

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v.

ROGER BARRY DAVIS,

Respondent.

Supreme Court Case No.
SC-

The Florida Bar File Nos.
2023-50,155(17A)(FES)
2023-50,728(17A)

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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 Roger Barry Davis, Attorney No. 161343, from the practice of law in Florida based on facts set forth in the affidavits of Carl Totaro, Certified Public Accountant and Lead Auditor for The Florida Bar, attached as Exhibit "A" and Exhibit "B" that establish clearly and convincingly that Roger Barry Davis has caused, or is likely to cause, immediate and serious harm to clients or the public as follows:

1. The bar's Executive Director authorized filing this Petition for Emergency Suspension.

2. Respondent, Roger Barry Davis, is, and at all times the relevant conduct occurred, was a member of The Florida Bar subject to the jurisdiction and disciplinary rules of this Court.

3. Respondent is currently the subject of bar disciplinary matters which have been assigned Florida Bar File Numbers 2023-50,155(17A) and 2023-50,728(17A).

4. The bar's investigation of this matter indicates that respondent has misappropriated client funds. In The Florida Bar File No. 2023-50,155(17A), respondent misappropriated at least \$13,837.00 entrusted to him. (See Exhibit A.) In The Florida Bar File No. 2023-50,728(17A), respondent misappropriated at least \$1,392.10 entrusted to him. (See Exhibit B.)

COUNT I

The Florida Bar File No. 2023-50,155(17A)

5. Respondent was appointed as guardian for William Frances Storen ("Storen") in or about 1976.

6. Respondent contacted Storen's family in May, 2019 because he had lost touch with Storen.

7. Susan Capri (“Capri”), Storen’s niece, informed respondent that Storen had died in or about 2018. Capri also requested an accounting of any funds respondent was holding on Storen’s behalf.

8. Respondent failed and refused to give Capri an accounting of funds held on Storen’s behalf.

9. After being unable to obtain the accounting, Capri filed a complaint against respondent with The Florida Bar.

10. Based upon Capri’s complaint, Certified Public Accountant and Lead Staff Auditor Carl Totaro examined the following accounts for the period of May 1, 2019 through January 31, 2023.

a. William Frances Storen Roger B. Davis Guardian account number ending with #3704 at Wells Fargo Bank;

b. Roger Barry Davis IOTA trust account number ending with #8038 at Wells Fargo Bank; and

c. Roger Barry Davis Personal Account number ending with #5695 at Bank of America.

11. The bank balance in the William Frances Storen Roger B. Davis Guardian account #3704 was \$13,933.26 as of May 13, 2019.

12. There was no transaction activity in account #3704 other than nominal interest, during the period of May 13, 2019 through May 17, 2022.

13. Storen's funds were disbursed from account #3704 by respondent as follows.

14. On May 25, 2022, an online banking transfer in the amount of \$5,000.00 was disbursed from account #3704 and deposited into respondent's account #5695 at Bank of America. See Exhibit A, Auditor's affidavit Exhibit 9, page 2.

15. On May 25, 2022, a Zelle disbursement in the amount of \$1,000.00 was sent to Galetti Keith. See Exhibit A, Auditor's affidavit Exhibit 9, page 2.

16. On May 31, 2022, an online banking transfer in the amount of \$1,000.00 was disbursed from account #3704 and deposited into respondent's account #5695 at Bank of America. See Exhibit A, Auditor's affidavit Exhibit 9, page 2.

17. On June 7, 2022, a Zelle disbursement was sent to respondent in the amount of \$1,000.00. See Exhibit A, Auditor's affidavit Exhibit 9, page 2.

18. On June 22, 2022, there was a Reverse Zelle (deposit) to respondent in the amount of \$1,000.00. See Exhibit A, Auditor's affidavit Exhibit 9, page 6.

19. On June 23, 2022, a Tele-Transfer disbursement in the amount of \$2,200.00 was disbursed from account #3704 and deposited into respondent's IOTA Trust Account #8038 at Wells Fargo Bank. See Exhibit A, Auditor's affidavit Exhibit 9, page 6 and Exhibit 11, page 2.

20. Thereafter, on June 23, 2022, respondent disbursed that \$2,200.00 from Trust Account #8038 to himself through check #1431 in the amount of \$3,500.00. Check #1431 dated June 23, 2022 in the amount of \$3,500.00 was paid from Trust Account #8038 at Wells Fargo Bank, payable to Roger B. Davis with a memo note indicating "WFS." See Exhibit A, Auditor's affidavit Exhibit 11, page 6.

