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| NORTH CAROLINA WAKE COUNTY | | BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 05 DHC 55 |
| THE NORTH CAROLINA STATE BAR, Plaintiff, v. DAVID H. ROGERS, Suspended Attorney, Defendant. | | FINDINGS OF FACT, CONCLUSIONS OF LAW, AND CONSENT ORDER OF DISCIPLINE |

This matter was considered by a hearing committee of the Disciplinary Hearing Commission composed of Karen Eady-Williams, Chair, and members Tommy W. Jarrett and R. Mitchel Tyler. Katherine E. Jean represented plaintiff, the North Carolina State Bar. Wayne B. Eads represented defendant, David H. Rogers. Both parties stipulate and agree to the findings of fact and conclusions of law recited in this consent order and to the discipline imposed. Defendant freely and voluntarily waives any and all right to appeal the entry of this consent order of discipline. Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina 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 promulgated thereunder.
2. Defendant, David H. Rogers ("Rogers"), was admitted to the North Carolina State Bar in June, 1979.
3. On January 10, 2003, in case number 01 DHC 15, *North Carolina State Bar v. David H. Rogers*, the Disciplinary Hearing Commission entered an Order of Discipline suspending Rogers' law license for a period of 3 years.
4. The suspension of Rogers' law license in 01 DHC 15 became effective March 18, 2003.
5. During the period of suspension of his law license, Rogers has nonetheless been subject to the rules, regulations and Rules of Professional

Conduct of the North Carolina State Bar and to the laws of the State of North Carolina.

6. From March 18, 2003, through the present, Rogers has not been an active member of the North Carolina State Bar admitted and licensed to practice as attorney-at-law.

7. Rogers' license to practice law has not been reinstated and the suspension has not been stayed.

8. In or before June, 2005, Rogers met an elderly woman, L. Denny Yeaman, who lives in Durham, North Carolina.

9. In or about June, 2005, Rogers gave legal advice to L. Denny Yeaman.

10. In or about June, 2005, Rogers assisted Ms. Yeaman in drafting a Last Will and Testament, a Power of Attorney, and a Durable Power of Attorney for Health Care. Rogers selected language which was inserted into the Will, including selecting the language to identify himself as the executor of Ms. Yeaman's estate and selecting the language to identify himself as the attorney in fact in Ms. Yeaman's Power of Attorney.

11. The Last Will and Testament named "David H. Rogers, Esq." as executor of Ms. Yeaman's estate.

12. The Power of Attorney named "David H. Rogers, Esq." as attorney in fact for Ms. Yeaman.

13. Rogers took Ms. Yeaman to a notary public to execute the documents identified in paragraph 10 above.

14. On June 8, 2005, Rogers wrote a letter to Denny Deady, Ms. Yeaman's niece, instructing Denny Deady how to execute the Durable Power of Attorney for Health Care and explaining to Denny Deady the difference between the Durable Power of Attorney for Health Care and the Living Will which was at issue in the Terry Schiavo case.

15. Rogers enclosed with his June 8, 2005 letter to Denny Deady a business card with the typewritten words "attorney at law" printed under his name and beside the handwritten letters "Ret'd."

16. The letters "Ret'd" written on Rogers' business card were intended by Rogers to communicate and were understood by Denny Deady to communicate that Rogers was a retired attorney at law.

17. Rogers did not simply retire from the practice of law. Rogers testified in his deposition that he "retired" after the Disciplinary Hearing

Commission entered an order suspending his license for three years in 01 DHC 15. Rogers was forced to cease engaging in the practice of law when his license was suspended by the Disciplinary Hearing Commission in 01 DHC 15.

18. Rogers' act of giving the business card to Denny Deady with the handwritten letters "Ret'd" was misleading to Denny Deady.

19. Rogers gave the business card to Denny Deady in an effort to induce her to believe that Rogers was a retired attorney at law.

20. Rogers' conduct in giving the business card to Denny Deady was an intentional deception.

21. Continuously from March 18, 2003 to the present, Rogers has maintained listings in the Bellsouth yellow pages, business white pages and residential white pages telephone directories for the Raleigh, North Carolina area identifying himself as an Attorney and as "Atty."

22. A member of the public seeing any of the yellow pages, business white pages or residential white pages listings identifying Rogers as an Attorney or "Atty" would believe that Rogers was an attorney licensed and able to practice law in North Carolina and that he was seeking to have potential clients hire him to provide legal services.

23. The existence of the listings in the white and yellow pages was deceptive and misleading to the public.

24. Rogers was aware of the telephone book listings identifying him as an Attorney and as "Atty" at latest on October 16, 2004.

25. Rogers wrote one letter to BellSouth Yellow Pages on October 16, 2004, requesting that the Yellow Pages listing be removed. Otherwise, Rogers took no action to eliminate the misleading listings from the telephone books. The listings were published in the 2005 and 2006 white and yellow pages, unchanged. Rogers paid to have these improper listings published in the 2005 and 2006 white and yellow pages.

