

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v.

JAMES ALFRED STANLEY, JR.,

Respondent.

Supreme Court Case No.
SC-

The Florida Bar File No.
2024-00,207(7A) (CES)

PETITION FOR EMERGENCY SUSPENSION

This petition of The Florida Bar (the bar) seeks emergency relief and requires the immediate attention of this Court under Rule 3-5.2 of the Rules Regulating The Florida Bar. The bar seeks the emergency suspension of James Alfred Stanley, Jr., Attorney No. 808024, based on facts set forth in the affidavit of Matthew D. Herdeker, CPA, attached as Exhibit "A," that establish clearly and convincingly that James Alfred Stanley, Jr. has caused, or is likely to cause, immediate and serious harm to clients or the public by misappropriating client funds and committing fundamental trust account violations, and states as follows:

1. The Florida Bar's Executive Director authorized the filing of this Petition for Emergency Suspension.

2. Respondent, James Alfred Stanley, Jr. is and, at all times

during the relevant conduct occurred was, a member of The Florida Bar subject to the jurisdiction and disciplinary rules of this Court.

3. Respondent currently is the subject of a bar disciplinary matter which has been assigned The Florida Bar file number 2024-00,207 (7A) (CES).

4. The bar's investigation of this matter indicates that respondent misappropriated client funds and is not in substantial compliance with the rules governing trust accounts.

5. On or about October 16, 2023, PNC Bank notified The Florida Bar that an overdraft in the amount of \$1,046.14 occurred in the trust account of the firm Meyers, Mooney, Meyers, Stanley & Hollingsworth on October 6, 2023.

6. On or about November 19, 2023, the bar sent a letter to respondent, asking him to explain the circumstances that resulted in the overdraft and provide documents corroborating his explanation.

7. On or about December 18, 2023, respondent provided a response to the bar and explained that the overdraft was the result of a clerical error. Respondent stated that he asked his bookkeeper and office manager to issue a check in the amount of \$4,500.00 to him for fees and for some unknown reason two checks were issued for that same amount.

Respondent advised that he had no knowledge of the transactions as his signature was affixed by a stamp.

8. On or about January 9, 2024, the bar initiated a compliance audit and sent a letter to respondent requesting closing statements and trust account records by January 19, 2024, pursuant to Chapter 5 of the Rules Regulating The Florida Bar for the period of January 1, 2021 to present. Respondent provided a response, but it only included bank statements. Respondent, however, failed to provide two months of bank statements as well as the remaining requested records including deposit tickets, canceled checks, journals, ledgers, reconciliations, monthly comparisons, written trust plans, and closing statements. Respondent stated in his email to the bar that the balance of the records would be separately provided. Respondent failed to send any further records.

9. In order to obtain the trust account records and the closing statements, a staff investigator for the bar served a subpoena on February 21, 2024 to an individual identifying herself as staff employee Teresa McElwee (believed to be respondent's wife) at respondent's office in Jacksonville, Florida. The records were due by the tenth day following service. Thereafter, respondent failed to provide any response to the bar's subpoena.

10. The bar also served a subpoena to PNC Bank for bank records for respondent's trust account for the period January 1, 2021 to present.

11. Upon review of the PNC Bank records, the bar's auditor calculated a shortage in the trust account ranging from at least \$30,131.46 to at least \$107,630.00 from June 2023 to January 2024. The shortage is detailed further in the affidavit of Matthew D. Herdeker, CPA, attached as Exhibit "A."

12. The shortage is due to respondent's failure to maintain funds in his trust account that he should have been holding for two clients: client "V.B." and client "Q.D."

13. In August 2022, client V.B.'s settlement in the amount of \$110,000.00 was deposited into the trust account. Only one payment was made to V.B. by check dated December 20, 2023 from the trust account in the amount of \$4,000.00 and it cleared the next day.

14. In July 2023, two settlement checks for client Q.D. totaling \$70,000.00 were deposited into the trust account. Only one payment was made to Q.D. by check from the trust account for \$370.00, dated July 10, 2023 and the check cleared the same day.

15. Based upon the PNC Bank records of respondent's trust account, the audit found that funds were going to a PNC Bank account

ending in #1717 and a Truist Bank account ending in #9690.