21. Thereafter, the bank balance in Trust Account #8038 was \$316.04 as of June 30, 2022. See Exhibit A, Auditor's affidavit Exhibit 11, page 2.

22. On June 28, 2022, an online banking transfer in the amount of \$1,000.00 was disbursed from account #3704 and deposited into respondent's account #5695 at Bank of America. See Exhibit A, Auditor's affidavit, Exhibit 9, page 6.

23. On June 29, 2022, an online banking transfer in the amount of \$1,000.00 was disbursed from account #3704 and deposited into

respondent's account #5695 Bank of America. See Exhibit A, Auditor's affidavit Exhibit 9, page 6.

24. On July 1, 2022, an online banking transfer in the amount of \$1,000.00 was disbursed from account #3704 and deposited into respondent's account #5695 at Bank of America. See Exhibit A, Auditor's affidavit Exhibit 9, page 6.

25. On July 1, 2022, a Zelle disbursement was sent to Downing Mary in the amount of \$500.00 for "Use In Good Health." See Exhibit A, Auditor's affidavit Exhibit 9, page 6.

26. On July 6, 2022, an online banking transfer in the amount of \$355.00 was disbursed from account #3704 and deposited into respondent's account #5695 at Bank of America. See Exhibit A, Auditor's affidavit Exhibit 9, page 6.

27. On July 18, 2022, an online banking transfer in the amount of \$110.00 was disbursed from account #3704 and deposited into respondent's account #5695 at Bank of America. See Exhibit A, Auditor's affidavit Exhibit 9, page 6.

28. On July 19, 2022, a Zelle disbursement was sent to Quinones Brigida in the amount of \$160.00. See Exhibit A, Auditor's affidavit Exhibit 9, page 11.

29. On July 19, 2022, a Zelle disbursement was sent to respondent in the amount of \$101.00. See Exhibit A, Auditor's affidavit Exhibit 9, page 11.

30. On July 20, 2022, an online banking transfer in the amount of \$165.00 was disbursed from account #3704 and deposited into respondent's account #5695 at Bank of America. See Exhibit A, Auditor's affidavit Exhibit 9, page 11.

31. On July 27, 2022, a Zelle disbursement was sent to respondent in the amount of \$135.00. See Exhibit A, Auditor's affidavit Exhibit 9, page 11.

32. On September 16, 2022, a Zelle disbursement was sent to respondent in the amount of \$111.00. See Exhibit A, Auditor's affidavit Exhibit 9, page 15.

33. Those fifteen (15) transaction disbursements, noted above, from the William Frances Storen Roger B. Davis Guardian account #3704 totaled \$13,837.00.

34. At least \$9,630.00 of that \$13,837.00 in disbursements were online transfers to respondent's personal account #5695 at Bank of America.

35. The bank balance in the William Frances Storen Roger B. Davis Guardian account #3704 at Wells Fargo Bank was \$102.94 as of September 16, 2022. See Exhibit A, Auditor's affidavit Exhibit 9, page 14.

36. There was no other transaction activity in Wells Fargo Bank account #3704 during the period of September 16, 2022 through February 15, 2023.

37. Thereafter, the bank balance in the William Frances Storen Roger B. Davis Guardian account #3704 at Wells Fargo Bank was \$102.94 as of January 19, 2023. See Exhibit A, Auditor's affidavit Exhibit 9, page 35.

38. During the period of May 25, 2022 through September 16, 2022, at least \$13,837.00 of Storen's funds were disbursed for respondent's personal benefit and for the benefit of others not entitled to Storen's funds through fifteen (15) transactions that were not for purposes intended by the Storen matter.

39. Respondent claimed those funds were his earned attorney fees. Respondent has not provided any evidence to support those funds were his earned attorney fees. Respondent did not have any right or basis to utilize the funds he disbursed from the William Frances Storen Roger B. Davis Guardian account #3704 at Wells Fargo Bank.

40. More importantly, Florida Statute 744.444 Power of guardian without court approval, effective: July 1, 2018, states the following in pertinent part:

Without obtaining court approval, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may: ... (16) **Pay or reimburse costs incurred and reasonable fees or compensation to persons, including attorneys, employed by the guardian pursuant to subsection (13) from the assets of the guardianship estate, subject to obtaining court approval of the annual accounting.** (emphasis supplied). See Exhibit A, Auditor's affidavit Exhibit 12.

41. Respondent failed to file an annual accounting in the William Storen Guardianship matter for the years 2014 through 2018.

