

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of)	Case Nos.: 09-O-10499-PEM
)	(10-O-03144; 10-O-09819;
JAMES VINCENT REISS,)	10-O-10285); 09-O-12479 (Cons.)
)	
Member No. 128020,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
A Member of the State Bar.)	ENROLLMENT

Introduction¹

In this disciplinary proceeding, respondent James Vincent Reiss is charged with multiple acts of misconduct in five client matters. The charged misconduct includes: (1) entering into a business transaction with a client without complying with the requirements that the transaction be fully disclosed and in writing; (2) failing to account for client funds; (3) failing to refund unearned fees; (4) committing multiple acts of moral turpitude, including misrepresentations and obtaining money through fraudulent and deceptive means; (5) failing to cooperate in State Bar investigations; and (6) issuing checks drawn against insufficient funds. This court finds, by clear and convincing evidence, that respondent is culpable of 16 counts of misconduct. Based on the serious nature and extent of the misconduct, and in consideration of the applicable mitigating and aggravating circumstances, the court recommends that respondent be disbarred.

Significant Procedural History

¹ Unless otherwise indicated, all references to rules refer to the California Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing two separate notices of disciplinary charges (NDCs) on August 8, 2011. On August 30, 2011, respondent filed responses to the NDCs.

On November 7, 2011, both parties appeared for a pretrial conference. At the pretrial conference, the court granted the State Bar's request to dismiss Count Six in case no. 10-O-09819; Count Ten in case no. 10-O-10285; and Counts One, Three, and Six in case no. 09-O-12479. The court also granted the State Bar's request to amend Count Two of case no. 09-O-12479 to allege theft of \$68,500 by fraud and deceit, rather than misappropriation of \$68,226.57.

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A five-day trial was held between November 16 and December 1, 2011. The State Bar was represented by Deputy Trial Counsel Michael Glass and respondent was represented by Michael Gerner. On December 1, 2011, following closing arguments, the court took this matter under submission.

Findings of Fact and Conclusions of Law

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

Case No. 09-O-10499 – The Chambers Matter

Facts

On January 18, 2005, Julie Chambers (Chambers) employed respondent to represent her in a personal injury claim. On April 29, 2005, respondent filed a civil action on behalf of Chambers in the Orange County Superior Court entitled *Chambers v. Irvine Co., et al.*, case no. 05CCO5735 (the Chambers action). Due to severe injuries, Chambers lost her lucrative job and

2 The factual allegations in Count Two remained the same. The court found it unnecessary to file an amended pleading because respondent had adequate notice of the amended allegation due to the fact that it was so closely related to the prior allegation.

income. She was a primary contributor to her family's resources. The loss of her income caused her family to undergo severe financial stress.

Around Christmas 2005, Chambers approached respondent and indicated her family could not meet its financial obligations, including payment of the home mortgage. Respondent provided her an advance of \$12,500 against the anticipated recovery. And on July 5, 2006, respondent loaned another \$3,700 to her husband, David Chambers, as an advance on the anticipated recovery in the Chambers action. On July 7, 2006, respondent loaned another \$3,650 to David Chambers as an advance on the anticipated recovery in the Chambers action.

Respondent made the loans to Chambers and David Chambers without putting the terms of the loan in writing. Respondent also did not advise Chambers—in writing—that she had the opportunity to seek independent counsel regarding the fairness of the advances and did not obtain her written consent to the advances. Chambers acknowledges that respondent did them a favor in advancing them the \$19,850.

On May 22, 2007, respondent deposited the sum of \$25,000 received on behalf of Chambers as a settlement in the Chambers action in a trust account at Citizens Business Bank (trust account). Thereafter, respondent took the funds as reimbursement for the loans made to Chambers and David Chambers and for reimbursement of costs incurred in the Chambers action.

On June 14, 2007, Chambers sent an email to respondent requesting that he issue her a check for \$25,000, less the 33% she owed him on the contingency fee contract. Respondent did not respond to her email.

