

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,
Petitioner,

Supreme Court Case
No. SC-

v.

The Florida Bar File
No. 2021-30,198 (5A) (CES)

MELANIE L. JOHNSON,
Respondent.

_____ /

PETITION FOR EMERGENCY SUSPENSION

This petition of The Florida Bar seeks emergency relief and requires the immediate attention of the Court pursuant to R. Regulating Fla. Bar 3-5.2. The Florida Bar seeks the emergency suspension of Melanie L. Johnson, Attorney No. 812161, from the practice of law in Florida based on facts that establish clearly and convincingly that Melanie L. Johnson appears to be causing great public harm by misappropriating client funds. These facts are supported by the affidavit of The Florida Bar Auditor, Matthew D. Herdeker, CPA, attached hereto as Exhibit "A," the transcript of respondent's sworn statement dated September 14, 2021 (without exhibits), attached hereto as Exhibit "B," and the affidavit of The Florida Bar Staff Investigator Bruce L. Barnett attached hereto as Exhibit "C" and demonstrate the following:

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1. The filing of this Petition for Emergency Suspension has been authorized by the Executive Director of The Florida Bar.

2. Respondent, Melanie L. Johnson, is and at all times hereinafter mentioned, was a member of The Florida Bar subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

3. Respondent currently is the subject of a bar disciplinary matter which has been assigned The Florida Bar file number 2021-30,198 (5A).

4. Debbie Geer of Mayfield Settlement Funding filed The Florida Bar Inquiry/Complaint Form alleging that respondent, as counsel for her husband in a personal injury claim, entered into a funding agreement with Mayfield Settlement Funding but failed to remit the funds due Mayfield Settlement Funding despite receiving settlement funds for her husband's case.

5. After receiving The Florida Bar Inquiry/Complaint Form, the bar initiated a compliance audit of respondent's trust account for the period September 12, 2018 to June 30, 2021. In addition, the bar conducted a review of respondent's operating account for the period September 12, 2018 to April 30, 2021. Both accounts were maintained at Regions Bank.

6. The bar's investigation of this matter found that respondent commingled and misappropriated client funds. In correspondence and in her sworn statement taken on September 14, 2021, respondent

acknowledged instances in which she transferred earned fees from her operating account into her trust account and that that she did not prepare written fee agreements when she collected nonrefundable fees.

7. The bar's audit revealed that respondent's trust accounting records and procedures were not in compliance with Chapter 5, Rules Regulating Trust Accounts. Respondent's trust account was not clearly labeled as a "trust account" and her journal and ledgers contained inaccurate entries.

MAYFIELD SETTLEMENT FUNDING

8. In or around August 2019, respondent's client/husband, William Johnson, contacted Mayfield Settlement Funding to request an advance of \$750.00 against his personal injury settlement.

9. On August 13, 2019, William Johnson executed the Mayfield Settlement Funding Security Agreement and Transfer of Proceeds in the amount of \$750.00. Respondent notarized her husband's signature on the document, an act prohibited by Fla. Stat. §117.107(11) (2006). On the same day, respondent executed, as his attorney, the Acknowledgement of Counsel, recognizing her obligation to distribute proceeds of the claim and stating that she would have control over the claim's proceeds.

10. On August 13, 2019, Mayfield Settlement Funding wired the \$750.00 to respondent's trust account for the benefit of Mr. Johnson.

11. When Mr. Johnson was telephonically interviewed on October 6, 2021, by The Florida Bar Staff Investigator, Mr. Johnson advised that he received a personal injury claim settlement check from Panda Express when it was delivered via FedEx to the home that he shared with respondent, forged respondent's signature on the check, and then deposited the check into respondent's checking account at Regions Bank through the ATM.

12. Mr. Johnson stated that he did not tell respondent that he obtained the settlement check or what he did with the money.

13. Respondent also advised the bar that she and Mr. Johnson were estranged and stated that he intercepted the settlement check after it was delivered to respondent's home address and deposited the check into respondent's operating account.

14. Respondent stated that she was unable to repay Mayfield Settlement Funding because Mr. Johnson spent the funds without respondent's knowledge and respondent believed that she did not have a duty to repay the funds.

15. Respondent did not notify the bar of the theft until after the bar's receipt of the Mayfield Settlement Funding's grievance.

16. The bar's audit of respondent's trust and operating account records from Regions Bank revealed that the personal injury settlement check payable to William H. Johnson and Melanie L. Johnson, PLLC for \$5,000.00 from Panda Restaurant Group, Inc. was deposited into respondent's Regions Bank operating account on August 26, 2019.

17. Because the settlement check was deposited to respondent's operating account instead of the attorney trust account this deposit constituted commingling.

18. Once the settlement check was deposited into respondent's operating account on August 26, 2019, respondent admitted in her sworn statement that she made payments totaling \$2,031.06 from the account for her own benefit including payments for \$315.00 to The Florida Bar for her annual membership fees, \$700.00 to Credit Acceptance for her car loan payment, \$332.25 to Spectrum for payment for her cable or internet usage and a \$683.81 payment for a home mortgage.

