

VANAMBERG, ROGERS, YEP, ABEITA, GOMEZ & WILKINSON, LLP

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**STATEMENT OF POSITION ON DISCIPLINARY BOARD COMPLAINT
FILED BY H. GARY BROWN**

SEPTEMBER 2, 2022

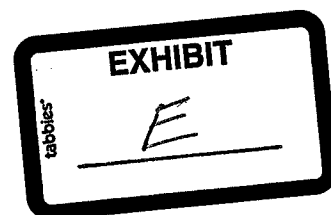
COMES NOW CARL BRYANT ROGERS, and for his Statement of Position in response to the Disciplinary Board Complaint filed against him by H. Gary Brown, states as follows:

1. The undersigned is counsel of record for all Defendants in a suit in which the Complainant H. Gary Brown is a Plaintiff. Howard Gary Brown and Brandon Sibley v. Choctaw Resort Development Enterprise, Et al., Civil Action No. 3:22-cv-00256-DPJ-FKB now pending in the United States District Court for the Southern District of Mississippi (Northern Division).

2. As summarized at Doc. 4, ¶ 6, pp. 2-3 and Doc. 6, ¶ 6, p.3 filed by Defendants in that suit:

Plaintiffs have sued all Defendants (hereinafter the "Tribal Defendants") based on the [Mississippi Band of Choctaw Indian's] enactment of and the individual Tribal Defendants' action to implement and enforce (at the Tribe's Golden Moon Casino & Hotel (Compl., ¶s 25, 26, 27-71)) a tribal mask mandate issued as a public health emergency measure authorized by Choctaw Tribal Ordinance 50-A, cited in the Chief's Executive Order No. 2020-06-B "Reinstatement of Face Covering Requirement." That Executive Order is referenced in the Complaint at ¶s 23, 24, 82 and appended thereto as Exhibit A. A true and correct copy of Choctaw Tribal Ordinance 50-A is attached hereto as Exhibit 6.

3. Mr. Brown's August 4, 2022 Bar Complaint was rejected by Disciplinary Counsel (**Exhibit A**) as unfounded on August 19, 2022 on the following ground:



... making a well-founded legal argument—even one disputed by the opposing side—does not constitute making a false statement of material fact or law. We agree. If you believe that Mr. Rogers' assertions are improper you must direct your concerns to the Court.

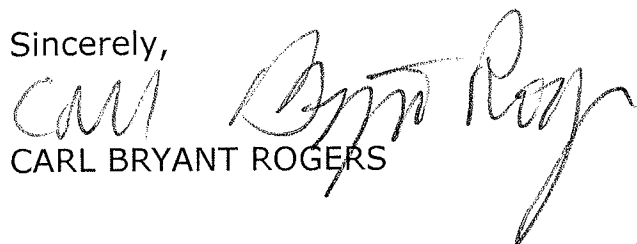
4. Incident to the filing of Mr. Brown's new Bar Complaint filed in late August, Mr. Brown sent the undersigned an email of August 26, 2022 attached hereto as **Exhibit B**. There Mr. Brown has threatened to continue filing Bar Complaints such as his August 4, 2022 and the later August, 2022 Bar Complaints unless the undersigned counsel changes his behavior and simply acquiesces in Plaintiffs' ridiculous legal arguments in that suit.

5. Mr. Brown's new Bar Complaint mirrors a claim he has made in a new "Motion to Show Cause for Materially False Statements Made by Defendants' Counsel" in the above suit. (Doc. 18). Basically, Mr. Brown's complaint reduces to the notion that the undersigned's failure or refusal to acquiesce in and concede the validity of Plaintiffs' ludicrous legal argument that the tribal party's receipt of federal funds to fight Covid-19 (or the fact that the Tribe's mask mandate to some extent paralleled other federal or tribal mask mandates) converts the Tribe's laws and actions challenged in the lawsuit into state laws and actions and, Plaintiffs' contend, constitutes a false statement to the Court by the undersigned in violation of multiple Rules of Professional Conduct. Since the undersigned has separately responded to this same argument in the referenced federal suit, the undersigned here relies upon and incorporates by reference that response in further support of this Bar Complaint response. See, Defendants' September 2, 2022 "Response to Plaintiffs' Motion to Show Cause (Doc. 18)" filed in the above suit, the filed copy of which is accessible to Disciplinary Counsel via Pacer.