The court finds Chambers never had any intention of reimbursing respondent for the \$19,850 he loaned her as an advance on her anticipated recovery. Chambers admitted that she declared bankruptcy and intended to list the \$19,850 owed to respondent as a debt to be discharged in the bankruptcy.³

³ Chambers was not financially harmed by this transaction. In fact, she benefitted. Chambers received \$19,850

Conclusions

Count 1 – Rule 3-300 [Avoiding Interests Adverse to a Client]

Rule 3-300 provides that an attorney must not enter into a business transaction with a client or knowingly acquire an ownership, security, possessory, or other pecuniary interest adverse to a client unless: the transaction/acquisition and its terms are reasonable and fair to the client and are fully disclosed and transmitted in writing to the client in a reasonably understandable manner; the client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to do so; and the client thereafter consents in writing to the terms of the transaction/acquisition. By making advances against the anticipated recovery to Chambers without: (1) putting the terms and conditions in writing; (2) advising her, in writing, that she had the opportunity to seek independent counsel regarding the fairness of the advances; and (3) obtaining her written consent to the advances, respondent failed to avoid interests adverse to his client, in willful violation of rule 3-300.

Count 2 – Rule 4-100(B)(3) [Failure to Account]

Rule 4-100(B)(3) provides that an attorney must maintain records of all client funds, securities, and other properties coming into the attorney's possession, and render appropriate accounts to the client regarding such property. The evidence before the court did not establish, by clear and convincing evidence, that respondent failed to timely render an appropriate accounting to Chambers. Accordingly, this count is dismissed with prejudice.

Case No. 10-O-03144 – The Ruff Matter

Facts

from respondent in advances. After respondent s 33 percent, Chambers was entitled to only \$16,750 of the settlement. There is no indication in the record that respondent ever attempted to collect the \$3,100 difference between Chamber s advances and her subsequent share of the settlement.

Beginning in 2003, Gregory Ruff (Ruff) employed respondent for legal services, and respondent represented Ruff in a civil action in the San Bernardino County Superior Court entitled *Ruff v. Alvarez, et al.*, case no. RCVRS096482 (the Ruff action).

In February 2008, Ruff met with respondent and informed him that Ruff had mistakenly made a payment of \$25,000 in advanced fees to respondent which he wanted returned. At that time, respondent agreed to return the advanced fees. Respondent also owed Ruff an additional \$25,000. Out of the \$50,000 owed to Ruff, respondent only paid \$25,000.⁴

Respondent agreed that he owed Ruff \$50,000 and testified that he paid Ruff the entire sum.⁵ As laid out below, respondent wrote checks to Ruff totaling \$25,000 on multiple occasions, however, none of these checks were honored by the bank.

On February 6, 2008, respondent issued check no. 8081 payable to Ruff in the sum of \$12,500, as a refund of fees which was drawn upon respondent's general bank account at Citizens Business Bank (general account). That same day, respondent also issued check no. 11564 payable to Ruff in the sum of \$12,500 as a refund of fees which was drawn upon respondent's cost account at Citizens Business Bank (cost account).

On February 21, 2008, check no. 8081 was returned due to insufficient funds in the general account, and check no. 11564 was returned due to insufficient funds in the cost account.

On February 21, 2008, respondent issued check no. 8102 payable to Ruff in the sum of \$12,500, as a refund of fees which was drawn upon the general account. That same day, respondent issued check no. 11606 payable to Ruff in the sum of \$12,500, as a refund of fees which was drawn upon the cost account.

⁴ This portion was paid on or about January 25, 2008, via check numbers 8165 and 11465.

⁵ Respondent stated that part of the \$50,000 was not for fees, but for an investigation. The court finds that respondent was hired in his capacity as an attorney, and not as a private investigator. Therefore, the fees paid by Ruff were legal fees.

On or about February 26, 2008, check no. 8102 was returned due to insufficient funds in the general account, and check no. 11606 was returned due to insufficient funds in the cost account.

On May 9, 2008, respondent issued check no. 8145 payable to Ruff in the sum of \$12,500 as a refund of fees which was drawn upon the general account. On May 9, 2008, Ruff deposited the check in his checking account at Wells Fargo Bank. On May 14, 2008, however, the deposit was reversed due to insufficient funds in the general account.

