

FILED

STATE OF NORTH CAROLINA

2016 MAR -4 AM 10: 28

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

FILE NO.: 16 CVS 2891

WAKE COUNTY, C.S.C.

THE NORTH CAROLINA STATE BAR,

BY Tracy  
Petitioner,

v.

TRACY CHAPPELL CURTNER, Attorney,

Respondent.

TEMPORARY  
RESTRAINING  
ORDER

THIS MATTER came on to be heard by the undersigned Judge of Superior Court of Wake County pursuant to Petitioner's Motion for Temporary Restraining Order and Petition for Preliminary Injunction. Petitioner, the North Carolina State Bar ("State Bar"), was represented by Leonor Bailey Hodge. Respondent, Tracey Chappell Curtner did not appear and was not represented. Based upon the evidence presented to the Court, the Court makes the following:

#### FINDINGS OF FACT

1. Respondent, Tracy Chappell Curtner ("Curtner"), was licensed to practice law in North Carolina in 1992.
2. Curtner practices law in Raleigh, Wake County, North Carolina. The State Bar's membership database shows the following address for Curtner: 333 Fayetteville Street, Suite 1513, Raleigh, NC 27601.
3. Curtner represented W. Rouse in a personal injury matter on a contingent fee basis.
4. Curtner did not have a written fee agreement for her representation of Rouse.
5. Curtner settled Rouse's personal injury case and the insurance company issued payment in the amount of \$21,133.39 to Rouse and his attorney, Curtner, on 8 September 2014.
6. Curtner did not have a trust account after 30 September 2014.
7. Curtner has failed to maintain the proceeds of Rouse's settlement in an attorney trust account.
8. To date, despite making promises to disburse Rouse's settlement proceeds to him, Curtner has failed to disburse Rouse's funds to him.
9. A need for prompt action exists to ensure that additional funds entrusted to Curtner are not mishandled.

10. Deputy Counsel Leonor Bailey Hodge gave Curtner notice of the scheduled hearing by email message sent on Thursday, 3 March 2016 at 7:52 a.m.

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 analyzes Curtner's accounts and to ensure that no additional client funds are mishandled.
2. This matter is properly before the Wake County Superior Court pursuant to N.C. Gen. Stat. § 84-28(f).
3. Curtner 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 over whom Curtner exercises control 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 Court pursuant to further order from this Court.
4. To assist the State Bar's analysis of her account(s), Curtner 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 account(s), Curtner 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.
6. Curtner should not be permitted to serve in any fiduciary capacity, including trustee, escrow agent, settlement agent, personal representative, executor or attorney-in-fact until further order of this Court.

THEREFORE, IT IS HEREBY ORDERED:

1. Tracy Chappell Curtner 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 over whom Curtner exercises control to withdraw funds from and/or to draw any checks on or otherwise disburse or withdraw funds from any account in which client or fiduciary funds have been deposited and from serving in any fiduciary capacity, including trustee, escrow agent, settlement agent, personal representative, executor or attorney-in-fact, until and unless expressly permitted to do so by subsequent orders of this Court.

2. This matter is scheduled for a hearing on the State Bar's Petition for Preliminary Injunction on the 14<sup>th</sup> day of March, 2016 at 10:00.m. in the Wake County Courthouse, Courtroom 10-C in Raleigh, North Carolina.
3. Tracy Chappell Curtner, or any other person having custody or control of her bank account records, immediately produce to the State Bar upon request any of Curtner's bank records for accounts into which any trust or fiduciary funds have been deposited, including but not limited to bank statements, canceled checks, deposit slips, identification of deposited items, credit card payment receipts, client ledger sheets, account reconciliation reports required to be prepared and maintained pursuant to Rule 1.15-3(d) of the Rules of Professional Conduct and any other records relating to the receipt and disbursement of client or fiduciary funds.
4. If Curtner does not have possession of the minimum records regarding trust funds required to be maintained pursuant to Rule 1.15-3 of the Rules of Professional Conduct, that she direct the bank(s) where her accounts(s) are maintained to copy and transmit any such missing records directly to the State Bar, at Curtner's expense.
5. If Curtner has not prepared reconciliation reports as required by Rule 1.15-3(d) of the Rules of Professional Conduct, that she conduct the monthly and quarterly reconciliations as required by the Rules of Professional Conduct for the time period required under the Rules of Professional Conduct and produce the reports to the State Bar at its offices in Raleigh, North Carolina.
6. That Curtner, or any other person having custody or control over records described herein, produce to the State Bar for inspection and copying all records and documents relating to individuals or entities for whom Curtner has provided legal services, including but not limited to client files, billing statements, memoranda and receipts. Documents relating to current client files and current employees shall be produced at the State Bar offices in Raleigh, North Carolina within 24 hours of demand by the State Bar and closed client files and records of former employees shall be produced at the State Bar offices in Raleigh, North Carolina within 3 days of demand by the State Bar.
7. This Temporary Restraining Order shall remain in effect until the 14<sup>th</sup> day of March 2016 unless extended by further orders of this Court.

THIS the 4<sup>th</sup> day of March, 2016 at 10:35 A.m.



The Honorable Paul C. Ridgeway  
Wake County Superior Court Judge