

Table of Contents

I. Introduction.....	2
II. Factual Background and Events Leading to the Complaint.....	3
1. Setting up the Meeting with Martin for the CIR (8/8/2017 - 8/21/2017).....	3
2. Events During the Meeting with Martin (8/21/2017).....	4
A. The purpose of the meeting.....	4
B. Cognition and health.....	4
C. Financial situation.....	5
D. James' three children (Shan-Yuan, Della, and Peter) and his relationship with Debby	5
E. Proceeds of the sale of the Foster City property.....	6
F. Engagement letter.....	6
G. Met with Debby.....	7
3. Events After the Meeting with Martin (8/21/2017 - 9/5/2017).....	7
4. Martin's Testimony (5/30/2019 and 9/26/2023).....	9
5. Judgment (4/9/2024).....	10
III. Complaints and Allegations Against Martin.....	10
1. Arguments for Negligence and Incompetence.....	10
2. Arguments for Ignoring Statutory Requirements and Misinterpreting Laws.....	10
3. Arguments for Dishonesty, Misconduct, and Unprofessional Conduct.....	13
4. Consequences and Damages.....	14
5. Requested Sanctions.....	14
IV. Summary.....	14
Endnotes.....	17

Exhibit 1: Martin emails

Exhibit 2: Dr. So-Rosillo Notes

Exhibit 3: Dr. Gheorghevici Notes

Exhibit 4: TRANSCRIPT - James and Debby before the meeting

Exhibit 5: TRANSCRIPT - John Martin Deposition

Exhibit 6: TRANSCRIPT - DAY 7 TRIAL

Exhibit 7: Martin Memorandum

Exhibit 8: Cashier's Check \$1.1M - Ho Loan Receipt

Exhibit 9: Gift Letter

Exhibit 10: James' Note to Martin for Estate Planning Documents

Exhibit 11: No Estate Planning Documents from Martin

Exhibit 12: Judgment

Exhibit 13: Certificate of Independent Review

Exhibit 14: Police Report

Exhibit 15: Excerpt from TRANSCRIPT - Reinhard Oesterle Deposition

I. Introduction

This complaint is submitted to the California State Bar to raise concerns regarding Attorney John C. Martin's (#257742) professional conduct in connection with a Certificate of Independent Review ("CIR") he prepared in August 2017 for his then-client, James Ho. The CIR was admitted into evidence and considered by the court in *In re: TRUST A UNDER THE JAMES F. HO AND GRACE C. HO DECLARATION OF TRUST DATED SEPTEMBER 11, 1992, AS AMENDED* (Case No. 17-PRO-00973, Superior Court of California, County of San Mateo).

The trial began on September 18, 2023, and centered on the validity of a \$1,167,050 transfer from James Ho ("James") to Debby Chang ("Debby"). On September 26, 2023, Attorney Martin ("Martin") testified as a witness for Debby regarding the CIR, which certified a gift of approximately \$1.1 million from James to Debby.

During the proceedings, Martin was questioned about his interactions with individuals involved in the preparation of the CIR, including Debby, her daughter, and her daughter's boyfriend. These individuals were not Martin's clients, nor were they legally authorized representatives of James. The Court ultimately entered judgment against Debby in April 2024, finding that the \$1,167,050 transfer had been obtained by false pretenses, false representations, and actual fraud, as well as through willful and malicious injury.

This complaint was intentionally deferred until the conclusion of the trial to ensure it did not interfere with Martin's role as a witness. It now challenges whether Martin met his legal and ethical obligations under the California Rules of Professional Conduct and the California Probate Code, specifically regarding the adequacy of his review and verification process, compliance with statutory requirements, and potential conflicts of interest. It details the negligence, statutory violations, and professional misconduct alleged against Martin, and respectfully urges the State Bar to impose appropriate disciplinary sanctions, including suspension or disbarment.

II. Factual Background and Events Leading to the Complaint

1. Setting up the Meeting with Martin for the CIR (8/8/2017 - 8/21/2017)

Reinhard Oesterle, a non-relative of James Ho, contacted Martin—without James’ knowledge—to schedule a home visit to obtain a Certificate of Independent Review for James. Martin’s understanding was that Reinhard was the son-in-law of Debby Chang, when in fact Reinhard was dating Debby’s daughter Rita and had no familial relationship to her.¹ Martin also assumed Debby Chang was James Ho’s girlfriend and referred to her as such in his notes, although he did not confirm this with James or any other source.² These individuals were not Martin’s clients, and despite their potential financial interest in the \$1,167,050 transfer from James to Debby, Martin did not fully explore or document their relationships to James or the implications of their involvement.

There were approximately 20 points of contact between Martin and Debby and/or her family members prior to Martin ever meeting James. In the email thread detailing most of the points of contact, Reinhard acted as though he were James’ representative, despite lacking any authorization to act in that capacity.³ He wrote to Martin things like:

- “Mr. Ho would like to go ahead and schedule a meeting with you. He is wondering if you have any availability before Wednesday next week (the day of his next chemotherapy appointment).”⁴
- “Please let me know what information you need and next steps re. engagement letter, payment, etc.”⁵
- “If you do need to reach Mr. Ho please let me know, or you can also call Debby Chang at 510-236-9727.”⁶
- “Can you please send us a copy of the engagement letter prior to the meeting so Mr. Ho can review?”⁷

Reinhard also informed Martin of the following:

- “I talked to Debby, and I think there is a pretty good chance she can ‘convince’ [James] Ho to do whatever it takes to put a Certificate of Independent Review in place. From what I understand from our conversation, this would provide the strongest line of defense against any challenge to the gift after his passing.”⁸
- “...[James] Ho is currently on chemotherapy and not feeling very well.”⁹

James was left off the email thread. Martin never met or communicated with James in any way before the day of the meeting, and therefore had no idea if James even wanted to meet him.¹⁰ In spite of all of this, Martin scheduled the house-call appointment for 8/21/2017. James knew nothing about the meeting until Debby first informed him and his son Peter Ho (“Peter”) the night before at 10pm.

On the day of the meeting on 8/21/2017, Peter called Martin’s office and spoke with Jackie, the assistant. Peter identified himself as James Ho’s son, and informed them that he held a durable Power of Attorney for his father. Peter canceled the appointment and told Jackie that his father was very confused as a result of his medical condition.¹¹

Jackie confirmed that their office would call Peter if anything else came up, including if anyone attempted to reinstate the appointment.

When Debby found out that Peter canceled the meeting, she had an argument with James. The audio was captured on several recording devices such as the nannycam in the house. According to the recordings, Debby threatened to leave James, take the million dollars with her, and cease providing care for him if he did not meet with Martin.¹²

Debby further told James that if he did not see Martin, there would be a lawsuit over the money. James responded that he was taking his money back, but Debby stated that he could not do so because it was her house, the money had been put into the house, and she could not sell it.¹³

James told Debby he did not want to see a lawyer and said he would not call him. Nevertheless, Debby proceeded to reinstate the meeting and placed the call to Martin, putting James on the phone with him. Although Peter had explained to his father that the appointment was canceled because he was very confused, James seemed unable to remember. On the phone, James told Martin he would find out later why his son canceled the appointment and left it canceled.¹⁴

Debby then called Martin a second time and reinstated the appointment, deliberately not informing Peter about it.¹⁵

2. Events During the Meeting with Martin (8/21/2017)

According to Martin's memorandum, handwritten notes, and testimony, he discussed the following topics with James. Key findings from that discussion included:

A. The purpose of the meeting

1. James was not certain why Martin was there.¹⁶
2. James thought Peter was his agent under his Power of Attorney.¹⁷
3. James did not know where his estate planning documents were and stated that his son was currently managing his affairs.¹⁸
4. James did not know what Debby did with the over \$1 million in funds.¹⁹

B. Cognition and health

1. James incorrectly thought he owned the house.²⁰
2. James did not know the name of the street he lived on.²¹
3. James did not know the current date.²²
4. James said he was currently suffering from headaches and that he was receiving treatment for them.²³
5. Martin never reviewed any of James' medical records, nor did he talk to any of James' doctors about his medical condition.²⁴ James had a history of significant medical issues, including a diagnosis of meningioma for which he underwent radiation treatments.²⁵ MRI scans of James' brain on February 16, 2017 and June 8, 2017 revealed substantial swelling as a result of these treatments. Brain swelling of this kind is medically

associated with potential cognitive impairment, including confusion and memory loss. These symptoms were later documented by his physicians (see Endnote 11).

