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STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE PM 4: 20 SUPERIOR COURT DIVISION FILE NO.: 12 CVS 17047

WAKE COUNTY

THE NORTH CAROLINA STATE BAR,

Petitioner

v.

AMENDED ORDER OF PRELIMINARY INJUNCTION

MICHAEL C. CASEY, Attorney,

Respondent

THIS MATTER is before the undersigned Judge of Superior Court of Wake County upon Respondent's motion to modify the terms of the Consent Order of Preliminary Injunction entered by this Court on 7 December 2012 to permit Respondent to disburse certain entrusted and/or fiduciary funds in the interests of justice and to ameliorate harm to clients and/or third parties. Petitioner was represented by Carmen H. Bannon, Douglas J. Brocker represented Respondent, Michael C. Casey. Based upon the Defendant's unopposed motion and the arguments of counsel, the Court makes the following:

FINDINGS OF FACT

- Respondent, Michael C. Casey was licensed to practice law in North 1. Carolina on August 29, 1998.
- 2. On December 7, 2012, a consent preliminary injunction was entered by the Wake County Superior Court, enjoining Casey from accepting any further client or fiduciary funds and from disbursing or writing checks against any account into which fiduciary or client funds had been deposited until further order of the Court.
- 3. The preliminary injunction had the effect of freezing the contents of Casey's attorney trust account ending in 4601, at PNC Bank, 103 East Mall Drive, P.O. Box 1406, Nags Head, NC 27959.
- In the interests of justice and to prevent and/or ameliorate significant harm to certain clients or third parties, some of the funds entrusted to Casey within the week prior to the Preliminary Injunction should be disbursed from the account. Specifically:
 - (a) On November 30, 2012, Casey received \$20,700.00 in trust from Sharon E. Nelson, which represented a down payment for a closing that was to occur on or about December 5, 2012. Ms. Nelson cannot complete her closing unless those funds are released to her.

- (b) On December 3, 2012, Casey received \$69,566.33 in trust from Sheila D. Quarto, which represented a down payment for a closing that was originally to occur on or about December 5, 2012. Ms. Quarto is in need of those funds so that she can complete her closing.
- (c) On December 3, 2012, Capital One, N.A. initiated a wire transfer of \$128,122.67 into the trust account in error. A wire in this same amount had posted to Casey's trust account on November 30, 2012 for a closing that day and those funds were promptly disbursed. Capital One, N.A. erroneously sent the duplicate wire the following business day and has requested that these funds be returned.
- (d) Casey has \$29,579.44 in trust for the benefit of Paul Albert Jr. for the purpose of paying off J.P. Morgan Chase Bank mortgage, loan number 1971402637, for a closing that has already taken place. In order to satisfy the prior owner's mortgage and ensure that Mr. Albert's property is not encumbered by the associated deed of trust, these funds should be released to J.P. Morgan Chase.
- 5. There are sufficient funds in Casey's trust account to disburse the amounts identified in paragraphs 4(a) through (d), above.
 - 6. The State Bar does not oppose this motion.

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 Casey's trust and other bank accounts.
- 2. In the interests of justice and to to ameliorate and/or avoid harm to the beneficial owners of the funds identified in paragraph 4(a) through (d) above, the identified amounts should be released from Casey's trust account. Time is of the essence and these disbursements should be made immediately.
- 3. With a limited exception for the disbursements described in paragraphs 4(a) through (d), above, Casey should be enjoined from accepting any further funds from or on behalf of clients or other individuals in any fiduciary capacity, from writing checks against any account in which client or fiduciary funds have been deposited, and from directing any employee or agent to draw a check on any account in which client or fiduciary funds have been deposited, except as expressly authorized by this order.
- 4. To assist the State Bar's analysis of his trust and operating accounts, Casey should provide the State Bar, to the extent not already provided, 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 his trust accounts, Casey 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.

THEREFORE, IT IS HEREBY ORDERED:

- 1. Michael C. Casey is enjoined from accepting or receiving any funds from clients or third parties in any fiduciary capacity, from withdrawing any funds from and/or drawing any checks or other instruments 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 to draw any checks or other instruments against any account in which client or fiduciary funds have been deposited until and unless permitted by subsequent orders of this Court.
- 2. Casey 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 for inspection and copying all of Casey'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 and debit memos and any other records relating to the receipt and disbursement of client and/or fiduciary funds.
- 3. If Casey does not have possession of the minimum records required to be maintained regarding trust and fiduciary funds pursuant to Rules 1.15-2 and 1.15-3 of the Rules of Professional Conduct and/or does not have possession of personal bank account records for any personal accounts into which client or fiduciary funds were deposited, he shall direct the bank(s) where his 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 Casey's expense.
- 4. Casey or any other person having custody or control over records relating to individuals for whom he 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 made available or produced within 24 hours of demand by the State Bar and closed client files shall be made available or produced within 3 days of demand by the State Bar.
- 5. Casey shall immediately produce to the North Carolina State Bar 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 Casey has not prepared such reports as required by Rule 1.15-3(d), he is

hereby ordered to conduct the monthly and quarterly reconciliations required by Rule 1.15-3(d) 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. Casey shall not serve in any fiduciary capacity, including trustee, escrow agent, settlement agent, personal representative, executor or attorney-in-fact until and unless he is permitted to do so by further order of this Court. As a limited exception to this prohibition, Casey may continue to serve as co-receiver in *Larry E. Jennings*, et al. v. Long John Silver LLC, Dare County file no 12-SP-245, in which his co-receiver is Jay Wheeless. In the *Jennings* receivership, Casey may perform all functions of his capacity as co-receiver other than receiving or disbursing entrusted funds. Casey may not receive or disburse entrusted funds in connection with the *Jennings* receivership unless and until he is permitted to do so by further order of this Court.
- 7. As a limited exception to the injunction contained in this Order, Casey is authorized to make the following disbursements from the entrusted funds held in his attorney trust account at PNC Bank:
 - (a) \$20,700.00 payable to Sharon E. Nelson;
 - (b) \$69,566.33 payable to Sheila D. Quarto;
 - (c) \$29,579.44 payable to J.P. Morgan Chase Bank to pay off mortgage loan number 1971402637;
 - (d) \$128,122.67 payable to Capital One, N.A.

Casey shall make these disbursements as soon as possible, by whatever method will most expeditiously transfer these funds to their beneficial owners.

- 7. Thus, notwithstanding the injunctive relief granted in paragraphs 1 through 6 above, the Court expressly authorizes PNC Bank to permit Casey to make the disbursements identified in paragraphs 7(a) through (d).
- 8. This Amended Order of Preliminary Injunction shall remain in effect until further orders of this Court.

This the $\frac{1}{2}$ day of December, 2012.

Wake County Superior Court Judge