26. During the period of his suspension from the practice of law, Rogers referred to himself in correspondence as "David H. Rogers, Esq.," including but not limited to such references in June 8, 2005 correspondence to Denny Deady, in July 13, 2005 correspondence to Denny Deady, and in August 17, 2005, September 5, 2005, and "July xx, 2005" correspondence to the North Carolina State Bar's Grievance Committee. Rogers' correspondence also references other persons. Rogers referred to the attorneys referenced in his correspondence as

"Esq." and did not refer to the laypersons referenced in his correspondence as "Esq."

27. Rogers' use of the term "Esq." following his own name, following the name of his own attorney, and following the name of attorney Sheri Murrell, but not following the names of Denny Deady and L. Denny Yeaman, who are laypersons, indicates that Rogers' use of the initials "Esq." was intended to indicate that the person to whose name it is appended is an attorney.

28. By appending the term "Esq." to his own name in correspondence referenced in paragraph 26 above, Rogers intended to communicate to the reader that he is an attorney.

29. On or about May 7, 2003, Rogers transmitted to Alison M. Moseley, Director of Student Service at Moseley, a continuing legal education provider, a resume in which Rogers represented that from June 1983 to "present" he was an attorney-at-law and that he was engaged in the private practice of law, from which he had "earnings per annum presently in the \$36,000 to 40,000 range." Also in the resume transmitted to Alison M. Moseley, Rogers represented that he is "licensed as attorney-at-law and member of the North Carolina Bar."

30. At the time of the representations and conduct described in paragraphs 9-29 above, Rogers was not authorized by the North Carolina State Bar to engage in the practice of law in the State of North Carolina and was not an active member of the North Carolina State Bar.

CONCLUSIONS OF LAW

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

2. Rogers was properly served with process, a hearing in this matter was set, and the matter came before the hearing committee with due notice to all parties.

3. Rogers' conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. §§ 84-28(b)(2) and (3) as follows:

a. During the period of suspension of his law license, Rogers held himself out by word, letter and advertisement as competent or qualified to give legal advice or counsel in violation of N.C.G.S. 84-4.

b. During the period of suspension of his law license, Rogers held himself out by word, letter and advertisement as being engaged in

advising or counseling in law or acting as attorney or counselor-at-law in violation of N.C.G.S. 84-4.

c. During the period of suspension of his law license, Rogers held himself out by word, letter and advertisement as being competent or qualified to prepare legal documents in violation of N.C.G.S. 84-4.

d. During the period of suspension of his law license, Rogers held himself out by word, letter and advertisement as furnishing the services of a lawyer in violation of N.C.G.S. 84-4.

e. During the period of suspension of his law license, Rogers engaged in the practice of law by performing legal services, preparing or participating in preparing a Last Will and Testament, Limited Power of Attorney, and Durable Power of Attorney for Health Care, and giving legal advice or counsel in violation of N.C.G.S. 84-4.

f. Rogers' conduct as described above constitutes multiple violations of N.C.G.S. 84-4.

g. By committing the acts described above, Rogers engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Revised Rule of Professional Conduct 8.4(c), engaged in criminal conduct that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Revised Rule of Professional Conduct 8.4(b), practiced law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction in violation of Revised Rule of Professional Conduct 5.5(a), and held out to the public or otherwise represented that he is admitted to practice law in North Carolina jurisdiction in violation of Revised Rule of Professional Conduct 5.5(b)(2).

Based upon the stipulations of fact and the consent of the parties, the hearing committee hereby finds by clear, cogent, and convincing evidence the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Rogers' misconduct is aggravated by the following factors:
 - a. Rogers has engaged in a pattern of misconduct;
 - b. Rogers committed multiple offenses;

c. Rogers has substantial experience in the practice of law;

d. Rogers has the following prior discipline: 3 year active suspension from the practice of law in 1982; public censure in 1985; admonition in 1998; 3 year active suspension in 2003.

2. Rogers' misconduct is mitigated by the following factors:

a. The 1982 and 1985 disciplinary orders are remote in time.

b. Rogers is a decorated veteran of the United States Army, having served honorably in both combat and non-combat assignments.

3. The aggravating factors outweigh the mitigating factors.

4. Rogers' conduct created a significant risk of serious damage to L. Denny Yeaman in that L. Denny Yeaman is a vulnerable person who relied upon Rogers.

5. Rogers' conduct has interfered with the State Bar's ability to regulate attorneys and undermined the privilege of lawyers in this State to remain self-regulating in that Rogers deliberately disobeyed a direct order of the Disciplinary Hearing Commission.

6. This DHC Committee has considered lesser alternatives and finds that a public censure or reprimand would not be sufficient discipline because of the gravity of the harm caused by the conduct of Rogers, because Rogers has had substantial prior discipline, and because Rogers has demonstrated an inability or an unwillingness to comply with the lawful orders of the Disciplinary Hearing Commission.