This Complaint is in several ways more ridiculous than the first one. Now the undersigned is accused of lying to the Court for not accepting some of Plaintiffs' absurd legal arguments. That conduct does not constitute the making of a false statement of law or fact or violate any of the other Rules of Professional Conduct applicable to New Mexico attorneys.

The undersigned respectfully requests that this Bar Complaint be dismissed as frivolous, meritless or otherwise unfounded.

Sincerely,


CARL BRYANT ROGERS

CBR/jt

Enclosures: as indicated

S:\Rogers\Choctaw\CRDE-Brown v. CRDE, et al. Statement of Position final (2nd Bar Compl.) 082822.doc



The Disciplinary Board

AN AGENCY OF THE SUPREME COURT OF THE
STATE OF NEW MEXICO

2440 Louisiana Blvd. NE
Suite 280
Albuquerque, NM 87110

Phone: (505) 842-5781
Facsimile: (505) 766-6833

RECEIVED
AUG 24 2022
COPY

CONFIDENTIAL

August 19, 2022

H. Gary Brown
c/o 1344 Lakeridge Drive
Baton Rouge, LA 70802

Re: Complaint filed against Carl Bryant Rogers, Esq.

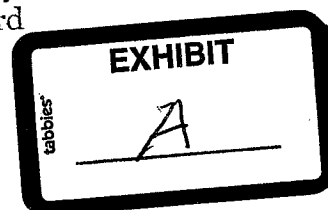
Dear Mr. Brown:

The Office of Disciplinary Counsel has investigated your complaint against the above-named attorney but has found insufficient evidence to support allegations that Mr. Rogers has violated the Rules of Professional Conduct. For that reason, the Board will be taking no further action.

The duties of the Office of Disciplinary Counsel are to investigate and prosecute allegations of professional misconduct against lawyers. When there is sufficient evidence of wrongful conduct by a lawyer, we may initiate proceedings before the Disciplinary Board seeking sanctions against the lawyer. The possible sanctions involve limitations on the lawyer's right to practice law in the future but do not provide any personal remedy for the complainant. The Board cannot direct an attorney in his or her handling of a particular case nor can it provide alternate counsel.

In his response to your complaint Mr. Rogers states that making a well-founded legal argument – even one disputed by the opposing side – does not constitute making a false statement of material fact or law. We agree. If you believe that Mr. Rogers' assertions are improper you must direct your concerns to the Court. Should a Court determine that Mr. Rogers has acted improperly you may re-file your complaint and provide a copy of that ruling. It is not within the purview of the Office of Disciplinary Counsel to make rulings of law or fact in the underlying matter.

Accordingly, the Disciplinary Board will be taking no further action. If you do not understand the reasons for the dismissal and wish to have the decision to dismiss this complaint reviewed by a member of the Disciplinary Board, you may submit a written request for review to this office. If the Disciplinary Board

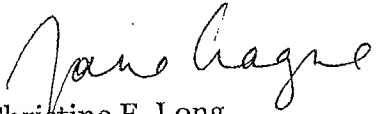


H. Gary Brown
August 19, 2022
Page Two

member feels that additional investigation is warranted, he or she will order the file re-opened for that purpose. The Board member's authority does not, however, extend to ordering that disciplinary action be taken.

On behalf of the Board, I thank you for bringing this matter to its attention.

Sincerely,


for Christine E. Long
Deputy Disciplinary Counsel

Cc: Disciplinary Board Chair
Carl Bryant Rogers, Esq.

C. Bryant Rogers

From: Gary B <hgarybrown@gmail.com>
Sent: Friday, August 26, 2022 12:57 PM
To: rvanamberg@nmlawgroup.com; dgomez@nmlawgroup.com;
cbrogers@nmlawgroup.com; brandon sibley
Subject: Bar Grievance and Initial Disclosures
Attachments: Bar Grievance - C. Bryant Rogers - 2nd.pdf

Bryant,

I hope that this email finds you well and in good health.