On January 26, 2009, the Ruff action concluded with a judgment for the defendants. In June 2009, after Ruff agreed to abandon his appeal, respondent's representation of Ruff concluded. Respondent did not provide Ruff with an accounting.⁶

In his defense, respondent argued that Respondent's Exhibit O illustrates that he paid Ruff another \$25,000 with check nos. 8081 and 8102. On the surface, Exhibit O appears to support this contention. Looking closer, however, it is clear that Exhibit O only establishes that checks 8081 and 8102 were written and that an attempt was made to cash each check. State Bar Exhibits 39, 40, and 41, however, tell the full story. Exhibits 39, 40, and 41 demonstrate that checks 8081 and 8102 were both returned for insufficient funds. Consequently, the court finds that respondent only provided Ruff with \$25,000 of the \$50,000 owed.⁷

Conclusions

Count 3 – § 6106 [Moral Turpitude]

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

⁶ This finding was based on the credible testimony of Ruff and the lack of any tangible evidence to the contrary.

⁷ Respondent argued that he had a 20-year relationship with the bank and had overdraft protection. He testified that the bank always knew he was good for the money, and that he would just be charged \$30 when he did not have the money in his account. The court finds that an account with overdraft protection does not give an attorney free license to draft checks based on insufficient funds. Even if the court were to consider this to be a viable defense, respondent's purported overdraft protection was ineffective, as multiple checks were not honored by the bank.

issued the checks to Ruff drawn upon insufficient funds, respondent knew, or was grossly negligent in not knowing, that he did not have sufficient funds in the general account and the cost account to pay the checks. By repeatedly issuing checks against insufficient funds, respondent committed an act involving moral turpitude, dishonesty, or corruption.

Count 4 – Rule 4-100(B)(3) [Failure to Account]

By not accounting to Ruff for the advanced fees received from Ruff, respondent failed to render appropriate accounts to a client regarding all funds coming into respondent's possession, in willful violation of rule 4-100(B)(3).

Count 5 – Rule 3-700(D)(2) [Failure to Return Unearned Fees]

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned. To date, respondent has not refunded \$25,000 in unearned fees to Ruff. By not refunding the \$25,000 in unearned fees to Ruff, respondent failed to refund promptly any part of a fee paid in advance that has not been earned, in willful violation of rule 3-700(D)(2).

Case No. 10-O-09819 – The Grizzle Matter

Facts

On May 27, 2004, William and Debra Kellen (the Kellens) filed a civil lawsuit against Dave Grizzle (Grizzle), Edna Grizzle, and Herve Dumont in the San Bernardino County Superior Court, case number SCVSS116051. The lawsuit was dismissed on November 17, 2005.

On April 18, 2006, Grizzle employed respondent to recover fees and expenses he incurred in defending the lawsuit from his insurance carrier or from the Kellens. That same day, respondent received \$2,500 from Grizzle as advanced fees for the representation.

Respondent did not file any lawsuit against Grizzle's insurance carrier and/or the Kellens to recover money for Grizzle. After employing respondent in April 2006, Grizzle repeatedly asked respondent for the status of his matter. Over a four-year span, respondent represented that he was either waiting on a response from the court or the insurance carrier, but never provided copies to Grizzle of correspondence with the insurance carrier or court documents. Through July 2010, respondent continued to represent to Grizzle that he was in contact with his insurance carrier and the court.⁸

In the fall of 2010, the State Bar opened an investigation identified as case number 10-O-09819 concerning a complaint submitted by Grizzle against respondent. On November 17, 2010, a State Bar investigator mailed a letter to respondent at his membership records address regarding the State Bar's investigation of Grizzle's complaint. In the letter, the investigator requested a written response to the allegations raised by the complainant by December 1, 2010. Respondent received the letter, but did not provide the State Bar with a written response to the allegations.

On December 7, 2010, a State Bar investigator mailed a letter to respondent at his membership records address regarding its investigation of Grizzle's complaint. In the letter, the investigator requested a written response to the allegations raised by the complainant by December 20, 2010. Respondent received the letter, but did not provide the State Bar with a

⁸ Respondent's testimony on this subject was not credible. Respondent admitted that he received calls from Grizzle, but testified that he received the calls while he was in his car without Grizzle's file. Respondent blamed his repeated false statements on the fact that he was operating without his file. Respondent further testified that when he finally looked at the case in his office, some four years later, he discovered the statute of limitations had run.

written response to the allegations or contact the State Bar investigator to request additional time to respond.

