

WAKE COUNTY
NORTH CAROLINA

IN THE GENERAL COURTS OF JUSTICE
SUPERIOR COURT DIVISION
09 CVS 009345

THE NORTH CAROLINA STATE BAR
PETITIONER

v.

CABELL J. REGAN, ATTORNEY
RESPONDENT

ORDER OF
PRELIMINARY INJUNCTION

THIS MATTER came on to be heard and was heard by the undersigned Judge of Superior Court of Wake County pursuant to a petition for temporary restraining order and motion for preliminary injunction filed by the North Carolina State Bar. Petitioner, the North Carolina State Bar was represented by Katherine E. Jean and Carmen K. Hoyme. Respondent, Cabell J. Regan, represented himself. Based upon the verified petition and motion with attachments and the evidence introduced at the hearing, the Court makes the following:

FINDINGS OF FACT

1. Respondent, Cabell J. Regan ("Regan"), was licensed to practice law in North Carolina in 1979.

2. As of the date of this order, Regan's last known address of record on file with the North Carolina State Bar is P.O. Box 1595, Pittsboro, NC, 27312.

3. On 12 March 2009, the North Carolina State Bar served Regan with a Letter of Notice and Subpoena for Cause Audit in grievance file # 09G0233. Pursuant to the subpoena, on 7 April 2009 Regan produced records related to his attorney trust accounts. On 21 April 2009, Regan produced additional trust account records pursuant to the subpoena.

4. The State Bar's preliminary investigation of the trust account records produced by Regan indicates that Regan has failed to comply with the provisions of Rule of Professional Conduct 1.15-2, regarding handling entrusted funds and trust account management. Specifically:

- a. Over a period of more than three years, Regan routinely commingled his personal funds with entrusted client funds in his attorney trust account and paid personal expenses from his trust account.

- b. This pattern of commingling is evident in more than one trust account maintained by Regan.
- c. Regan wrote at least eight trust account checks, totaling \$2,879.56, payable to “cash.”
- d. In April and May 2008, Regan’s trust account had a negative balance and Regan wrote multiple trust account checks which were presented against insufficient funds.
- e. The State Bar was not notified when these items drawn on Regan’s trust account were presented against insufficient funds.

5. The foregoing facts establish that funds held in trust by Regan have been mishandled in violation of Rule 1.15-2 of the Revised Rules of Professional Conduct.

6. Regan’s pattern of commingling personal and entrusted funds, in violation of the Rules of Professional Conduct, impedes the State Bar’s ability to promptly determine whether client funds have been misappropriated from Regan’s attorney trust account.

7. Regan’s pattern of commingling personal and entrusted funds puts client funds at risk of misappropriation and subjects them to potential claims by Regan’s creditors.

8. Prior to entry of this Order, Regan received \$195,029.67 in trust for Judith B. Martino (“Martino”). On 27 April 2009, Regan used the \$195,029.67 held in trust for Martino to purchase an interest-bearing certificate of deposit from Capital Bank, which was issued to “Cabell J. Regan, Attorney at Law.” The certificate of deposit account acquired by Regan on behalf of Martino is Capital Bank account number 397511.

9. All of the funds deposited by Regan into Capital Bank certificate of deposit account number 397511 are fiduciary funds held by Regan for the benefit of Martino.

10. A need for prompt action exists to ensure that additional client funds are not mishandled to their detriment.

BASED UPON THE FOREGOING FINDINGS, the Court makes the following:

CONCLUSIONS OF LAW

1. Prompt action, pursuant to N.C. Gen. Stat. § 84-28(f), is necessary to preserve the status quo while the State Bar conducts an analysis of Regan’s trust accounts and to ensure that no client funds are mishandled.

2. Regan should be enjoined from accepting any further funds from or on behalf of clients or other individuals in a fiduciary capacity, from withdrawing funds from and/or writing checks against any account in which client or fiduciary funds have been

deposited, and from directing any employee or agent to withdraw funds from and/or draw a check on any account in which client or fiduciary funds have been deposited, except as expressly authorized by this Order.

