

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

PETER MARCELLUS CAPUA,

Respondent.

Supreme Court Case No.
SC07-2199

The Florida Bar File No.
2008-70,522(11H-MES)

**THE FLORIDA BAR'S AND RESPONDENT'S AGREED MOTION TO
DISBURSE FROZEN TRUST FUNDS**

Comes now Respondent Peter Marcellus Capua, and undersigned counsel for The Florida Bar, and jointly file this Agreed Motion to Disburse Frozen Trust Funds, and state as follows:

1. Respondent, Peter Marcellus Capua, was emergency suspended by Supreme Court Order dated December 3, 2007. By said Order, Respondent was directed to stop withdrawing or disbursing trust funds. Respondent subsequently tendered a Disbarment on Consent and was disbarred pursuant to Supreme Court Order dated November 20, 2008.

2. At the time of the emergency suspension, there remained \$18,782.33 in Respondent's City National Bank IOTA trust account. Unbeknownst to the Florida Bar or Respondent, the account was escheated to the state. A third party

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notified Respondent of this action, and he thereafter filed a claim for the funds. In March 2017, the State of Florida Department of Financial Services issued a check to Respondent in the amount of \$18,782.33.

3. Respondent contacted the Bar to determine what actions must be taken in reference to this check. He has not negotiated same.

4. Upon being advised of this information and with Respondent's cooperation, the Bar proceeded to investigate the issue of entitlement to the funds. The results of that investigation are set forth in the following paragraphs.

5. The Florida Bar staff auditor reviewed trust account records in the Bar's possession as a result of Respondent's prior disciplinary actions, as well as obtained additional information from the Florida Bar's Client Security Fund. The Bar's Staff Investigator contacted all possible claimants known to the Bar. The Bar also posted an announcement in the classifieds to notify any potential claimants to the funds.

6. The information reviewed demonstrated that the following clients had valid claims to a portion of the funds in the account:

Rufus Royal	\$5,350.00
Alakhir S. Daniels	\$750.00

(Copies of the documentation pertinent to these claims is attached as Composite Exhibit 1).

7. Additionally, the client security fund has paid claims relative to Respondent in the amount of \$11,533.39. Several other clients made claims to the client security fund, which were either denied for unknown reasons, or were only partially paid. The Bar made attempts to contact these individuals, but did not receive any additional communications from them:

Miguel Olba	claimed \$5200.00, claim denied
Sandra D. Jordan	claimed \$1938.00, CSF paid \$1184.69
Henry Moriarty	claimed \$4240.00, CSF paid \$3348.70
Nestor Rodriguez	claimed \$52,300, claim denied

WHEREFORE, it is the recommendation of The Florida Bar and Respondent that the Court issue an Order for Respondent to bring the check he received from the Department of Financial Services to the bank, and negotiate same for the following cashier's checks:

- \$5,350.00 to Rufus Royal at
3616 Grand Ave., Apt 8, Miami, FL 33133
- \$750.00 to Alakhir S. Daniels at
4708 Muriel Avenue, Sebring, FL 33870
- \$12,682.33 to be escheated to the State of Florida Department of Unclaimed Property, as an unidentifiable accumulation of trust funds, in compliance with Rule 5-1.1(i) and Fla. Stat. Chapter 717.

Respondent shall mail the cashier's checks to the recipients by U.S. Certified Mail, return receipt. Respondent shall provide a copy of the Florida Supreme Court Order approving these disbursements to the bank and to each recipient of the cashier's checks. Respondent shall provide proof of compliance to the Florida Bar's headquarters office in Tallahassee within thirty days of the Supreme Court Order. Respondent shall provide verifiable proof of payment and receipt which shall consist of a copy of the check and certified return receipt.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of The Florida Bar's and Respondent's Agreed Motion to Disburse Frozen Trust Funds has been e-filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided to Peter Marcellus Capua, Respondent, via e-mail at carbon374@gmail.com using the e-filing portal, and to Adria E. Quintela, Staff Counsel, via e-mail at aquintela@floridabar.org using the e-filing portal; on this 26th day of February, 2017.



Jennifer R. Falcone, Bar Counsel
The Florida Bar