IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

PHILLIP TIMOTHY HOWARD,

Respondent.

_____/

Supreme Court Case No. SC-

The Florida Bar File No. 2016-00,682(2A)



**COMPLAINT**

The Florida Bar, complainant, files this Complaint against Phillip Timothy Howard, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is, and at all times mentioned in the complaint was, a member of The Florida Bar, admitted on May 29, 1987 and is subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent resided and practiced law in Leon County, Florida, at all times material.

3. The Second Judicial Circuit Grievance Committee "A" found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.

4. Jason Hall (now deceased) was a former client of respondent.

5. On March 16, 2006, Jason Hall was injured in a workplace accident that left him a paraplegic.

6. On October 3, 2006, Jason and Dana Hall ("Ms. Hall," his then wife) entered into a contingency fee agreement with respondent as a result of Jason's Worker's Compensation claim being denied by his employer's insurance carrier.

7. On July 15, 2008, before the settlement was approved by the court, respondent had Jason Hall sign a "Distribution Plan for Non-refundable, Non-Client Funds" which, among other things, provided that funds would "remain in the determined account until paid to the annuity". The document states that by signing, Jason Hall's "notarized signature below verifies your directives as listed above."

8. As if to clarify the "Distribution" letter, respondent had Jason Hall sign another letter on July 15, 2008, titled "Non-refundable, Non-Client Funds for Deposit and Distribution". This document read:

> This document is provided in order to comply with professional standards and to verify that you have identified and directed that various funds from Summit as a result of your worker's compensation settlement received by this firm are non-refundable, non-client funds that are to be deposited at this firm's discretion for distribution. They include a $20,000 lump sum, and another approximate $410,000 lump sum.
>
> Your notarized signature below verifies your agreement with this as directed by you.

9. The notary paragraph read:

> Before me appeared Jason R. Hall, who being personally known swears that he directs that the non-refundable, non-client funds are to be deposited at this firm's discretion for distribution as described above in this letter….

10. Respondent did not give Jason Hall the option of opening a separate, interest bearing trust account in his name. Rather, he explained that he would be better able to negotiate discounts on the outstanding medical bills and personal debts and would provide funds to Jason and Dana as needed from his operating account.

11. On August 5, 2008, the court approved the settlement for Jason's injuries. On August 8, 2008, a deposit was made in the amount of $612,828.00 into respondent's law firm's operating account. Respondent had no trust account at the time he received settlement funds on behalf of Jason Hall.

12. When the marriage began to deteriorate, respondent contacted Ms. Hall and convinced her to allow him to mediate a reconciliation and/or settlement. Respondent sought to make Jason responsible for any and all of respondent's attorney fees associated with his representation for both parties.

13. The "Mediation and Settlement Process" was entered into on September 8, 2008. The mediation agreement included contingencies to last for a six (6) month period. When Jason did not adhere to the contingencies, on March 2, 2009 the mediation agreement expired.

14. On March 24, 2009, respondent had Dana and Jason sign a "Divorce Process Agreement Between Dana and Jason Hall" as a result of the failed mediation. The parties then retained separate divorce attorneys.

15. Jason and Dana were divorced in August 2010 with both parties being represented by counsel.

16. On May 3, 2012, Jason Hall passed away from injuries sustained in an automobile crash.

17. Jason Hall did not have a will at the time of his death, however, his Worker's Compensation settlement provided funds in the event of his death. Ms. Hall remained the beneficiary and there were two minor children.

18. Respondent offered to represent Ms. Hall and the minor children pro bono in settling Jason's estate and filed papers with the court acknowledging his representation and requesting Ms. Hall be appointed the Personal Representative.

19. It was later discovered that the divorce settlement included a clause that prevented Dana Hall from being appointed the Personal Representative. Sandra Fulop (Dana's mother and grandmother of the minor children) was substituted as the Personal Representative.

20. On December 23, 2013, respondent met with Ms. Hall and Ms. Fulop and provided an accounting and a check to Ms. Fulop in the amount of $16,200.00,

claiming they were “non-refundable, non-client funds”. He also provided a separate check to pay delinquent property taxes owed for Jason's home.

21. Respondent required that Ms. Fulop sign a letter stating that this was the "Full and Final Distribution of Jason R. Hall Non-refundable, Non-Client Funds”.

22. Respondent requested that Ms. Fulop and Ms. Hall retrieve all of Jason Hall's files after he relocated to a new office.