16. As a result, on or about March 1, 2024, the bar served a subpoena to PNC Bank for bank records for the account ending in #1717. The records PNC Bank provided several weeks later showed that the account was a personal checking account and respondent and Teresa E. Stanley (believed to be Teresa McElwee) were the only signatories on the account.

17. On March 5, 2024, the bar also served a subpoena to Truist Bank for bank records for the account ending in #9690. The records revealed that the account was respondent's operating account and he and his wife, Ms. Stanley, appeared to be the only signatories on that account.

18. In the Truist Bank operating account, the bar's auditor noted four payments to client Q.D. totaling \$5,100.00 from June 2023 to February 2024.

19. The bar's auditor did not identify any other payments in the Truist Bank operating account or PNC personal checking account that benefited clients V.B. or Q.D.

20. The shortage was caused or increased by checks issued from respondent's trust account and deposited into the PNC Bank personal checking account ending in #1717 and the Truist Bank operating account

ending in #9690 for the benefit of respondent or his wife.

21. For example, during the month of August 2023, two trust account checks payable to respondent, totaling \$4,600.00, were deposited into respondent's PNC personal checking account. Respondent did not appear to be entitled to the payments as fees or costs.

22. In the PNC personal checking account, the funds corrected overdrafts in the account and were spent on payments to American Express, Citicard, Poshmark, Applecard, The Home Depot, BB Nails & Spa, Publix, and Capital One.

23. During the month of August 2023, four trust account checks totaling \$19,500.00 and payable to respondent, were deposited into respondent's Truist Bank operating account. The funds do not appear to be payments for fees or costs.

24. The funds from the trust account corrected an overdraft in respondent's Truist Bank operating account and also were used for payments to Poshmark, individuals for payroll, tax payments to the Internal Revenue Service, Comcast, a bookkeeping service, Amazon, and Atlantic Self Storage.

25. The bar's auditor determined that respondent was not in substantial compliance with the Rules Regulating The Florida Bar

governing trust accounts and that respondent misappropriated client funds that were then used for the benefit of respondent, his firm, or his wife.

26. Respondent certified that he was in compliance with the rules regarding trust accounts and safekeeping property when he paid his membership dues in 2021, 2022, and 2023.

27. Respondent's conduct above violated the following Rules Regulating The Florida Bar:

a. 4-1.15 Safekeeping Property; Compliance With Trust Accounting Rules. A lawyer shall comply with The Florida Bar Rules Regulating Trust Accounts.

b. 4-8.4(c) Misconduct. A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

c. 4-8.4(g)(3) Misconduct. A lawyer shall not fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made within the time stated in any subpoena issued under these Rules Regulating The Florida Bar (without additional time allowed for mailing).

d. 5-1.1(a)(1) Trust Accounts; Nature of Money or Property

Entrusted to Attorney; Trust Account Required; Location of Trust Account; Commingling Prohibited. A lawyer must hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation. All funds, including advances for fees, costs, and expenses, must be kept in a separate federally insured bank, credit union, or savings and loan association account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person and clearly labeled and designated as a trust account except: (A) A lawyer may maintain funds belonging to the lawyer in the lawyer's trust account in an amount no more than is reasonably sufficient to pay bank charges relating to the trust account; and (B) A lawyer may deposit the lawyer's own funds into trust to replenish a shortage in the lawyer's trust account. Any deposits by the lawyer to cover trust account shortages must be no more than the amount of the trust account shortage, but may be less than the amount of the shortage. The lawyer must notify the bar's lawyer regulation department immediately of the shortage in the lawyer's trust account, the cause of the shortage, and the amount of the replenishment of the trust

account by the lawyer.

e. 5-1.1(b) Trust Accounts; Application of Trust Funds or Property to Specific Purpose. Money or other property entrusted to a lawyer for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose. Money and other property of clients coming into the hands of a lawyer are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over the property on demand is conversion.

f. 5-1.1(e) Trust Accounts; Notice of Receipt of Trust Funds; Delivery; Accounting. On receiving funds or other property in which a client or third person has an interest, a lawyer must promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer must promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, on request by the client or third person, must promptly render a full accounting regarding the property.