6. Martin debriefed with his associate Beth and told her that James "may be easily influenced."²⁶

C. Financial situation

1. Martin testified: "He [James] said he was managing his assets and Peter was."²⁷
2. Martin wrote in his notes: "[James was] not sure what Debby did with the funds" and "not sure what he own."²⁸
3. James believed he still owned the Mercedes.²⁹
4. "He told me that he only owned one home."³⁰ Martin did not ask follow-up questions about the house, such as its address, mortgage, how it was titled, or how much it was worth.³¹
5. James said Debby had at least two other properties. Martin did not inquire further about those properties.³²
6. Martin did not ask if James had been giving Debby additional funds.³³
7. "He [James] said he had certain monthly expenditures, which were handled by his son."³⁴
8. "He [James] said yes and showed me his check register, where he appeared to have a very orderly and detailed listing of his financial transactions, by date and check number."³⁵ However, Attorney Martin did not ask who was balancing James' checkbook register, did not know what the balance was, and did not inquire if James had other accounts.³⁶

D. James' three children (Shan-Yuan, Della, and Peter) and his relationship with Debby

1. "He [James] said he had three children, and that they all have their own homes as well."³⁷
2. James said that Della "...worked at Kaiser in Redwood City."³⁸
3. "He told me that Debby kept the house nice, and that she arranged for people to come and help often. He told me that Debby had a home in the East Bay and in Los Angeles, 'at least two homes,' he said. He told me that he only owned one home."³⁹
4. "I asked him when he began living with Debby, and he seemed to be a bit evasive on answering. At first, he said that Debby visited him and had her own place. Later, he said that Debby lived with him in Foster City. I asked him how long he had known Debby. He stated that he had known Debby from the time that he was engaged to his wife over 20 years ago, and that they had known each other for a long time."⁴⁰
5. "And he said that from time to time--sometime during that 20-year period Debby lived with him"⁴¹ and she had always maintained her own house."⁴²
6. There is no reference in Martin's notes about Debby's relationship with James' children.

7. In his entire 1.5 hour interview with James, Martin did not ask if James had authorized Debby or Reinhard to make the CIR appointment for him.⁴³
 8. Martin decided it would "...probably be best not to communicate with the [Ho] children,"⁴⁴ and he did not communicate with the Ho children or seek to corroborate James' statements,⁴⁵ though he met with Debby Chang.
 9. James did not know where his estate planning documents were, but he believed Peter had them because he was handling his affairs. Martin did not ask James to produce the documents, nor did he ask Peter for them.
- E. Proceeds of the sale of the Foster City property
1. The proceeds, along with funds from James' personal savings and IRA, were used to purchase the Fulton property in Redwood City. Martin was not informed of, and did not examine, the additional funds from James's personal savings and IRA.⁴⁶
 2. James issued two checks: a personal check for \$67,050 for the deposit to purchase the Fulton property, and a cashier's check for \$1,100,000 to Debby Chang as a loan.⁴⁷ Martin did not request or review them in preparation for the CIR.⁴⁸
 3. James told Martin **they** bought the house. James thought he was on title, and Martin pointed out that he wasn't.⁴⁹
 4. "I asked him, are you sure you wrote a check, or did you wire the money? He said he recalled that he had gone to the bank. I asked whether he had used a certified check, and he said maybe."⁵⁰
 5. "He said that he didn't need the money any more at this point, and that he wanted Debby to have it."⁵¹ Martin did not inquire about James' other assets or determine what other accounts he may have had.⁵²
 6. Martin did not ask whether there was a gift letter or other documentation regarding the alleged gift. He testified at his deposition that he did not review the "Gift Letter," which Debby had submitted as part of her mortgage application when purchasing the Fulton property. The document bore James Ho's signature, which the Court later determined to be a forgery, and falsely identified James as Debby's husband.⁵³ Debby did not disclose the existence of the Gift Letter to Martin, and he did not request or review it in preparation for the CIR.⁵⁴
- F. Engagement letter
1. Martin stated, "I suggested that I write a certificate of independent review so that potentially it could reduce the chances of litigation."⁵⁵
 2. Martin never discussed the terms of his engagement with James prior to 8/21/2017, even though he had discussed it with Reinhard.⁵⁶
 3. Martin presented the engagement letter and his \$2,000 fee after he completed his interview with James.⁵⁷ It was executed afterwards, with Debby's help, and mailed to Martin by Debby.

G. Met with Debby

1. Martin sought out Debby and talked to her for half an hour. James was seated at the table and fell asleep.⁵⁸
2. Martin did not request or review documentation from Debby regarding the source of funds, nor did he ask her about the nature of the transaction, despite her role as the sole beneficiary of a \$1,167,050 gift. Martin was asked at trial: Q. Did Ms. Chang describe to you the mechanics of how the gift had been made to her? A. Not that I recall.⁵⁹
3. Debby confirmed that Peter was acting as James' agent under his Power of Attorney.⁶⁰
4. Debby told Martin that each week, Peter took James to his chemo and radiation treatments, or medical appointments.
5. Debby made many unsubstantiated statements to Martin that were later contradicted by other evidence or testimony, and she did not disclose the forged "Gift Letter." However, Martin relied on Debby's statements as the truth of the matter.⁶¹ For example, Martin testified at trial: "And he [James] was afraid, I think, of Peter Ho and what might happen if Peter Ho knew that he was meeting with me." However, James did not express any such sentiment, and it is not found anywhere in Martin's meeting notes. In fact, it was Debby who said to Martin that James was afraid of Peter and that he didn't want to upset his son.⁶²

3. Events After the Meeting with Martin (8/21/2017 - 9/5/2017)

Immediately after the meeting on 8/21/2017, Reinhard emailed Martin: "Thanks for being flexible and for helping Mr. Ho document his true intentions. I may consult you for my own estate planning needs in the future." Martin did not raise any objections or note concerns about this communication, despite Reinhard not being a client and having no legal authority to act on James Ho's behalf.

Between 8/22/2017 and 8/24/2017, James' daughter Shan-Yuan called Martin twice, but he wouldn't talk to her, saying any request for information needed to come directly from James. Shan-Yuan told Peter (as James' agent under his Power of Attorney) to call Martin. Martin told Peter essentially the same thing he told Shan-Yuan and said he would only speak to James in person.

John Martin signed the Certificate of Independent Review and mailed it to the Fulton address on 8/25/2017.

That same day, Attorney Ed Koplowitz (counsel for James Ho's children) advised Shan-Yuan to have James write a note to Martin asking him to provide a copy of all his estate planning documents to Peter.⁶³

On 8/28/2017, Shan-Yuan, Peter, and family friend Mai took James to see Martin at his office and request a copy of estate planning documents in person. Martin's office was

locked, and he refused to see James and did not allow him to wait in his office. His assistant Jackie came out of the office and said he was preparing for another appointment. Shan-Yuan and Peter gave her James' hand-written note asking for a copy of all his estate planning documents and said they were going to wait. James was waiting in his wheelchair on the sidewalk, but nothing—including the CIR—was provided to him, and they were asked to leave.

That evening, Peter emailed Martin to follow-up on James' handwritten request, stating, "My father does not know what legal work you performed for him and does not have any copies of any work product." Martin replied that he did not "have any estate planning documents of your father's in my files, including any copies." Martin also wrote a response letter to James and mailed it to the Fulton address: "Our office does not have any of your estate planning documents; therefore we have nothing to give to Peter."⁶⁴

On 8/30/2017, James was admitted to the hospital and placed on hospice care.

That same day, Attorney Koplowitz contacted Martin on behalf of his clients to request copies of James' estate planning documents. During the call, he also informed Martin that James was in hospice care, raising concerns about James' health, mental capacity, and the circumstances surrounding the CIR.⁶⁵ Martin did not address these concerns in his response and instead stated that James had been in good health the week before. Attorney Koplowitz later stated that Martin was unhelpful during the conversation, but understood that Martin may have prepared a loan acknowledgment or agreement, and possibly a CIR. According to Attorney Koplowitz, Martin did not confirm or deny whether such documents existed and interpreted James' reference to "estate plans" narrowly. In his deposition, Martin stated, "...I was very categorical and refusing to give him any information and was very uncooperative."⁶⁶

On 8/31/2017, Martin typed up an Authorization to Disclose Information for James to sign, but he never sent or gave this letter to James, nor did he try to call James.⁶⁷ Martin drafted the following statement for James, where the content aligns with statements made by Debby,⁶⁸ but there is no indication that it includes input from James or his family:

"I acknowledge that there may be a conflict of interest in John C. Martin disclosing such documents to Peter Ho and/or his counsel, because Peter Ho's personal interests appear to conflict with my own. For instance, my intent to make a gift to Debby Chang in March of this year appears to conflict with Peter Ho's intentions regarding the property that should be subject to my estate at my death. I also acknowledge that my counsel, John C. Martin, has advised me that it appears that Peter Ho may be using fear and intimidation to cause me to disclose these documents to him and his counsel; that Peter Ho may have wrongfully transferred my property tax rate to himself without providing me with any fair compensation or benefit; and that Peter Ho has, during the past several

days, held me against my will and kept me from residing at my residence of choice."