42. In fact, on or about April 24, 2019, the court in the guardianship matter issued Guardianship Sua Sponte Notice of Hearing and Order to Show Cause for Case Inactivity.

43. The aforesaid Notice of Hearing stated that the order to show cause was issued due to "an apparently willful failure to file the following document(s) [...] Accountings for the Year(s) 2014-2018 and Plans for the Year(s) 2019." See Exhibit A, Auditor's affidavit, Exhibit 5, page 1.

44. Respondent filed a Motion for Extension of time which was granted, and respondent was given 60 days from the date of the January

31, 2020 order to close the estate. See Exhibit A, Auditor's affidavit Exhibit 5, page 4.

45. Respondent failed to do so and the court entered an Order of Dismissal finding that the case is "hereby DISMISSED WITHOUT PREJUDICE for the following reason: . . . Other: failure to comply with court order dated January 31, 2020." Exhibit A, Auditor's affidavit Exhibit 5, page 5.

46. Finally, respondent has admitted that despite the clear language of Florida Statute 744.444, he never obtained approval authorizing him to pay himself attorney fees with Storen's funds on deposit in the Guardianship bank account #3704.

47. On or about January 19, 2023, The Florida Bar requested certain information regarding respondent's assertion that the monies in Storen's guardianship account were his fees.

48. Respondent provided his response on January 30, 2023.

49. Respondent was asked, "Provide the Court order authorizing you to pay yourself Mr. Storen's remaining funds as attorney's fees." Respondent stated: "Having never sought one, I remain unable to provide an authorizing Order." See Exhibit A, Auditor's affidavit Exhibit 4, page 7.

50. Respondent was then asked, "If there is no Court order authorizing you to pay yourself, please provide the Florida Statute and caselaw you rely on that authorizes you to pay yourself guardianship funds without court approval." Respondent stated, "I cite no statutory or case law upon which I specifically relied, but offered Capris counsel full opportunity to appear and inquire, formally or informally, directly or indirectly; in the Guardianship proceedings, before the Court elected, sua sponte, to dismiss the case." See Exhibit A, Auditor's affidavit Exhibit 4, page 7.

51. Respondent was asked, "Provide a copy of all petitions in which you request reasonable attorney's fees for work done on behalf of Mr. Storen in his guardianship case." Respondent stated "I am unable to provide any such Petitions." See Exhibit A, Auditor's affidavit Exhibit 4, page 7.

52. The evidence is clear and convincing that respondent misappropriated at least \$13,837.00 of funds regarding the Storen matter, as of September 16, 2022, for his own personal use/benefit and for the benefit of others not entitled to Storen's funds, by disbursing those funds from the William Frances Storen Roger B. Davis Guardian account #3704 without obtaining court approval.

53. Respondent has not applied money (at least \$13,837.00) entrusted to an attorney for a specific purpose as mandated by Rule 5-1.1(b).

54. It should be further noted that respondent made material misrepresentations to Capri and her attorney regarding the funds held in trust for Storen.

55. Capri was forced to hire counsel to represent her in this matter.

56. Still, respondent failed and refused to give an accounting of the funds held in trust for Storen.

57. Finally, in an email dated July 6, 2022, to Capri's attorney, respondent stated, "[I] have made donations to worthy charities with all of the Storen fortune, in his name, and to honor his life." See Exhibit A, Auditor's affidavit Exhibit 2, page 8.

58. In a letter from The Florida Bar to respondent dated December 27, 2023, respondent was asked to provide a "Copy of the document authorizing you to disburse William Francis Storen's funds in the amount of \$13,915.00 to a 'Worthy Cause' on behalf of William Francis Storen."

59. Respondent replied, "[T]here are none. Money was deposited into my operating account as legal fees and included in my gross taxable income." See Exhibit A, Auditor's affidavit Exhibit 4, page 5.

60. By the conduct set forth above, respondent violated R. Regulating Fla. Bar 3-4.3 (Misconduct and Minor Misconduct); 4-8.4(c) (Conduct involving dishonesty, fraud, deceit or misrepresentation); and 5-1.1 (Trust Accounts).

COUNT II

The Florida Bar File No. 2023-50,728(17A)

61. In or about September 2022, respondent was hired by Henry Rose (“Rose”) to represent his company Miami Motors, Inc., in a civil matter.

