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NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE 7017 NEC 10 開 毕 36 SUPERIOR COURT DIVISION

WAKE COUNTY	12 CVS 14872
WAKE COUN	TY, C.S.C.
THE NORTH CAROLINA STAFE BAR, Petitioner)
	Order of Preliminary Injunction
v.)
ALAN M. ROUGHTON, Attorney, Respondent)))

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 preliminary injunction filed by the North Carolina State Bar. Petitioner, the North Carolina State Bar was represented by Brian P.D. Oten. Respondent, Alan M. Roughton, did not appear. Based upon the verified petition and the evidence introduced at the hearing, the Court makes the following:

FINDINGS OF FACT

- Respondent, Alan M. Roughton, was licensed to practice law in North Carolina on 24 August 2007.
- Roughton's address of record on file with the North Carolina State Bar is 126 Oakmount Drive, Unit 16, Greenville, North Carolina, 27858. The United States Post Office has informed the State Bar that Roughton no longer lives at this address, and the State Bar has been unable to locate Roughton.
- On 23 October 2012, the North Carolina State Bar filed a petition for preliminary injunction in this matter. Due to the State Bar's inability to locate Roughton, the State Bar served Roughton with the petition for preliminary injunction by publishing notice of this action in the Daily Reflector, a newspaper qualified for legal advertising in accordance with N.C. Gen. Stat. §§ 1-597 & 1-598 serving the Greenville, North Carolina area. Notice was published in the Daily Reflector on 26 October 2012, 2 November 2012, and 9 November 2012.
- Roughton was served with notice of this matter pursuant to Rule 4(j1) of the North Carolina Rules of Civil Procedure, including notice of today's hearing, and has had ample opportunity to respond. Roughton has not responded to the State Bar's petition for preliminary injunction and is not present today.
- The State Bar's investigation of Roughton's trust account records indicates that Roughton mishandled client funds that were deposited into his attorney trust account and Roughton has failed to comply with the provisions of Rules 1.15-2 & 1.15-3 of the

Rules of Professional Conduct regarding handling entrusted funds and trust account management. Specifically:

- a. From at least January 2010 to October 2012, Roughton maintained an attorney trust account at Bank of America bearing account number ending in 8037 (hereinafter "trust account") into which Roughton deposited entrusted client funds.
- b. Between January 2010 and October 2012, Roughton made numerous disbursements from his trust account that were unattributed to any client, including checks drawn on the account made payable to third parties, checks drawn on the account made payable to himself or his law office, and transfers of funds into unidentified Bank of America checking accounts.
- c. On or about 4 June 2010, Roughton deposited into his trust account \$295.00 belonging to Kenneth Osborne.
- d. Roughton did not disburse any entrusted funds from his trust account for the benefit of Osborne.
- e. On or about 13 October 2010, Roughton deposited into his trust account \$295.00 belonging to Kristina Howell.
- f. Roughton did not disburse any entrusted funds from his trust account for the benefit of Howell.
- g. On or about 1 October 2010 and 4 October 2010, Roughton deposited into his trust account \$400.00 and \$260.00, respectively, belonging to Trisha Peel as a partial deposit of the \$2,000.00 advance fee charged to Peel by Roughton for representation in a civil litigation matter.
- h. On or about 28 January 2011, Peel paid Roughton the remainder of her \$2,000.00 advance fee by check in the amount of \$1,340.00.
- i. Roughton negotiated Peel's 28 January 2011 check but did not deposit Peel's \$1,340.00 advance fee in his trust account.
- j. Roughton did not disburse any entrusted funds from his trust account for the benefit of Peel.
- k. Because Roughton never disbursed the entrusted funds deposited in his trust account belonging to Osborne, Howell, and Peel, Roughton's trust account should contain a total of at least \$1,250.00 belonging to Osborne, Howell, and Peel, collectively.
- 1. As of 18 January 2012, Roughton's trust account contained a zero balance.

- m. In or around April 2010, Kendall Hankins paid Roughton \$275.00 for representation in a traffic citation. Hankins's \$275.00 payment included Roughton's fee for legal services as well as anticipated court costs and fines.
- n. Roughton's trust account records do not reflect any deposit of the \$275.00 paid by Hankins.
- o. Osborne, Howell, and Hankins instructed Roughton to pay the court costs and fines associated with their respective traffic citations.
- p. Roughton did not pay the court costs and fines associated with Osborne's, Howell's, or Hankins's respective traffic citations.
- q. Roughton never delivered any portion of the funds entrusted to him by Osborne, Howell, Peel, or Hankins to a third party at his client's direction and never used the funds for his client's benefit.
- r. Roughton never refunded any portion of the unused or unearned funds entrusted to him by Osborne, Howell, Peel, or Hankins.
- s. Roughton has failed to produce any documentation supporting or justifying the disbursement of Osborne's, Howell's, and Peel's entrusted funds from his trust account, and Roughton has failed to produce any documentation supporting or justifying his failure to deposit Hankins's or Peel's entrusted funds into his trust account.
- t. Roughton has since abandoned his practice and has not replied to his clients' or the State Bar's numerous inquiries concerning the status of his clients' respective cases and the location of his clients' entrusted funds.
- 6. The foregoing facts establish that Roughton has mishandled entrusted funds in violation of the Rules of Professional Conduct.
- 7. A need for prompt action exists to ensure that additional client funds are not mishandled to their detriment.

Based upon the foregoing Findings of Fact, 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 Roughton's trust and operating accounts and to ensure that client funds are not mishandled.

- 2. Roughton 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 any account in which client or fiduciary funds have been deposited, and from directing or permitting any employee or agent to withdraw funds from and/or to draw any checks or other instruments upon any account in which client or fiduciary funds have been deposited until and unless expressly permitted by subsequent orders of the Court.
- 3. To assist the State Bar's analysis of his trust and operating accounts, Roughton 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.
- 4. To assist the State Bar's analysis of his trust accounts, Roughton should provide the State Bar with the reconciliation reports required to be prepared and maintained pursuant to Rule 1.15-3(d) of the Rules of Professional Conduct.
- 5. Roughton should be prohibited from serving 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. Alan M. Roughton 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 orders of the Court.
- 2. Roughton, 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, North Carolina location for inspection and copying all of Roughton'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. Roughton, or any other person having custody or control over records relating to individuals for whom Roughton has provided legal services, shall produce to the North Carolina State Bar at its Raleigh, North Carolina location 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.

- 4. If Roughton 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 and operating bank account(s) 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 its Raleigh, North Carolina location, at Roughton's expense.
- 5. Roughton shall immediately produce to the North Carolina State Bar at its Raleigh, North Carolina location the monthly and quarterly reconciliation reports for any and all trust accounts that he is required to produce and maintain pursuant to Rule 1.15-3(d) of the Rules of Professional Conduct. If Roughton has not prepared such reports as required, Roughton is hereby ordered to conduct the monthly and quarterly reconciliations required by Rule 1.15-3(d) of the Rules of Professional Conduct for the time period required under the Rules of Professional Conduct, or a lesser period if so specified by the State Bar, and produce the reports to the State Bar within two weeks of the date of this order or by the deadline set by the State Bar, whichever is later.
- 6. Roughton is hereby enjoined from serving as an attorney-in-fact, trustee, escrow agent, executor, personal representative or in any other fiduciary capacity.
- 7. This Order of Preliminary Injunction shall remain in effect until further order of this Court.

THIS the Oday of December, 2012.

Superior Court Judge Presiding