

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

FILE NO.: 10 CVS 13217

THE NORTH CAROLINA STATE BAR,

Petitioner

v.

BRIAN CHRIS DANIELS, Attorney,

Respondent

TEMPORARY RESTRAINING
ORDER

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 Margaret Cloutier and Leanor Bailey Hodge. Respondent, Brian Chris Daniels, 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, Brian Chris Daniels ("Daniels"), was licensed to practice law in North Carolina in 2000.
2. Daniels' address of record on file with the North Carolina State Bar is 104 E. Olive Court, Pine Knoll Shores, NC, 28512.
3. On May 15, 2007, the North Carolina State Bar served Daniels with a Letter of Notice in grievance file # 06G1205. On March 26, 2008 the State Bar served Daniels with a subpoena for his trust account records. Pursuant to the subpoena, Daniels signed an authorization allowing the State Bar to procure records related to his attorney trust account.
4. The State Bar's preliminary investigation of the trust account records produced by Daniels for the period beginning September 8, 2006 and ending February 29, 2008 indicates that Daniels properly maintained and disbursed entrusted funds.
5. On December 8, 2009, the North Carolina State Bar served Daniels with a Letter of Notice in grievance file #09G0862. On March 15, 2010, the State Bar issued a subpoena to Daniels' bank to obtain additional trust account records.

6. The State Bar's further investigation indicates that during the period from March 1, 2008 to March 31, 2010, Daniels has failed to comply with the provisions of Rule of Professional Conduct 1.15-2, regarding handling entrusted funds and trust account management in that between September 1, 2009 and December 1, 2009, Daniels negotiated numerous checks made payable to himself in the total approximate amount of \$44,500.00. Many of those checks to Daniels were for \$1,500.00, \$2,000.00, \$3,000.00, \$4,000.00 or \$5,000.00 and had no apparent relationship to the balances being held on behalf of his clients. From December 2, 2009 to March 31, 2010, the bank records indicate no activity in the account and a consistent balance of \$33.39.

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

8. A need for prompt action exists to ensure that any additional client funds entrusted to Daniels are not mishandled to the client's 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 Daniels' trust and operating accounts and to ensure that no client funds are mishandled.

2. Daniels 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, Daniels should provide the State Bar with records of all accounts in which client or fiduciary funds have been deposited.

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

THEREFORE, IT IS HEREBY ORDERED:

1. Brian Chris Daniels 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. This matter is scheduled for a hearing on the Petitioner's Motion for a Preliminary Injunction on the 16th day of August, 2010 at 10 A.M in the Wake County Courthouse, Courtroom 10-C in Raleigh, North Carolina.

3. Brian Chris Daniels or any other person having custody or control of records relating to any account into which client or fiduciary funds have been deposited shall immediately produce to the N.C. State Bar upon request all of Daniels' 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.

4. If Daniels 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 Revised 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 any request by the State Bar, to copy and transmit any such missing records directly to the State Bar, at Daniels' expense.

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

6. This Temporary Restraining Order shall remain in effect until the 16th day of August, 2010 unless extended by further orders of this Court.

THIS the 4th day of August, 2010 at 2:15 P.M.


Wake County Superior Court Judge