3. To assist the State Bar's analysis of his trust and operating accounts, Regan should provide the State Bar with records of all accounts in which client or fiduciary funds have been deposited. Regan shall provide the North Carolina State Bar with all records of all accounts in which client or fiduciary funds were deposited.

4. Regan should not be permitted to serve in any fiduciary capacity, including trustee, escrow agent, personal representative, executor or attorney-in-fact until further order of this Court

THEREFORE, IT IS HEREBY ORDERED:

1. Cabell J. Regan is enjoined from accepting any further funds from clients or third parties in a fiduciary capacity, from withdrawing any funds from and/or writing any checks against any account in which client or fiduciary funds have been deposited, and from directing any employee or agent to withdraw funds from and/or draw a check on any account in which client or fiduciary funds have been deposited until permitted by subsequent orders of the Court.

2. Cabell J. Regan or any other person having custody or control of records relating to any account into which client or fiduciary funds have been deposited shall, upon request, immediately produce to the North Carolina State Bar for inspection and copying all of Regan's financial records relating to such accounts including but not limited to bank statements, canceled checks, deposit slips, client ledger cards, check stubs and debit memos and any other records relating to the receipt and disbursement of client and/or fiduciary funds.

3. If Regan does not have possession of the minimum records required to be maintained regarding trust and fiduciary funds pursuant to Rule 1.15-3 of the Rules of Professional Conduct, he shall direct the bank(s) where his trust account(s) (and all other accounts) are maintained, within 10 days of the date of this order, to copy and transmit any such missing records directly to the North Carolina State Bar, at Regan's expense.

4. Cabell J. Regan, or any other person having custody or control over records relating to individuals for whom Regan has provided legal services shall produce to the North Carolina State Bar for inspection and copying all records and documents, including but not limited to: client files, billing statements, memoranda and receipts. Current client files shall be produced within 24 hours of demand by the State Bar and closed client files shall be produced within 3 days of demand by the State Bar.

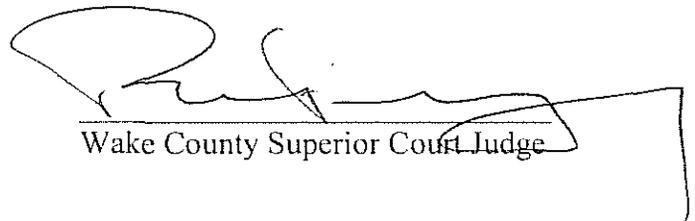
5. Regan shall not serve in any fiduciary capacity, including trustee, escrow agent, personal representative, executor or attorney-in-fact until further order of this Court.

6. As a limited exception to the injunction contained in this Order, Regan shall be permitted to liquidate or redeem Capital Bank certificate of deposit account number 397511 or withdraw funds from Capital Bank certificate of deposit account number 397511 only upon express written authorization by both Martino and the North Carolina State Bar.

7. Thus, notwithstanding the injunctive relief granted in paragraphs 1 through 5 above, the Court expressly authorizes Capital Bank, upon receipt of written authorization from both Martino and The North Carolina State Bar, to permit Regan to liquidate or redeem Capital Bank certificate of deposit account number 397511 or withdraw funds from Capital Bank certificate of deposit account number 397511. Any funds withdrawn from, or resulting from the liquidation or redemption of, Capital Bank certificate of deposit account number 397511 shall be made payable by Capital Bank directly to Martino and/or any third party designated by Martino in writing. Regan shall not attempt to liquidate or redeem Capital Bank certificate of deposit account number 397511 or withdraw funds from Capital Bank certificate of deposit account number 397511 without the express, written authorization of both Martino and The North Carolina State Bar.

8. This Order of Preliminary Injunction shall remain in effect until further orders of this Court.

This the 14 day of May, 2009.



Wake County Superior Court Judge