After realizing that the statute of limitations had run on Grizzle's matter, respondent decided to write Grizzle a check for the amount of money Grizzle wanted from his insurance company. On December 9, 2010, respondent mailed Grizzle a cashier's check in the sum of \$18,600. Respondent, however, did not inform Grizzle that the statute of limitations had run and the funds were coming directly from respondent. Instead, he stated, in an accompanying cover letter, that the check represented reimbursement for attorney fees paid to Grizzle's defense attorney that were not reimbursed by his insurance carrier. Respondent concluded the letter by thanking Grizzle for his courtesy and cooperation throughout "this litigation."

The court finds that respondent's December 9, 2010 representation to Grizzle was intentionally vague and misleading. This letter was specifically crafted to conceal respondent's failure to perform and repeated misrepresentations.

Conclusions

Count 7 – § 6106 [Moral Turpitude – Misrepresentation]⁹

By making repeated misrepresentations to Grizzle regarding the status of his matter, respondent committed acts involving moral turpitude and dishonesty, in willful violation of section 6106.

⁹ Count 6 was dismissed at the State Bar's request.

Count 8 – § 6068, Subdivision (i) [Failure to Cooperate]

Section 6068, subdivision (i) provides that an attorney has a duty to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney. By not providing the State Bar with a written response to the allegations raised by Grizzle’s complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against him, in willful violation of section 6068, subdivision (i).

Count 9 – § 6106 [Moral Turpitude – Misrepresentation]

By intentionally making vague and misleading representations to Grizzle in the December 9, 2010 cover letter accompanying the \$18,600 check, respondent committed an act involving moral turpitude and dishonesty, in willful violation of section 6106.

Case No. 10-O-10285 – The Dumont Matter

Facts

As referenced above, the Kellens, on May 27, 2004, filed a civil lawsuit against Grizzle, Edna Grizzle, and Herve Dumont (Dumont) in the San Bernardino County Superior Court, case number SCVSS116051. The lawsuit was dismissed on November 17, 2005.

On April 5, 2006, Dumont employed respondent to recover fees and expenses he incurred in defending the lawsuit from his insurance carrier or from the Kellens. On April 5, 2006, respondent received \$2,500 from Dumont as advanced fees for the representation.

Respondent did not file any lawsuit against Dumont’s insurance carrier and/or the Kellens to recover money for Dumont. For four years after employing respondent in April 2006, Dumont asked respondent for the status of his matter at least three times a year. Respondent always represented that he was either waiting on a response from the court or the insurance carrier, but

never provided copies to Dumont of correspondence with the insurance carrier or court documents.

As he did in the Grizzle matter, respondent asserted that he received Dumont's calls while he was without the file. Again, the court finds respondent's testimony on this subject lacked credibility. Respondent further contended that the Dumont and Grizzle matters simply slipped through the cracks. "Slipping through the cracks," however, suggests that respondent forgot about these matters. That is not the case here. Dumont and Grizzle regularly contacted respondent over a four-year period, requesting status updates on their cases. Respondent repeatedly provided Dumont and Grizzle with false and misleading updates.

Through July 2010, respondent continued to falsely advise Dumont that he was in contact with his insurance carrier and the court. In 2010, however, Dumont contacted Grizzle and Farmers Insurance. Both Grizzle and Farmers Insurance reported having no contact with respondent.

In October 2010, Dumont made a complaint to the State Bar about respondent. On November 17, 2010, a State Bar investigator mailed a letter to respondent at his membership records address regarding its investigation of Dumont's complaint. In the letter, the investigator requested a written response to the allegations raised by the complainant by December 1, 2010. Respondent received the letter, but did not provide the State Bar with a written response to the allegations.

On December 7, 2010, a State Bar investigator mailed another letter to respondent at his membership records address regarding its investigation of Dumont's complaint. In the letter, the investigator requested a written response to the allegations raised by the complainant by December 20, 2010. Respondent received the letter, but did not provide the State Bar with a written response to the allegations.

On December 9, 2010, respondent mailed Dumont a cashier's check in the sum of \$19,750. In the accompanying cover letter, respondent stated that the check represented reimbursement for attorney fees paid to Dumont's defense attorney that were not reimbursed by his insurance carrier. Respondent did not explain how he had received the funds paid to Dumont but thanked him for his courtesy and cooperation throughout "this litigation."