On 9/1/2017, Debby sent back three unopened letters mailed by Martin postmarked 8/18/2017, 8/25/2017, and 8/28/2017, along with a handwritten note, identifying herself as "James Ho's friend."⁶⁹ The letter dated 8/25/2017 from Martin contained the CIR. It was returned to Martin and was never delivered to James. Martin did not attempt to redeliver the CIR to James.⁷⁰

On 9/5/2017, James passed away under hospice care at the home of his daughter Della, a registered nurse, just two weeks after his meeting with Martin.

4. Martin's Testimony (5/30/2019 and 9/26/2023)

At his deposition on 5/30/2019, Martin testified:

- A. "...this was our only certificate of independent review that we've done."⁷¹
- B. Q. Okay. How often do you prepare certificates of independent review? A. Not often at all.
Q. Can you give me an estimate as to how many times you've done it? A. This is the only one.⁷²
- C. Q. Okay. And you indicate to him [James] that, "Our office does not have any of your estate planning documents. Therefore, we have nothing to give to Peter." A. Yes.
Q. Why didn't you include the certificate of independent review? Your client was asking for it? A. I already sent him the certificate of independent review, did I not?⁷³
- D. "...I was very categorical and refusing to give him [Attorney Koplowitz] any information and was very uncooperative."⁷⁴
- E. James told Martin that he believed his son had his estate planning documents. However, Martin never asked to see them and testified that he did not have the opportunity to meet with anyone who had the power to give him those documents, despite having spoken with Peter on the phone and having communicated with Peter's attorney Ed Koplowitz.⁷⁵
- F. "He [James] actually seemed very -- he followed completely what I said. He was profoundly intelligent. I could feel a lot of intelligence. When you are with somebody like that you realize that, you know, perhaps at a certain point he was even more intelligent than I."⁷⁶

Trial witness testimony (9/26/2023):

- A. When Judge Catherine Gallagher asked him directly if he had done another certificate of independent review prior to this one, he told the Court two times before, which directly contradicted his deposition testimony, where he clearly stated this was his first and only CIR.⁷⁷
- B. Martin did not reaffirm his previous deposition statements describing James as profoundly intelligent. When asked again at trial if he believed James was

profoundly intelligent, he instead asked for clarification and denied that James was more intelligent than himself, which contradicted his deposition testimony.⁷⁸

5. Judgment (4/9/2024)

The Court rendered judgment in favor of petitioner Peter C. Ho, trustee and against respondent Debby Chang in the amount of \$1,706,000 (which is \$1,167,050 plus interest), which was determined to be money obtained by false pretenses, false representations, and actual fraud, as well as money obtained through willful and malicious injury.⁷⁹

III. Complaints and Allegations Against Martin

1. Arguments for Negligence and Incompetence

- Martin disregarded Peter Ho's legally valid Power of Attorney to act on behalf of his father, James Ho. Instead, he communicated and coordinated the CIR primarily through Debby Chang, Rita Chang, and Reinhard Oesterle—none of whom had legal authority to act for James Ho. This conduct appears inconsistent with an attorney's duty to verify the legal authority of individuals purporting to act on behalf of a client.
- Martin testified that coercive behavior by Debby—such as yelling, threats to leave, or instructing James on what to say—would have been very significant to his independent assessment as the certifying attorney.⁸⁰ Despite this, there is no indication that Martin took steps to investigate these circumstances that could have compromised the voluntariness of the transaction.
- Martin did not follow up on concerning responses from James, including James not knowing what street he lived on, his mistaken belief that he owned the house, and his uncertainty regarding what Debby had done with the funds—which were in fact used to purchase the very house he believed was his.⁸¹ He further dismissed relevant information from family members and legal colleagues. For example, Martin disregarded Attorney Kopolwitz's assertion that James was in hospice. He also alleged that Peter Ho had abducted and abused James—claims that originated from Debby Chang but were later determined in court to lack merit.

By not addressing these concerns or taking corrective action when opportunities arose, Martin's actions suggest a pattern of conduct inconsistent with his professional duty to provide competent and diligent legal services under California Rules of Professional Conduct (CRPC) 1.1 (Competence) and 1.3 (Diligence).

2. Arguments for Ignoring Statutory Requirements and Misinterpreting Laws

- **Ignoring Statutory Requirements:** Martin failed to comply with the legal requirements set forth in California Probate Code § 21384 for the CIR. The statute mandates that (1) an independent attorney, (2) reviews the donative instrument, (3) counsels the transferor out of the presence of the beneficiary, (4) attempts to determine if the transfer is the result of fraud or undue influence and,

(5) signs and delivers to the transferor an original certificate. Evidence indicates that Martin did not meet these requirements to the requisite standard of care.

1. Lack of Independence: Martin's 20 points of contact with Debby Chang, Rita Chang, and Reinhard Oesterle to set up the appointment for James—without James' knowledge—demonstrates that he was not an independent attorney as defined by Probate Code section 21370. Those contacts included several "red flag" statements such as: (a) Debby can "convince" Ho to do whatever it takes to put a Certificate of Independent Review in place, (b) Reinhard instructing Martin to call him or Debby if he needed to reach James—without suggesting that Martin call James directly, and (c) Debby or Rita or Reinhard would retain Martin's services in the future. This conduct raises concerns about whether Martin satisfied the standard of care required of a certifying attorney to maintain his independence from the recipient of the gift. It created a business, financial, professional, and/or personal relationship between Martin and Debby (the purported beneficiary of the \$1,167,050 transfer and potential wrongdoer), calling into question his independence. Despite all of this, and even though he had not spoken to James Ho, Martin set up the CIR appointment anyway.
2. Failure to Review Donative Instrument: According to his deposition, Martin did not review the donative instrument. He testified that he did not review the "Gift Letter" (which would have alerted him to the forged signature for James and that Debby falsely claimed to be James' wife), did not review the purchaser's copy of the \$1,100,000 cashier's check (and if he had done so, he would have seen that Debby wrote the transfer was a loan, not a gift), and did not review the initial escrow deposit made by James for \$67,050 (which he testified he never even discussed with James). These documents illustrate on their face the reason for the statutory requirement that Martin must review the donative instrument, as they would put him on notice of potential fraud and/or undue influence and should—with any reasonable care—have led him to further investigate the matter or even deny the CIR that Debby (and not James) was requesting. Martin also testified that if he knew Debby had misrepresented James as her husband, it would be "significant" and "could cause [him] concern depending on the context."⁸²
3. Lack of Private Counseling: Martin also failed to counsel James outside of Debby's presence, as she remained in the house and within her sphere of influence over James. Debby greeted Martin, was present in the house during his meeting with James, and spoke with Martin again afterward. Her continued presence in the house—where James could have believed she was listening or might enter the room—raises concerns about whether he was able to speak freely and whether Martin satisfied the legal requirement to counsel James outside the presence of the beneficiary.

4. Failure to Investigate for Undue Influence: Martin failed to make any meaningful effort to determine if the “gift” was the result of fraud or undue influence, since the only source of information he relied on outside of James was the possible wrongdoer and supposed gift recipient, Debby Chang. In addition, Martin took James’ statements to him at face value, and his only effort to confirm what James had told him was to talk alone with Debby—the very person whose motives were being questioned. He chose to disregard questionable answers from James by never making an effort to fact-check James’ statements with any of James’ family members.

Martin also failed to take reasonable steps to assess James’ cognitive capacity at the time of the CIR. Notably, he did not review any of James’ medical records, nor did he consult with James’ treating physicians, despite James’ known medical conditions, including brain swelling related to radiation treatment for a diagnosed meningioma. MRI reports dated February 16 and June 8, 2017, as well as clinical observations from July and August 2017, documented cognitive issues such as confusion, memory loss, and impaired decision-making. These issues are medically associated with diminished capacity. Martin did not conduct any documented assessment of capacity.

