

IN THE SUPREME COURT OF FLORIDA
Before a Referee

THE FLORIDA BAR,

Complainant,

Case No: SC17-782

v.

DENNIS L. HORTON,

Respondent.

_____ /

**RESPONDENT'S EMERGENCY MOTION FOR RELIEF
AND CLARIFICATION REGARDING ORDER OF SUSPENSION**

Respondent, DENNIS L. HORTON, through undersigned counsel, files this
Emergency Motion For Relief and Clarification Regarding Order of Suspension
and states as follows:

1. Respondent, DENNIS L. HORTON, hereinafter, "Mr. Horton," is 68
years old. He was admitted to the Florida Bar in 1974 and has no disciplinary
record. He has practiced law for 43 years in Clermont, Florida.

2. In 2016, Mr. Horton's son, **Michael G. Horton**, joined his father's
law firm and in January 2017, the name of the firm was changed from "Dennis L.
Horton, P.A." to "Law Office of Horton & Horton, P.A." This was done because
Mr. Horton intends to significantly reduce his workload and shift it to Michael G.
Horton in anticipation of retirement.

3. Accordingly, Michael G. Horton was made a signatory to the law

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firm's bank accounts. The firm, "Law Office of Horton & Horton, P.A.," owns bank accounts at the following banks, some of which are operating accounts, payroll accounts, trust accounts, and escrow accounts:

- a) CenterState Bank, 1105 West Broad Street, Groveland, Florida;
- b) First Green Bank, 1391 Citrus Tower Blvd., Clermont, Florida;
- c) J.P. Morgan Chase Bank, 25 E. Church St., Orlando, Florida;
- d) Seacoast Bank, 150 N. Orange Avenue, Orlando, Florida;
- e) First Nat'l Bank of Mt. Dora, 714 Donnelly Street, Mt. Dora, Florida;
- f) SunTrust Bank, 200 S. Orange Avenue, Orlando, Florida.

4) This Court's Order entered *ex parte* on May 3, 2017 ordered **Dennis L. Horton** "to stop disbursing or withdrawing any monies from any trust account related to Respondent's law practice without approval of the Florida Supreme Court or a referee appointed by the Florida Supreme Court." The Order further ordered **Dennis L. Horton** "to stop withdrawing any monies from any trust account or other financial institution account related to Respondent's law practice or transfer any ownership of real or personal property purchased in whole or part with funds properly belonging to clients, probate estates for which Respondent served as personal representative, guardianship estates for which Respondent served as guardian, and trusts for which Respondent served as trustee without approval of the Florida Supreme Court or a referee appointed by the Florida

Supreme Court.”

5) This Court’s Order does not prohibit **Michael G. Horton** in any such way involving any such bank account.

6) This Court’s Order also orders **Dennis L. Horton** “to immediately notify in writing all banks and financial institutions in which Respondent maintains an account related to the practice of law” ... “of the provisions of respondent’s suspension and to provide said financial institutions with a copy of this Court’s order, and furthermore, to provide Bar Counsel with a copy of the notice sent to each bank or financial institution[.]”

7) The Florida Bar’s Petition for Emergency Suspension was filed May 1, 2017 at 3:29 p.m. and this Court entered its Emergency Suspension Order on May 3, 2017 at 11:50 a.m.; that is, in about 1-1/2 business days. The proceeding was, in every practical sense, an *ex parte* proceeding, since this Court permits no response. The Court relies wholly on the Bar’s *ex parte* presentment.

