

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v.

LARRY EDWARD POWERS, JR.,

Respondent.

Supreme Court Case No.
SC-

The Florida Bar File No.
2024-30,057 (18A) (CES)

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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 Larry Edward Powers, Jr., Attorney No. 705934, from the practice of law in Florida based on facts set forth in the affidavit of Matthew D. Herdeker, CPA, attached as Composite Exhibit "A," that establish clearly and convincingly that Larry Edward Powers, 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 filing of this Petition for Emergency Suspension.

2. Respondent, Larry Edward Powers, 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 is currently the subject of a bar disciplinary matter which has been assigned Florida Bar file number 2024-30,057 (18A) (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. Florida Surgery Consultants ("FSC") provided medical treatment to four of respondent's personal injury clients.

6. Surgical Capital Solutions, Inc. ("SCS") purchased the rights from FSC to receive payments of the clients' bills.

7. On or about July 24, 2023, the bar received a complaint from Gary Smith, President of SCS advising that respondent failed to remit the amounts owed to SCS upon settlement of the claims even though respondent knew of the purchase.

8. On or about October 27, 2023, the bar sent correspondence to respondent, requesting documentation regarding the settlement of the claims including the related closing statements and his monthly trust

account bank statements for the period July 2023 to present.

9. Respondent provided his response to the bar and explained that he no longer had documents because the documents had been "purged," after the files had been closed and the money had been disbursed in 2016 or earlier.

10. The bar's investigation revealed that a Notice of Voluntary Dismissal had been filed by respondent in October 2020 for a case included in the complaint filed by Mr. Smith on behalf of client "J.O."

11. On or about January 17, 2024, the bar sent a letter to respondent, asking him to provide the documentation related to J.O.'s settlement.

12. On or about February 5, 2024, respondent advised by email he did not deposit the settlement check in his trust account because the funds were minimal, and he provided the check directly to the client who was having financial problems.

13. Respondent failed to provide any documentation regarding the settlement explanation.

14. In order to conduct a compliance audit, on March 1, 2024, the bar served a subpoena signed by the grievance committee chair on respondent for his trust account for the period January 1, 2020 to present.

15. To date, respondent has failed to produce any of the trust records.

16. The bar also served Regions Bank with a subpoena for respondent's trust account records for the period January 1, 2020, to present.

17. After review of the records, the bar's audit found that a shortage had occurred in the amount of \$49,714.74 due to respondent's failure to maintain funds in his trust account that he should have been holding for three clients: client "J.O.", client "M.T.", and client "T.S." The shortage is detailed further in the affidavit of Matthew D. Herdeker, CPA, attached as Composite Exhibit "A."

18. The trust account records revealed that in October 2020, a settlement check in the amount of \$100,000.00 received on behalf of client J.O. was deposited into respondent's trust account. Only one payment was made to J.O. by check from the trust account in the amount of \$25,000.00 and it cleared on October 28, 2020. No additional payments for the benefit of J.O. were identified in the records.

19. In October and December 2020, two settlement checks for client T.S. totaling \$30,000.00 were deposited into the trust account. No payments were identified for the benefit of T.S. from October 2020 through

March 2021.

20. In December 2020, two settlement checks for client M.T. totaling \$20,000.00 were deposited into the trust account. No payments for the benefit of M.T. were identified in the trust account records from December 2020 through March 19, 2021.

21. By March 19, 2021, the balance of the trust account was only \$285.26. Almost the entire amount of the settlements respondent was required to be holding for clients J.O., T.S., and M.T. had left his trust account.

22. On September 23, 2021, the respondent was ordered by a bankruptcy judge to turn over the \$20,000.00 of funds he received for M.T.'s settlement. On that day, the balance of the trust account was only \$8,788.07.

23. Thereafter, on October 7, 2021, a cashier's check remitted by respondent's wife in the amount of \$20,000.00 was deposited into respondent's trust account. On October 8, 2021, a check referencing client M.T. in the amount of \$20,000.00 was issued to the bankruptcy trustee.

24. At the beginning of April 6, 2023, the balance in respondent's trust account was \$125.58. Later the same day, a check in the amount of \$90,000.00 that appears to be from the account of respondent's wife was

deposited into the trust account. On July 24, 2023, a payment in the amount of \$7,000.00 was issued to client T.S. No additional payments for the benefit of client T.S. were identified in the records.

25. The Regions Bank records of respondent's trust account revealed that, respondent caused the shortage by making payments to unrelated clients and by withdrawing funds from the trust account, to which he was not entitled, and depositing them into his operating account.