5. Improper Delivery of CIR: The certificate was mailed to James but was intercepted and returned by Debby, with a note indicating that James never received it. Martin did not attempt re-delivery. This raises questions about whether the requirement to deliver the original certificate—as specified by § 21384 for the certificate to be valid—was met.
- There are several factual errors in the CIR Martin signed.⁸³
 1. The CIR states that the transfer occurred in March 2017 and involved approximately \$1.1 million. The checks in question were dated February 2017 and totaled \$1,167,050. Mr. Martin did not examine these checks before certifying the transaction.
 2. Martin certified that the transfers to Debby are not the product of fraud or undue influence. However, the eventual trial judgment completely contradicts his CIR, ruling that Debby obtained the money “by false pretenses, false representations and actual fraud.”
 - **Misinterpreting Laws**: Martin testified that he delivered the CIR to his client through the act of mailing it. However, the statute requires actual delivery to the transferor. Martin did not ensure that delivery occurred—he did not send it by certified mail, and it was ultimately returned to him with a note that James never received it. Martin’s interpretation of the delivery requirement left the validity of the CIR uncertain, which contributed to a costly and protracted trial where the CIR was a key element in Debby’s defense.

- Martin had multiple opportunities to deliver the CIR, including a chance to personally give it to James, when James, Shan-Yuan, and Peter went to his office. Shan-Yuan, Peter, and Attorney Koplowitz asked for any of James' estate planning documents that Martin prepared, but he refused to provide the CIR, arguing that a CIR was not an estate planning document.

3. Arguments for Dishonesty, Misconduct, and Unprofessional Conduct

- **Dishonesty:** When asked if he was trying to defend his CIR, Martin said no, but his actions suggest otherwise. Judge Catherine Gallagher questioned Martin under oath about how many CIRs he had completed before James'. He claimed to have done two prior CIRs, but it was actually his first—something he had testified to in his earlier deposition. Furthermore, he testified that he sent a letter requesting a meeting with James,⁸⁴ but none of the three letters he sent contained such a request, raising questions about the accuracy of his testimony.
- Martin asserted that he independently concluded that Peter had abducted and abused James.⁸⁵ However, these accusations appear to have originated solely from Debby's fabrications, which were made to conceal her fraudulent actions.
- **Misconduct:** Martin relied on hearsay and the unverified claims of Debby (who was not his client nor family) without consulting James' family members or investigating Debby's assertions. He failed to validate critical information about James's circumstances and health status. By failing to confirm critical facts, Martin certified a transaction later ruled to be fraudulent, raising concerns about his adherence to his client's legal protections. Furthermore, by not acting when he thought James was abducted, he did not look out for the best interest of his client. Instead, he continued to strongly defend his CIR.
- James did not receive the CIR and could not remember what Martin did for him. Shan-Yuan, Peter, and Attorney Koplowitz each called Martin. Martin admitted to being "very uncooperative," refusing to grant access to James' estate planning documents, despite repeated requests. He told Shan-Yuan and Peter that James had to make the request himself, and he insisted that the Power of Attorney Peter held was insufficient to obtain the documents. When James did so in writing and tried to meet in person, Martin then answered that his office did not have any of James' estate planning documents, testifying that he did not include the CIR because he had already sent it by mail.⁸⁶ Yet he also replied to Peter that he did not "have any estate planning documents of your father's in my files, including any copies." He provided inconsistent responses to repeated requests from James' family and their attorney, which obstructed rather than facilitated lawful access to critical information.
- **Unprofessional Conduct:** Martin relied on Debby's statements, despite her lack of legal standing and apparent conflict of interest, and did not consult his client's family for accurate information.

- Martin was dismissive in his refusal to accept credible information regarding James's hospice status.

CRPC Rule 8.4 (Misconduct) prohibits attorneys from engaging in conduct involving dishonesty, fraud, deceit, or reckless disregard for the rights of others.

4. Consequences and Damages

Martin testified: "I suggested that I write a certificate of independent review so that potentially it could reduce the chances of litigation."

However, his CIR had the opposite effect, as it became a central element of Debby's defense in a protracted lawsuit lasting nearly seven years and costing the parties over \$2,000,000 in legal fees. The Court ultimately ruled that Debby obtained the funds through fraud and false pretenses, nullifying Martin's certification that it was a gift.

The impact of Martin's unwarranted CIR was significant. Had he reviewed the relevant documents, verified James' condition, or consulted with James' family, he would have identified multiple red flags calling the validity of the CIR into question,⁸⁷ and he could have rescinded the CIR. Despite having opportunities to reassess, he did not take corrective action and continued to rely primarily on information provided by Debby, without adequately assessing whether she may have exerted undue influence or engaged in conduct later determined by the Court to be fraudulent.⁸⁸

5. Requested Sanctions

This complaint requests that:

1. Martin refund the \$2,000 charged for the invalid CIR.
2. A severe reprimand be issued.
3. He be placed on probation, or alternatively, suspended or disbarred.

Martin's actions—or lack thereof—raise concerns of negligence and repeated failures under the California Rules of Professional Conduct. His conduct not only compromised his duty to his client but also contributed to false claims by Debby and an extended legal battle. Had he exercised proper competence and diligence, these significant legal and ethical complications could have been avoided. Appropriate disciplinary action is requested to hold him accountable and prevent future misconduct.

IV. Summary

The factual record and the specific complaints outlined above demonstrate a clear pattern of professional misconduct by Martin, characterized by negligence, ignoring statutory requirements, dishonesty, and a failure to uphold the ethical obligations owed to his client, James Ho.

The appointment between Martin and James was orchestrated by non-relatives—none of whom had legal authority—and required approximately 20 separate points of contact to set up, while

excluding James and his duly authorized agent. This process undermined James Ho's legal rights and led to serious legal and financial repercussions. One of the organizers, Reinhard, even suggested that Debby could "convince" James to do whatever it takes to put a CIR in place. These facts raise serious red flags, including concerns about undue influence and a potential conflict of interest. Martin's failure to address these issues reflects unprofessional conduct and a disregard for potential risks to his client. His lack of inquiry into possible coercion demonstrates serious negligence and incompetence.

Martin interviewed only the gift recipient (Debby) and did not follow up with any of James' beneficiaries, including Peter, whom James had indicated was assisting with his finances and held Power of Attorney. Martin's reliance on Debby's statements—without independent verification or consultation with his client's family—compromised his objectivity and independence. By relying solely on Debby's account, Martin neglected to investigate or reconcile issues he later testified were significant, thereby failing to protect his client's best interests. He acknowledged that the forged "Gift Letter"—which Debby had not disclosed—would have raised a red flag had he reviewed it. He also dismissed concerns about James' confusion and told his associate that James may be easily influenced. Yet, he did not address that James did not know what Debby had done with the money, and that James mistakenly believed he was on title to the Fulton property purchased with that money. These discrepancies warranted further inquiry; Martin's failure to pursue them reflects a lack of professional competence and diligence.

Martin further failed to conduct a proper assessment of James' cognitive ability or capacity, despite being aware of his confusion, meningioma diagnosis, and radiation treatments. He did not review James' medical records or consult with any of his physicians. Those records documented brain swelling resulting from the radiation treatment for his meningioma—findings that are medically associated with symptoms such as confusion and memory loss. These omissions further demonstrate professional negligence. In addition, Martin was dismissive of credible information regarding James's hospice status, further reflecting a lack of respect for his client and his family's concerns.

Martin issued a CIR that was severely inadequate, citing an incorrect transfer date and an inaccurate gift amount. He further violated statutory requirements by failing to ensure delivery of the certificate to James. Despite the mail being returned to him, Martin made no further effort to rectify the delivery failure. He attempted to justify his conduct, saying he considered it "delivered" when he dropped it in the mail. The Court ultimately found that the \$1,167,050 transfer was obtained by "false pretenses, false representations and actual fraud," thereby rendering Martin's certification both invalid and legally ineffective.

Under oath, Martin testified that he "was very categorical and refusing to give him [Attorney Koplowitz] any information and was very uncooperative." Furthermore, he attempted to mislead the Court by misrepresenting that he had completed two CIRs prior to James Ho's, when in fact, this was his first CIR. His testimony demonstrates unprofessionalism, deliberate misconduct,

and dishonesty. His conduct reveals a serious lack of integrity and respect for judicial proceedings, and calls into question his credibility and the integrity of his legal practice.

