

FILED

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE 7018 JUN -8 PM 3: 54 SUPERIOR COURT DIVISION  
18 R 439

WAKE CO., C.S.C.

IN THE MATTER OF )  
) ORDER PLACING ATTORNEY  
) TONY SAMI BOTROS ON  
) DISABILITY INACTIVE STATUS  
TONY SAMI BOTROS, Attorney )

THIS MATTER came on for hearing on June 1, 2018 in Wake County Superior Court after an Order to Show Cause was served upon Tony Sami Botros notifying him of the issues to be considered and the time and place of the hearing. A. Root Edmonson, Deputy Counsel of the North Carolina State Bar, appeared to prosecute this matter as ordered by the Court. Attorney Botros appeared *pro se* on June 1, 2018. Shortly before 5:00 p.m., the Court adjourned the hearing in the midst of the evidence, and announced in open court, with Attorney Botros present, that the hearing would resume at 1:00 p.m. on June 6, 2018. Attorney Botros failed to appear at the resumption of the hearing on June 6, 2018, whereupon the Court received further evidence and took the matter under advisement. Based upon the evidence and arguments presented, the Court finds the following to be supported be clear, cogent and convincing evidence:

FINDINGS OF FACT

1. Tony Sami Botros, hereinafter referred to as (“Attorney Botros”) was licensed to practice law in North Carolina on August 28, 2013 and issued North Carolina Bar License 45883. Since that time Attorney Botros has maintained an office in Wake County located within the Tenth Judicial District.

2. During the week of March 26, 2018 Attorney Botros had a matter on the Wake County Civil Superior Court Trial Calendar. Because the matter in which Attorney Botros appeared could not be heard on March 26, 2018 he was informed by the Trial Court Administrator's office that his matter would be heard at 12:00 p.m. on March 29, 2018 in Courtroom 10-B of the Wake County Courthouse.

3. Lisa Tucker, the Superior Court Coordinator confirmed this with Attorney Botros on several occasions between March 26, 2018 and March 28, 2018.

4. Attorney Botros failed to appear at the appointed time on March 29, 2018 in Courtroom 10-B presided over by Judge A. Graham Shirley ("Judge Shirley"). The Courtroom Clerk in Courtroom 10-B received a call from the Courtroom Clerk in Courtroom 2-A and indicated that Attorney Botros was in that Courtroom and was attempting to determine which court had priority despite previously being told that he was expected in Courtroom 10-B at 12:00 p.m. Judge Shirley went to Courtroom 2-A to discuss this matter with the presiding District Court Judge Ashleigh P. Dunston ("Judge Dunston").

5. In the course of their conversation in Courtroom 2-A, Judge Dunston informed Judge Shirley that she was of the opinion that Attorney Botros was impaired. She recounted that while Attorney Botros was in or around Courtroom 2-A, Judge Dunston observed that Attorney Botros spoke in a rambling and sometimes ranting fashion, had slurred speech and dilated eyes, and that she believed him to be under the influence of an impairing substance.

6. The Courtroom Clerk in Courtroom 2-A also formed the opinion that Attorney Botros was impaired. She observed that Attorney Botros initially appeared lethargic, and that he spoke with slurred speech, was sweaty, and that he frequently wiped his face and tugged at his collar. This same Clerk also encountered Attorney Botros outside of the courthouse during the lunch hour, and Attorney Botros was walking down stairs in a very unsteady manner and needed to steady himself on the hand rails.

7. After speaking with Judge Dunston and upon leaving Chambers for Courtroom 2-A, Judge Shirley witnessed Attorney Botros speaking with a Deputy of the Wake County Sheriff's Office. Based upon Attorney Botros' speech he continued to appear impaired and disoriented.

8. It was only after Judge Shirley went to Courtroom 2-A that Attorney Botros presented himself before Judge Shirley in Courtroom 10-B of the Wake County Courthouse.

9. Immediately upon appearing before Judge Shirley, Attorney Botros requested five minutes to "collect" himself. Attorney Botros appeared somewhat distressed and disoriented.

10. When Attorney Botros returned, Judge Shirley met with counsel in Chambers. Attorney Botros' pupils were dilated, his speech was slurred, and he did not appear to be able to speak in a coherent manner. Attorney Botros stated that he was taking antidepressant medication and had been diagnosed with depression and social anxiety disorder.

11. Because Judge Shirley concluded that Attorney Botros was impaired and unable to adequately represent his client, Judge Shirley indicated that he would not proceed with the matter. Attorney Botros indicated he was ready and willing to proceed and stated he wanted to put that fact on the record. When Judge Shirley asked Attorney Botros if he understood that if the Court were to go on the record it would have no choice but to detail, in open Court and in front of Attorney Botros' client, his reasons for continuing the case: Attorney Botros said, "Yes". Despite the damage that it could cause to Attorney Botros' professional reputation and his relationship with his client, Attorney Botros continued to insist that he wanted to state on the record that he was ready to proceed. In an effort to protect Attorney Botros, Judge Shirley refused to go back on the record or proceed with the hearing and continued it until April 6, 2018 at 2:30 p.m. in Courtroom 10-A of the Wake County Courthouse.