19. The balance in the operating account prior to the Panda Express settlement deposit was only \$380.17.

20. Respondent, therefore, disbursed a significant portion of the settlement funds for her own benefit and by September 3, 2019, the settlement funds were nearly exhausted with the remaining balance in the Regions Bank operating account on that date only \$6.75.

MHP ORMOND BEACH, LLC

21. In a second matter, respondent represented MHP Ormond Beach, LLC, the plaintiff in an eviction matter filed in Volusia County, Florida.

22. In a stipulation dated May 21, 2019, the defendant in the matter agreed to pay MHP Ormond Beach, LLC \$2,282.00 for past due rent from the court registry.

23. On June 29, 2019, respondent deposited a check in the amount of \$2,282.00 from the Volusia County Clerk of Circuit Court, Court Registry into her Regions Bank operating account. The check was payable to MHP Ormond Beach, LLC c/o Melanie L Johnson PLLC. The deposit cleared July 1, 2019.

24. Respondent testified under oath during her sworn statement that the funds were owed to MHP Ormond Beach, LLC and that she should have deposited the check into her trust account.

25. Respondent commingled MHP Ormond Beach, LLC's funds with her operating and/or personal funds.

26. By July 8, 2019, nearly all of the funds belonging to MHP Ormond Beach, LLC were spent. The balance in respondent's Regions Bank operating account on that date was \$51.15.

27. Respondent spent some of the funds for her own benefit.

28. During her sworn statement, respondent admitted to paying \$653.43 to Credit Acceptance for her car loan payment on July 3, 2019.

29. The remainder of the funds were spent on a home mortgage payment, ATM withdrawals, and various retail purchases. Respondent was unable to identify who made each of the ATM withdrawals and retail purchases during her sworn statement with the bar.

30. On August 2, 2019, respondent purchased a cashier's check in the amount of \$2,282.00, payable to MHP Ormond Beach, LLC, using funds from her Regions Bank trust account. The memo referenced "Court Registry Deposit." A stamp on the back of the check indicated MHP Ormond Beach, LLC received the check and deposited the funds into its account.

31. During her sworn statement, respondent testified under oath that the purpose of the cashier's check was to satisfy the stipulation in the MHP Ormond Beach, LLC matter. When questioned, respondent could not explain why the payment she made to MHP Ormond Beach, LLC came from her trust account when she had deposited the court registry funds into her operating account.

32. The bar's audit of respondent's records revealed that respondent made entries in her trust account records that did not accurately reflect the payment to MHP Ormond Beach, LLC because she

recorded the payment to MHP Ormond Beach, LLC on a ledger card for her unrelated client "C.S." and recorded the payment in her trust account journal with C.S.'s last name and the description "payment of settlement."

33. During her sworn statement, respondent testified that the MHP Ormond Beach, LLC matter was unrelated to C.S.'s settlement and that the journal and ledger entries were incorrect and described them as mistakes.

C.S. SETTLEMENT MATTER

34. In a third matter, client C.S. hired respondent to represent her in a claim for personal injuries sustained at a local convenience store.

35. On October 5, 2021, C.S. advised The Florida Bar Staff Investigator that respondent facilitated a settlement for \$3,000.00 and that she did not recall having received any money from the settlement.

36. The signed settlement statement for the C.S. matter showed that C.S. was owed proceeds of \$2,290.00 from the settlement.

37. The bar's audit revealed that on August 19, 2019, respondent deposited an insurance settlement check for the C.S. matter in the amount of \$3,000.00 into her Regions Bank trust account and that no payments were issued by respondent to C.S. from the law firm trust account or the operating account.

38. The bar requested respondent to provide a copy of any payments issued to C.S. for the settlement proceeds by September 21, 2021 and to date, respondent has failed to provide the bar with a copy of any payment made to C.S.

A.A. REFUND MATTER

39. In a fourth matter, A.A. hired respondent to represent her in a landlord-tenant dispute.

40. A.A. advised the bar that respondent recovered a \$300.00 security deposit from an apartment complex for A.A. However, it took approximately eleven months for respondent to remit the funds to A.A. and this only occurred because A.A. contacted respondent and inquired as to the reason for the lengthy delay.

41. The bar's audit revealed that on July 24, 2020, respondent deposited a check from Bell Partners, Inc. in the amount of \$300.00 into her Regions Bank operating account. The check was payable to respondent's client "A.A." and respondent for a refund of a security deposit owed to A.A. The memo line referenced an apartment complex located in Rockledge, Florida.

42. During her sworn statement, respondent was unable to give an explanation as to why she deposited the funds intended for A.A. into her

operating account. By depositing the check in respondent's operating account, respondent commingled A.A.'s funds.

43. The bar's audit discovered that a portion of A.A.'s funds was used to correct an existing overdraft in respondent's operating account and was also used for ATM withdrawals and various retail purchases.

