



State of North Carolina  
General Court of Justice  
Tenth Prosecutorial District

P. O. BOX 31  
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COLON WILLOUGHBY  
DISTRICT ATTORNEY

February 15, 2012

MEMORANDUM

To: The Honorable Donald W. Stephens  
FROM: The Honorable Colon Willoughby *Ccw*

A recent incident involving the unauthorized scheduling of impaired driving case has prompted me to take a closer look at the handling of some of those cases. Also, last week DMV officials notified our office of some unusual judgments, and that too has triggered further review.

Although I have not done an exhaustive search, a quick review of some recent cases shows that at least twelve (12) driving while impaired (DWI) cases have a disturbing pattern of what may be unauthorized and illegal judgments in those cases. The pattern shows a DWI case coming to District Court and there being a conviction and an appeal to Superior Court. After a period of time varying from two and a half (2 ½) to fourteen (14) months while the case has been pending in Superior Court, the appeal is withdrawn and the case is remanded back to District Court. As the law requires, the defendant must be resentenced by a District Court Judge after the remand. Because of the normal rotation of Judges, the resentencing is usually done by a different Judge than the one that handled the original sentencing. In all twelve (12) of these cases, another Judge, Kristin Ruth, who was not involved in either the original sentencing or the resentencing, has entered what appears to be an ex parte order, without notice to the State, changing the effective date of the judgment entered at resentencing. There are no Motions for Appropriate Relief in any of the files and no indication that the State was even aware any Motions had been made or that Orders were entered.

While the full extent of the motives or implications of these changes in the dates of convictions are not clear to me, it does appear that changing the effective dates of convictions, as these Orders do, would backdate the convictions and shorten or eliminate the mandatory suspensions of defendants' driver's licenses following their DWI convictions. In at least three (3) of these cases it appears that Judge Ruth has issued limited driving privileges for defendants without legal authority to do so. In all of these

cases it appears that the attorney of record was James Crouch.

Because of the limited nature of my search, I do not know how widespread this or other irregularities might be, nor how many cases may be in a similar status. I have talked with the prosecutors in District Court and none of them were aware of this activity. Also, it is unclear whether the defendants themselves are involved in this process, or whether it is conducted solely by others without their knowledge or participation. While on the surface this activity appears to be a contradiction of the rules, law and justice, I am mindful that the District Attorney in a neighboring district is in the process of being removed from office for her allegations in pleadings that a Judge had acted inappropriately. As the Senior Judge in this district I need your advice. Although I know you are involved in a protracted homicide trial I do think that this matter needs prompt attention, and I request the opportunity to meet with you and get your guidance as to how I should proceed in a proper manner. I will be available to meet with you at your convenience. Attached for your review is a list and simple analysis of the history of the twelve (12) cases I referred to earlier in this letter.

CC: The Honorable Robert Rader

The Honorable Lorrin Freeman



State of North Carolina  
General Court of Justice  
10th Judicial District

DONALD W. STEPHENS  
SENIOR RESIDENT SUPERIOR COURT JUDGE

WAKE COUNTY COURTHOUSE  
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February 20, 2012

The Honorable C. Colon Willoughby, Jr.  
District Attorney  
Tenth Prosecutorial District  
Post Office Box 31  
Raleigh, North Carolina 27602

RE: Irregular entries in DWI cases

Dear District Attorney Willoughby:

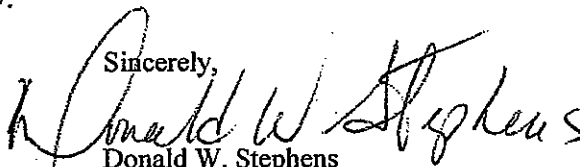
This letter is in response to yours of February 15<sup>th</sup> concerning irregular judicial orders in twelve closed Wake County Driving While Impaired case files. From the information you provided, it appears that a judge may have made unauthorized ex parte orders in cases in which that judge had no connection or jurisdiction. It appears that these entries were made out of court and without notice to the District Attorney. It further appears that these orders resulted in alterations of the original judgments which benefited the convicted defendant and lessened the impact of the original sentence.

The activity which you have described in your letter appears to have no basis in law for a judge to engage in or be a part of. There may be a totally innocent explanation for this conduct; however, from the face of the court files as documented I can think of none. If these orders were knowingly entered, they could constitute evidence of misconduct, including an attempt to obstruct criminal justice.

This type of alleged irregularity brings into question the integrity of the court system. As the Senior Judge in the Wake County Courthouse, it is incumbent upon me to call for a thorough investigation. Therefore, by separate letter mailed today, I am requesting that the Director of the North Carolina State Bureau of Investigation begin an investigation into these apparent irregularities to determine whether this conduct was inadvertent or intentional, whether or not it was knowingly done, and whether or not a crime may have been committed. By separate letter I am also notifying Chief District Court Judge Robert Rader of this referral and requesting that he not assign Judge Kristen Ruth to hold criminal court pending the conclusion of the investigation.

Thank you for bringing this matter to my attention. I hope you will concur with my decision to request this review by an outside agency.

Sincerely,

  
Donald W. Stephens

DWS:tps