23. They subsequently discovered a "Contract and Agreement” of a loan for $200,000, dated September 5, 2008, from Jason Hall to respondent. Terms of repayment of the loan were not included in any accounting or any of respondent’s discussions with Ms. Hall and/or Ms. Fulop.

24. On September 5, 2008, the same day that the loan was entered into, Jason Hall executed a document titled "Completion of Representation." The date on the header of the document is September 2, 2008, three (3) days prior to execution of the contract, indicating that the loan was at least contemplated prior to the formal ending of the attorney/client relationship.

25. In some of respondent’s accountings for the estate, Ms. Hall and Ms. Fulop discovered payments not attributable to Jason Hall.

26. Copies of checks were found that were paid to or on Jason's behalf, but do not total the amount of funds that were deposited into respondent's law firm

account on August 5, 2008. There was also a check in the amount of $20,000.00 which was unaccounted for. There was no mention of loan repayment in the memo section on any of the checks paid to Jason.

27. Emails between Fulop, Hall and respondent, dated as recently as April 6, 2016, show their repeated request for clarification and respondent's continued delay in providing a full accounting. The most recent incomplete accounting respondent provided was on October 30, 2015.

28. Respondent's accounting does, however, include a check payable to one of his employees, Ankur Mehta, in the amount of $3,400.00.

29. An audit of trust accounting matters related to the complaint was performed for the period of July 1, 2008, through December 31, 2016. The purpose of the audit was to determine whether the respondent complied with the Chapter 5 Trust Accounting Rules. The following is the result of that review:

**Trust Funds Were Commingled with Respondent's Personal Funds**

30. A settlement totaling $632,828.00 was received by the respondent. Of that amount, an advance of $20,000.00 was received in July 2008 and the remainder on August 5, 2008. The settlement funds included $109,000.00 for legal fees and costs, $300,000.00 for past medical bills, with a balance of $223,828.00. The total held on behalf of Jason Hall was $523,828.00. The respondent deposited the full amount into his operating account.

31. The respondent wrote in an August 23, 2016, letter to the Bar that "Rule 5-1.1(a)(2), states that in order to comply with a client's directive, funds that would normally be in an IOTA account, can be held in a separate account, so that the client can receive interest on those funds." The respondent misstated Rule 5-1.1(a)(2) that states trust funds may be held "other than in a bank or savings and loan association account if the lawyer receives written permission from the client."

32. Rule 5-1.1(a)(2) does not apply to a situation where a lawyer deposits trust funds into the lawyer's operating account. Rule 5-1.1(a)(1) specifically requires lawyers to "hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in the lawyer's possession." Even when trust funds are held other than in a bank account, such as when cash is held, the funds are still trust property that must be held separately from a lawyer's personal property.

33. Rule 5-1.1(g) allows a lawyer to open an interest-bearing trust account in the name of a client, if the client's funds are not nominal or short term. The respondent could have either opened an interest-bearing trust account or deposited the funds in an IOTA and immediately disbursed the funds to lienholders and Jason Hall.

34. It appears that respondent deceived Jason Hall into believing the only way interest could be earned on the settlement funds was by giving the settlement funds to the respondent to use at the respondent's discretion.

35. On July 15, 2008, the day the "Distribution Plan for Non-refundable, Non-Client Funds" letter was signed by Jason, respondent was on probation for previous trust account violations.

36. The respondent had an incentive to avoid using an IOTA that might be reviewed by The Florida Bar before his probation ended. The respondent's actions were for his personal benefit.

**Failure to Create and Maintain Trust Accounting Records**

37. Trust accounting record requirements are provided in Rule 5-1.2(b) and required monthly procedures are provided in Rule 5-1.2(d). Rule 5-1.2(f) requires trust accounting records to be maintained "for six years subsequent to the final resolution of each representation".

38. The respondent last paid a lien on behalf of Jason Hall on July 29, 2015, when he paid a Medicaid lien. That was just over three years ago, and the respondent is required to maintain records for six years after a case is resolved. The respondent never fully accounted for the settlement funds, meaning the six-year retention period has likely not even started yet.

39. The respondent did not provide all bank statements, all cancelled checks, all lien documentation, a settlement statement, and other required records for the audit period. The respondent failed to create trust accounting records required by Rule 5-1.2(b) and failed to follow the procedures required by Rule 5-1.2(d). The respondent failed to maintain trust accounting records as required by Rule 5-1.2(f).

**False Accounting for Third-Party Medical Liens**

40. After Jason Hall died in May 2012, Ms. Hall and Ms. Fulop became aware of unpaid medical bills. These medical bills were incurred before April 2008 and were liens against settlement funds.