g. 5-1.2(b)(2) Trust Accounting Records and Procedures; Minimum Trust Accounting Records. The following minimum trust

accounting records must be maintained: original or clearly legible copies of deposit slips if the copies include all data on the originals and, in the case of currency or coin, an additional cash receipts book, clearly identifying the date and source of all trust funds received and the client or matter for which the funds were received.

h. 5-1.2(b)(3) Trust Accounting Records and Procedures; Minimum Trust Accounting Records. The following minimum trust accounting records must be maintained: original canceled checks or clearly legible copies of original canceled checks for all funds disbursed from the trust account, all of which must: (A) be numbered consecutively (B) include all endorsements and all other data and tracking information, and (C) clearly identify the client or case by number or name in the memo area of the check.

i. 5-1.2(b)(6) Trust Accounting Records and Procedures; Minimum Trust Accounting Records. The following minimum trust accounting records must be maintained: a separate cash receipts and disbursements journal, including columns for receipts, disbursements, transfers, and the account balance and containing at least: (A) the identification of the client or matter for which the funds were received, disbursed, or transferred; (B) the date on which all

trust funds were received, disbursed, or transferred; (C) the check number for all disbursements; and (D) the reason for which all trust funds were received, disbursed, or transferred.

j. 5-1.2(b)(7) Trust Accounting Records and Procedures; Minimum Trust Accounting Records. The following minimum trust accounting records must be maintained: a separate file or ledger with an individual card or page for each client or matter, showing all individual receipts, disbursements, or transfers and any unexpended balance and containing: (A) the identification of the client or matter for which trust funds were received, disbursed, or transferred; (B) the date on which all trust funds were received, disbursed, or transferred; (C) the check number for all disbursements; and (D) the reason for which all trust funds were received, disbursed, or transferred.

k. 5-1.2(c)(1) Trust Accounting Records and Procedures; Minimum Trust Accounting Records; Responsibility of Lawyers for Firm Trust Accounts and Reporting. Every law firm with more than 1 lawyer must have a written plan in place for supervision and compliance with this rule for each of the firm's trust account(s), which must be disseminated to each lawyer in the firm. The written plan must include the name of each signatory for the law firm's trust

accounts, the name of each lawyer who is responsible for reconciliation of the law firm's trust account(s) monthly and annually, and the name of each lawyer who is responsible for answering any questions that lawyers in the firm may have about the firm's trust account(s). This written plan must be updated and re-issued to each lawyer in the firm whenever there are material changes to the plan, such as a change in the trust account signatories or lawyer(s) responsible for reconciliation of the firm's trust account(s).

I. 5-1.2(d)(1) Trust Accounting Records and Procedures; Minimum Trust Accounting Procedures. The minimum trust accounting procedures that must be followed by all members of The Florida Bar (when a choice of laws analysis indicates that the laws of Florida apply) who receive or disburse trust money or property include as follows: (1) The lawyer is required to make monthly: (A) reconciliations of all trust bank or savings and loan association accounts, disclosing the balance per bank, deposits in transit, outstanding checks identified by date and check number, and any other items necessary to reconcile the balance per bank with the balance per the checkbook and the cash receipts and disbursements journal; and (B) a comparison between the total of the reconciled

balances of all trust accounts and the total of the trust ledger cards or pages, together with specific descriptions of any differences between the 2 totals and reasons for these differences.

The above facts show that respondent has caused, or is likely to cause, immediate and serious harm to clients or the public and immediate action must be taken to protect respondent's clients and the public.