8) In this *ex parte* context, The Florida Bar violated Rule 4-3.3.c of the Rules Regulating The Florida Bar, by failing to advise this Court of the following:

a) That Michael G. Horton, Esq. is a signer on any or all of the bank accounts it was requesting to be affected by the Petition and Order;

b) That the law firm maintains a real estate escrow account specifically for real estate closings in which funds are wired into and out of said account per

the closing documents; some of those clients are Michael G. Horton's clients, and those clients and other innocent third parties will be harmed.

c) That Mr. Horton has significant assets, including: the building in which he and his son practice the law; other commercial and residential properties; and several commercial orange groves.

d) The Bar knows or should know that Mr. Horton has longstanding business relationships with the officers of the several banks listed herein above. These bankers paid every overdrawn check that Mr. Horton wrote.

e) The Bar pleaded that Mr. Horton borrowed \$90,000 from a client / friend of his, Edward Lowman, but it failed to mention that Mr. Horton paid back \$92,078.53 to Mr. Lowman in February 2017. Emergency gone. Just as he said in his sworn statement, Mr. Horton had been in a liquidity crisis until he could sell one of his several properties – which he said would be sold shortly and in fact was sold before the Bar took his second sworn statement in April 2017.

f) The Florida Bar knew or should have known that the liquidity crisis that prompted Mr. Horton to borrow money and take up-front probate fees had been remedied by his sale of property, and that after such sale Mr. Horton posed no threat of great harm to the “public” going forward.

g) The Florida Bar has no evidence that the conduct Mr. Horton freely admitted to in his two (2) sworn statements bore any indication that he would

continue to do in the future what he had admitted doing in his liquidity crisis.

9) The Bar was interested in pleading only bad facts in its *ex parte* Petition; that is, it sought only to portray Mr. Horton incompletely and falsely as a larcenous miscreant who is apt to clean out his trust accounts at any moment and hop the next freighter to Venezuela. In doing so the Florida Bar has misled this Court in a calculated and disingenuous way.

10) The Bar was not interested in learning or advising this Court that Mr. Horton's net worth is around three million dollars.

11) The Bar knew or should have known of Mr. Horton's good relations with his local bankers because it knows that, despite numerous overdrafted checks and thousands of dollars charged in overdraft fees, those banks paid every check Mr. Horton wrote. That is because the bankers know Mr. Horton's worth and they know he is good for it. The Bar's Petition failed to mention this pertinent fact.

12) Rather than protecting the public from "great harm," the Bar's purpose in seeking entry of the *ex parte* Order was to vex and embarrass Mr. Horton.

13) Example: The Florida Bar could not wait for Mr. Horton to follow the subject Order and notify his various banks – those people with whom he has business relationships of long standing – so the Bar determined on its own to draft and deliver the notices itself to these several banks. The Bar sent letters out to the six (6) banks on the morning of May 4, 2017 – less than 24 hours after the Order

hit the internet. *See* Exhibit 1, sample. The Bar sent such a letter to each of the six banks listed above, with a copy of the Suspension Order. The only perceived purpose in the Bar preempting Mr. Horton in this manner was to embarrass him in front of the bankers whom it knows he has a longstanding relationship – as if his own Notice and the Order itself is not embarrassing enough.

14) Undersigned counsel was in the process of drafting the Notices for Mr. Horton when he was copied on the Bar's six letters to the six banks at 10:16 a.m. on the morning of May 4, 2017. Exhibit 2, email.

15) Since the Bar had usurped this Order and function, the undersigned instead determined to send letters to the bankers advising them of the limitations of the Order; that is, that it did not impair the law firm's stakeholder, **Michael G. Horton**, from using the accounts on which he is a signer. *See* Exhibit 3, sample.

16) Upon receiving the Notice and subject Order from The Florida Bar, Scott D. Leitner, Esq., counsel for First Green Bank in Clermont, Florida, contacted Bar Counsel, Ms. Carrie C. Lee, on Friday, May 5, 2017, to ask whether the Order prohibited **Michael G. Horton** from using the firm's accounts. Ms. Lee advised Mr. Leitner that no one could use the firm's accounts at that bank. *See* Exhibit 4, Affidavit of Scott D. Leitner, Esq.

17) The legal advice Ms. Lee provided to First Green Bank's attorney is not what the subject Order says, by any stretch of liberal interpretation. The Order

pertains only to the Respondent, Dennis L. Horton.