These actions caused significant legal and financial harm and constitute violations of the California Rules of Professional Conduct and the California Probate Code. This case spanned almost seven years, beginning with the orchestrated CIR appointment in early 2017 and culminating in a final court ruling years later. Over this time, James' family suffered severe emotional and financial harm. They were entangled in prolonged litigation, facing unfounded accusations, stripped of their inheritance, and burdened with immense legal costs while trying to protect James' interests. Martin's involvement was not peripheral; it was pivotal. His certification legitimized a fraudulent transfer and severely obstructed justice. His actions not only betrayed the trust of a vulnerable elder but also undermined the integrity of the CIR process as a safeguard against abuse. Given the magnitude of harm caused and the breach of ethical standards, the State Bar is respectfully urged to impose serious disciplinary sanctions consistent with the requested sanctions outlined above to ensure accountability, uphold public trust, and reaffirm the ethical responsibilities expected of attorneys who serve California's most vulnerable citizens.

Endnotes

1. [Exhibit 5: p. 180, ll. 3-11]
2. [Exhibit 5: p. 238, ll. 21-25; p. 239, ll. 1-3]
3. In Reinhard's deposition, he admits he never discussed finding Martin with James [Exhibit 15, p. 34, ll. 6-19]:
 - Q. Did you ever discuss a certificate of independent review with James Ho? A. I did not.
 - Q. Never at any point in time during his life? A. That's correct.
 - Q. Did you ever discuss John Martin with James Ho? A. I did not.
 - Q. Did you ever discuss any lawyer with James Ho? A. No.
 - Q. Did James Ho ever ask you to locate a lawyer for him? A. No.
4. Email from Reinhard Oesterle to John Martin, August 17, 2017, 11:12 AM [Exhibit 1: JM0011]
5. Email from Reinhard Oesterle to John Martin, August 17, 2017, 11:12 AM [Exhibit 1: JM0011]
6. Email from Reinhard Oesterle to John Martin, August 17, 2017, 2:11 PM [Exhibit 1: JM0012]
7. Email from Reinhard Oesterle to John Martin, August 17, 2017, 5:19 PM [Exhibit 1: JM0013]
8. Email from Reinhard Oesterle to John Martin, August 11, 2017, 2:45 PM [Exhibit 1: JM0010]
9. Email from Reinhard Oesterle to John Martin, August 11, 2017, 2:45 PM [Exhibit 1: JM0010]
10. Martin was asked at trial [Exhibit 6, p. 114, ll. 8-16]:
 - Q. Since you had only spoken with Reinhard at this point in time and that raised a red flag for you, did you -- did it come into your mind at all that it would be a good idea for you to reach out directly to Mr. Ho at this time? A. Well, first of all, it sounds like Debby Chang was also -
 - Q. My question is: Did that occur to you? A. I don't recall having that thought, no.
11. James' oncologist Dr. Rosendo So-Rosillo wrote in his medical notes on 7/26/2017 [Exhibit 2]:

"The pt has a difficult time retaining information and things have to be repeated multiple times. He appears to have memory loss (dementia). Despite explaining things he would forget soon thereafter."

During James' visit to the Emergency Room on 8/12/2017, Dr. Gheorghevi (Emergency Room consulting physician) documented the following [Exhibit 3]:

"Mental Status - alert, oriented x 2, confused about date; forgetful. Patient is a poor historian due to memory loss."
12. Debby said the following to James on August 21, 2017 [Exhibit 4: p. 5, para. 8; p. 14, para. 8, 10]:

"I'm leaving. I'm taking the one million with me. (inaudible) I'm leaving. I won't come back. If we don't do this today, I won't come back... I'm leaving. What did you say? What did you say?... If he doesn't hire, then who will take care of you?"
13. Debby and James said the following on August 21, 2017 [Exhibit 4: p. 21, paras. 7-10; p. 22, paras. 2, 9-15]:

Debby: I don't like it. If you don't write this... (inaudible)... there will be a lawsuit, you know?

James: What lawsuit? I am taking it back!

Debby: You can't take it back. It's my house. The money for the house is inside, how can you retrieve it?

James: You tricked me

...

Debby: ...can't sold the house either., .can't sold the house either.

...

James: Who asked you to get involved with this money

Debby: How am I involved in this...

James: Give it back

Debby: What do you mean I'm involved in this...

James: Of course you're involved when you go to court.

Debby: They'll sue me, not the other way around.

James: Then give me my money back.

However, after the meeting with Martin, Debby abandoned James, she would not let him return to the Fulton house, and she listed the house for sale.

14. Debby and James said the following on August 21, 2017 [Exhibit 4: p. 2, para. 4; p. 4, paras. 5-6; p. 16, paras. 2-15]:

Debby: I'm letting you speak to the lawyer now. You tell him that I want to keep this appointment.

...

Debby: Call the lawyer now and tell him to come today.

James: I won't call.

...

Female: Hi, Mr. Martin? Ah, maybe, ah, Mr. Ho, James Ho, he and ..(inaudible) have an appointment at three O'clock? No, He is fine, no, he is fine. (inaudible) can you talk again? Ok, thank you good. Mr. Martin.

James: Mr. Martin? This is James. Fine, thank you. I just heard that my son canceled my appointment?

James: Oh, I do not know and I want to find out later. (inaudible) why?

James: Ah, ok. Ah, (inaudible) ok, I will talk to her about it.

Debby: (inaudible) Debby

James: Thank you.

Debby: (inaudible)

James: Yes, half an hour. (beeping sound)

James: Ok, ok...ok, all right, I will. All right. Thank you.

Debby: (inaudible)

Debby: Hi, Mr. Martin? Hello? What did he say?

James: He said call him back.

Debby: Call back for what?

James: Right now its canceled

15. Debby and James said the following on August 21, 2017 [Exhibit 4: p. 18, paras. 4-5; p. 20, paras. 2-3]:

Debby: Mr. Martin, are you able to come today? Ok. So, can you confirm...(inaudible)one hour, can you? ...one more time. Confirm,OK , can you, please?

James: 4:30PM. All right, I will let my son know. 4:30 pm.

...

James: Then you give Peter a call.

Debby: Don't call, don't call him. He never calls us. Should we call him? Don't call, don't call. If we call, he'll just cancel it again. It's so annoying.

16. Martin wrote in his memorandum [Exhibit 7: JM0037, para. 4]: "I then asked James if he knew why I was there. James said, "I think it may be about the gift that I gave to Debby."

17. Martin wrote in his memorandum [Exhibit 7: JM0037, para. 4]: "I asked if his son was as his agent under his power of attorney, and he said he thought so."

18. Martin wrote in his memorandum [Exhibit 7: JM0037, para. 4]: "I asked James if he had any estate planning documents, such as a will or trust. James told me that he had set up a living trust with his wife,

Grace, who had passed away about 20 years ago. I asked if I could see the documents. He said he didn't know where these documents currently were, and stated that his son was currently managing his affairs."

19. Martin wrote in his memorandum [Exhibit 7: JM0039, para. 1]: "I asked him, did you know that she used the million dollars you gave her to purchase the home? He said he didn't know what she had done with the million dollars, since it was her money now."

Martin was asked in his deposition [Exhibit 5: p. 106, ll. 8-20; p. 107, ll. 13-16]:

Q. So your notes indicate that he told you about six months ago he believed that he had given Debby \$1 million? A. That's actually not what these notes literally say. It says six months, believes he have given to Debby 1 million.

Q. Okay. And then your notes indicate that he told you he wasn't sure what Debby did with the funds. Correct? A. That's what it says.

Q. Okay. So he was not aware what Debby had done with the \$1 million that he had given to her?

A. Well, what I recall from my conversation and I wrote down, "not sure what Debby did with the funds,"...

...

Q. Do your notes say that he was not sure what Debby had done with the funds? A. Actually, it says the words, "not sure what Debby did with the funds."

20. Martin wrote in his memorandum [Exhibit 7: JM0039, para. 1]: "He then said that they had bought the house where they were currently living. He seemed to think that he currently owned this house, so I asked him whether he knew that Debby's name alone was on title. [I had looked up the property records before this 'meeting']." [Exhibit 7: JM0039, para. 1]

21. Martin testified at his deposition [Exhibit 5: p. 156]: "I recall that I asked him the name of the street that he lived on and he couldn't recall that it was Fulton Street."

22. Martin wrote in his memorandum [Exhibit 7: JM0037, para. 5]: "However, he did not know the current date."

23. Previously, Reinhard had told Martin that James was currently on chemotherapy and not feeling very well; Debby also said that James was undergoing chemo and radiation. Peter indicated that his father was confused, but Martin determined that James was not.

