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STATE OF NORTH CAROLINA

FILED

COUNTY OF WAKE

1985 MAR -6 AM 2:18

O.E. JAMES, SEC.  
THE N.C. STATE BAR

BEFORE THE  
GRIEVANCE COMMITTEE  
OF THE  
NORTH CAROLINA STATE BAR  
84G 0197(II)

IN THE MATTER OF

DAVID H. ROGERS,  
ATTORNEY AT LAW

PUBLIC CENSURE

At its regular quarterly meeting on October 17, 1984, the Grievance Committee of the North Carolina State Bar conducted a preliminary hearing under Section 13 of the Discipline and Disbarment Rules of the North Carolina State Bar regarding the grievance filed against you by Margaret Rundell. The Committee considered all of the evidence before it, including your written statement to the Committee. Pursuant to Section 13(10) of the Discipline and Disbarment Rules, the Committee found probable cause. Probable cause is defined under the Discipline and Disbarment Rules as: "A finding by the Grievance Committee that there is reasonable cause to believe that a member of the North Carolina State Bar is guilty of misconduct justifying disciplinary action." The rules also provide that if, after a finding of probable cause, the Committee determines that a complaint and a hearing are not warranted, the Committee may issue a public censure upon the acceptance of the same by the attorney. That determination has been made by the Committee and the Committee issues this Public Censure to you.

As Chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this Public Censure and I am certain that you understand fully the spirit in which this duty is performed, that you will understand the censure, and appreciate its significance. The fact that a public censure is not the most serious discipline that may be imposed by the North Carolina State Bar should not be taken by you to indicate that any member of the Committee feels that your conduct was excusable or less than a serious and substantial violation of the Code of Professional Responsibility.

You represented Dennis Ray Higgins in a contested divorce proceeding in Wake County, file number 84 CvD 430, and a child support action, file number 83 CvD 5672. Lisa Skurry Higgins was the opposing party in the divorce proceeding. The opposing party in the child support action was Wake County, ex rel. Lisa Skurry Higgins. Wake County was attempting to recover AFDC payments from Dennis Ray Higgins made to Lisa Skurry Higgins. Dennis Ray Higgins had signed a voluntary support agreement prior to your representation of him. Margaret Rundell filed an Answer on behalf of Lisa Skurry Higgins in the divorce proceeding. The Answer challenged the period of separation and claimed that a child had been born of the marriage which Dennis Ray Higgins had admitted was his by signing the voluntary support agreement. By filing an Answer on Lisa Skurry Higgins' behalf on February 22, 1984, Margaret Rundell became attorney of record for Lisa Skurry Higgins.

After the Answer was filed on Lisa Skurry Higgins' behalf, Lisa Skurry Higgins informed you that she planned to marry a man who intended to adopt her child and that she no longer wanted to contest the divorce and child support actions. On April 17, 1984, you met with Lisa Skurry Higgins at a Hardee's and presented her with an affidavit that stated that Dennis Ray Higgins was not the natural father of her child and that she no longer wanted to continue any child support action against Dennis Ray Higgins. It further stated that she did not want to contest the divorce proceeding. Lisa Skurry Higgins signed the affidavit and you notarized her signature. You communicated with Lisa Skurry Higgins concerning the litigation in which she was the opposing party knowing that Margaret Rundell was attorney of record for Lisa Skurry Higgins, and without her prior authorization or consent in violation of DR 7-104(A)(1).

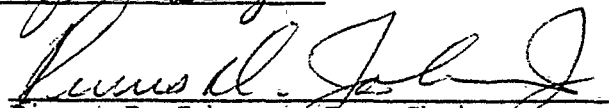
While it may be true that Lisa Skurry Higgins told you that she no longer wanted Margaret Rundell to represent her, no motion for Margaret Rundell to withdraw as counsel had been filed with the Court. As far as you were concerned, Margaret Rundell remained as counsel of record until such time as the Court may have allowed her to withdraw. Motivated by a change in her circumstances, Lisa Skurry Higgins may have given up important legal rights without careful consideration of the consequences of her actions. She did so without benefit of counsel. You should have either notified Margaret Rundell of Lisa Skurry Higgins' desire to meet with you and sought her permission or refrained from communicating with Lisa Skurry Higgins until Margaret Rundell had withdrawn as counsel.

Your conduct was unprofessional. It violated not only the letter of the Code of Professional Responsibility but also its spirit. Your conduct was not the conduct expected of a member of the legal profession and an officer of the court. It brought discredit upon you, the profession, and the courts. It damaged both your reputation and the profession's. It placed your privilege to serve the public as a lawyer in serious jeopardy.

The Committee is confident that this Public Censure will be heeded by you, that it will be remembered by you, and will be beneficial to you. The Committee is confident that you will never again allow yourself to depart from strict adherence to the highest standards of the profession. Instead of being a burden, this Public Censure should serve as a profitable and everpresent reminder to weigh carefully your responsibilities to your clients, to the public, to your fellow attorneys, and to the courts.

Pursuant to Section 23 of the Discipline and Disbarment Rules, it is ordered that a certified copy of this Public Censure be forwarded to the Superior Court of Wake County for entry upon the judgment docket and to the Supreme Court of North Carolina for entry in its minutes. This Public Censure will also be maintained as a permanent record in the judgment book of the North Carolina State Bar. Pursuant to policy adopted by the Council of the North Carolina State Bar on the taxing of costs in cases where discipline is entered by the Grievance Committee, you are hereby taxed \$50.00 as the administrative costs in this action.

This the 7<sup>th</sup> day of January, 1985.

  
Rivers D. Johnson, Jr., Chairman  
The Grievance Committee