

WAKE COUNTY

FILED

IN THE GENERAL COURTS OF JUSTICE

SUPERIOR COURT DIVISION

NORTH CAROLINA

2012 OCT 29 AM 10:47

12 CVS 13882

WAKE COUNTY, C.S.C.

THE NORTH CAROLINA STATE BAR,)
PETITIONER BY _____)

v.)

CONSENT ORDER OF
PRELIMINARY INJUNCTION

SUE E. MAKO,)
ATTORNEY, RESPONDENT)

THIS MATTER is before the undersigned Judge of Superior Court of Wake County on motion of the North Carolina State Bar. Petitioner, the North Carolina State Bar, is represented by Carmen Hoyme Bannon. Respondent, Sue E. Mako, represents herself. Based upon the consent of the parties, the Court makes the following:

FINDINGS OF FACT

1. Respondent, Sue E. Mako, was licensed to practice law in North Carolina in 1988.
2. Mako's address of record on file with the North Carolina State Bar is 3208 Oleander Drive, Wilmington, NC 28403.
3. On 18 September 2012, the North Carolina State Bar served Mako with a subpoena to produce and permit inspection of documents related to her attorney trust account in connection with grievance file #12G0893. The subpoena directed Mako to produce the identified documents by 8 October 2012.
4. To provide interim assurance that client funds were being properly tracked and safeguarded, the State Bar also asked Mako to immediately produce her most recent quarterly trust account reconciliation and the corresponding monthly bank statement. On 21 September 2012, Mako produced documents in response to this request.
5. The State Bar's preliminary examination of the records produced by Mako on 21 September 2012 indicated that Mako has failed to comply with North Carolina Rules of Professional Conduct 1.15-2 and 1.15-3, regarding handling entrusted funds and trust account management.
6. On 4 October 2012, this Court entered a Temporary Restraining Order (TRO) enjoining Mako from handling entrusted funds. The TRO was extended by subsequent orders of the Court on 15 October 2012 and again on 19 October 2012.

7. The State Bar served the 4 October 2012 TRO on BB&T and PNC Bank, the two banks at which Mako maintains attorney trust accounts. Upon receipt of the TRO, the banks placed holds on Mako's trust accounts which blocked any further deposits or disbursements. Those holds remain in place pending further orders of the Court.

8. During the eight days prior to the entry of the TRO on 4 October 2012, Mako received personal injury settlement funds for seventeen clients. (These seventeen clients, who in the interest of privacy are not identified herein by name or individual settlement amount, are referred to hereafter as "the 'last-in' clients"). The settlement proceeds for the "last-in" clients were all deposited into Mako's trust account at PNC Bank (account number ending in -7255).

9. The settlement funds received for eight of the "last-in" clients remained entirely intact in the PNC Bank trust account until the account was frozen. For the remaining nine "last-in" clients, Mako's attorney fee had already been disbursed, but the funds due to the client and/or medical providers were still in the PNC Bank trust account at the time the account was frozen.

10. In total, \$82,718.59 remains in the PNC Bank trust account for the benefit of the "last-in" clients whose settlements were received in the eight days preceding the TRO.

11. Wilmington attorney Ashley M. Edwards volunteered to assist Mako's clients and her law firm by handling entrusted funds for the firm's clients after the TRO was entered. Edwards agreed to undertake responsibility for entrusted funds received by Mako and/or her firm after the entry of the TRO. Edwards deposits funds received for the benefit of Mako's clients into a BB&T trust account he established for that purpose, and controls the disbursement of those funds.

12. Releasing the \$82,718.59 referenced above from Mako's trust account to Edwards for distribution to the appropriate individuals would ameliorate the harm to the "last-in" clients whose settlement funds have not been promptly released due to the TRO and consequent hold on Mako's trust account.

13. A need for prompt action exists to ensure that client funds are not mishandled.

Based upon the foregoing findings, and with the consent of the parties, the Court makes the following:

CONCLUSIONS OF LAW

1. This Court has personal jurisdiction over Respondent and jurisdiction over the subject matter. This matter is properly before the Wake County Superior Court pursuant to N.C. Gen. Stat. § 84-28(f).

2. Prompt action, pursuant to § 84-28(f), is necessary to preserve the status quo while the State Bar conducts an analysis of Mako's accounts and to ensure that no client funds are mishandled.

