

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
NO. 82 CRS 63259

STATE OF NORTH CAROLINA

v.

DAVID H. ROGERS

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ORDER

THIS CAUSE coming on to be heard and being heard before the undersigned Judge Presiding at the March 7, 1983 session of Superior Court of Wake County upon a summary proceeding for discipline of an attorney, and the defendant, David H. Rogers, being present in court and represented by his attorney, Wayne Eads, and the State being represented by the Special Prosecutor, Charles H. Hobgood, and the defendant, having consented to the court hearing this matter at this session of court; the Court, having heard the evidence presented at the trial of the above-captioned case, finds the following facts, having been satisfied thereof by clear, cogent and convincing proof:

1. That the defendant, David H. Rogers, is at present an attorney licensed to practice law in the State of North Carolina.

2. That on July 7, 1982 shortly before 2:30 a.m. the defendant entered the Wake County Magistrate's Office.

3. That at approximately 2:30 a.m. on said date Paula Anne Gately was brought before Magistrate Jerry P. Ray and was charged with driving under the influence and hit and run

property damage in the case of State v. Paula Anne Gately, being Case No. 82 CR 39809, and Paula Anne Gately was placed under a \$100 cash bond.

4. That at that time the defendant offered to become a surety on her bail bond; that he left the Magistrate's Office and returned with \$100 in cash and at approximately 4:30 a.m. posted bond for Paula Anne Gately, who was not a member of his immediate family, by paying \$100 to the Magistrate and signing his name to the bail bond.

5. That immediately before the defendant signed the bond, Magistrate Jerry P. Ray asked the defendant if the defendant was aware of the statute making it illegal for an attorney to become a surety on a bail bond; that at that time Magistrate Jerry Ray opened a volume of the North Carolina General Statutes to the page containing the statute and placed the General Statute book in front of the defendant for him to read; that the defendant testified that he did not take and read the statute book because he was afraid that such conduct would insult the Magistrate, but the Court finds that this testimony from the defendant is unbelievable; that the defendant deliberately declined to read the statute in question which was offered for him to read.

6. That the defendant willfully and intentionally became a surety on the bail bond; and that this act was a violation of G.S. §15A-541.

7. That on that date the defendant and Paula Anne Gately left the Magistrate's Office together; that the defendant gave Paula Anne Gately a ride to her home in his car; and that while driving to her residence the defendant and Paula Anne Gately entered into an agreement wherein he agreed to represent her as her attorney in the case of State v. Paula Anne Gately.

8. That in August, 1982 the defendant had a conversation with Barbara Mobley, an Assistant Clerk of Court for Wake County, and as a result of that conversation he mailed to her a letter and Assignment of Interest in Appearance Bond dated August 17, 1982; that during that conversation Barbara Mobley asked the defendant whether he was going to represent Paula Anne Gately; that the defendant stated to Barbara Mobley that he did not represent Paula Anne Gately and that he had no intention of representing Paula Anne Gately; and that the defendant made said statement at a time when he had already agreed to represent Paula Anne Gately and was planning to represent her.

9. That on August 19, 1982 the defendant appeared in Wake County District Court for the trial of the case of State v. Paula Anne Gately and announced that he was representing Paula Anne Gately; and that after the call of the calendar he stated to Mary Dombalis, the Assistant District Attorney who

was handling the docket, that the State's witness, Bobby Edward McMillian, was not present and that the State would have to dismiss the criminal charges against his client.

10. That later on that morning the State's witness, Bobby Edward McMillian, appeared in court; that after Bobby Edward McMillian arrived, the defendant called Bobby Edward McMillian, the arresting officer, and Paula Anne Gately into the attorney's conference room; and that at that meeting the defendant offered to have money paid to Bobby Edward McMillian as restitution for damages arising out of the criminal action if Bobby Edward McMillian did not appear in court and testify as a witness for the State so that the DUI and hit and run property damage charges against Paula Anne Gately would be dismissed.

11. That the defendant made this offer without first notifying and without thereafter intending to notify the Assistant District Attorney of these negotiations.

12. That the defendant further told Bobby Edward McMillian that he would not be needed and instructed him to leave court, telling him to "hit the door."

13. That the defendant admitted in his testimony at the trial of the above-captioned case that he knew that the Assistant District Attorney was the only one who had the authority to negotiate pleas and to dismiss the State's witness,

and he further admitted that he used bad judgment in dismissing the State's witness.

14. That upon the calling of the case of State v. Paula Anne Gately, the Assistant District Attorney moved for a continuance, and the defendant belligerently demanded that the case be tried at that time stating that his client had been in court all day awaiting trial and that he was prepared to proceed with the trial of said case.

