08CV019523

WAKE COUNTY

NORTH CAROLINA

IN THE GENERAL COURTS OF JUSTICE
SUPERIOR COURT DIVISION
08 CVS

THE NORTH CAROLINA STATE BAR PETITIONER v. DAVID CURTIS SMITH, ATTORNEY RESPONDENT	)))))))))	CONSENT ORDER OF PRELIMINARY INJUNCTION

THIS MATTER came on to be heard and was heard by the undersigned Judge of Superior Court of Wake County on motion of the North Carolina State Bar. Petitioner, the North Carolina State Bar was represented by Margaret Cloutier. The Respondent, David Curtis Smith, represented himself. Based upon the pleadings herein and the consent of the parties, the Court makes the following:

FINDINGS OF FACT

1. Respondent, David Curtis Smith ("Smith"), was licensed to practice law in North Carolina in 1999.

2. As of the date of this order, Smith's last known address of record on file with the North Carolina State Bar is 1218 Broad Street, Durham, NC 27705.

3. On November 5, 2008, the North Carolina State Bar served Smith with a Letter of Notice and a Subpoena for Cause Audit.

4. The State Bar's preliminary investigation of Smith's transactions indicates that fiduciary funds have been mishandled.

5. Smith desires to cooperate with the North Carolina State Bar.

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

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 Smith's trust and operating accounts and to ensure that no client funds are mishandled.

2. Smith 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, Smith should provide the State Bar with records of all accounts in which client or fiduciary funds have been deposited. Smith shall provide the North Carolina State Bar with all records of all accounts in which mishandled fiduciary funds were deposited.

4. Smith 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. David Curtis Smith 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. David Curtis Smith 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 Smith'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.

3. If Smith 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 the date of this order, to copy and transmit any such missing records directly to the North Carolina State Bar, at Smith's expense.

4. David Curtis Smith, or any other person having custody or control over records relating to individuals for whom Smith 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 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.

5. Smith shall not serve in any fiduciary capacity, including trustee, escrow agent, personal representative, executor or attorney-in-fact until further order of this Court.

6. This Consent Order of Preliminary Injunction shall remain in effect until further orders of this Court.

THIS the 7th day of [illegible], 2008.

Wake County Superior Court Judge

WE CONSENT

Margaret Cloutier
Attorney for the Petitioner
The North Carolina State Bar

David Curtis Smith
Respondent