Therefore, under Rule 3-5.2, the bar respectfully requests this Court issue an order suspending respondent from the practice of law until further order of this Court and ordering the respondent to:

A. Immediately:

- accept no new clients from the date of this Court's order of emergency suspension;
- initiate no litigation on behalf of clients from the date of this Court's order of emergency suspension;
- provide a copy of this Court's order of emergency suspension to all courts, tribunals, or adjudicative agencies before which James Alfred Stanley, Jr. is counsel of record; all state, federal, or administrative bars of which respondent is a member; all clients; all co-counsel; and all opposing counsel, as required by Rule 3-5.1(h);

- cease withdrawing or disbursing any money from any trust account or other financial institution account holding funds of clients or third parties in respondent's possession in connection with legal representation or funds of third parties in connection with respondent's service as a fiduciary including, but not limited to, personal representative, guardian, or trustee, until further order of this Court, a judicial referee appointed by this Court, or by order of the circuit court in an inventory attorney proceeding instituted under Rule 1-3.8;
- not transfer any ownership of any real or personal property purchased in whole or in part with funds of clients or third parties in connection with legal representation or with funds of third parties in connection with respondent's service as a fiduciary including, but not limited to, personal representative, guardian, or trustee, without approval of this Court, a judicial referee appointed by this Court, or by order of the circuit court in an inventory attorney proceeding instituted under Rule 1-3.8;
- deposit any fees or other sums received in connection with the practice of law or employment as a personal representative, guardian, or trustee, by the respondent on or after the date of this

Court's order of emergency suspension into a specified trust account from which withdrawal may only be made by order of this Court, a judicial referee appointed by this Court, or by order of the circuit court in an inventory attorney proceeding instituted under Rule 1-3.8;

- provide a copy of this Court's order of emergency suspension to all banks and financial institutions where the respondent maintains any account holding funds of clients or third parties in respondent's possession in connection with representation or funds of third parties in connection with respondent's service as a fiduciary including, but not limited to, personal representative, guardian, or trustee;
- comply with, and provide all documents and testimony responsive to, a subpoena from the bar for trust account records and any related documents necessary for the bar to conduct a trust account audit;
- authorize any referee appointed in these proceedings to determine entitlement to funds in any trust accounts frozen as a result of an order entered in this matter; and

- turn over to any successor the complete financial records of any estate, guardianship, or trust in which respondent served as a fiduciary on the successor's appointment;
- cease holding himself out as a Florida Bar member or lawyer and eliminate all indicia of respondent's status as a Florida Bar member or lawyer on websites, email, social media, telephone listings, stationery, checks, business cards, office signs, email address, and any other indicia of respondent's status as a Florida Bar member or lawyer; and

B. Within 30 days from the date of this Court's order of emergency suspension:

- cease all practice of law in Florida;
- withdraw from representation of all clients;
- wind down all pending matters;
- cease acting as a fiduciary, including, but not limited to, personal representative for any estate, guardian for any ward, and trustee for any trust;
- provide Staff Counsel with an affidavit listing all of the following that respondent notified of this Court's order of emergency suspension: all courts, tribunals, or adjudicative agencies of which

respondent is a member; all state, federal, or administrative bars of which respondent is a member; all clients; all co-counsel; and all opposing counsel.

- provide bar counsel in this case with an affidavit listing each bank or financial institution respondent provided with a copy of this Court's order of emergency suspension; and
- notify bar counsel in this case of the receipt and location of any fees or other sums received in connection with the practice of law or in connection with respondent's service as a fiduciary, including, but not limited to, personal representative, guardian, or trustee, received by respondent after issuance of this Court's order of emergency suspension.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that this document has been E-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via email to Respondent, James Alfred Stanley, Jr., at astanley@astanleylaw.com; and that a copy has been provided by United States Mail via certified mail No. 7020 1810 0000 0813 9664, return receipt requested to Respondent, James Alfred Stanley, Jr., whose record bar address is Meyers and Stanley, 1904 University Blvd. W, Jacksonville, FL 32217-2014, and via email to Carrie Constance Lee, Bar Counsel, clee@floridabar.org, on this 23rd day of April, 2024.



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NOTICE OF DESIGNATION OF PRIMARY EMAIL ADDRESS

Bar counsel in this matter is Carrie Constance Lee, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Orlando Branch Office, The Gateway Center, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-1050, (407) 425-5424 and clee@floridabar.org, orlandooffice@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than bar counsel and to Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-2300, psavitz@floridabar.org.

MANDATORY ANSWER NOTICE

RULE 3-5.2(a), OF THE RULES REGULATING THE FLORIDA BAR,
PROVIDES THAT A RESPONDENT MUST ANSWER A COMPLAINT.