62. Rose paid respondent a fee of \$350.00.

63. No fee agreement was ever entered into between respondent and Rose.

64. After respondent accepted the case and his fee, the case settled for the sum of \$3,500.00.

65. Rose filed a complaint against respondent after respondent failed and refused to remit certain settlement funds.

66. Based upon Rose’s complaint, Certified Public Accountant and Lead Staff Auditor Carl Totaro examined the following accounts for the period of September 1, 2022 through June 30, 2023:

a. Roger Barry Davis IOTA trust account number ending with #8038 at Wells Fargo Bank; and

b. Roger Barry Davis Personal Account number ending with #5695 at Bank of America.

67. The case settled in 2023, and the defendant, Volkswagen Group of America, Inc. remitted a settlement payment in the amount of \$3500.00.

68. Respondent failed to deposit the check into his trust account.

69. Instead, on March 21, 2023, respondent deposited the \$3,500.00 settlement check received on behalf of Rose, into his checking account, account ending in #5695 at Bank of America. See Exhibit B, Auditor's affidavit Exhibit 10, pages 3, 35 & 36.

70. By depositing a settlement check into his personal checking account, respondent commingled personal and trust account funds.

71. During the period of March 21, 2023, through March 31, 2023, respondent made no disbursements to Rose or on his behalf from the settlement funds on deposit in respondent's personal checking account #5695. See Exhibit B, Auditor's affidavit Exhibit 10, pages 1, 4, 5 & 7.

72. The bank balance in respondent's personal checking account #5695 was \$182.90 as of March 31, 2023.

73. During this time period, respondent disbursed \$3,317.10 (\$3,500.00 – \$182.90) of Rose’s settlement proceeds for respondent’s own benefit.

74. Those transactions include, but are not limited to, disbursements to Florida Power and Light, American Express, Capital One, Target, and Citibank. See Exhibit B, Auditor’s Affidavit, Exhibit 10, pages 4-7.

75. Respondent had a Trust Account liability for the Rose matter in the amount of \$1,575.00 as of March 31, 2023. This is substantiated by the fact that during the period of April 10, 2023 through May 4, 2023, respondent paid Rose a total of \$1,575.00 (\$500.00 + \$350.00 + \$350.00 + \$375.00) from a new source of funds, similar to a “Ponzi scheme,” unrelated to Rose’s \$3,500.00 of settlement funds respondent deposited into Account #5695 on March 21, 2023.

76. Respondent paid Rose the following amounts:

- a. April 10, 2023 Zelle Transfer to Nick Rose in the amount of \$500.00; See Exhibit B, Auditor’s affidavit, Exhibit 10, page 14.

b. April 17, 2023 Zelle transfer to Nick Rose in the amount of \$350.00; See Exhibit B, Auditor's affidavit, Exhibit 10, page 14.

c. April 27, 2023 Zelle transfer to Nick Rose in the amount of \$350.00; See Exhibit B, Auditor's affidavit, Exhibit 10, page 15.

d. May 4, 2023 Zelle transfer to Nick Rose in the amount of \$375.00. See Exhibit B, Auditor's affidavit, Exhibit 10, page 22.

77. Respondent has misappropriated at least \$1,392.10 (\$1,575.00 paid to Rose - \$182.90 bank balance on March 31, 2023) of funds regarding the Rose matter, as of March 31, 2023, for his own personal use/benefit by removing those funds from Account #5695 without authorization and utilizing those funds for purposes not intended by the Rose matter. Respondent has not applied money (\$1,392.10) entrusted to an attorney for a specific purpose as mandated by Rule 5-1.1(b).

78. One cannot use client money received today for an attorney's personal purposes banking on it being replaced in time for a client payment in the future. That is the very essence of a "Ponzi scheme."

79. By the conduct set forth above, respondent violated R. Regulating Fla. Bar 3-4.3 (Misconduct and Minor Misconduct); 4-8.4(c) (Conduct involving dishonesty, fraud, deceit or misrepresentation); and 5-1.1 (Trust Accounts).

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 respondent 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 yourself 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, Roger Barry Davis, at rogerlaw1@aol.com and that a copy has been provided by United States Mail via certified mail No. 7020 1810 0000 0813 5413, return receipt requested to Respondent, Roger Barry Davis, whose record bar address is Captain's Paradise, Suite 202, 136 Golden Isles Dr, Hallandale Beach, FL 33009-5890 and via email to William Mulligan, Bar Counsel, wmulligan@floridabar.org, on this 5th day of April 2024.



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NOTICE OF DESIGNATION OF PRIMARY EMAIL ADDRESS

Bar counsel in this matter is William Mulligan, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Ft. Lauderdale Branch Office, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323, (954) 835-0233 and wmulligan@floridabar.org and esanchez@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.