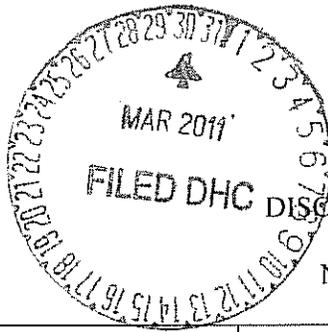


NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
10 DHC 40

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

DAVID H. ROGERS, Attorney,

Defendant

ORDER
OF DISCIPLINE

This matter is before a hearing panel of the Disciplinary Hearing Commission composed of Steven D. Michael, Chair, and members Robert F. Siler and Dr. Charles L. Garrett, Jr. Carmen Hoyme Bannon represents Plaintiff, the North Carolina State Bar. Defendant, David H. Rogers, has not participated in this matter and no counsel of record has appeared on his behalf.

On Plaintiff's motion, judgment by default was entered against Defendant. Based upon the pleadings and admissions pursuant to 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(f) and Rule 8(d) of the Rules of Civil Procedure, the hearing panel hereby finds by clear, cogent, and convincing evidence the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, David H. Rogers (hereafter "Defendant" or "Rogers"), was admitted to the North Carolina State Bar on 8 June 1979 and is an Attorney at Law subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina. Rogers' license to practice law in North Carolina was active from the date of his admission until 7 March 1983, when he was judicially suspended. Rogers' license was reinstated on 3 January 1986 and remained active until 20 March 2003, when it was suspended for three years. On 25 May 2006 Rogers entered into a consent order of discipline wherein his license was suspended for five years, to run consecutive to his prior suspension. Rogers' law license was still suspended when the complaint in this matter was filed.

3. Defendant was properly served with process in this action.

4. In July 2008, Rogers went to the Orange County home of William Anthony Ralston and shot Ralston in the abdomen, seriously injuring him.

5. As a result of the conduct described in paragraph 4, Rogers was charged, in *State of North Carolina v. Rogers*, Orange County file numbers 08 CRS 000872 and 08 CRS 053684, with one count each of attempted murder (a class B2 felony) and assault with a deadly weapon with intent to kill inflicting serious injury (a class C felony).

6. In October 2010, after a Superior Court jury trial, Rogers was convicted of both charges in file numbers 08 CRS 000872 and 08 CRS 053684.

As previously found by default judgment and now recited herein, based on the foregoing Findings of Fact the hearing panel makes the following

CONCLUSIONS OF LAW

1. All the parties are properly before the hearing panel and the panel has jurisdiction over Defendant, David H. Rogers, and the subject matter.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(1), for his convictions of attempted murder and assault with a deadly weapon with intent to kill inflicting serious injury, criminal offenses showing professional unfitness.

3. Defendant's conduct, as set out in the Findings of Fact above, also constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) as follows: By engaging in the felonious conduct for which he was convicted, Rogers committed criminal acts that reflect adversely upon his trustworthiness and fitness as a lawyer in violation of Rule 8.4(b).

Based upon the foregoing Findings of Fact and Conclusions of Law, the hearing panel hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. The findings in paragraphs 1 through 6 above are reincorporated as if fully set forth herein.

2. Rogers was licensed in 1979 and therefore has substantial experience in the practice of law.

3. Rogers committed violent felonies and thereby engaged in criminal conduct involving moral turpitude.

4. Acting with intent to kill and infliction of serious injury are elements of the crime of assault with a deadly weapon with intent to kill inflicting serious injury. Rogers' conviction of that offense establishes that he acted with intent and caused serious harm to his victim.

5. The felonies Rogers committed necessarily result in incarceration under North Carolina law.

6. Rogers' criminal convictions are a matter of public record.

7. Rogers' status as a lawyer is a matter of public record.

8. When a lawyer is convicted of a serious crime it brings the legal profession into disrepute.

9. Rogers has a history of repeated and lengthy active suspensions from the practice of law, which demonstrates a pattern of serious disciplinary violations.

10. The hearing panel has carefully considered all of the different forms of discipline available to it in considering the appropriate discipline to impose in this case.

Based upon the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact Regarding Discipline, and upon consideration of the factors set forth in 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0114(w), the hearing panel hereby enters the following additional

CONCLUSIONS OF LAW REGARDING DISCIPLINE

1. The hearing panel has carefully considered all of the factors enumerated in 27 N.C.A.C. 1B § .0114(w) of the Rules and Regulations of the North Carolina State Bar. The hearing panel finds evidence of the following factors:

(a) From Rule .0114(w)(1):

- i. Intent of Defendant to cause the resulting harm or potential harm, in that inherent in Rogers' convictions are findings that he acted with intent to harm the victim of his crimes;
- ii. Intent of Defendant to commit acts where the harm or potential harm is foreseeable;
- iii. Circumstances reflecting Defendant's lack of trustworthiness or integrity;
- iv. Effect of Defendant's conduct on third parties (to wit: the victim of his criminal offenses);

(b) From Rule .0114(w)(2):

- i. Commission of a felony.

(c) From Rule .0114(w)(3):

- i. Prior disciplinary offenses;
- ii. A pattern of misconduct; and
- iii. Substantial experience in the practice of law.

2. Rogers' conduct resulted in at least potential significant harm to the profession due to the public nature of his criminal charges and conviction.

3. Rogers' conduct resulted in significant harm to William Anthony Ralston, the victim of his crimes.

4. The hearing panel has carefully considered admonition, reprimand, censure, suspension and disbarment in considering the appropriate discipline in this case.

5. The hearing panel finds that admonition, reprimand, censure or suspension would not be sufficient discipline because of the gravity of harm and potential harm to the public and the profession in the present case.

6. The hearing panel concludes that discipline short of disbarment would not adequately protect the public for the reasons stated above and for the following reasons:

- a. Rogers committed misdeeds involving moral turpitude and violations of the public trust, including violent crimes for which imprisonment is mandatory. Felonious violations of criminal law are among the most serious kinds of misconduct that an attorney can commit.
- b. Rogers has repeatedly engaged in serious misconduct reflecting adversely on his honesty, trustworthiness or fitness as a lawyer.
- c. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Rogers committed, would be inconsistent with discipline issued in prior cases involving similar misconduct, and would send the wrong message to attorneys and the public regarding the conduct expected of members of the Bar of this State.
- d. The protection of the public and the legal profession requires that Rogers not be permitted to resume the practice of law until he is able to demonstrate the following: That he has reformed; that he understands his obligations to his clients, the public, and the legal profession; and that permitting him to practice law will not be detrimental to the public, the integrity and standing of the legal profession, or the administration of

justice. Disbarred lawyers are required to make such a showing before they may resume practicing law.

Based upon the foregoing Findings of Fact, Conclusions of Law, and additional Findings of Fact and Conclusions of Law Regarding Discipline, the hearing panel hereby enters the following

ORDER OF DISCIPLINE

1. Defendant, David H. Rogers, is hereby DISBARRED from the practice of law.
2. Defendant shall pay the costs of this proceeding as assessed by the Secretary of the North Carolina State Bar. Defendant must pay the costs within 30 days of service upon him of the statement of costs by the Secretary.
3. Defendant shall comply with all provisions of 27 NCAC 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules.

JSK Signed by the Chair with the consent of the other hearing panel members, this the 28th day of March, 2011.



Steven D. Michael, Chair
Disciplinary Hearing Panel