3. Mako should be enjoined from accepting any further funds from or on behalf of clients or other individuals in a fiduciary capacity, from writing checks against or withdrawing funds from any account in which client or fiduciary funds have been deposited, and from directing any employee or agent to write a check against or withdraw funds from any account in which client or fiduciary funds have been deposited, unless and until expressly permitted by subsequent order of the Court.

4. To assist the State Bar's analysis of her trust and operating accounts, Mako should provide the State Bar with records of all accounts in which client or fiduciary funds have been deposited and with all client files requested by the State Bar as set forth below.

5. To assist the State Bar's analysis of her trust account, Mako should provide the State Bar with the reconciliation reports that North Carolina lawyers are required to prepare and maintain pursuant to Rule 1.15-3(d) of the Rules of Professional Conduct.

6. Mako should be prohibited from serving as a trustee, attorney-in-fact, executor, personal representative or in any other fiduciary capacity.

THEREFORE, IT IS HEREBY ORDERED:

1. Sue E. Mako 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 write a check against any account in which client or fiduciary funds have been deposited until permitted by subsequent order of the Court.

2. Mako, 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 North Carolina State Bar at its Raleigh offices for inspection and copying all of Mako's financial records relating to any account into which client or fiduciary funds have been deposited, including, but not limited to bank statements, canceled checks, deposit slips, client ledger cards, check stubs, deposited items and debit memos and any other records relating to the receipt and disbursement of client and/or fiduciary funds, as requested by the State Bar.

3. If Mako 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, she shall direct the bank(s) where her trust and operating bank account(s) are maintained, within ten days of the date of this order, to copy and transmit any such missing records directly to the North Carolina State Bar at its Raleigh offices, at Mako's expense.

4. Mako, or any other person having custody or control over records relating to individuals for whom Mako has provided legal services, shall produce to the North Carolina State Bar at its Raleigh offices for inspection and copying all records and documents related to the provision of those services including but not limited to: client files, billing statements, memoranda and receipts. Current client files shall be produced within twenty-four hours of

demand by the State Bar and closed client files shall be produced within three days of demand by the State Bar.

5. Mako is hereby enjoined from serving in any fiduciary capacity, including attorney-in-fact, escrow agent trustee, executor, or personal representative, until further order of this Court.

6. As a limited exception to the injunction contained in this Order, Mako (or any other individual with signature authority on the account) shall be permitted to issue a single check from Mako's PNC Bank trust account (ending in -7255), payable to "Mako & Associates c/o Ashley Edwards, trustee" in the amount of \$82,718.59.

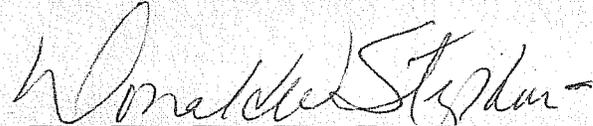
7. Thus, notwithstanding the injunctive relief granted in paragraphs 1 through 5 above, the Court expressly authorizes PNC Bank, upon receipt of this Order, to permit Mako, or any other individual with signature authority on the PNC Bank trust account, to make a single disbursement of funds from the trust account as described in paragraph 6, above. PNC Bank is expressly authorized to honor a check drawn on Mako's trust account ending in -7255 and payable to Mako & Associates c/o Ashley Edwards, trustee, in the amount of \$82,718.59.

8. Notwithstanding the injunctive relief granted in paragraphs 1 through 5 above, the Court expressly authorizes Edwards to deposit said check into the BB&T trust account he established for Mako & Associates' client funds, and to disburse those funds on behalf of the "last-in" clients as directed by the State Bar.

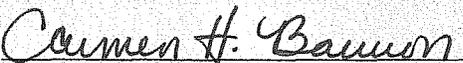
9. Mako shall not attempt to make any disbursements or withdrawals from trust or fiduciary accounts other than the disbursement described in paragraph 6, above.

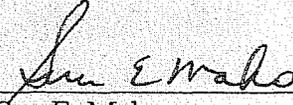
10. This Order of Preliminary Injunction shall remain in effect until further order of this Court.

This the 29 day of October, 2012.


Wake County Superior Court Judge

WE CONSENT:


Carmen Hoyme Bannon
Attorney for Petitioner
The North Carolina State Bar

 10/26/12
Sue E. Mako
Respondent