12. The Courtroom Clerk in Judge Shirley's courtroom also formed the opinion that Attorney Botros was impaired on March 29, 2018. She noted that he was jumpy, erratic, sweating, not able to express coherent thoughts and that his eyes were dilated. This same clerk had seen Attorney Botros on March 26, 2018 at calendar call, and his appearance and actions on March 29, 2018 were markedly different from his more normal demeanor on March 26, 2018.

13. After leaving Courtroom 10-A on March 29, 2018 Attorney Botros returned to Courtroom 2-A. There, Judge Dunston informed him that based upon her observations and Judge Shirley's observations, she was not going to allow

Attorney Botros to proceed. Attorney Botros told Judge Dunston that he was not taking anything other than prescribed medications and that he was not "high." Judge Dunston asked whether he would submit to an examination by a Drug Recognition Expert (DRE) and Attorney Botros answered he would. However, when the DRE arrived, Attorney Botros stated that he did not want to submit to an examination and just wanted to leave.

14. At the hearing on April 6, 2018 in Courtroom 10-A before Judge Shirley, Attorney Botros failed to appear at the appointed time. Because Judge Shirley had other matters on the calendar he proceeded with those until Attorney Botros arrived.

15. The nature of the matter in which Attorney Botros was appearing before Judge Shirley was a Motion for Summary Judgment on a claim of Intentional Infliction of Emotional Distress in which Attorney Botros represented the Plaintiff. After argument of counsel for Defendants and over halfway through Attorney Botros' argument Attorney Botros paused, appeared distressed, asked for a minute to drink some water and then stated to the Court that he was not on his "A-Game" and requested that the Court continue the matter. Judge Shirley refused that request.

16. Judge Shirley took the Motion for Summary Judgment under advisement, took a brief recess, and asked to meet with Attorney Botros in Chambers. Attorney Botros accompanied Judge Shirley into Chambers along with Ms. Kellie Myers, the Trial Court Administrator for the Tenth Judicial District.

17. In Chambers, Judge Shirley advised Attorney Botros that Judge Shirley was concerned with his conduct on March 29, 2018 and that his conduct on April 6,

2018 did nothing to alleviate those concerns. Judge Shirley informed Attorney Botros that the Court believed that his conduct of March 29, 2018 amounted to Contempt of Court and a violation of the Rules of Professional Conduct and that the Court had prepared a Motion to Show Cause, which he showed to Attorney Botros. Judge Shirley further informed Attorney Botros that first and foremost he was concerned for Attorney Botros' well-being. Judge Shirley explained that he was prepared to issue and file the Motion to Show Cause but would hold off on signing any order if Attorney Botros would voluntarily present himself to the Lawyer's Assistance Program (LAP) for an evaluation and follow any recommended treatment. As a further condition of not proceeding with the Motion to Show Cause, Judge Shirley indicated that he would only defer entering the Motion to Show Cause if Attorney Botros executed a release that would allow LAP to provide the following information to the Court: (a) whether Attorney Botros made contact with LAP; (b) the status of Attorney Botros' participation with LAP, including whether or not he was compliant with the clinical recommendations of the LAP; (c) a copy of any LAP Recovery Contract entered into by Attorney Botros; and (d) the status of Attorney Botros' LAP Recovery Contract.

18. The release would not have given Judge Shirley any access to any statements by and between Attorney Botros and any health care provider, nor would it give Judge Shirley access to any diagnosis. Judge Shirley informed Attorney Botros that so long as he presented himself to LAP, participated in LAP and complied with all clinical recommendations and terms of his LAP Contract Judge Shirley would

not sign or file the Motion to Show Cause. The sole purpose of the release was to monitor compliance with these conditions.

19. Attorney Botros indicated that he wanted to voluntarily present himself to LAP and he thereafter executed the release.

20. As a result of the April 6, 2018 hearing, the Court ultimately granted the Defendants' Motion for Summary Judgment. In addition to the Court concluding that the evidence did not show intentional or reckless conduct, Plaintiff failed to present any evidence in the form required by Rule 56(e) of the North Carolina Rules of Civil Procedure concerning any severe emotional distress suffered by Plaintiff. In defense of this lack of evidence Attorney Botros complained to the Court that his client's deposition had not even been taken.