44. By July 29, 2020, the entire \$300.00 intended for A.A. was spent. The balance in respondent's Regions Bank operating account on that date was negative \$406.47.

45. During her sworn statement, respondent testified under oath that she paid the funds to A.A. but was unable to articulate when or how she made the payment. The bar requested respondent to produce documentation showing the payment to A.A by September 21, 2021. Respondent failed to provide the bar with any documents.

K.C. DEPOSIT RETURN

46. In a fifth matter, K.C. hired respondent to handle a dispute with the landlord and paid a flat fee of \$500.00.

47. K.C. had paid her landlord a deposit when she signed the lease and hoped that respondent would obtain a full refund of the \$2,250.00. K.C. never received anything from respondent.

48. The landlord, C.L., confirmed that he paid the refund of K.C.'s \$2,250.00 deposit to respondent at respondent's direction and the check was posted against his account in August 2020.

49. On August 27, 2020, respondent deposited a check payable to her client K.C. in the amount of \$2,250.00 into her Regions Bank operating account. The check was issued by K.C.'s landlord and the memo referenced the return of a deposit and a property address.

50. By August 31, 2020, nearly the entire \$2,250.00 belonging to K.C. had been spent through ATM withdrawals and various retail purchases. The balance in respondent's Regions Bank operating account on that date was \$82.37.

51. The bar's audit did not reveal any payments to K.C. from respondent's operating account or trust account. During her sworn statement, respondent stated that K.C. gave her permission to keep the funds as her earned fees. However, respondent testified that she probably did not have a signed written fee agreement with K.C. for the matter.

52. The Florida Bar Staff Investigator subsequently interviewed K.C. and K.C. stated that she did not give respondent permission to keep the funds.

53. Although the bar directed respondent to produce within seven days from the September 14, 2021 sworn statement the written fee

agreement with K.C., respondent has failed to produce any such documentation.

54. The enclosed affidavits of The Florida Bar Auditor, Matthew D. Herdeker, CPA, and The Florida Bar Staff Investigator Bruce L. Barnett, as well as the transcript of respondent's sworn statement taken on September 14, 2021 support this Petition for Emergency Suspension.

55. Wherefore, by reason of the foregoing, respondent has violated the following Rules Regulating The Florida Bar:

A. 3-4.3 The standards of professional conduct required of members of the bar are not limited to the observance of rules and avoidance of prohibited acts, and the enumeration of certain categories of misconduct as constituting grounds for discipline are not all-inclusive nor is the failure to specify any particular act of misconduct be construed as tolerance of the act of misconduct. The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of the lawyer's relations as a lawyer or otherwise, whether committed within Florida or outside the state of Florida, and whether the act is a felony or a misdemeanor.

B. 4-1.15 A lawyer shall comply with The Florida Bar Rules Regulating Trust Accounts.

C. 4-8.4(c) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule.

D. 5-1.1(a)(1) 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.

E. 5-1.1(b) 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.

F. 5-1.1(e) 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.

G. 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.

The following are the minimum trust accounting records that must be maintained: (1) a separate bank or savings and loan association account or accounts in the name of the lawyer or law firm and clearly labeled and designated as a “trust account”; (6) 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; (7) 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.

WHEREFORE, based on the aforementioned facts, the bar asserts that respondent has caused, or is likely to cause, immediate and serious harm to clients or the public and that immediate action must be taken for

the protection of 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:

1. Accept no new clients from the date of this Court's order of emergency suspension;
2. Initiate no litigation on behalf of clients from the date of this Court's order of emergency suspension;
3. 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);
4. 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;

5. 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;

6. 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;

7. 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;

8. 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;

9. 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

10. 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; and

11. Cease holding 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, 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:

1. Cease all practice of law in Florida;

2. Withdraw from representation of all clients;
3. Wind down all pending matters;
4. Cease acting as a fiduciary, including, but not limited to, personal representative for any estate, guardian for any ward, and trustee for any trust;
5. 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.
6. 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
7. 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 Petition for Emergency Suspension 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, Melanie L. Johnson, at mel.johnsonlaw@gmail.com; and that a copy has been provided by United States Mail via certified mail No. 7017 3380 0000 1082 8116, return receipt requested to Respondent, Melanie L. Johnson, whose record bar address is Post Office Box 391, Titusville, Florida 32781-0391 and via email to Ashley Taylor Morrison, Bar Counsel, 1000 Legion Place, Suite 1625, Orlando, Florida 32801 at amorrison@floridabar.org, orlandooffice@floridabar.org, ndejesus@floridabar.org, on this 7th day of December, 2021.



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NOTICE OF DESIGNATION OF PRIMARY EMAIL ADDRESS

Bar counsel in this matter is Ashley Taylor Morrison, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Orlando Branch Office, The Gateway Center, 1000 Legion Place, Suite 1625, Orlando, Florida 32801-1050, (407) 425-5424 and amorrison@floridabar.org, orlandooffice@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 East Jefferson Street, Tallahassee, Florida 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.