

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

WAKE COUNTY

FILED

SUPERIOR COURT DIVISION

FILE NO.: 11 CVS 14973

THE NORTH CAROLINA STATE BAR,

Petitioner

v.

VICTOR H. MORGAN, JR.,

Attorney, Respondent

2011 SEP 29 PM 2:36

WAKE COUNTY, C.S.C.

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 T. Cloutier. Respondent, Victor H. Morgan, Jr. did not appear before the Court. Based upon the State Bar's petition and motion and attached affidavit, the Court makes the following:

#### FINDINGS OF FACT

1. Respondent, Victor H. Morgan Jr. ("Morgan"), was licensed to practice law in North Carolina in 1983.

2. Morgan's address of record on file with the North Carolina State Bar is P.O. Box 746, Jacksonville, NC, 28541.

3. On 19 November 2010, the North Carolina State Bar conducted a random audit of Morgan's attorney trust account. The auditor discovered that Morgan was in violation of numerous provisions of Rule 1.15 of the Rules of Professional Conduct, which governs lawyers' handling of entrusted funds. Specifically, the audit revealed that Morgan:

- a. Failed to perform quarterly reconciliations of the account and did not have a current monthly reconciliation of the account;
- b. Used deposit slips that did not always identify the source of funds;
- c. Did not provide clients with written accountings of entrusted funds upon complete disbursement, or annually if funds were held for more than one year;
- d. Failed to escheat abandoned or unidentified funds as required by statute;
- e. Did not direct the bank to notify the State Bar in the event a trust account check was presented against insufficient funds;
- f. Failed to promptly pay entrusted funds as directed by clients; and

g. Failed to maintain images of the back of cancelled trust account checks, showing the endorsement on the check.

4. Morgan agreed to correct the deficiencies within 45 days of the audit, but failed to provide any evidence of corrective action or otherwise communicate with the State Bar auditor thereafter. On 1 March 2011, the auditor informed Morgan that if he did not show that he had taken the required corrective action by 11 March 2011, the matter would be referred to the State Bar's Grievance Committee. Morgan did not respond.

5. On 4 May 2011, Morgan was notified by certified letter from the State Bar's Trust Account Compliance Counsel that the Grievance Committee would not open a grievance file regarding Morgan's trust account violations if Morgan agreed to participate in the Trust Account Compliance Program, which involves voluntarily submitting to trust account monitoring by the State Bar. Morgan failed to respond to this letter.

6. On 12 August 2011, Morgan was served with a Letter of Notice informing him that a grievance file had been opened based on his violations of Rule 1.15 as revealed by the random audit. The Letter of Notice required Morgan to respond in writing within 15 days. He failed to respond, request an extension of time, or otherwise communicate with the State Bar.

7. On 13 September 2011, the State Bar sent Morgan a letter noting his failure to respond to the Letter of Notice and setting another deadline for response of 26 September 2011. Morgan failed to respond by that deadline, request an extension of time, or otherwise communicate with the State Bar.

8. Morgan's substantial violations of the trust account rules establish that funds held in trust by Morgan have been mishandled in violation of Rule 1.15 of the Rules of Professional Conduct.

9. Morgan's refusal to respond, over a ten month period, to repeated inquiries from the State Bar about his attorney trust account strongly indicates that client funds are at risk.

10. Morgan's refusal to provide trust account information and documentation lawfully requested by the State Bar, in violation of the Rules of Professional Conduct, impedes the State Bar's ability to promptly determine whether client funds have been misappropriated from Morgan's attorney trust account.

11. Prompt action is necessary to ensure that 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 Morgan's attorney trust account(s) and to ensure that no client funds are mishandled.

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

4. Morgan 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. Victor H. Morgan, Jr. 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 10 day of October, 2011 at 10:00 A.M in the Wake County Courthouse, Courtroom 10C in Raleigh, North Carolina.

3. Victor H. Morgan, Jr. 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 Morgan'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.

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

5. Morgan 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 10<sup>th</sup> day of October, 2011 unless extended by further orders of this Court.

THIS the 29th day of September, 2011 at 2:35 P.M.

  
Wake County Superior Court Judge