18) The undersigned assumes the same legal advice Mr. Leitner received upon inquiry will be given to every other bank agent who contacts the Florida Bar requesting clarification of the Order as it relates to Michael G. Horton.

19) When the undersigned learned from Mr. Leitner of the advice he received from the Bar, he got hold of Mr. Lee by telephone late Friday, May 5, 2017. Ms. Lee expressed the Bar's legal position that all of the firm's bank accounts were frozen. The Order makes no mention of freezing any bank account.

20) When the undersigned asked the Bar agents to point out to him the language in the subject Order that operated to freeze all these several and sundry bank accounts, the undersigned was directed to the second page of the Order signed by Justice Labarga, which directed the chief judge of the Eighth Judicial Circuit to assign a referee to this case. The language in the ministerial Order to which the undersigned was directed reads:

“The referee shall thereafter hear, conduct, try, and determine the matters presented at the final hearing, and submit findings of fact and recommendations to the Supreme Court of Florida as provided in rule 3-7.6(m) (Referee's Report). In addition, the referee shall determine entitlement to funds in the lawyer's frozen trust account as provided in rule 3-5.2(c).”

21) This appears to be boilerplate language having no meaning in the context of an Order that does not expressly state that any bank account is to be

frozen. However, this is what the Bar has interpreted and what the Bar has advised at least one bank agent when contacted to inquire about those accounts upon receipt of the Bar's letter.

22) As for the law firm's trust account at CenterState Bank, that account has a balance now of \$131,723.74, all of which are client funds for real estate transactions. The single largest ledger entry in the CenterState Bank account is a \$100,000 deposit wired in for a real estate closing set for the end of this week. There is also a \$10,000 entry that is supposed to be disbursed to a Seller in June. The remainder in that account are for expenses for recording, documentary stamps and other miscellany relating to real estate closings already having taken place or to take place. Several checks for such mundane items are outstanding.

23) As to the First Green Bank trust account, the \$25,468.37 being held in abeyance mainly relate to Estates that are cost deposits for paying the filing fees for probate, certified copies, newspaper ads etc. relating to pending probate cases. Except for \$875.00, which belongs to the law firm, the remainder are client funds for many checks that are in the process of being deposited or cleared by the clerk's office and other vendors.

24) First Green Bank confirms that a "hold" has been placed on the law firm's accounts residing there, both a trust account and an operating account. The law firm is prejudiced by the hold on its operating account. Many of the trust

funds that are effectively frozen relate to clients of Michael G. Horton, not Dennis L. Horton. Michael Horton and his clients are being prejudiced.

25) The *de facto* freezing of the Horton & Horton firm's trust accounts by a misconstrued or overreaching Order that results in incorrect advice to banking officers is apt to cause more public harm than Mr. Horton is accused of causing.

26) More precise language in the subject Order is necessary to avoid innocent clients and third parties from being harmed in this manner.

WHEREFORE, Respondent, DENNIS L. HORTON, respectfully requests entry of an Order clarifying the Court's Order of Suspension dated May 3, 2017, such that it states clearly that the prohibitions therein apply solely to Mr. Horton and his ability to withdraw, disburse or transfer funds; that the Order does not proscribe or inhibit the any other signatory on the law firm's accounts from lawfully accessing, disbursing or transferring the funds therein, in any way, plus any and all such further relief as the Court may deem just and proper under the circumstances.

CERTIFICATE OF SERVICE

I CERTIFY that this paper with Exhibits were furnished per Rule 2.516 to Carrie C. Lee, Esq., at clee@floridabar.org, with copies to mcasco@floridabar.org, aquintel@floridabar.org, avanstru@floridabar.org, at The Florida Bar, 561 E. Jefferson Street, Tallahassee, Florida 32399 on May 8, 2017.

Brett Alan Geer

BRETT ALAN GEER

The Geer Law Firm, L.C.

3030 N. Rocky Point Drive W., #150

Tampa, Florida 33607-7200

(813) 961-8912

(813) 265-0278 Facsimile

Florida Bar Number 61107