As in the Grizzle matter, the court finds that respondent's December 9, 2010 representation to Dumont was intentionally vague and misleading, and specifically crafted to conceal respondent's failure to perform and repeated misrepresentations.

Conclusions

Count 11 – § 6106 [Moral Turpitude – Misrepresentation]¹⁰

By making repeated misrepresentations to Dumont regarding the status of his matter, respondent committed acts involving moral turpitude and dishonesty, in willful violation of section 6106.

Count 12 – § 6068, Subdivision (i) [Failure to Cooperate]

By not providing the State Bar with a written response to the allegations raised by Dumont's complaint, respondent failed to cooperate and participate in a disciplinary investigation pending against respondent, in willful violation of section 6068, subdivision (i).

Count 13 – § 6106 [Moral Turpitude – Misrepresentation]

¹⁰ Count 10 was dismissed at the State Bar's request.

By intentionally making vague and misleading representations to Dumont in the December 9, 2010 cover letter accompanying the \$19,750 check, respondent committed an act involving moral turpitude and dishonesty, in willful violation of section 6106.

Case No. 09-O-12479 – The Humphreys Matter – C-Cure Corporation¹¹

Facts

In July 1998, respondent began representing Robert Humphreys (Robert) and C-Cure of California in *C-Cure Corporation, a Texas Corporation v. Robert Humphreys, C-Cure of California*, Orange County Superior Court case number 00CC00825 (the C-Cure litigation). C-Cure of California was a dba for Robert and Randall Humphreys.¹²

On or about April 26, 1999, all parties agreed to binding arbitration of the dispute. Neil Knuppel (Knuppel) was counsel for C-Cure Corporation of Texas.

On October 1, 1999, the matter was arbitrated, and on October 5, 1999, the arbitrator issued a Binding Award of Arbitration finding in favor of C-Cure Corporation of Texas and CalPERS, and against Robert and C-Cure of California. In June 2000, a judgment in favor of C-Cure Corporation of Texas and against Robert for principal, attorney's fees, and costs, was entered in the amount of \$50,515.36 (the judgment).

Knuppel and CalPERS took no court action to collect on the judgment for several years. Knuppel instead focused his investigation on locating Robert's assets, recording liens, and obtaining property profiles on Robert.

By 2007, Robert had not made any payments toward the judgment. In March 2007, respondent represented to Robert's brother, Randall Humphreys (Randall), that he had negotiated

¹¹ Respondent represented Robert and Randall Humphreys in more than one matter. For the purposes of clarity, the court will address the C-Cure Corporation matter separate from Western States Wholesale matter.

¹² The C-Cure litigation was essentially a landlord tenant matter. The Humphreys vacated a facility and were sued by CalPERS, the owner of the building. CalPERS sued C-Cure of Texas, C-Cure of California, and the Humphreys. C-Cure of Texas filed a cross complaint against C-Cure of California.

a resolution of the outstanding judgment. Respondent requested that Randall provide a check payable to respondent's client trust account in the amount of \$68,500. The purpose of the check was to pay the negotiated settlement. Respondent further represented that he would prepare a Satisfaction of Judgment, Release of Lien, and Dismissal.

As of March 2007, however, respondent had not negotiated a resolution of the judgment. Knuppel credibly testified that there was no settlement agreement until 2008. When respondent represented to Randall that he had negotiated a settlement of the judgment, he knew, or was grossly negligent in not knowing, that he had not negotiated a settlement of the judgment.

On March 22, 2007, Randall gave respondent a check for \$68,500, on behalf of Robert, to pay the settlement that respondent purportedly negotiated. On March 22, 2007, respondent deposited, or caused to be deposited, the check into his client trust account.

Since no settlement had actually been negotiated, respondent should have maintained \$68,500 in his client trust account on behalf of Robert. But, by April 3, 2007, the balance in the client trust account dropped to \$273.49.

On January 30, 2008, respondent negotiated a settlement of the judgment without Robert's knowledge or consent. The settlement was memorialized by a forbearance agreement (the agreement). Respondent placed, or caused to be placed, Robert's signature on the agreement, as the debtor, without his knowledge or authority.

