

**IN THE SUPREME COURT OF FLORIDA
(Before a Referee)**

THE FLORIDA BAR,

Complainant,

v.

LISA METELLUS,

Respondent.

**Supreme Court Case
No. SC08-2451**

The Florida Bar File Nos.:
2008-51,567(17J)
2008-51,425(17J)
2009-51,018(17J)
2009-51,172(17J)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS:

Pursuant to a Florida Supreme Court Order dated December 3, 2008, respondent was emergency suspended. The Florida Bar filed its formal Complaint in Supreme Court Case No. SC08-2451, The Florida Bar File No. 2008-51,567(17J), on December 29, 2008. Thereafter, the undersigned was appointed to preside as referee, by order of the Chief Judge of the Fifteenth Judicial Circuit. The parties have presented to me a Guilty Plea and Consent to Disbarment, which has been approved by The Florida Bar Board of Governors' designated reviewer. After due deliberation, I have determined to recommend that respondent's Guilty Plea and Consent to Disbarment be approved, for the reasons set forth herein. The pleadings and all other papers filed in this cause, which are forwarded to the Supreme Court of Florida with this report, constitute the entire record.

During the course of these proceedings, respondent was represented by Kevin P. Tynan and The Florida Bar was represented by Juan Carlos Arias.

FINDINGS OF FACT: Pursuant to the terms and conditions of the consent judgment executed by all parties I find as follows:

A. Jurisdictional Statement: Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, and subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative Summary: 2008-51,567(17J) The Florida Bar received a sworn complaint from respondent's client, Jenide Morantus, who complained that a settlement check received from respondent in the amount of \$74,375.74 had been returned for insufficient funds. Based on the foregoing, The Florida Bar performed a limited compliance audit of respondent's trust account for the period of November 1, 2007 through September 30, 2008. Florida Bar Staff Auditor Carl Totaro, C.P.A. (hereinafter "Totaro") conducted the aforementioned compliance audit and determined that respondent had a significant shortage in her attorney trust account in regard to the Morantus matter. Further, Totaro determined that respondent utilized client trust funds for her own purposes or for purposes other than those for which these funds were entrusted to her, thereby converting and/or misappropriating client funds. Respondent maintained a trust account at BankAtlantic. This trust account (hereinafter "the trust account") was identified as

the Metellus Hood & Associates IOTA Trust Account #xxxxxxxxx1090. After receiving the sworn complaint against respondent from Jenide Morantus, The Florida Bar requested respondent's explanation as to the settlement check having been returned for insufficient funds. Because respondent's initial explanation was unsatisfactory, The Florida Bar subpoenaed respondent to produce trust account records. In response to The Florida Bar's subpoena, respondent provided only partial records. Because respondent did not produce the mandatory trust account records requested, The Florida Bar issued a subpoena duces tecum to BankAtlantic to obtain respondent's trust accounting records for the period of November 1, 2007 through September 30, 2008. Upon receipt of the subpoenaed records, Bar auditor Totaro reviewed the records, reconstructed respondent's trust account records for the transaction involving Jenide Morantus, and completed a limited compliance audit that shows respondent made numerous "cash withdrawals" from her trust account. The Florida Bar's compliance audit demonstrated that on December 12, 2007, a divorce settlement check from Bady Kersaint, complainant's ex-husband, in the amount of \$75,000.00 was deposited into respondent's trust account. Such monies were a settlement belonging to Jenide Morantus. After removing her attorney's fees, respondent should have been holding \$74,375.74 in trust for Morantus. As of March 31, 2008, respondent's trust account had an overdrawn balance of \$4,897.05. Since respondent should have been holding \$74,375.74 on

Morantus' behalf, the negative balance in the trust account conclusively demonstrates that respondent misappropriated client funds. On April 3, 2008, respondent issued to Morantus check number 1811 from her attorney trust account in the amount of \$74,375.74. Such check was returned for insufficient funds. To date, respondent has not paid Morantus the \$74,375.74 from the divorce settlement finalized on or about December 12, 2007.

ADDITIONAL DISCIPLINARY CASES

Respondent is also the subject of three (3) bar complaints at staff level with file numbers 2008-51,425(17J), 2009-51,018(17J), and 2009-51,172(17J). Respondent tenders a guilty plea for her conduct in those matters, prior to the filing of a formal complaint on these cases: 2008-51,425(17J) involved an allegation that respondent failed to pay her client the proceeds of the sale of a house in a divorce proceeding. Respondent paid her client after the bar complaint was filed; 2009-51,018(17J) was a referral from a judge who reported that respondent issued an inappropriate letter on her professional association letterhead following the emergency suspension order; 2009-51,172(17J) involved a complaint from respondent's client that respondent failed to refund unused legal fees following respondent's suspension.