According to Martin's memorandum [Exhibit 7: JM0036, para. 3]: "When I picked up, James Ho came on the line. He did not sound confused but very clearly identified himself as James Ho and asked why I was late to his meeting."

However, according to the recordings in Exhibit 4, the last part is untrue because James never asked why he was late to his meeting.

24. Martin was asked in his deposition [Exhibit 5: p. 139, ll. 15-20]:

Q. Did you ever review any of James's medical records? A. No.

Q. Did you ever ask to talk to any of his doctors about his medical condition? A. No.

25. James received radiation therapy for his meningioma and was undergoing chemo for multiple myeloma, a blood cancer that develops in the bone marrow.

Martin testified at his deposition [Exhibit 5: p. 140, ll. 2-7]: "I asked James how he felt and he said he had headaches, he was going in for some treatments, and aside from that he felt fine. I asked Debby and she told me that he had been diagnosed with a kind of bone [sic] cancer. It's hard to pronounce but meningioma and that he was receiving radiation treatment."

26. Martin was asked in his deposition [Exhibit 5: p. 162, ll. 11-17]:

Q. Well, does it appear that it says, "may be easily influenced" to you? A. There's a hyphen and the words "may be easily influenced."

Q. Did you tell Beth that James may be easily influenced? A. I probably did.

27. [Exhibit 5: p. 123, l. 7]

28. [Exhibit 5: p. 107, l. 19]

29. Contrary to what he believed, James had sold the Mercedes 15 years earlier. Martin was asked in his deposition [Exhibit 5: p. 205, ll. 1-15]:

Q. Has anybody ever informed you that the Mercedes that you referenced on multiple occasions and specifically told me yourself four different times was sold 15 years before you ever met James? A. Nobody told me that.

Q. Okay. Is that significant to you in terms of James's ability to remember or not remember things at the time you met him? A. If it's true, then it would have some significance, yes.

Q. Well, wouldn't it be very significant that he had sold a car 15 years before he met with you and yet told you that he still owned it? A. If that's the car that he's referring to, then, yes.

30. [Exhibit 7: JM0038, para. 3]

Contrary to what James believed, he did not own any other homes at that time. The CSM Dr property was sold in 2014, and the Boothbay Ave property belonged to and was titled to the bypass trust.

31. Martin was asked in his deposition [Exhibit 5: p. 111, ll. 2-25; p. 112, ll. 1-25; p. 113, ll. 1-2]:

Q. About the property that he owned as of August 21, 2017, find me a note anywhere regarding where that property was located. A. Well, I believe in my memorandum I refer to the second property.

Q. Where is it located? A. You want me to read through every line here?

Q. I'll represent to you that there's no reference in your notes as to what -- or your file as to where that property is located. You are free to spend as much time as you need to look through them to see if my representation is accurate or not. A. I'm sorry. What property are you referring to?

Q. The property that you just testified about that he told you he owned as of August 21, 2017. A. Which property is that?

Q. You tell me. You had the meeting with him.

MR. LOEW: Objection. Argumentative. Misstates testimony.

THE WITNESS: What's your question?

BY MR. CILLEY: Q. Where is -- what's the address of the property that he owned? A. Well, I didn't write that down in these notes apparently.

Q. What was that property worth? A. How would I know that information?

Q. You didn't ask him. Correct? A. Did I ask him how much what property is worth? The property he was living in?

Q. The property that he told you he owned. A. Well, wait a minute. What I did was I asked him if he recalled what property he owned. And what I said is exactly what he related to me in general terms, which is that at some point he owned a couple properties and now he recalled owning one.

Q. Right. There's no reference to where that property is located? A. Correct.

Q. What was that property worth? A. I didn't ask him that question.

Q. Okay. What was the mortgage owing, if any, on that property? A. I don't know.

Q. How was that property titled? A. I'm not sure.

Q. Was it in his trust? A. I can't recall.

Q. You didn't ask him? A. I don't recall asking him if his house was titled to his trust but I did ask him if he had a trust.

32. Martin later admits in his deposition [Exhibit 5: p. 116, ll. 22-25] that it would be relevant if he knew James had given Debby an interest in a property in Southern California.

33. Martin later admits in his deposition [Exhibit 5: p. 137, ll. 8-16] that it would be significant to him if James had been giving Debby additional funds.

34. [Exhibit 7: JM0038, para. 2]

35. [Exhibit 7: JM0038, para. 2]

36. Martin assumed James was balancing his own checkbook, but it was Peter who was balancing his father's checkbook with the neat and orderly entries since February 2017, when James became incapable of doing so himself.

Martin was asked in his deposition [Exhibit 5: p. 113, ll. 13-21]:

Q. Oh, first of all, let's - okay. Let's start here. Where was that checking account maintained? A. I'm not sure.

Q. What was the balance of that checking account? A. I don't know.

Q. Okay. What other accounts did James Ho have aside from that checkbook? A. To my knowledge, I'm not sure what other accounts he may have had.

37. [Exhibit 7: JM0038, para. 4]

James is confused: while Peter and Della each owned their own homes, Shan-Yuan had never owned her own home until after James passed away.

38. [Exhibit 7: JM0038, para. 4]

James is confused: Della stopped working at Kaiser over 10 years ago and is working at Stanford Hospital.

39. [Exhibit 7: JM0038, para. 3]

40. [Exhibit 7: JM0038, para. 4]

41. In that 20-year period, Debby started living with James 3 years before he died. They lived in their separate residences prior to that.

42. [Exhibit 5: p. 220, ll. 15-17]

43. In fact, Reinhard testified that he didn't talk to James about it (see Endnote 3).

44. [Exhibit 5: p. 242, ll. 13-14]

45. Martin was asked in his deposition [Exhibit 5: p. 192, ll. 7-10]:

Q. But you never made any sort of an effort to corroborate and/or refute or run what Mr. Ho had told you by any of his children? A. Correct.

Martin was asked in his deposition [Exhibit 5: p. 242, ll. 1-16]:

Q. I'll represent to you that they're [James' children] going to testify that Jackie came out and said to them that you specifically told her that you would not meet with Peter Ho that day or James Ho that day. Do you have any reason to dispute the accuracy of that representation? A. I don't know what Jackie was thinking specifically when she said that. Jackie may have been saying that for any number of reasons.

Q. Did you tell her to say that? A. After she came back, I did express concerns to her that we had to look out for the interest of James Ho and that we had to be very careful and it would probably be best not to communicate with the children and then to have a meeting with James Ho one-on-one if that's possible.

46. The proceeds from the sale of the Foster City property were not enough to purchase the Fulton property. James withdrew funds from his personal savings and IRA to make up the difference.

Martin testified at his deposition [Exhibit 5: p. 220, l. 25; p. 221, ll. 1-24; p. 222, ll. 3-25]:

A. He said that he had sold his place in Foster City.

Q. And did he tell you anything about what he did with the proceeds from selling that property? A. Yes. He said that he put the money into an account.

Q. And did he tell you anything else about that money? A. He picked up his checkbook, gestured to it, and then we proceeded to talk about that being the source of the gift that he had made to Debby.

Q. And what -- what else did he tell you about the gift that he had made to Debby? A. He -- I wanted to know what the circumstances were for how the gift had been made. So I asked him if it had been a check that he had written and he nodded that yes, it was. And I said, "Well, is it possible that it had been a wire transfer?" And he seemed to think no but then said maybe it was possible. But then he said he had gone to the bank. And I asked, "Well, was it a certified check?" And then he said, "Yes."

Q. And did he make reference -- well, let me -- let me go to Exhibit No. -- Exhibit No.4. If you can take a look at that, please. This is the separate set of exhibits that Mr. Cilley had.

...

Q. Do you see this document? A. Yes.

Q. And do you see the bottom of this document? A. Yes.

Q. And do you know if James Ho ever mentioned this particular transfer to you? A. To Old Republic Title? I think he was referring to this because **he said specifically that he thought he had written two checks**. So this I believe was one of them.

Q. And I draw your attention as well to - apologize -- Exhibit No. -- Exhibit No.6. I draw your attention to the first -- I'll draw your attention to where there's handwriting first appearing on the check, the two numbers of 67,050 slash \$1.1 million? A. Yes.

Q. Does that appear to be consistent with what James told you if you read that first paragraph? A. It is consistent with what he said to me.

Q. And nothing you've heard today has led you to believe that that's not consistent with what he told you. Correct? A. Not at all.