I would like to inquire as to when Plaintiffs can expect initial disclosures in compliance with FRCP Rule 26. In addition, will you be representing the John Does in the complaint? If so, will it be in both of their official and individual capacities?

The best way to discover the truth, according to the adversary model of criminal justice, is by having an advocate for the prosecution and for the defense. Each advocate has the responsibility of **presenting the facts** from a partisan point of view. This system is supposed to maximize the chances that all the relevant facts and arguments will be placed before a fact-finder on their search for truth.

Legal argument means arguments on the jurisdiction of the director to hear the contested case. The Constitutionality of a statute or rule. The application of a Constitutional requirement to the director, and the application of court precedent to the facts of the particular contested case hearing.

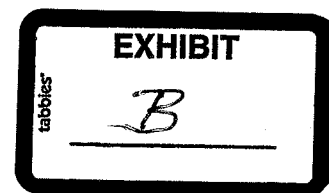
Making materially false statements is not legal arguments; rather litigation tactics aimed at turning this new controversy into a former precedent ruling.

Unfortunately, it appears that neither you nor your law firm is in search for truth. All I have seen is distraction, misdirection, and obfuscation.

So, it is with great displeasure that I forward you the bar grievance mailed this morning. These will continue every few weeks until we have exhausted all of the materially false statements placed on the record by counsel. We will soon be making use of Rule 16-501 of the New Mexico Rules for Professional Conduct, as it seems that the conduct of Bryant has not been tamed by our efforts thus far. Perhaps some encouragement from his law partners will help?

Govern Yourselves Accordingly,

Gary



2nd Bar Grievance – C. Bryant Rogers

OFFICE OF THE DISCIPLINARY COUNSEL

NEW MEXICO ATTORNEY DISCIPLINARY BOARD

H. Gary Brown
c/o 1344 Lakeridge Drive
Baton Rouge, Louisiana [70802]
VIA First Class Mail
504-756-1987

August 24, 2022

New Mexico Attorney Disciplinary Board
2440 Louisiana Blvd. NE
Suite 280
Albuquerque, New Mexico 87110
(505) 842-5781

IN RE: C. Bryant Rogers
P.O. Box 1447
Santa Fe, NM 87504-1447

ETHICAL CONDUCT COMPLAINT

One, H. Gary Brown, the Undersigned Affiant, hereinafter known as I, me, myself or one, H. Gary Brown, does hereby solemnly affirm, declare and state, under penalty and perjury, including first hand witness and testimony as follows:

1. Affiant is competent to state the matters set forth herewith.
2. Affiant has personal knowledge of the facts stated herein
3. All the facts stated herein are true, correct, and complete in accordance with Affiant's best firsthand knowledge and understanding, and if called upon to testify as witness Affiant shall so state.

This Affidavit and all attached documents are made part of the Public Record, and will be used in administrative and judicial proceedings at law or equity.

2nd Bar Grievance – C. Bryant Rogers

4. C. Bryant Rogers, hereinafter known as “Rogers,” in the course of conducting his business and interests, has violated Rule 16-401 Truthfulness in statements to others of the New Mexico Code of Professional Conduct.
5. Rule **16-401** of the New Mexico Rule of Professional Conduct prohibits a lawyer from making any false statement of material fact or law to a third person.
6. Case # 3:22CV256-DPJ-FKB in the U.S. Federal District Court for the Southern District of Mississippi (Northern Division) located in Jackson, Mississippi involving Plaintiffs, Howard Brown and Brandon Sibley with Defendants, CHOCTAW RESORT DEVELOPMENT ENTERPRISE, ET AL. is where you will find such violation.
7. Plaintiffs have exposed multiple untruthful statements by Defendants’ Counsel, C. Bryan Rogers, with what the Plaintiffs believe to be a malicious intent to obfuscate, stonewall, and mislead the court about the facts of the case.
8. Specifically, Rogers begins a two-sided argument in his reply brief for his motion to dismiss **(Document 11)** as evidenced by his title stating, “REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION **OR, IN THE ALTERNATIVE**, FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED UNDER U.S.C. § 1983.”
 - a. Page 3 of document 11, written by opposing counsel, starts at ¶ 6; “ In an effort to avoid the legal consequences of “under color of state law requirement,” Plaintiffs suggest in Doc. 9 submission ¶ 9 that: ‘It is a FACT, that the Mississippi Band of Choctaw Indians, by and through their Chief Cyrus Ben, issued an ordinance that coincided with the actions of many state governors’ mandates, state health department’s advice, suggestions

