

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Supreme Court Case No.
SC-

IN RE:
THE PETITION FOR DISCIPLINARY
REVOCATION OF DAVID LAND
WHIGHAM,

The Florida Bar File No.

Petitioner.

**PETITION FOR DISCIPLINARY REVOCATION WITHOUT
LEAVE TO REAPPLY FOR READMISSION**

Petitioner, David Land Whigham, submits this Petition for Disciplinary Revocation without Leave to Reapply for Readmission, pursuant to Rule 3-7.12, Rules Regulating The Florida Bar, and states:

1. Petitioner knowingly and voluntarily submits this petition with full knowledge of its effect. Petitioner is represented by counsel in this matter.
2. Petitioner is 48 years old and has been a member of The Florida Bar since April 20, 1998, and is subject to the jurisdiction of the Supreme Court of Florida and the Rules Regulating The Florida Bar.
3. The Petitioner has no disciplinary history with The Florida Bar.

4. The following disciplinary charges are currently pending against the Petitioner:

a. The Florida Bar File No. 2016-10,238 (13B) (pending at staff level) alleges that: The Bar received an overdraft notice for Petitioner's trust account from the Bank of Tampa in September 2015, showing a negative balance of (\$1,355.31). In addition to his own trust account, Petitioner serves as trustee on various other trust accounts that have accounts at Bank of Tampa. Petitioner explained that the overdraft was caused by a transfer from a client trust account to his operating account in July 2015, which should have been transferred to his trust account. The funds were to cover medical expenses for a client; however, he transferred a lump sum of \$2,000.00 instead of the exact costs of the medical expenses. Petitioner did not discover the error until the Bank of Tampa inquired about the overdraft. Petitioner then noticed that his trust records showed the proper transactions, although the bank records did not. Petitioner immediately transferred funds from his operating account to cover the overdraft.

Petitioner submitted to the Bar his trust records for the period of August 1, 2015, through October 31, 2015, for review. Prior to the Bar's review being complete, Petitioner received another Bar complaint referenced below.

b. The Florida Bar File No. 2016-10,578 (13B)(HES); SC16-349 (pending at Supreme Court level due to Bar's filing of Petition and order dated

March 2, 2016, granting Emergency Suspension effective April 1, 2016) alleges that: Petitioner became successor trustee of the Joseph E. Steuerlein Revocable Living Trust in April 2012. The trust provided that upon the death of the settlor's son, the principal and any undistributed income shall be equally apportioned to the Imperial Counsel A.A.N.O.M.S. ("Shriners") for the benefit of Shriner's Hospital in Tampa, FL, and to A.A.S.R. ("Scottish Rite") for the benefit of the Scottish Rite Schizophrenic Research Foundation of the Northern Masonic Jurisdiction in Lexington, MA. By wire deposit to Petitioner's trust account, Petitioner took possession of the trust proceeds in the amount of \$899,431.24 on June 11, 2012. In or about August 2015, after being contacted by representatives for the Shriners, Petitioner distributed \$200,000 solely to the Shriners from his operating account. Petitioner did not make an equal distribution to the Scottish Rite. In December 2015, a representative for the Scottish Rite, Jim Deyo, asked Petitioner about the distribution made to the Shriners and about other matters pertaining to the poor administration of the trust.

The beneficiaries hired counsel, Hamden Baskin, III, in December 2015, who sought to remove Petitioner as trustee, compel distributions, demanded an accounting, and other things in January 2016. To date, Petitioner has made no distributions to one beneficiary, and other than the distribution from his operating account, he has not made any further distribution to the other beneficiary. On

February 2, 2016, Petitioner returned a signed Resignation of Successor Trustee, prepared and sent to Petitioner by Mr. Baskin on February 1, 2016. On February 5, 2016, and on behalf of his clients, Mr. Baskin filed a Petition for Order to Accept Resignation of David L. Whigham and to Appoint David B. Smitherman as Second Successor Trustee of the Steuerlein Trust. On February 9, 2016, the Court entered an Order accepting the resignation of Mr. Whigham as first successor trustee and appointed Mr. Smitherman as second successor trustee.

5. This revocation will not adversely affect the public interest, the purity of the courts, nor hinder the administration of justice or the confidence of the public in the legal profession.

6. The Petitioner agrees to reimburse the Clients' Security Fund of The Florida Bar for any and all payments imposed as a result of his conduct, if any.

7. The Petitioner agrees to reimburse The Florida Bar for the costs incurred in his disciplinary cases.

8. The Petitioner agrees to permit the Bar to audit any and all trust accounts and any other accounts over which he has signatory authority as either an attorney, fiduciary, or trustee.

9. The Petitioner has provided The Florida Bar with a sworn financial affidavit.

10. The Petitioner shall notify the Bar of any change of address during a


two-year period to be computed from the date of the entry of this Court's order accepting this petition for disciplinary revocation. Further, the Petitioner shall keep the Bar advised as to the physical address of Petitioner's home and/or business in the event the Petitioner should utilize a post office box or other type of mail drop service.

11. The Petitioner understands that the granting of this petition by the Supreme Court of Florida shall serve to dismiss all pending disciplinary cases.

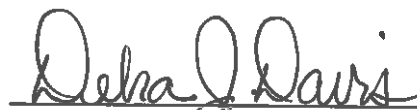
WHEREFORE, the Petitioner respectfully requests this Honorable Court to grant the petition herein as follows:

- A. That the Petitioner's membership in The Florida Bar be revoked on April 1, 2016, the effective date of Petitioner's suspension imposed in Florida Supreme Court Case No. SC16-349.
- B. That the Petitioner not be granted leave to apply for readmission.

Respectfully submitted,



DAVID LAND WHIGHAM
Petitioner
307 S. Boulevard, Suite B
Tampa, Florida 33606-2177
(813) 259-4440
dwhigham@whighamlaw.com
Florida Bar No. 136832



DEBRA JOYCE DAVIS
Counsel for Petitioner
Smith, Tozian, Daniel & Davis, P.A.
109 N. Brush Street, Suite 109
Tampa, Florida 33602
(813) 273-0063
Primary: ddavis@smithtozian.com

Secondary: pomnitz@smithtozian.com
Secondary: email@smithtozian.com
Florida Bar No. 93556

Dated: 3/15/16

Dated: March 15, 2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Petition for Disciplinary Revocation has been electronically filed with the Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida, 32399-1927; a copy of the foregoing by U.S. Mail to Jack F. Harkness, Executive Director, The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, with a copy by electronic mail to his official Bar email address of jharkness@floridabar.org; a copy by electronic mail to Adria E. Quintela, Staff Counsel, at her official Bar email address of aquintel@floridabar.org; and a copy by electronic mail to Chardean Mavis Hill, Bar Counsel, The Florida Bar, at her designated email addresses of chill@floridabar.org, yserralta@floridabar.org; and tampaoffice@floridabar.org; all on this 15th day of March 2016.



Debra Joyce Davis
Counsel for Petitioner