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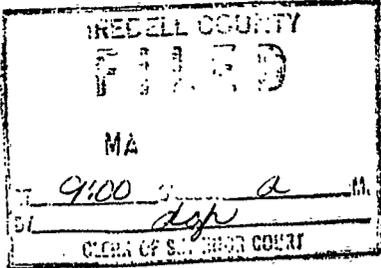
STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF IREDELL

SUPERIOR COURT DIVISION

96 CRS



IN THE MATTER OF
KENNETH B. DARTY

ORDER OF CONTEMPT

THIS CAUSE coming on to be heard and being heard before the Honorable William H. Freeman, Superior Court Judge, assigned to hold court in the 22nd. Judicial District, and it appearing to the Court:

that this matter was heard at a regular session of Superior Court in Davidson County on April 29, 1996; that the Hon. H.W. Zimmerman, Jr. Issued an order for Attorney Kenneth B. Darty to show cause why he should not be held in contempt for his failure to appear in the Superior Court of Iredell County on April 25, 1996; that Attorney William F. Fritts was appointed to prosecute this matter; that Mr. Darty was personally present and was represented by his attorney, David Freedman; that both parties stipulated to the recitation of the facts as presented by Mr. Fritts and the explanation presented by Mr. Freedman and that these facts were true and were uncontested; and that the parties and subject matter were properly before the court.

THEREFORE the court finds the following beyond a reasonable doubt:

FINDINGS OF FACT

1.

Attorney Kenneth B. Darty represented several clients with cases on the April 22, 1996 superior court criminal docket in Iredell County, N.C., including the St. Vs Michael Anthony Cherry, who was in custody in the Iredell County jail.

2.

The district attorney's office published a list of cases for trial that week which included Mr. Cherry's case and that this list was made available to all attorneys on Monday morning.

3.

The District attorney's office scheduled the case of St. Vs Cherry for trial to begin at 11:00 a.m. on Thursday, April 25, 1996, and approximately 46 jurors were

brought back to court for the specific purpose of comprising a jury venire for this case. This was the last case for trial remaining on the trial list for that term of court.

4.

The district attorney's office notified Mr. Darty of the trial time for the Cherry case in two telephone calls, one from the secretary in the district attorney's office and another from Assistant District Attorney Stephen Barnhill. These calls occurred between 9:00 a.m. and 9:15 a.m. on April 25, 1996.

5.

In the aforementioned telephone calls, the district attorney's office notified Mr. Darty the the Cherry case would begin jury selection at 11:00 a.m. Mr. Darty informed the district attorney's office that he had a prior personal obligation in Winston-Salem and that he would not be in court at 11:00 as requested. Mr. Darty indicated that he could be available for court during the afternoon of April 25, 1996. At no time during the term of court had Mr. Darty informed the district attorney's office or the court that he had any personal plans that would conflict with his duties in court.

6.

Mr. Darty has indicated to this court through counsel that he had a personal matter which may have satisfied the presiding judge to excuse him from attendance in court. However, Mr. Darty did not let Judge Zimmerman know about this nor asked his permission to delay the trial of the Cherry case.

7.

The State and the court were prepared to try the case of St. Vs. Cherry at 11:00 a.m. on April 25, 1996. The assistant district attorney notified the judge of their intent to have the matter tried. Judge Zimmerman instructed the bailiff to contact Mr. Darty's office. Deputy James Lett telephoned Mr. Darty's office and informed his secretary that Mr. Darty should be in court at 11:00 a.m. for the trial of the case.

8.

Mr. Darty personally made an appearance in the District Criminal Court of Davie County during the early morning of April 25, 1996, at which time he told two assistant district attorneys that he had to have his cases disposed of quickly so that he could be in Iredell County at 11:00 a.m. for trial in Superior Court. This request was accommodated by the assistant district attorneys. At the time he made this request, Mr. Darty had no intention of attending Superior Court in Iredell County and this statement was misleading and untruthful.

9.

Attorney Darty failed to appear in the Superior Court of Iredell County during the morning of April 25, 1996, and thereafter, the court excused the jurors for the remainder of the week without trying the Cherry case.

10.

Attorney Kenneth Darty was served with Judge Zimmerman's show cause order during the afternoon of April 25, 1996.

11.

During the afternoon of April 25, 1996, Attorney Darty was overheard by several assistants in the clerk of court's office making a statement which the assistants construed as a threat by Mr. Darty to engage in assaultive behavior towards Judge Zimmerman. This court finds that Mr. Darty's comments about Judge Zimmerman were mere bravado and that Mr. Darty did not have any intent to carry out any assaultive behavior towards the judge.

12.

On April 29, 1996, Attorney Darty appeared before Judge Zimmerman and personally apologized to him for his actions and this apology was graciously accepted by the judge.

13.

In a previous term of court, Superior Court Judge Peter McHugh saw fit to enter a written order which ordered Mr. Darty to be present in court to represent his client, but did not find him to be in contempt of court.

Based upon the foregoing findings of fact, the COURT CONCLUDES AS A MATTER OF LAW:

1.

The parties and the subject matter are properly before the Court.

2.

Attorney Kenneth B. Darty has engaged in contemptuous behavior in that he has willfully failed to comply with the schedules and practices of the court resulting in substantial interference with the business of the court.

3.

Attorney Kenneth B. Darty has violated the Rules of Professional Conduct.

Based upon the foregoing findings of fact and conclusions of law, the COURT ORDERS, ADJUDGES, AND DECREES THAT:

1.

Attorney Kenneth B. Darty is hereby found guilty of willful contempt of court.

2.

Attorney Kenneth B. Darty is hereby publicly censured for violation the Rules of Professional Conduct for attorneys.

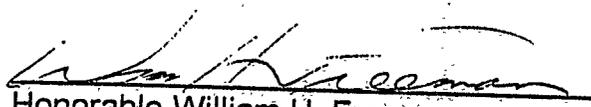
3.

Attorney Kenneth B. Darty may purge himself of the contempt by henceforth complying with all the rules of professional conduct for attorneys, especially the requirement that he appear in court in a timely fashion as directed by the court; and by performing ten hours of community service under the direction of the Community Service Coordinator within 30 days of the entry of this order. Mr. Darty is to have a report from said coordinator verifying completion of the service to be filed with the Clerk of Court's office. The Court hereby waives Mr. Darty's obligation to pay the community service fee.

4.

The Clerk of Superior Court of Iredell County shall enter this order on the public record and this order should be brought to the attention of any judge should Mr. Darty engage in similar conduct in the future. The Clerk shall also forward a copy of this order to the N.C. State Bar.

This Order entered the 29th. Day of April, 1996 and signed this the 6th day May, 1996.


Honorable William H. Freeman
Superior Court Judge Presiding

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