21. On April 30, 2018, Attorney Botros had a case that appeared on the Wake County Superior Court trial calendar at line 35 entitled *Leslie Epstein v. Daniel Epstein and Ebbestone Senior Care, Inc.*, 18 CVS 59. Attorney Botros represented the Plaintiff in the matter. Scheduled to be heard at this session of Court was Plaintiff's Motion for Default Judgment and Defendant's Motion to Set Aside Default Judgment and Defendant's Motion for Injunction. Attorney Botros failed to appear at the calendar call and the Court did not hear his client's Motion for Default Judgment. The Court did grant Defendant's Motion to Set Aside Default Judgment and Motion for Injunction.

22. On May 2, 2018 at 4:37 a.m. Attorney Botros sent an email to Ms. Kellie Myers revoking the LAP release and declaring it null and void. On May 2, 2018 at

4:45 a.m., and after receiving an out of office reply from Ms. Myers, Attorney Botros informed the Eastern Clinical Coordinator of LAP, via email, that he was revoking the release as it was not voluntary.

23. After the hearing in this matter was concluded on June 6, 2018, Attorney Botros sent communications to the Court regarding this matter. Because these communications were not offered as evidence or argument during the hearing in this matter, the communications have not been reviewed or considered by the Court.

BASED UPON the foregoing Findings of Fact, the Court makes the following:

#### CONCLUSIONS OF LAW

1. This Court has personal and subject matter jurisdiction.
2. The Court has jurisdiction of this cause pursuant to its inherent authority over attorneys as officers of the Court.
3. Attorney Botros received appropriate notice of these proceedings.
4. Attorney Botros' conduct, as set out in the Findings of Fact above, demonstrates that Attorney Botros suffers from a mental or physical condition that materially impairs his performance, judgment or competence as an attorney.
5. Due to Botros' inability to effectively handle his clients' matters, and the delays caused by his appearances in court in an impaired condition, his continuing to practice law poses a threat of significant potential harm to his clients, to the public, to the profession, and to the administration of justice.

6. It is in the best interest of Botros' clients, the public, the profession and the administration of justice that Botros should be placed on disability inactive status until Attorney Botros has been evaluated and treated for his impaired condition.

7. It is in the best interest of Botros, his clients, the public, the profession and the administration of justice for Botros to undergo, under the supervision of the Lawyers Assistance Program ("LAP") or some other qualified provider approved by this Court, a substance abuse evaluation, a psychiatric evaluation and a fitness to practice evaluation, and to follow all treatment recommendations found to be appropriate, prior to returning to active practice.

BASED UPON the foregoing Findings of Fact and Conclusions of Law, this Court hereby enters the following:

ORDER PLACING ATTORNEY TONY SAMI BOTROS ON DISABILITY  
INACTIVE STATUS

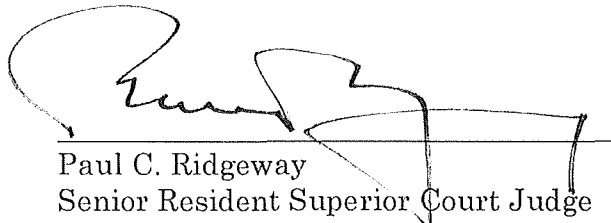
1. Tony Sami Botros is hereby placed on disability inactive status.
2. Botros may petition the North Carolina State Bar for a hearing to determine whether he should be reinstated to active status pursuant to the 27 NCAC 1B, § .0129(c).
3. To be reinstated to active status, Botros must show:
  - (a) that, under the supervision of the Lawyers Assistance Program ("LAP") or some other qualified provider approved by this Court, he has

obtained a substance abuse evaluation, a psychiatric evaluation and a fitness to practice evaluation, and has followed all treatment recommendations found to be appropriate;

(b) that he does not then suffer from a mental or physical condition (which may include but is not limited to mental illness and/or substance abuse) which significantly impairs his professional judgment, performance, or competence as an attorney; and

(c) that he has authorized LAP, each evaluator and each treatment provider to answer inquiries made by the Office of Counsel of the North Carolina State Bar concerning Attorney Botros' professional judgment, performance, competence and fitness to act as an attorney.

This the 8 day of June 2018.



Paul C. Ridgeway  
Senior Resident Superior Court Judge  
10th Judicial District

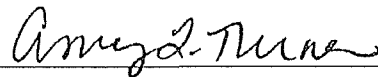
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was served on the parties by depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed as follows, and with a courtesy copy by electronic mail, to:

A. Root Edmonson  
NC State Bar  
P.O. Box 25908  
Raleigh, NC 27611  
[redmonson@ncbar.gov](mailto:redmonson@ncbar.gov)

Tony S. Botros  
P.O. Box 37577  
Raleigh, NC 27627-7577  
[tony@botroslaw.com](mailto:tony@botroslaw.com)

This the 8<sup>th</sup> day of June, 2018.



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Amy L. Turner  
Trial Court Coordinator  
PO Box 1916, Raleigh, NC 27602