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2nd Bar Grievance – C. Bryant Rogers

from the CDC, and recommendations by federal agencies that did little more than to suggest, advise, and recommend, not force, as plead in the Plaintiffs' Complaint.

- b. Defendants' Counsel replies in the 1st ¶ on page 4 (**Document 11**) of the aforementioned brief and states; "Initially, nowhere do such allegations appear in the Complaint; but even if Plaintiffs had included these allegations in their Complaint they would not be sufficient to show the Tribal Council's enactment of Ordinance 50-A or Chief Cyrus Ben's issuance of and tribal staff's enforcement of the Chief's Executive Order implementing that ordinance, via promulgation of the Covid-19 mask mandate, challenged by Plaintiffs were the product of some kind of "conspiracy" with state actors, nor would;"

9. Plaintiffs pled on page 14 of their complaint under the 2nd Federal Questions exactly, "**2nd Federal Question:** Can the advice, guidelines, recommendations, and encouragement from corporate, federal, and state agencies, such as the CDC and the Mississippi State Health Department supersede the United States Constitution which incorporates substantive and procedural due process? Plaintiffs contend, no."
10. Therefore, the Plaintiffs are entitled to injunctive relief against Defendants to enjoin them from enforcing un-constitutional actions against the Plaintiffs or anyone else.
11. The issue stated above in number eight (8) of this document is clearly a violation of New Mexico's Rules of Professional Conduct 16-401, however, if we are being honest with ourselves, it also violates 16-303 (Candor towards Tribunal), 16-103 (Diligence), and 16-101 (Competence) to say the least.

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2nd Bar Grievance – C. Bryant Rogers

12. It appears that good faith warnings to counsel by affiant have fallen on deaf ears and that the affiant needs to start concerning himself with the violations of Rule 16-501 (Law Firms and Associations) as a way of curbing the bad behavior by counsel.

There are MANY untruthful statements, by Rogers, that have been uncovered in the course of conducting the business of the above-mentioned case and this bar grievance is the second attempt of many to come for Mr. Rogers as his conduct can only be described as destructive.

Thank you for your time and consideration in this matter; should you need to contact me for any housekeeping matters my phone number is 504-756-1987 or for electronic receipts hgarybrown@gmail.com.

This Declaration is dated this twenty-fourth day of August in the year, two thousand and twenty-two.

This instrument was prepared by one, H. Gary Brown

Howard Gary Brown – Affiant

This Affidavit and all attached documents are made part of the Public Record, and will be used in administrative and judicial proceedings at law or equity.

2nd Bar Grievance – C. Bryant Rogers

VERIFICATION OF BAR GRIEVANCE

STATE OF LOUISIANA

EAST BATON ROUGE PARISH

BEFORE ME personally appeared Howard Gary Brown who, being by me first duly sworn and identified in accordance with Louisiana law, deposes and says:

1. My name is Howard Gary Brown.
2. I have read and understood the attached foregoing request for admissions and production filed herein, and each fact alleged therein is true and correct of my own personal knowledge.

FURTHER THE AFFIANT SAYETH NAUGHT.

H. Gary Brown, Affiant

SWORN TO and subscribed before me this 24th day of August, 2022.

Notary Public

My commission expires:

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C. Bryant Rogers

From: Gary B <hgarybrown@gmail.com>
Sent: Friday, August 26, 2022 12:57 PM
To: rvanamberg@nmlawgroup.com; dgomez@nmlawgroup.com;
cbrogers@nmlawgroup.com; brandon sibley
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