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NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

ROWAN COUNTY 03 AUG 25 AM 10:16

03CVS1873

ROWAN COUNTY, C.C.C.

IN RE:

BY



CHARLES LINWOOD MORGAN, JR.

Attorney at Law

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FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND  
ORDER OF DISCIPLINE

This matter came on to be heard and was heard in Cabarrus County Superior Court, designated as file number 02 CVS 3019, on December 16, 2002 and April 25, 2003, thereafter the case was transferred to Rowan County by consent of the parties and upon order of the undersigned and was concluded on July 18, 2003; Isaac T. Avery, III and Patricia A. Duffy represented the State of North Carolina, A. Root Edmonson represented the North Carolina State Bar, and Ronald L. Gibson represented Charles Linwood Morgan, Jr. Based upon the evidence presented at the hearings and the arguments of counsel, the undersigned finds the following by clear, cogent and convincing evidence:

#### FINDINGS OF FACT

1. On or about May 26, 2001, Christopher John Lyle (hereinafter, Lyle) was charged with driving while impaired in Cabarrus County.
2. Lyle retained Charles Linwood Morgan, Jr. (hereinafter, Morgan), an attorney licensed in North Carolina, to represent him on the DWI. On appeal to Cabarrus County Superior Court, Lyle's case was denominated 01 CRS 9716.
3. In Lyles' case, Morgan issued a subpoena duces tecum to Paul Glover (hereinafter, Glover) of the Forensic Test for Alcohol Branch of the North Carolina Department of Health and Human Services (hereinafter, Forensic Test Unit) that required Glover to produce all data for all tests and operations performed on the Intoxilyzer 5000, SN-003526, from January 1, 2000 until November 21, 2000.
4. On September 24, 2002, the undersigned conducted a hearing on the state's motion to quash the subpoena issued to Glover in Lyle's case. In that hearing, the state produced evidence that Morgan had issued subpoenas to Glover and other employees of the Forensic Test Unit to appear in DWI cases in more than one county on the same date.
5. At the conclusion of the hearing on September 24, 2002, the undersigned found, inter alia, that the data sought by Morgan's subpoena to Glover was not material to whether the Intoxilizer used to test Lyle's blood alcohol content malfunctioned on Lyle's test and that the data demanded by Morgan's subpoena was overly broad and unduly burdensome.

6. Also at the hearing on September 24, 2002, the found that Morgan's practice of subpoenaing employees of the Forensic Test Unit to appear in multiple counties on the same date severely and adversely impacted the employees' ability to comply with the demands of such court appearances and was intentionally calculated to inflict chaos and inconvenience upon the employees of the Forensic Test Unit.

7. Also at the hearing on September 24, 2002, in the presence and hearing of Morgan, the undersigned ordered Morgan to cease and desist from issuing subpoenas requiring any Forensic Testing Unit employee to be present in more than one county in the State of North Carolina on the same day.

8. On September 25, 2002, the undersigned entered a written order that had been announced to Morgan in open court the previous day, and a copy was sent to Morgan on that date.

9. On or after September 25, 2002, Morgan subpoenaed Forensic Test Unit employees to be present in more than one county in the State of North Carolina on the same day on at least eight court dates, in willful violation of this Court's order of September 24, 2002.

10. Morgan was properly served with an order to appear and show cause why he should not be disciplined for his violation of the September 24, 2002 order, and a disciplinary hearing was conducted in Cabarrus County Superior Court on December 16, 2002.

11. On December 31, 2002, the undersigned entered an order referring Morgan to the Lawyers' Assistance Program (hereinafter, LAP), ordering Morgan to fully cooperate with LAP, including entering into a contract with LAP under such terms and conditions as they may impose for the period that LAP may find appropriate, and retaining jurisdiction of the disciplinary matter.

12. Morgan entered into a contract with LAP.

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

#### CONCLUSIONS OF LAW

1. The undersigned has personal and subject matter jurisdiction of this disciplinary matter pursuant to this Court's inherent power to discipline officers of this Court, and has concurrent jurisdiction with the North Carolina State Bar for this purpose pursuant to NCGS §84-36.

2. Morgan's conduct as found in the findings of fact above constitutes conduct prejudicial to the administration of justice in violation of Rule 8.4(d) of the Revised Rules of Professional Conduct.

3. Morgan's conduct has caused harm to employees of the Forensic Test Unit and their ability to perform the functions of their office for the citizens of the State of North Carolina such that Morgan's conduct warrants imposition of a Reprimand.

4. Morgan should continue to comply with the requirements of paragraphs 2, 3, and 4 of the order entered by the undersigned in this matter on December 31, 2002.

THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED:

1. Charles Linwood Morgan, Jr. is reprimanded for his misconduct. A Reprimand, of even date herewith, will accompany this order.

2. Morgan shall continue to comply with the requirements of paragraphs 2, 3, and 4 of the order entered by the undersigned in this matter on December 31, 2002.

This is the 25<sup>th</sup> day of August, 2003.

*W. Erwin Spainhour*  
W. Erwin Spainhour  
Superior Court Judge Presiding

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IN RE:

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CHARLES LINWOOD MORGAN, JR.

Attorney at Law

REPRIMAND

After hearings conducted in Cabarrus County on December 16, 2002 and April 25, 2003 and, after the case was transferred to Rowan County by consent of the parties and upon order of the undersigned, concluded on July 18, 2003, the undersigned entered Findings of Fact, Conclusions of Law and Order of Discipline signed of even date herewith. Pursuant to that order, the undersigned found that you, Charles Linwood Morgan, Jr., should be reprimanded. This document constitutes that reprimand.

On September 24, 2002, the undersigned ordered you not to subpoena Forensic Test Unit employees to appear in more than one county in the State of North Carolina on the same day. You were sent a written order on September 25, 2002. Thereafter, you issued subpoenas requiring employees of the Forensic Test Unit to be in multiple counties on at least eight court dates. Your conduct severely and adversely impacted the ability of the employees subpoenaed to comply with the demands of multiple court appearances. Your conduct was willful and intentional, calculated to inflict chaos and inconvenience upon the employees of the office and was prejudicial to the administration of justice in violation of Revised Rule 8.4(d).

The undersigned hereby reprimands you for your professional misconduct. The undersigned hopes that you will heed this reprimand, that it will be remembered by you, that it will be beneficial to you, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession.

Issued this the 28<sup>th</sup> day of August, 2003.

W. Erwin Spainhour  
W. Erwin Spainhour  
Superior Court Judge Presiding