

25847

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE  
COUNTY OF CLEVELAND  
FILED SUPERIOR COURT DIVISION  
2004 JUN 11 PM 2:10 04 CRS 4162

IN THE MATTER OF CLEVELAND COUNTY, C.S.C.  
GARY S. LEIGH

BY \_\_\_\_\_

ORDER

This cause came on before the undersigned Superior Court Judge presiding at the June 7, 2004 session of the Superior Court of Cleveland County. On June 9, 2004 the undersigned Judge ordered Gary S. Leigh to appear at 12 o'clock noon on June 10, 2004 to show cause why he should not be adjudged in contempt for his failure to appear in court on Monday, June 7, 2004 and at 9:30 a.m. on Wednesday, June 9, 2004. Pursuant to the Court's order a hearing was held on June 10, 2004 at the scheduled time. The alleged contemnor, Gary S. Leigh was represented by Rob Deaton. Prosecuting the contempt was Steve Kaylor, assistant district attorney for the 27B Judicial District. Based upon the evidence presented at the hearing, the Court makes the following Findings of Fact, all found beyond a reasonable doubt:

1. Gary S. Leigh is an attorney licensed to practice law in the State of North Carolina and has been practicing law in North Carolina for five years. Mr. Leigh has offices in Hickory, Asheville and Shelby.

2. On May 10, 2004 Mr. Leigh was appointed to represent David Lee Weeks in the case of the State of North Carolina versus David Lee Weeks, docket number 00-CRS-55319, in Cleveland County Superior Court.

3. It is a practice in Cleveland County for published court calendars and orders appointing counsel in criminal cases to be placed in mailboxes provided for Cleveland County attorneys in the Office of the Clerk of Superior Court. Mr. Leigh has a mailbox for his use in the Clerk of Superior Court's office in Cleveland County.

4. Mr. Leigh employs a secretary, Leslie Miller, whose responsibilities include checking his courthouse mailbox weekly.

5. Ms. Miller ordinarily checks the mailbox on Mondays.

6. The appointment of counsel in the case of David Lee Weeks was placed in Mr. Leigh's mailbox, on or around the date of the appointment, May 10, 2004.

7. Ms. Miller neglected to check the mailbox for court calendars and other documents placed therein for three to four weeks.

8. Mr. Leigh did not see the order appointing him in the Weeks case until Wednesday, June 9th, 2004, when he removed it from the mailbox in the clerk's office.

9. During the three- to four-week period when Ms. Miller did not check the mailbox, Mr. Leigh did not inquire of Ms. Miller whether she had checked the mailbox or whether he had received any documents placed therein.

10. David Weeks' case appeared on the published calendar for the June 7, 2004 one-week criminal session of Cleveland County Superior Court. The case was scheduled for hearing on June 7, 2004. A copy of the calendar was placed by an employee of the district attorney's office in Mr. Leigh's courthouse mailbox during the last week of May, 2004. Mr. Leigh was not aware that the case appeared on the published calendar until he received a telephone call from the district attorney's office on the afternoon of Monday, June 7, 2004.

11. On Monday, June 7, 2004 David Weeks appeared in court at the call of the calendar. Mr. Leigh was not present and did not appear in court that date.

12. On the afternoon of June 7, 2004, the undersigned Superior Court Judge instructed the district attorney's office to contact Mr. Leigh's office and to inform him that his presence would be required in court on Tuesday, June 8, 2004 at 9:30 a.m. to handle the Weeks case.

13. An employee of the district attorney's office telephoned Mr. Leigh's office on the afternoon of June 7 to tell Mr. Leigh that his presence would be required in court on the next day, June 8. The message was left with one of Mr. Leigh's secretaries.

14. Shortly after the telephone call was made, Mr. Leigh called the district attorney's office and informed the district attorney's office that he planned to attend a Continuing Legal Education seminar on Tuesday, June 8, 2004 in Asheville. Mr. Leigh asked if the Weeks case could be continued to a later date. At

the direction of Elizabeth Lari, assistant district attorney, Mr. Leigh was informed that the Weeks case would be called for disposition on Wednesday, June 9, 2004 at 9:30 a.m. Mr. Leigh was directed to be present in court at that time.

15. Mr. Leigh spent the night of June 9, 2004 in Asheville with his fiancée who was suffering from stomach problems. Mr. Leigh was aware that he would have to be in Superior Court in Shelby the next day at 9:30 a.m.

16. On the morning of Wednesday, June 9, 2004 Mr. Leigh's fiancée was experiencing severe stomach discomfort. Mr. Leigh was going to drive to Shelby for court that morning, and his fiancée was going to drive to Shelby for a doctor's appointment in a separate vehicle. Concerned for his fiancée's medical condition, Mr. Leigh did not leave Asheville for Shelby until approximately 9 o'clock. Mr. Leigh telephoned the district attorney's office in Shelby to inform them that he would be late, and would arrive in court at approximately 10:15.

17. When court convened at 9:30 a.m. on Wednesday, June 9, 2004, Mr. Leigh was not present, and he did not arrive in court until after 10 a.m. The David Lee Weeks case was heard at 12:15 p.m. on Wednesday, June 9, 2004.

18. Mr. Leigh's failure to appear in court on Monday, June 7, 2004 was not willful. However, his failure to appear in court on that date was a result of Mr. Leigh's gross negligence in the handling of the appointed case assigned to him by the Court on May 10, 2004. His failure to check his mailbox in the Clerk of Superior Court's office for court calendars and orders of appointment, and his failure to supervise the employee in his office responsible for checking the mailbox was grossly negligent inasmuch as the mailbox was not checked for three to four weeks and no inquiry was made by Mr. Leigh as to the documents placed in the mailbox during that three- to four-week period.

19. Mr. Leigh's failure to appear in court on June 9, 2004 was neither willful nor grossly negligent.

Based upon the foregoing Findings of Fact, all found beyond a reasonable doubt, the Court makes the following Conclusions of Law:

1. Mr. Leigh's failure to appear in the Superior Court of Cleveland County on Monday, June 7, 2004 to represent David Lee Weeks in the case of State of North Carolina versus David Lee Weeks, Cleveland County docket


number 00-CRS-055319, constituted a grossly negligent failure to comply with the schedules and the practices of the Superior Court which resulted in substantial interference with the business of the Court. His failure also constituted a grossly negligent failure by an officer of the court to perform his duties in an official transaction.

2. Mr. Leigh's failure to appear in the Superior Court of Cleveland County on Wednesday, June 9, 2004 at 9:30 a.m. was not a willful or grossly negligent act.

3. Mr. Leigh's failure to appear in the Superior Court of Cleveland County on June 7, 2004 constitutes an indirect criminal contempt of court.

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS THEREFORE ADJUDGED that Gary S. Leigh be and is hereby censured for his gross negligence in failing to appear on June 7, 2004 in the Superior Court of Cleveland County. It is ordered that copies of this order be sent to the Honorable F. Donald Bridges, Senior Resident Superior Court Judge of the 27B Judicial District, and that a copy of this order be sent to the North Carolina State Bar for such action, if any, the North Carolina State Bar deems appropriate.

This the 11<sup>th</sup> day of June, 2004.

  
\_\_\_\_\_  
Richard D. Boner  
Superior Court Judge Presiding