III. RECOMMENDATION AS TO GUILT: Pursuant to the terms and conditions of the consent judgment executed by all parties I find as follows:

1. As to all cases referenced above, respondent violated R. Regulating

Fla. Bar: **3-5.1(e)** [The respondent may be suspended from the practice of law for a definite period of time or an indefinite period thereafter to be determined by the conditions imposed by the judgment. During such suspension the respondent shall continue to be a member of The Florida Bar but without the privilege of practicing...]; **4-1.8** [A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, except a lien granted by law to secure a lawyer's fee or expenses...]; **4-1.16(a)(1)** [...A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or law...]; **4-1.16(d)** [Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers and other property relating to or belonging to the client to the extent permitted by law.]; **4-3.4(c)** [A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;]; **4-8.4(a)** [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly

assist or induce another to do so, or do so through the acts of another;]; **4-8.4(c)**; [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation....]; **5-1.1(b)** [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. Money and other property of clients coming into the hands of an attorney are not subject to counterclaim or setoff for attorney's fees, and a refusal to account for and deliver over such property upon demand shall be deemed a conversion.]; and **5-1.1(e)** [Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall 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 shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.].

IV. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:

I recommend that respondent be found guilty of misconduct justifying bar discipline, and that she be disbarred from the practice of law immediately and nunc pro tunc January 3, 2009, the effective date of the emergency suspension. As a condition precedent to readmission, **Respondent is required to pay Jenide Morantus \$74,375.74.** Respondent shall also pay The Florida Bar's costs in this

matter. It is recommended such costs be charged to respondent and that interest at the statutory rate shall accrue.

Disbarment is the presumptive sanction for misappropriation of client funds. See *The Florida Bar v. Spear*, 887 So.2d 1242 (Fla. 2004); *The Florida Bar v. Barley*, 831 So.2d 163 (Fla. 2002); and *The Florida Bar v. Potter*, 684 So.2d 810 (Fla. 1996).

I further recommend that respondent comply with all terms and conditions of her Guilty Plea and Consent to Disbarment dated April 24, 2009. I recommend that respondent comply with the following terms and conditions of her Consent, specifically:

1. Respondent is aware that R. Regulating Fla. Bar 3-7.6(q) provides for the taxing of The Florida Bar's costs against the respondent in bar disciplinary proceedings. Respondent hereby agrees to pay The Florida Bar's costs in these proceedings (as set forth in The Florida Bar's affidavit of costs).

2. Respondent further agrees that she will not attempt to discharge her obligation to pay these costs in any future proceedings including, but not limited to, a petition for bankruptcy.

3. Respondent agrees to fully cooperate with any future bar investigation(s) that may be initiated relating to any claims that may be filed with The Florida Bar's Clients' Security Fund.

4. Respondent agrees to submit to a complete audit of her trust account(s) and any account in which she has placed client funds, when and if requested to do so by The Florida Bar.

5. In order to cooperate with The Florida Bar in any future bar investigations, as set forth herein, respondent also agrees to keep The Florida Bar informed of her current mailing and physical address for two (2) years subsequent to the date of any resulting order in this cause.

6. Respondent agrees to provide The Florida Bar with a current financial affidavit, on a form to be provided by the Bar within thirty (30) days of the signing of the Guilty Plea and Consent to Disbarment, including a statement of assets and liabilities.

7. Respondent will reimburse The Florida Bar's Clients' Security Fund if payments are made by the Fund as a result of respondent's misconduct. Respondent hereby agrees and acknowledges that she must repay to the Clients' Security Fund all monies paid out as a result of her misconduct, as a condition precedent to her eligibility to apply for readmission to The Florida Bar.

V. PERSONAL HISTORY, PAST DISCIPLINARY RECORD AND AGGRAVATING AND MITIGATING FACTORS:

Prior to recommending discipline, and pursuant to R. Regulating Fla. Bar 3-7.6(k)(1), I considered the following:

A. Personal History of Respondent:

Age: 34

Date admitted to The Florida Bar: May 8, 2000

B. Aggravating Factors: None

C. Mitigating Factors: During the time frame at issue, the Respondent suffered from a life threatening illness, as well as related emotional and mental health concerns. See Fla. Standard for Imposing Lawyer Sanctions, Standard 9.32 (c) & (h).

VI. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED:

I find that the following reasonable costs have been incurred by The Florida Bar and that the same should be assessed against the Respondent:

A. Grievance Committee Level Costs:	\$ 0.00
B. Referee Level Costs:	
1. Court Reporter Costs (to be determined).	\$ 0.00
2. Bar Counsel Travel Costs (to be determined).	\$ 0.00
C. Administrative Costs	\$1,250.00
D. Auditor Costs	\$1,372.50
E. Miscellaneous Costs:	
1. Investigator Costs:	\$
2. Witness Fees	\$ 0.00
3. Telephone Charges	\$ 0.00
4. Copy Charges	\$
5. Translation Services Fees	<u>\$ 0.00</u>
TOTAL COSTS (to date)	<u><u>\$2,622.50</u></u>

DONE AND ORDERED at Palm Beach Gardens, Palm Beach County,
Florida on this _____ day of May, 2009.

HONORABLE LAURA S. JOHNSON
REFEREE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to THE HONORABLE THOMAS D. HALL, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927, and that copies were mailed by regular U.S. mail to the following: STAFF COUNSEL, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300; and JUAN CARLOS ARIAS, Bar Counsel, The Florida Bar, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323; and KEVIN P. TYNAN, Counsel for Respondent, Richardson & Tynan, P.L.C., 8142 N. University Drive, Tamarac, Florida 33321, on this _____ day of _____, 2009.

LAURA S. JOHNSON, REFEREE