47. On the Wells Fargo cashier's check receipt, Debby wrote in Chinese at the top, 'Received of the money loaned to me from Ho.' [Exhibit 8]

Martin testified in his deposition [Exhibit 5: p. 134, ll. 23-25; p. 135, ll. 1-6]:

Q. Okay. And Debby Chang told you that the gift was actually \$1.1 million, not \$1 million? A. I wrote down the words gift was \$1.1 million.

Q. And then she told you plus, looks like, 60K? A. I think she said plus 67,000.

Q. Okay. And then your notes indicate said, "Once she sells the house, she would pay it back." Is that correct? A. I can't read that. It does look like the word pay.

See Endnote 46 regarding the two checks.

48. Martin was asked in his deposition [Exhibit 5: p. 196, ll. 21-25; p. 197, ll. 1-6, 11-14]:

Q. Exhibit No.4 is -- it's actually two documents. The first is an escrow trust receipt and the second is a copy of a check that's at the bottom of the escrow trust receipt. First of all, did you ever see this escrow trust receipt? A. No.

Q. And did you ever see the check or copy of the check that James Ho wrote to Old Republic Title Company for the acquisition of the Fulton property? A. No.

...

Q. ...Did you ever discuss with James that he had written a check for the deposit for the purchase of the Fulton Street property? A. For the deposit, no.

Martin was asked at trial [Exhibit 6: p. 163, ll. 8-12]:

Q. Let's have you turn to Exhibit 78. This morning you said, when Mr. Baer asked you about the donative instrument, you said you were not able to review the actual check, right? A. Right.

49. Martin wrote in his memorandum [Exhibit 7: JM0038, para. 5; JM0039, para. 1]:

"...he said he put the money into an account. He referred to a savings account and checking account, and again gestured to his checkbook. He then said that they had bought the house where they were currently living. He seemed to think that he owned the house, so I asked him whether he knew that Debby's name alone was on title. [I had looked up the property records before this meeting]. He indicated, if that's what she did, he was fine with that. I asked him, did you know that she used the million dollars you gave her to purchase the home? He said he didn't know what she had done with the million dollars, since it was her money now. I asked what he meant by this, and he said that, well, the gift of the million dollars was in the past, so there was nothing that could be done about it now."

50. [Exhibit 7: JM0039, para. 1]

Martin was also asked in his deposition [Exhibit 5: p. 141, ll. 15-25; p. 142, ll. 1-7]:

Q. Okay. Next page, page 25, you say around February 2017 James made a gift of \$1.1 million. That's information that Debby had relayed to you? A. Yes.

Q. Okay. And then your notes also indicate he went to the bank to get a -- is that cashier's check? A. Yes.

Q. And Debby told you that? A. Yes.

Q. And then below the figure \$60,000 there's some notes that I can't read. Can you read that? The first word appears to be "he was." A. "He was having problems."

Q. Okay. What were the problems that he was having? A. I'm not sure.

Q. Okay. Were they medical problems? Cognitive problems? A. I'm not sure.

51. [Exhibit 7: JM0039, para. 1]

James already had his will and trust in place that named his beneficiaries. James did not set up this appointment with Martin. He did not know what Debby did with the money. Yet despite all of this, he allegedly represented to Martin that he wanted Debby to have it--amounting to over $\frac{2}{3}$ of his estate--because he didn't need it anymore.

52. Martin was asked in his deposition [Exhibit 5: p. 113, ll. 18-25; p. 114, ll. 1-3]:

Q. Okay. What other accounts did James Ho have aside from that checkbook? A. To my knowledge, I'm not sure what other accounts he may have had.

Q. What other assets did James Ho own as of August 21, 2017, apart from the house that he may have told you about and apart from the checking account that he pointed to? A. Since I didn't require him to do an estate planning inventory, I wouldn't possibly have the answer to that question.

53. James' signature was forged on the Gift Letter that stated \$1,167,050 was a gift from James (as Debby's husband) to Debby. [Exhibit 9] The handwriting expert concluded the forged signature is likely Debby's handwriting.

54. Martin was asked in his deposition [Exhibit 5: p. 198, ll. 12-25; p. 199, ll. 1-10]:

MR. CILLEY: Okay. Let me have this next document which is entitled "Gift Letter" marked as the next in order, Exhibit 6. (Whereupon, Exhibit 6 was marked for identification.)

BY MR. CILLEY: Q. Have you ever seen Exhibit 6? A. No.

Q. Exhibit 6 is a gift letter that states I, quote, we, James Ho have made a gift of \$67,050 and \$1,100,000 to the borrowers named below, and it goes on to state that the borrower is James - or Debby Chang rather. Do you see that this document lists Debby's relationship to the borrower as - or James's relationship to Debby as husband? A. Relationship to borrower husband.

Q. Yeah. And it's signed by James Ho and signed by Debby Chang. A. Yes.

Q. Do you see that? Okay. It's signed on 3/9/177 A. Yes.

Q. Okay. Have you ever seen this document before I just showed it to you? A. No.

55. [Exhibit 6: p. 70, ll. 13-15]

56. Martin was asked in his deposition [Exhibit 5: p. 77 ll. 21-25; p. 78, ll. 1-11]:

Q. And you indicate that you will bring the proposed engagement letter with you to the meeting; is that correct? A. Yes.

Q. And did you in fact bring the proposed engagement letter with you to the meeting? A. Yes.

Q. Do you have any knowledge -- okay. So do you have any knowledge as to whether or not the first time that James Ho ever saw the proposed engagement letter was at the time of the meeting? A. I can't recall specifically but I may have mailed it to him in advance.

Q. Okay. You just don't know one way or the other as you sit here right now? A. I just can't recall.

57. The first time James ever saw the engagement was at the very end of the meeting when he was worn down. Martin's notes state, "At this time James was starting to look tired." [Exhibit 5: p. 149, ll. 14-15] James soon fell asleep after that at the table.

58. Martin was asked in his deposition [Exhibit 5: p. 151, ll. 1-6]:

Q. And that portion of your meeting that day lasted approximately half an hour? A. Yes.

Q. And James fell asleep for a portion of that part of the meeting? A. That's right.

59. [Exhibit 6: p. 93, ll. 19-21]

60. [Exhibit 7: JM0040, para. 1]

61. It should be noted that during the course of the subsequent lawsuit, in her attempt to explain evidence, Debby changed her story multiple times on whether the money from James was a loan or gift, and when she claimed it became a gift. Also, the Redwood City police noted that she changed her story multiple times regarding James' alleged "abduction" by his children. Contrary to Debby's testimony, Peter had informed her that James would be staying with him after his medical appointment, to which she had no objection. Afterwards, she would not let him return to the Fulton house, during which time she tried to sell it. Debby was ultimately found liable for fraud on James.

62. [Exhibit 7: JM0040, para. 3]

63. [Exhibit 10]

64. [Exhibit 11]

65. [Exhibit 5: p. 232, ll. 23-25]

66. Martin testified in his deposition [Exhibit 5: p. 190, ll. 6-16]:

A. I had gotten the e-mail from Peter Ho. And also his attorney Ed Koplowitz -

Q. Okay. A. -- contacted me and he asked me a series of questions on what kind of documents I had. And I was very categorical and refusing to give him any information and was very uncooperative.

Q. You were uncooperative with A. Yes.

Q. - Mr. Koplowitz? A. Yes.

67. Martin was asked in his deposition [Exhibit 5: p. 239, ll. 23-25; p. 240]:

Q. -- why didn't you just call James? He was your client. A. Did he have a cell phone at that time?

Q. Yes. And you had his number. A. I thought that that was the home number.

Q. Okay. Well, let's turn back to page 12 of your notes. The e-mail from Richard Oesterle [sic] to you of August '17. And you see there's James Ho's contact information there? A. Yes.

Q. And there's a phone number? A. Yes.

Q. You understood that -- or you thought that that was the home number? A. That was my assumption.

Q. Why did you - did you do anything to test your assumption, such as, for example, spend a few seconds to dial the number?

MR. FERGUSON: Objection. Argumentative.

THE WITNESS: No. I made the assumption that if I called I would get Debby Cilang.

BY MR. CILLEY: Q. Did you try to call? A. No. I said I did not

68. Martin testified in his deposition [Exhibit 5: p. 187, ll. 2-10]:

A. Well, it was my _ and I wasn't sure about this at the time, but based upon the call that I had received with Debby and, again, I don't remember the specific date, I had concerns that Mr. Ho was being held against his will.