At the time of the agreement, the total amount of principal and interest owing on the judgment was \$141,869.08. The agreement bound Robert to pay \$120,000 plus interest in monthly installments of \$10,000, beginning in January 2008. And if payments were not timely made, the full remainder of the judgment would be immediately due.¹³

¹³ Randall and Robert first saw the agreement in 2011, and neither of them signed the agreement.

Between January 25, 2008 and August 29, 2008, respondent issued the following checks toward the monthly installment payments, each in the amount of \$10,000 and payable to Knuppel. Each of these checks was drawn on insufficient funds from respondent's cost account. Respondent knew, or was grossly negligent in not knowing, there were insufficient funds in his account to pay these checks.

<u>Check No.</u>	<u>Date of Issue</u>	<u>Balance on Date of Issue</u>	<u>Outcome</u>
11491	1/30/2008	[-]\$3,304.44	The bank paid against insufficient funds and charged an overdraft fee
11616	2/21/2008	[-]\$8,149.56	The bank paid against insufficient funds and charged an overdraft fee
11792	4/7/2008	[-]\$5,393.81	The bank paid against insufficient funds and charged an overdraft fee
12019	6/25/2008	\$4,165.51	Stop payment order placed on check after date of issue
12064	6/30/2008	\$2,658.72	Stop payment order placed on check after date of issue
12277	8/22/2008	[-]\$5,672.04	The bank rejected check
12307	8/29/2008	[-]\$812.92	The bank rejected check and charged an overdraft fee

Between October 23, 2008 and November 5, 2008, respondent issued the following checks to Robert and Randall, from the cost account, each in the amount of \$3,500, drawn against insufficient funds:

<u>Check No.</u>	<u>Date</u>	<u>Payee</u>	<u>Balance on Date of Issue</u>
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12463	10/23/2008	Robert	[-]\$1,835.62
12464	10/23/2008	Randall	[-]\$1,835.62
12497	11/5/2008	Robert	[-]\$2,164.09
12500	11/5/2008	Robert	[-]\$2,164.09

Respondent, or someone on his behalf, placed stop-payment orders on check numbers 12463 and 12464, after the date of issue. The bank rejected check numbers 12497 and 12500, for insufficient funds, and charged the cost account an overdraft fee on or about November 21, 2008. Respondent issued these checks when he knew, or was grossly negligent in not knowing, there were insufficient funds to pay them.

Conclusions

Count 2 – § 6106 [Moral Turpitude – Theft by Fraud and Deceit]¹⁴

Through fraudulent representations, respondent caused Randall to give him \$68,500 to pay a settlement that didn't exist. By procuring money through fraudulent and deceitful representations, respondent committed an act involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.¹⁵

Count 4 – § 6106 [Moral Turpitude – Misrepresentation]

By placing, or causing to be placed, Robert's signature on the agreement without his knowledge or authority and binding Robert to settlement terms of which he was not aware, respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.¹⁶

14 As noted previously, Counts One, Three, and Six of case no. 09-O-12479 were dismissed at the request of the State Bar.

15 The court does not recommend that respondent be ordered to pay restitution in the matter because the evidence presented at trial indicated that respondent subsequently paid off the agreement.

16 Even if the court believed that respondent did not place or cause Robert's signature to be placed on the agreement, respondent was grossly negligent in not ascertaining whether the signature was Robert's signature given the circumstances of the situation and the amount of money involved.

Count 5 – § 6106 [Moral Turpitude – NFS Checks]

By knowingly, or with gross negligence, issuing checks to Knuppel drawn against insufficient funds, respondent committed an act involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

Count 7 – § 6106 [Moral Turpitude – NFS Checks]

By knowingly, or with gross negligence, issuing checks to Robert and Randall drawn against insufficient funds, respondent committed acts involving moral turpitude, dishonesty or corruption, in willful violation of section 6106.

Case No. 09-O-12479 – The Humphreys Matter – Western States Wholesale

Facts

In or about January 2000, respondent represented Western States Wholesale (WSW). Randall was president of WSW.

On January 6, 2000, respondent filed a civil lawsuit entitled *Western States Wholesale, Inc. v. Tracy Beblie, Tracy Beblie & Associates, MAS 90, Sun Microsystems, Michael Shook, and Does 1-20, inclusive*, San Bernardino Superior Court case number RCVO44992 (the WSW matter). The WSW matter arose from WSW's purchase of a computer accounting system, and involved allegations of breach of contract, fraud and deceit, breach of fiduciary duty, and negligence. After filing suit, respondent never served, or caused to be served, any of the defendants.

