in willful violation of rule 3-110(A).

COUNT NINE

Case Nos. 14-O-04029 and 14-O-06411  
Business and Professions Code, section 6068(m)  
[Failure to Inform Client of Significant Developments]

11. Respondents failed to keep respondents' client, Lewis Grauss, reasonably informed of significant developments in a matter in which respondents had agreed to provide legal services, in willful violation of Business and Professions Code, section 6068(m), by failing to inform Mr. Grauss that they were assisting his daughter, Dale Masters, with the transfer of control of his assets and medical care to Ms. Masters, without his knowledge or permission.

**NOTICE - INACTIVE ENROLLMENT!**

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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 THE CHIEF TRIAL COUNSEL

DATED: April 25, 2016

By: Esther Rogers  
ESTHER J. ROGERS  
Senior Trial Counsel

**DECLARATION OF SERVICE BY CERTIFIED MAIL and U.S. FIRST-CLASS MAIL**

**CASE NUMBERS: 14-O-04029; 14-O-06411**

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, Article Nos.: See below, at San Francisco, on the date shown below, addressed to:

Counsel for David Alan Shafer  
  
Russell Samuel Roeca  
Roeca Haas Hager LLP  
250 Montgomery St Suite 1410  
San Francisco, CA 94104

Counsel for Stuart Jay Furman  
  
Brian Slome  
Lewis Brisbois Bisgaard & Smith LLP  
333 Bush St Ste 1100  
San Francisco, CA 94104

Certified Mailing No.  
9414 7266 9904 2042 4873 49

Certified Mailing No.  
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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: April 26, 2016

Signed:   
Meagan McGowan  
Declarant