41. Emails provided by the complainants reveal numerous demands for an accounting from the respondent for the medical liens. The respondent did not produce a settlement statement or a simple accounting that identifies all lienholders, and provides amounts owed and paid. Instead, the respondent provided accountings that either withheld necessary information or presented information in a manner that was intended to be confusing.

42. The 2008 accounting does not provide the names of lienholders and amounts owed, stating only that $300,000.00 was held to pay medical bills. The 2016 accounting is presented in a disorganized manner that cannot be comprehended as written.

43. The 2016 accounting included medical bills from Tallahassee Memorial Hospital, totaling $281,258.00, and Brooks Rehabilitation for $21,576.25.

44. Ms. Hall and Ms. Fulop provided documentation showing that these medical bills were paid by charities, by Medicaid, and some amounts were written off, **before the settlement funds were received**.

45. The respondent did not provide any evidence that Tallahassee Memorial Hospital or Brooks Rehabilitation had a lien on settlement funds when the 2008 accounting was produced. The respondent did not provide any evidence that he had settled these medical bills after July 15, 2008.

46. The respondent produced false accountings for the third-party medical liens, in violation of Rule 4-8.4(c). The respondent did not promptly provide a full accounting, in violation of Rule 5-1.1(e).

**Third-Party Medical Liens Were Not Promptly Paid**

47. The Florida Bar's auditor verified payments for the third-party medical liens, calculated the number of days that elapsed between the payment dates and August 5, 2008, when the settlement funds for the liens were deposited.

48. The respondent paid one lien for $44,235.00 after more than 2 months, one lien for $7,175.20 after more than 9 months, two liens totaling $4,740.00 after more than 14 months, and one lien for $38,483.08 after more than

6 years. The respondent did not provide any payment documentation for liens totaling $11,584.52, that were likely never paid.

49. It is clear from these results, that the respondent did not handle the liens promptly. The respondent deposited the settlement funds for the liens in his operating account, where he could use the funds for his personal use, and that created a disincentive for the respondent to promptly pay the liens. The respondent did not promptly disburse trust funds owed to third party lienholders, in violation of Rule 5-1.1(e).

**Clearly Excessive Fee from Lien Negotiation Agreement**

50. The respondent's 2008 accounting included a lien negotiation agreement providing the respondent with a 20% fee for "any savings from the approximately $300,000.00 in medical expenses that this firm negotiates payment on". The 2016 accounting included a total of $281,258.00 in medical liens owed to Tallahassee Memorial Hospital.

51. The respondent claimed that he negotiated these liens to $0 and earned a 20% lien negotiation fee of $56,251.58. Ms. Hall and Ms. Fulop provided documentation showing these medical bills were paid by a charity, by Medicaid, or otherwise written off **before** July 15, 2008, when the agreement was signed.

52. The respondent did not provide any evidence to support his claim that he earned a lien negotiation fee for negotiating the Tallahassee Memorial Hospital lien amounts.

53. The respondent charged a $56,251.58 lien negotiation fee that was unearned, clearly excessive, and in violation of Rule 4-1.5(a).

**False Accounting for Loan from Settlement Funds**

54. The respondent and Jason Hall signed a loan agreement on September 5, 2008. The loan agreement allowed the respondent to borrow $200,000.00 from the settlement funds at 10% annual interest.

55. Jason Hall could receive the earned interest at his discretion. Any amount of earned interest that was not disbursed to Jason Hall was to be held by the respondent until the end of the loan.

56. The loan agreement specified in paragraph 3 that "Tim Howard can end this loan anytime after six months from today's date, and interest will be calculated up to the date of the loan repayment".

57. The loan agreement did not provide for the partial repayment of loan principle or the repayment of the loan for a term of less than six months.

58. The respondent accounted for the loan in the 2016 accounting, claiming the loan was repaid through numerous partial payments, made to Jason Hall, Ms. Hall, and various other persons or entities. That is not consistent with the

loan agreement that required the loan to be repaid as a lump sum payment to Jason Hall for $200,000.00 of principle plus owed interest.

59. The 2016 accounting indicated most of the loan principle, $139,987.82, was repaid by the end of 2008, less than four months after the loan agreement was signed. That conflicts with the loan agreement that did not allow the respondent to repay the loan principle until six months after the loan agreement was signed, on March 5, 2009, at the earliest. There is no evidence that any items from 2008 were repayments of loan principle.