7. This DHC Committee finds that Rogers' conduct caused significant harm and significant potential harm to L. Denny Yeaman, to the public, and to the profession, and that a discipline more severe than public censure or reprimand is necessary to protect the public.

8. Entry of an order imposing lesser discipline than suspension would fail to acknowledge the seriousness of the offenses committed by Rogers, would be inconsistent with orders of discipline entered by this body in similar cases and would send the wrong message to attorneys and to the public regarding the obligation of all attorneys to obey the lawful orders of the Disciplinary Hearing Commission.

9. For those reasons, this DHC Committee believes and so finds that an Order imposing discipline short of a suspension of Rogers' law license would not be appropriate.

Based upon the foregoing factors and with the consent of the parties, the hearing committee hereby enters the following

ORDER OF DISCIPLINE

1. The license of defendant, David H. Rogers, is hereby suspended for five (5) years, which suspension shall begin immediately upon expiration of the 3 year suspension imposed by the Disciplinary Hearing Commission in 01 DHC 15.

2. If he has not already done so, Rogers shall submit his license and membership card to the Secretary of the North Carolina State Bar immediately.

3. As conditions precedent to his reinstatement to the active practice of law at the end of the five (5) year suspension, Rogers shall have the burden of proving all of the following by clear, cogent and convincing evidence:

a. Except for matters already dealt with in this Order of Discipline, that he complied with all other conditions of reinstatement imposed by the Hearing Committee in the Order of Discipline entered in 01 DHC 15.

b. That he has satisfied all of the requirements of 27 N.C. Admin. Code Chapter 1, Subchapter B, § .0125(b)(3)(A)-(J) of the State Bar Discipline & Disability Rules.

c. That he has reformed and that he presently possesses the moral qualifications required for admission to practice law in North Carolina.

d. That he paid the costs of this proceeding within 180 days of service of the statement of costs upon him.

e. That he has submitted a report from a psychiatrist satisfactory to the State Bar Office of Counsel reflecting that no later than 60 days prior to filing Rogers' petition for reinstatement, Rogers was found by the psychiatrist not to be suffering from any mental, physical, emotional or psychological condition which impairs his professional judgment, performance or competence.

f. That he has kept his address of record with the North Carolina State Bar current, has promptly accepted all certified mail from the North Carolina State Bar, and has responded to all letters of notice and requests for information from the North Carolina State Bar by the deadlines stated in the communication.

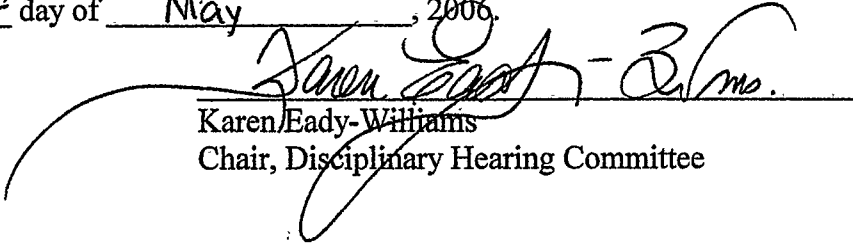
g. That he has not violated the Revised Rules of Professional Conduct or the laws of the United States or of any state.

h. That he has taken all steps necessary to ensure that from the effective date of this Order forward there will be no listing in any telephone

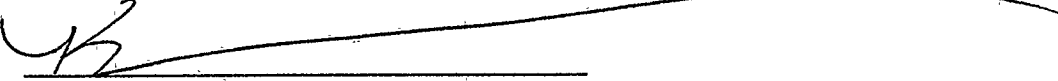
directory indicating in any way that he is an attorney or "Atty" or containing any other false or misleading information about him.

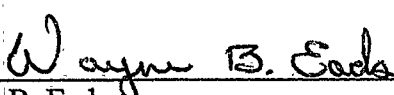
- i. That he paid all Membership dues and Client Security Fund assessments and complied with all Continuing Legal Education (CLE) requirements on a timely basis as if still in practice during the suspension.

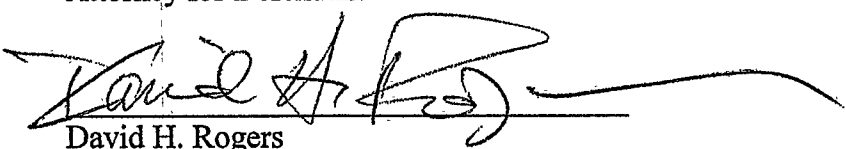
Signed by the Chair with the consent of the other hearing committee members,
this the 25th day of May, 2006.


Karen Eady-Williams
Chair, Disciplinary Hearing Committee

CONSENTED TO BY:


Katherine E. Jean
Deputy Counsel
Attorney for Plaintiff


Wayne B. Eads
Attorney for Defendant


David H. Rogers
Defendant