

FILED

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

WAKE COUNTY

2013 JUN 14 AM 11:09

SUPERIOR COURT DIVISION

13 CVS _____

WAKE CO., C.S.C.
BY

THE NORTH CAROLINA STATE BAR,)
Petitioner)

Temporary Restraining Order

v.)

THOMAS H. CLEMENTS, 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 motion for temporary restraining order and 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, Thomas H. Clements, was not present but had notice of the proceeding. 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, Thomas H. Clements, was licensed to practice law in North Carolina on 21 August 1983.
2. Clements's address of record on file with the North Carolina State Bar is 434 Lansdowne Road, Fayetteville, NC 28314.
3. On 6 February 2013, the Disciplinary Hearing Commission of the North Carolina State Bar suspended Clements for two years, staying the active term of suspension for a period of two years upon Clements's compliance with a number of conditions (case no. 13 DHC 8). On 16 April 2013, the State Bar filed a motion for order to show cause with the DHC, seeking to activate Clements's suspension for failing to comply with the conditions imposed on his stayed suspension. On 22 April 2013, the Hon. James Floyd Ammons, Jr. appointed a trustee to wind down Clements's law practice.
4. The State Bar's preliminary investigation of Clements's trust account records indicates that Clements 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. In March 2013 and April 2013, Clements wrote twelve (12) checks to himself from his attorney trust account, listed in the table below. These twelve checks failed to attribute the funds withdrawn from the trust

account to a particular client in violation of Rules 1.15-2(a) & 1.15-3(b)(2).

<u>Recipient</u>	<u>Date (cleared bank)</u>	<u>Check Number</u>	<u>Amount (\$)</u>
Thomas Clements	26 March 2013	3318	100.00
Thomas Clements	29 March 2013	3320	100.00
Thomas Clements	3 April 2013	3321	125.00
Thomas Clements	8 April 2013	3322	50.00
Thomas Clements	5 April 2013	3323	115.00
Thomas Clements	8 April 2013	3325	200.00
Thomas Clements	9 April 2013	3326	200.00
Thomas Clements	12 April 2013	3327	500.00
Thomas Clements	15 April 2013	3328	1400.00
Thomas Clements	16 April 2013	3329	250.00
Thomas Clements	22 April 2013	3330	200.00
Thomas Clements	17 April 2013	3331	300.00
TOTAL:			<u>\$3540.00</u>

- b. On 15 May 2013, the State Bar sent Clements a letter requesting explanation of the disbursements identified in the table above. Clements has failed to produce any explanation or documentation supporting or justifying the disbursements in question.
- c. Clements was not entitled to the \$3,540.00 disbursed from his trust account via the twelve checks noted above.
- d. The withdrawals from Clements's trust account noted in paragraph (a) above were not authorized by any of Clements's clients. Accordingly, these withdrawals violated Rules 1.15-2(a) & (m).

5. The foregoing facts establish that Clements has mishandled entrusted funds in violation of Rules 1.15-2 & 1.15-3 of the Rules of Professional Conduct.

6. Clements's misappropriation of entrusted client funds caused significant harm to his client(s) by depriving the client(s) of their rightful property as well as the trust the client(s) place in Clements to protect their funds. Additionally, Clements's misappropriation puts client funds at risk of further misappropriation and subjects them to improper disbursement without the client's knowledge or authorization.

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 Clements's trust and operating accounts and to ensure that client funds are not mishandled.

2. Clements 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 account(s), Clements 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. Clements should not be permitted to serve 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. Thomas H. Clements is enjoined from accepting or receiving any funds from clients or third parties in a 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 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.

2. This matter is scheduled for a hearing on the Petitioner's Motion for a Preliminary Injunction on the 24 day of June, 2013 at 10:00 am in the Wake County Courthouse, Courtroom 10C in Raleigh, North Carolina.

2. Clements 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 Clements'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, debit memos and any other records relating to the receipt and disbursement of client and/or fiduciary funds.

3. Clements or any other person having custody or control over records relating to persons or entities for whom Clements or Clements's law firm has provided legal services shall produce to the North Carolina State Bar for inspection and copying all records and

documents relating to each such person or entity including but not limited to client files, billing statements, memoranda and receipts. Documents relating to current clients shall be produced within 24 hours of demand by the State Bar. Documents relating to closed client files shall be produced within 3 days of demand by the State Bar.

4. If Clements 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 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 Clements' expense.

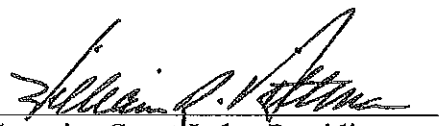
5. Clements shall immediately produce to the North Carolina State Bar at its Raleigh, North Carolina location the monthly and quarterly reconciliation reports for any and all trust accounts that he is required to produce and maintain pursuant to Rule 1.15-3(d) of the Rules of Professional Conduct. If Clements has not prepared such reports as required, that Clements be 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 the order or by the deadline set by the State Bar, whichever is later.

6. Clements shall not serve in any fiduciary capacity, including trustee, escrow agent, personal representative, executor or attorney-in-fact until and unless he is permitted to do so by order of this Court.

7. This Temporary Restraining Order shall remain in effect until the 24 day of June, 2013 unless extended by further order of this Court.

8. No security is required to or by the Plaintiff.

THIS the 14 day of June 2013.


Superior Court Judge Presiding