15. That upon being questioned by District Court Judge Narley Cashwell, the Judge Presiding over the case, as to whether the defendant dismissed the witness, the defendant at first did not directly answer the Court's questions, and only after being asked several times did the defendant answer the Court's questions, and he admitted that he had dismissed the State's witness.

16. That the conduct of the defendant was an attempt to interfere with the State's witness and was a violation of G.S. §14-226 and was an Obstruction Of Justice.

17. That thereafter the defendant advised his client, Paula Anne Gately, that she should have a criminal charge brought against the State's witness, Bobby Edward McMillian, for assault by pointing a gun.

18. That on August 20, 1982 the defendant went with Paula Anne Gately to the Wake County Magistrate's Office and

assisted her in having a criminal charge brought against Bobby Edward McMillian for assault by pointing a gun, and he had his name listed as a witness on the warrant in that case.

19. That Paula Anne Gately did not want to prosecute said action against Bobby Edward McMillian because she did not see Bobby Edward McMillian point a gun at her; that she considered the bringing of the action to be vindictive; that a few days later she returned to the Magistrate's Office alone and attempted to have the action dismissed; and that later the action was dismissed.

20. That when the defendant suggested to Paula Anne Gately that she prosecute the action and when he assisted her in having the action brought, he knew or should have known that there was insufficient evidence to support the action; that the only evidence that Bobby Edward McMillian committed that criminal offense was an alleged admission by Bobby Edward McMillian, but that admission was uncorroborated by other evidence; that the defendant testified that Paula Anne Gately told him that she saw Bobby Edward McMillian point a gun at her, but that that testimony is unbelievable; and that the conduct by the defendant was without legal basis and was vindictive.

21. That the above-captioned case came on for trial at the February 21, 1983 session of Wake County Superior Court;

and that on February 28, 1982 the defendant was found guilty by a jury verdict of becoming a surety on a bail bond in violation of G.S. 15A-541 and of attempting to interfere with a witness in violation of G.S. 14-226; and that on March 7, 1983 before the entry of this Order, the Court imposed judgment and sentenced the defendant.

22. That at the jury trial, the defendant testified in defense of the charge of becoming a surety on a bail bond that he was ignorant of the law in question; that although the defendant was found not guilty of soliciting legal business, the defendant testified in defense of that that he was not aware that there was a statute making the solicitation of legal business a criminal offense; that the defendant testified on cross examination that in 1980 he had altered a court order outside the presence of the judge who signed the Order and that at that time he was not familiar with the law in that area and was not aware that his conduct was improper; and that the Court notes that as a practical matter that the defendant's own testimony, if true, would show a lack of knowledge of the law and perhaps a willful refusal to know the law that protects - and limits - all of us.

23. That the defendant has professed to have only gotten two to three hours' sleep on work nights for the past several years.

24. That the defendant's physical and mental condition as shown by the testimony and as observed by the Court in watching the defendant's demeanor and behavior these past two weeks, is interfering with his ability to handle cases and advise clients.

Based upon the foregoing Findings of Fact, the Court concludes as a matter of law:

1. That pursuant to N.C.G.S. §84-36 and pursuant to the inherent powers of this Court, this Court has authority to impose disciplinary sanctions upon the defendant.

2. That the offenses which the defendant committed (and for which the defendant has been convicted) directly involved the defendant's practice as an attorney; that his conduct shows professional unfitness; and that the offense of attempting to interfere with a witness, which the Court (independently of the jury) has found that the defendant committed was a serious act of criminal misconduct that involved an interference with the judicial process and was an Obstruction Of Justice and that the defendant's conduct in committing this offense (separate and apart from being found guilty of the offense) warrants disciplinary punishment by this Court, to be imposed as a punishment separate and independent from the judgment and sentence previously entered in this action.

3. That as a further, separate and independent ground for subjecting the defendant to disciplinary punishment by this Court, the Court notes that the defendant's defense of ignorance of the law to the charge of becoming a surety on a bail bond and his other admissions of ignorance of the law, if true, and the defendant's advice to Paula Anne Gately that she should prosecute a criminal action against Bobby Edward McMillian, without a sufficient legal and factual basis, show that the defendant's performance as an attorney and knowledge of the law is not within the range of competence demanded of attorneys in civil and criminal cases. See State v. Vickers, 306 N.C. 90, 291 S.E. 2d 599 (1982).

4. That as a further, separate and independent ground for subjecting the defendant to disciplinary punishment, the defendant's deliberate failure to read the statute prohibiting attorneys from becoming a surety was a willful failure on the part of the defendant to know and understand the law.