On September 8, 2000, a case management conference was held. Respondent did not appear. The court then set the matter for an OSC re dismissal to be heard on October 24, 2000.

On October 23, 2000, respondent filed, or caused to be filed, a "Declaration of James V. Reiss," in the WSW matter (the declaration). Respondent signed the declaration under penalty of perjury. Among other things, respondent declared that, "Plaintiffs and Defendants have

informally resolved this matter and the year 2000 upgrades and compliance have been installed and are still currently being tested.” At the time, there had been no informal resolution and no upgrades and compliance had been installed or tested. Respondent knew, or was grossly negligent in not knowing, the aforementioned statement was false.

On April 2, 2001, respondent appeared at a hearing on an OSC re service of process. Respondent represented to the court that there was a tentative settlement of the matter. There was, however, no tentative settlement. Respondent knew, or was grossly negligent in not knowing, this statement was false.

On June 13, 2001, respondent appeared at a hearing on an OSC re dismissal. Respondent represented to the court that settlement funds from a party were forthcoming. This statement, however, was false. No settlement had been reached and no settlement funds were forthcoming. Respondent knew, or was grossly negligent in not knowing, this statement was false.

On June 20, 2001, respondent sent a letter to Randall detailing the status of the WSW matter. In this letter, respondent made several false statements. Said misrepresentations included assertions that the court had ordered mediation, extended time to complete mediation, and would soon be setting a trial date. Respondent also falsely stated that the delay in the mediation was caused by the court-appointed mediator. At the time respondent made these statements, he knew, or was grossly negligent in not knowing, they were false.

On August 31, 2001, respondent appeared at another hearing on an OSC re dismissal. At that hearing, respondent represented to the court that a final installment payment was due that day. Once again, this statement was false. No settlement had been reached and no installment payments had or would be made. Respondent knew, or was grossly negligent in not knowing, this statement was false.

On September 26, 2001, respondent filed a request for dismissal of the lawsuit, which was granted.

Approximately seven years later, in or around 2008, respondent represented to Randall that he had negotiated a settlement of the WSW matter. Respondent told Randall that the WSW matter settled out of court for \$250,000. Approximately one month later, respondent represented to Randall that he had received the \$250,000. These representations, however, were false. Respondent did not negotiate a settlement in the WSW matter and did not receive \$250,000 in settlement funds. Respondent knew, or was grossly negligent in not knowing, these statements were false when he made them.

Conclusions

Count 8 – § 6106 [Moral Turpitude – Misrepresentation]

By misrepresenting to the court that the parties had settled the lawsuit and that payments had been made or were forthcoming, respondent committed acts involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

Count 9 – § 6106 [Moral Turpitude – Misrepresentation]

By misrepresenting the status of the WSW matter in the June 20, 2001 letter to Randall, respondent committed an act involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

Count 10 – § 6106 [Moral Turpitude – Misrepresentation]

By misrepresenting that he settled the WSW matter and falsely asserting that he was in possession of the settlement funds, respondent committed acts involving moral turpitude, dishonesty, or corruption, in willful violation of section 6106.

Aggravation¹⁷

The record establishes two factors in aggravation by clear and convincing evidence. (Std. 1.2(b).)

Multiple Acts of Misconduct

The present matter involves multiple acts of misconduct. (Std. 1.2(b)(ii).) Respondent was found culpable on 16 counts of misconduct, involving 5 client matters.

Significant Harm

Respondent's misconduct has caused significant harm. (Std. 1.2(b)(iv).) Respondent's aforementioned misconduct resulted in significant financial harm to his clients, most notably Ruff who was not refunded \$25,000 in unearned fees. In addition, respondent's misconduct caused multiple clients to lose the opportunity to litigate their actions, either through dismissal or running of the statute of limitations.

Respondent's misconduct also harmed the administration of justice, as his misrepresentations deceived the San Bernardino Superior Court into setting at least four separate hearings under false pretenses.

Mitigation

The record establishes that respondent has proven, by clear and convincing evidence, the following two factors in mitigation. (Std. 1.2(e).)