26. As a result, on or about May 3, 2024, the bar served Regions Bank with a subpoena for bank records for respondent's operating account for the period January 1, 2020, to present.

27. The records for respondent's operating account showed that respondent used client funds for the benefit of himself or his law firm.

28. For example, from March 4, 2021, to March 19, 2021, respondent made seven withdrawals totaling \$18,700.00 from the trust account and deposited the funds into his operating account to cover overdrafts, issue payroll checks, pay advertising expenses, pay AT&T, pay Mercedes-Benz of North Orlando, and pay LA Fitness.

29. 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 or the benefit of his law firm.

30. Respondent certified he was in compliance with the bar's trust accounting rules when he paid his annual dues in 2020, 2021, and 2023 (he did not appear to provide any certification in 2022).

31. Respondent's above-mentioned conduct 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. 4-1.5(f)(5) Fees and Costs for Legal Services; Contingent Fees. In the event there is a recovery, on the conclusion of the representation, the lawyer must prepare a closing statement reflecting an itemization of all costs and expenses, together with the amount of fee received by each participating lawyer or law firm. A copy of the closing statement must be executed by all participating lawyers, as well as the client, and each must receive a copy. Each participating lawyer must retain a copy of the written fee contract and closing statement for 6 years after execution of the closing statement. Any contingent fee contract and closing statement must be available for inspection at reasonable times by the client, by any other person upon judicial order, or by the appropriate disciplinary agency.

e. 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.

f. 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.

g. 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.

h. 5-1.1(f) Trust Accounts; Disputed Ownership of Trust Funds. When in the course of representation a lawyer is in possession of property in which 2 or more persons (1 of whom may be the lawyer) claim interests, the property must be treated by the lawyer as trust property, but the portion belonging to the lawyer or law firm must be withdrawn within a reasonable time after it becomes due unless the right of the lawyer or law firm to receive it is disputed, in which event the portion in dispute must be kept separate by the lawyer until the dispute is resolved. The lawyer must promptly

distribute all portions of the property as to which the interests are not in dispute.

i. 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.

j. 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.

k. 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.

l. 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.

m. 5-1.2(b)(8) Trust Accounting Records and Procedures; Minimum Trust Accounting Records. The following minimum trust

accounting records must be maintained: all bank or savings and loan association statements for all trust accounts.

n. 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.

o. 5-1.2(d)(3) Trust Accounting Records and Procedures; Minimum Trust Accounting Procedures. Monthly reconciliations, comparisons, and listings must be retained for at least 6 years.

p. 5-1.2(f) Trust Accounting Records and Procedures;

Record Retention. A lawyer or law firm that receives and disburses client or third-party funds or property must maintain the records required by this chapter for 6 years after the final conclusion of each representation in which the trust funds or property were received. (1) On dissolution of a law firm or of any legal professional corporation, the partners must make reasonable arrangements for the maintenance and retention of client trust account records specified in this rule. (2) On the sale of a law practice, the seller must make reasonable arrangements for the maintenance and retention of trust account records specified in this rule consistent with other requirements regarding the sale of a law firm set forth in chapter 4 of these rules.

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 Larry Edward Powers, 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 filed via the Florida Courts E-Filing Portal with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via the portal to Mark Matthew O'Mara, Counsel for Respondent, at mark@omaralawgroup.com, and by United States Mail via certified mail No. 7020 1810 0000 0813 9862, return receipt requested to Mark Matthew O'Mara, Counsel for Respondent, 221 NE Ivanhoe Blvd., Suite 200, Orlando, FL 32804-6400; and a copy via email to Alexis Leigh Lombard, Bar Counsel, alombard@floridabar.org on this 8th day of August, 2024.



PATRICIA ANN TORO SAVITZ
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NOTICE OF DESIGNATION OF PRIMARY EMAIL ADDRESS

Bar counsel in this matter is Alexis Leigh Lombard, whose address, telephone number and primary email address are The Florida Bar, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-1050, (407) 425-5424, and alombard@floridabar.org, Lismith@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.

NOTICE OF MANDATORY ELECTRONIC FILING

All parties must file all pleadings, motions, and notices in this matter electronically, with a copy to the referee, through the Florida Courts E-Filing Portal, www.myflcourtaaccess.com, under Rule Regulating The Florida Bar 3-7.6(h)(5)(A) and (B).

MANDATORY ANSWER NOTICE

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