60. The respondent falsely reported the repayment of loan principle and incorrectly calculated interest amounts in the 2016 accounting.

61. The respondent borrowed trust funds from his client, Jason Hall, a conflict of interest in violation of Rule 4-1.8(a). The respondent failed to promptly provide a full accounting for the loan to the complainants, in violation of Rule 5-1.1(e). The respondent provided a dishonest accounting for the loan, in violation of Rule 4-8.4(c).

**Misappropriation of Settlement Funds**

62. After his analysis, the Bar's auditor concluded that the respondent did not have a trust account at the time he settled Jason Hall's case. According to the respondent, the settlement funds were deposited into his operating account per Jason Hall's directive. However, a review of his operating account bank statements

reflected that the account was overdrawn as of December 2010. This is significant because the respondent continued to disburse settlement funds after 2010, including a final payment of approximately $16,000.00, to the personal representative of Jason Hall's estate.

63. The auditor also found that the respondent did not repay the $200,000.00 loan principle and owed earned interest totaling $66,830.28 as of December 31, 2016. The auditor concluded that respondent's failure to repay the loan and interest as well as his subsequent failure to account for these funds when he represented Jason Hall's estate, amounted to misappropriation.

**False Certification of Trust Accounting Compliance**

64. Lawyers are required by Rule 5-1.2(d) to file an annual trust account certification with The Florida Bar, indicating whether they complied with the trust accounting and property safekeeping rules.

65. The respondent certified compliance for the years ending June 30, 2014, and June 30, 2015, and failed to complete the certification for the year ending June 30, 2013.

66. The respondent certified that he was not required to maintain a trust account for the years ending June 30, 2011 and June 30, 2012.

67. During all of these time periods, the respondent was not in compliance with the minimum requirements of the Chapter 5 Rules regarding Jason Hall's settlement funds.

68. The respondent violated Rule 4-8.4(c) by falsely certifying compliance for years ending 2014 and 2015, and falsely certifying that he had not received or held client funds for years ending 2011 and 2012. The respondent violated Rule 5-1.2(d) by failing to certify noncompliance for the year ending in 2013.

69. By reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar: 3-4.3 Misconduct and Minor Misconduct; 4-1.1 Competence; 4-1.3 Diligence; 4-1.4(b) Communication: A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; 4-1.5(a)(1) An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee; 4-1.8(a)(2) Business Transactions With or Acquiring Interest Adverse to Client; 4-1.15 Safekeeping Property; 4-4.1(a) A lawyer shall not knowingly make a false statement of material fact or law to a third person; 4-8.1(a) An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not knowingly make a false statement of material fact; 4-8.4(c) Conduct involving

dishonesty, fraud, deceit, or misrepresentation; 4-8.4(d) Conduct prejudicial to the administration of justice; 5-1.1(a)(1) Nature of Money or Property Entrusted to Attorney. Trust Account Required; Commingling Prohibited. A lawyer shall 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, shall be kept in a separate bank 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. A lawyer may maintain funds belonging to the lawyer in the trust account in an amount no more than is reasonably sufficient to pay bank charges relating to the trust account; 5-1.1(b) Application of Trust Funds or Property to Specific Purpose. Money or other property entrusted to an attorney for a specific purpose, including advances for fees, costs, and expenses, is held in trust and must be applied only to that purpose; 5-1.2(b) Records may be maintained in their original format or stored in digital media as long as the copies include all data contained in the original documents and may be produced when required; 5-1.2(d) Minimum Trust Accounting Procedures; 5-1.2(f) Record Retention.

WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.

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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, Phillip Timothy Howard, at tim@howardjustice.com; and that a copy has been furnished by United States Mail via certified mail No. 7017 1070 0000 4774 1756, return receipt requested to Respondent, whose record bar address is 1415 Piedmont Dr. E., Ste 5, Tallahassee, FL 32308-7944 and via email to Shaneé L. Hinson, Bar Counsel, shinson@flabar.org, on this 26th day of March, 2019.

Adria E. Quintela

ADRIA E. QUINTELA
Staff Counsel

## NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY EMAIL ADDRESS

PLEASE TAKE NOTICE that the trial counsel in this matter is Shaneé L. Hinson, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Tallahassee Branch Office, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, (850) 561-5845 and shinson@flabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, Lakeshore Plaza II, Suite 130, 1300 Concord Terrace, Sunrise, Florida 33323, aquintel@flabar.org.

## MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES OF DISCIPLINE, EFFECTIVE MAY 20, 2004, PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.