No Prior Record of Discipline

¹⁷ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Respondent had practiced law in California for nearly 14 years prior to the commencement of the instant misconduct. During that span, he had no prior record of discipline. Respondent's 14-year tenure of discipline-free practice is entitled to mitigation. (Std. 1.2(e)(i).)

Character Evidence

Respondent presented the testimony of four witnesses, including two attorneys, attesting to his good character. (Std. 1.2(e)(vi).) Each of the witnesses praised respondent for his honesty and integrity. The court finds that respondent's character evidence warrants some consideration in mitigation.

Discussion

In determining the appropriate discipline to recommend in this matter, the court looks at the purposes of disciplinary proceedings and sanctions. Standard 1.3 sets forth the purposes of disciplinary proceedings and sanctions as "the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession."

In addition, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

In this case, the standards call for the imposition of a minimum sanction ranging from reproof to disbarment. (Stds. 2.3, 2.6, 2.8, and 2.10.) The most severe sanction is found at standard 2.3 which recommends actual suspension or disbarment, depending upon the extent to which the victim of the misconduct is harmed or misled and depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

Honesty is the fundamental rule of ethics, “without which the profession is worse than valueless in the place it holds in the administration of justice’ [Citations.]” (*Rhodes v. State Bar* (1989) 49 Cal.3d 50, 60.) The Supreme Court has regularly and consistently condemned attorney dishonesty. (*Sevin v. State Bar* (1973) 8 Cal.3d 641, 645-646 [misappropriation and fabricated loan agreement]; *Chang v. State Bar* (1989) 49 Cal.3d 114, 128 [misappropriation with fraudulent and contrived misrepresentations to the State Bar]; *Marquette v. State Bar* (1988) 44 Cal.3d 253, 263 [insufficiently funded checks].)

In determining the appropriate level of discipline, the court is guided by *In the Matter of Brimberry* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 390.

In *Brimberry*, the attorney committed serious misconduct in four separate matters. In the first matter, the attorney signed her client’s signature without authorization, made a deliberate misrepresentation to the superior court, misappropriated \$2,000 in excess of an agreed \$500 fee, and was grossly negligent in her representation of a minor client. In the second matter, the attorney offered a client an illegal finder’s fee. In the third matter, the attorney knowingly filed false pleadings asserting that the case had settled, appeared in court without authorization, and made false representations to the court. In the fourth matter, the attorney failed to refund unearned fees and failed to account. In aggravation, the attorney committed multiple acts of

misconduct, made dishonest representations to the State Bar Court, caused significant harm to her clients, demonstrated indifference to rectifying her misconduct, and displayed a lack of candor and cooperation. In mitigation, the attorney presented four character witnesses; however, this finding was substantially discounted because the witnesses did not know the extent of the attorney's wrongdoing. In recommending disbarment, the Review Department noted, among other things, that the attorney had become an advocate against her client and that she threw aside the lawyer's fundamental duty of honesty in pursuit of personal gain.

The present case shares many similarities with *Brimberry*. Respondent made elaborate misrepresentations to four clients and a court, with some of the misrepresentations extending over a four-year span. Respondent even went so far as to obtain \$68,500 in settlement funds for a settlement that did not, and would not exist. While respondent clearly made some efforts to make his clients whole, even these efforts were shrouded in deception. Respondent has demonstrated a profound detachment from the honesty and integrity that serve as pillars for the legal community. Consequently, the court sees no alternative but to recommend his disbarment from the practice of law.

Recommended Discipline

The court recommends that respondent **James Vincent Reiss** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

It is further recommended that James Vincent Reiss make restitution to Gregory Ruff in the amount of \$25,000 plus 10 percent interest per annum from February 6, 2008 (or reimburses

the Client Security Fund to the extent of any payment from the fund to Gregory Ruff in accordance with Business and Professions Code section 6140.5).¹⁸

A. California Rules of Court, Rule 9.20

The court further recommends that respondent be ordered to comply with 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 calendar days, respectively, after the effective date of the Supreme Court order in this matter.¹⁹

B. Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are 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), it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California effective 30 days after service of this decision and order by mail. (Rules Proc. of State Bar, rule 5.111(D)(1).)

Dated: February _____, 2012

PAT McELROY
Judge of the State Bar Court

¹⁸ Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d)

¹⁹ Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court files its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)