5. That as a further, separate and independent ground for subjecting the defendant to disciplinary punishment, the defendant's statement to Barbara Mobley, Assistant Clerk of Superior Court of Wake County, that he did not represent and did not intend to represent Paula Anne Gately was a knowing misrepresentation of fact to a court official.

6. That as a further, separate, and independent ground for subjecting the defendant to disciplinary punishment, the

defendant's physical and mental condition is interfering with his ability to handle cases and advise clients.

IT IS NOW, THEREFORE, ORDERED:

1. That the defendant's North Carolina law license is hereby REVOKED and he is SUSPENDED from the practice of law for a period of 18 months commencing immediately upon the entry of this Order.
2. That the defendant shall surrender his North Carolina law license and membership card to the Secretary of the North Carolina State Bar, who will maintain them in his possession for the duration of the suspension.
3. That the defendant is not to engage in the practice of law or hold himself out as an attorney during the period of revocation and suspension.
4. That the above order of revocation and suspension will be shortened from a period of 18 months to 6 months upon the defendant's satisfying the following two conditions of rehabilitation, the Court attempting to both protect the people of North Carolina from the kind of wrongful and incompetent law practice detailed in this Order and also to restore the defendant to a legally proper and productive law practice:
  - a. That the defendant satisfy the North Carolina State Bar by clear and convincing evidence that he has the moral

qualifications, competency and learning in the law within the range of competence demanded of attorneys in civil and criminal cases; the Court suggests that one way the defendant's learning in the law may be established is by the defendant's successful passing of the North Carolina bar examination; however, the North Carolina State Bar may accept such proof as it deems appropriate; and

b. That the defendant shall also satisfy the North Carolina State Bar by clear and convincing evidence that his physical and mental condition is such that it does not interfere with his handling of cases and advising clients; and the Courts suggests that one way the defendant may establish this is by obtaining regular counseling from a psychiatrist licensed to practice medicine in the State of North Carolina and by full compliance with any course of treatment prescribed by that physician, which compliance could be shown by a certificate of the physician submitted to the North Carolina State Bar that the defendant had complied with all prescribed treatments.

5. In connection with 4(a) and 4(b) the Court, in order to avoid any alleged repeat of the defendant's history of difficulty with the Board of Law Examiners, directs that:

a. The North Carolina State Bar, and not the Board of Law Examiners, determine the defendant's moral qualifications, and

b. Inquiry as to the defendant's moral qualifications not go beyond June 25, 1979, the date he was admitted to practice pursuant to Order of the North Carolina Supreme Court.

The Court further directs that a Hearing Committee of the Disciplinary Hearing Commission of the North Carolina State Bar may hear and determine this matter on behalf of the North Carolina State Bar.

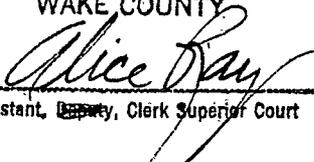
6. It is further ORDERED that the Clerk of Superior Court of Wake County shall forthwith certify a copy of this Order to the North Carolina State Bar.

This the 7 day of March, 1983.

  
Honorable Anthony Brannon  
Judge Presiding

A TRUE COPY

CLERK OF SUPERIOR COURT,  
WAKE COUNTY

BY   
Assistant, ~~Deputy~~, Clerk Superior Court

JUDGMENT  
COURT OF APPEALS OF NORTH CAROLINA

No. 8310SC825

STATE OF NORTH CAROLINA

vs.

Wake County

DAVID H. ROGERS

No. 82CRS63259

This cause came on to be argued upon the transcript of the record from the Wake County Superior Court

Upon consideration whereof, this Court is of opinion that there is ~~error~~ in the record and proceedings of said trial tribunal

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the

Honorable CLIFTON E. JOHNSON Judge, be certified to the said trial tribunal

to the intent that the PROCEEDINGS BE HAD THEREIN IN SAID CAUSE ACCORDING TO LAW AS

DECLARED IN SAID OPINION

And it is considered and adjudged further, that the DEFENDANT DO PAY

the costs of the appeal in this Court incurred, to wit, the sum of

\*\*\*\*\* ONE HUNDRED EIGHTEEN AND NO/100 \*\*\*\*\*

dollars (\$ 118,00

and execution issue therefor. Certified to Superior Court this 4th day of June 19 84

CLERK OF THE COURT OF APPEALS  
OF NORTH CAROLINA

A TRUE COPY

BY

*Katherine P. Barber*  
DEPUTY CLERK

*S/ Francis E. Dail*  
Clerk of the Court of Appeals.

*July 20 84*