Q. So, again, it was based upon information that came from Debby? A. Correct. But I also had a desire not to facilitate any kind of undue influence or elder abuse.

69. Debby's handwritten note reads [Exhibit 5: p. 185, ll. 7-12, 15-19]:

Mr. Martin,

This is Debby Chang, James Ho's friend.

I'm sending all the letters back to you, because I still have no chance to talk to James Ho after he left with his son (Peter Ho) from my house on Aug 23, 17.

His son has asked to have the letters you mailed to my house but I don't feel comfortable to give to him, even the son has a power attorney from his father. I'm not sure his power attorney has enough power to do every thing.

Sorry for the inconvenience!

Debby Chang

70. Martin was asked at trial [Exhibit 6: p. 178, ll. 21-25; p. 179, ll. 1-19]:

Q. Did you review the statute to see if you needed to deliver the statute -- the certificate to Mr. Ho? A. Yes.

Q. When the envelopes came back to you, did you review them to see if you had actually been able to comply with the statute? A. I had complied with the statute by delivering them to him.

Q. So it's your opinion that just putting them in the mail is sufficient? A. I don't think it's required to hand them to him physically. I think mail is an acceptable form of delivery.

Q. If you -- if you had become aware that the certificate had not been delivered to Mr. Ho despite mailing it, do you believe the statute required you to then find a way to deliver it to Mr. Ho? A. No.

Q. And, in fact, you didn't make any efforts to send it to Mr. Ho again after it had already been mailed once? A. I sent him a follow-up letter expressing concerns and wanting to get in touch with him.

71. [Exhibit 5: p. 102, ll. 3-4]

72. [Exhibit 5: p. 72, ll. 7-12]

73. [Exhibit 5: p. 186, ll. 11-18]

74. [Exhibit 5: p. 190, ll. 6-16]

75. Martin was asked in his deposition [Exhibit 5: p. 237, ll. 7-17]:

Q. And what did he tell you when you asked if you could see the [estate planning] documents? A. He said he believed his son had them.

Q. And so were you ever able to see the documents? A. No.

Q. Were you not able to see the documents because of some lack of effort on your part? A. In part, perhaps.

Q. Well, did you ever have the opportunity to meet with anyone who had the power to give you those documents? A. No.

76. [Exhibit 5: p. 226, ll. 11-16]

77. Martin was asked at trial [Exhibit 6: p. 214, ll. 5-19]:

THE COURT: Prior to doing the certificate of independent review, had you ever done another one? THE WITNESS: I believe so.

THE COURT: And do you know how many times? THE WITNESS: I think I've done it less than five times and I think at least three. Right now, I'm not sure if it's four or three. Three or four times.

THE COURT: And those were before August 2017? THE WITNESS: If I'm recalling correctly, I've only done one since this. So I think if, I'm recalling correctly, there was two -- two before, but now it's very hazy. It's such a long timeline, so I could be mistaken.

78. [Exhibit 6: p. 191, ll. 5-20]

Q. In thinking back on your meeting with Mr. Ho on August 21, how would you describe his intelligence level? A. He seemed intelligent.

Q. And we've heard some of the things he's told you today. Did he seem profoundly intelligent? A. What do you mean by "profoundly"?

Q. When you talked to him, could you feel a lot of intelligence?

MR. BAER: Objection. Vague and ambiguous. THE COURT: Sustained.

THE WITNESS: I'm not sure what that means.

Q. At some point, did you start to believe that he was more intelligent than you were? A. No.

79. [Exhibit 12]

80. Martin was asked in his deposition [Exhibit 5: p. 128, ll. 20-25; p. 129, ll. 1-10]:

Q. Let me ask you to turn to the next page, page 22. And before I get there, would it be of -- would it have been significant to your review and your meeting with James Ho if Debby Chang had yelled at him immediately before your meeting to have the meeting with you? A. Yes.

Q. Very significant? A. Yes.

Q. Would it be significant to you if she had told him that she was going to leave him if he did not meet with you? A. Yes.

Q. Would it be of significance to you if she had told him that she wanted him to tell you that the \$1.1 million was a gift? A. Yes.

81. Martin overlooked several red flags in James' own statements. James did not know what Debby had done with the funds. Those funds—including (1) a \$67,050 personal check from James to the title company for the initial escrow deposit and (2) a \$1,100,000 cashier's check to Debby—were used to purchase the Fulton property. Yet James mistakenly believed he owned the house and was on title to the property. Taken together, these facts should have raised serious concerns about James's understanding of the transaction and its voluntariness.

82. [Exhibit 5: p. 197, ll. 18-24]

83. Martin's Certificate of Independent Review [Exhibit 13]

84. Martin was asked at trial [Exhibit 6: p. 173, ll. 14-25; p. 174, ll. 1-17]:

Q. Well, Mr. Ho's at your office and you really wanted to get a hold of him you told us? A. I sent him a letter.

Q. But here he is at your office. Did you take the opportunity to meet with him? A. No.

Q. Did you take the opportunity to have your secretary set up a meeting with him? A. I don't see that as an opportunity to meet with him. I don't just get up and leave from existing client appointments. In fact, I didn't learn of all the specific circumstances of what happened until later.

My assistant Jackie was actually the one who was really concerned. She said to me, John, I think there's something really going on here. That's not a good situation for this man to be, you know, taken around by his kids like this. And so after talking to Jackie, this was after my appointment, I thought, wow, that really is very concerning.

Q. Did you ask Jackie to set up a meeting with Mr. Ho? A. Specifically? Q. Yes. A. I can't remember asking her to do that.

Q. Did you ask Jackie to call Mr. Ho? A. That would be redundant since I just sent a letter to him asking for that.

85. Martin was asked at trial [Exhibit 6: p. 172, ll. 12-19]

Q. Did she say words to the effect that she thought Mr. Ho's children had abducted her – abducted him? A. I came to that conclusion on my own.

Q. What did Debby say to you to lead you to that conclusion? A. I'm sorry, I don't think Debby said anything that led me to that conclusion.

However, this claim was inconsistent with his earlier deposition testimony [Exhibit 5: p. 231, ll. 11-16]:

"...since my conversation with Debby indicated that although he had been living together with her for so many years Peter Ho didn't return him after his medical appointment as was their usual practice and that she was extremely distraught and that he was being held by Peter and the children..."

86. Martin was asked in his deposition [Exhibit 5: p. 186, ll. 11-18]

Q. Okay. And you indicate to him that, "Our office does not have any of your estate planning documents. Therefore, we have nothing to give to Peter." A. Yes.

Q. Why didn't you include the certificate of independent review? Your client was asking for it? A. I already sent him the certificate of independent review, did I not?

87. Martin was asked at trial [Exhibit 6: p. 104, ll. 17-20; p. 154, ll. 10-17; p. 155, ll. 8-11; p. 156, l. 25; p. 157, ll. 1-5]:

Q. Okay. Would it have been of significance to you if you knew that Reinhard lied to you about being Debby's son-in-law? A. Yes.

...

Q. Now, I believe you testified that it would have been significant to you if Debby had represented herself as his wife when, in fact, she wasn't? A. Yes.

Q. And it would have been significant to you if Debby had done that on a bank loan application, right? A. Potentially.

...

Q. And would it have been significant for you if you had learned that Mr. Ho had been writing numerous checks to Debby for the amounts of 5,000 and \$10,000? A. Yes.

...

Q. Did either Debby or Mr. Ho ever tell you that Mr. Ho wrote 11 checks to Debby in the year prior to your meeting totaling almost \$100,000? A. Never. Q. Would that have raised a red flag for you? A. Perhaps.

88. Debby testified on Trial Day 3 that she did say or may have said the following statements to James, and Martin is now being asked at trial whether these statements would have raised any red flags for him in his role as the CIR attorney [Exhibit 6: p. 157, ll. 18-21; p. 158, ll. 12-25; p. 159, l. 1]:

Q. Would that have raised a red flag for you if Debby said to Mr. Ho that she would leave him if he didn't reinstate the appointment with you? A. Yes.

...

Q. Would it have raised a red flag for you if Debby told Mr. Ho that she would leave and take the \$1.1 million with her? A. Yes.

Q. Would it have raised a red flag for you if Debby told Mr. Ho that if he doesn't meet with you that she would leave and not help him anymore? A. Yes.

Q. Would it have raised a red flag for you if they raised their voices during that conversation? A. Yes.

Q. Would it have raised a red flag for you if Debby said to Mr. Ho that he needed to tell Mr. Martin that the \$1.1 million was a gift? A. Yes.