

STATE OF NORTH CAROLINA

WAKE COUNTY

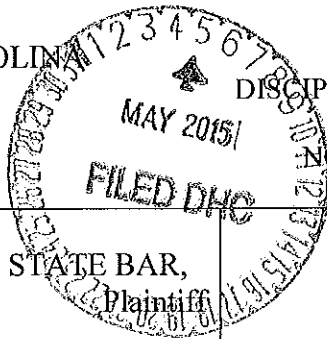
THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

CHRISTINE C. MUMMA, Attorney,
Defendant

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
15 DHC 20



COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar (hereafter "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Christine C. Mumma (hereafter "Defendant" or "Mumma"), was admitted to the North Carolina State Bar on 20 March 1999 and is an attorney at law subject to the rules, regulations, and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the relevant period referred to herein, Mumma was actively engaged in the practice of law and served as Executive Director and legal counsel for the North Carolina Center on Actual Innocence (hereafter "NCCAI") in Durham County, North Carolina.

4. In August 1978, Joseph Sledge (hereafter "Sledge") was convicted of two counts of second degree murder in *State v. Sledge*, Columbus County Superior Court case nos. 78 CRS 2415-2416. Sledge's convictions were for the murders of Josephine and Aileen Davis ("Davis crime").

5. DNA testing of evidence collected from crime scenes was not available when Sledge was convicted in 1978.

6. In later years, DNA testing of crime scene evidence became prevalent and Sledge began making requests to have the Davis crime scene evidence tested for DNA.

7. In June 2003, Sledge obtained an order directing law enforcement to search for evidence collected from the Davis crime scene to be tested for DNA.

8. In January 2005, Sledge contacted the NCCAI for assistance with enforcement of the 2003 court order.

9. NCCAI agreed to assist Sledge and Mumma assumed responsibility for Sledge's case on behalf of NCCAI.

10. In or about 2012, Jon David, District Attorney for the 13th Prosecutorial District ("David") reopened the investigation into the Davis crime and obtained the SBI's assistance in the investigation.

11. Between about late 2012 and March 2013, Mumma coordinated her efforts for Sledge with David.

12. On or about 19 March 2013, Mumma stopped coordinating her efforts for Sledge with David.

13. On 25 March 2013, Mumma filed a Motion for Appropriate Relief for Sledge partly based on information she obtained on or about 19 March 2013.

14. On 6 May 2013, Mumma provided to the North Carolina Innocence Inquiry Commission ("NCIIC") some of the documentation required to make a claim of factual innocence on behalf of Sledge.

15. Mumma provided to NCIIC the remainder of the required documentation on 21 May 2013. The NCIIC accepted Sledge's claim and opened an investigation of the case.

16. NCIIC worked on the Sledge case continuously from the time that the file was opened.

17. Mumma believed that it would be beneficial to Sledge to obtain evidence that showed that the DNA of others could be linked to items recovered from the Davis crime scene.

18. Mumma considered R. Smith and his brother J. Smith ("Smith brothers") possible suspects of the Davis crime and thus sought to obtain their DNA so that it could be tested against DNA recovered from the Davis crime scene.

19. On 8 October 2013, Mumma asked NCIIC whether NCIIC had obtained a DNA sample from a Smith family member.

20. Later that day, NCIIC informed Mumma that it had not obtained a DNA sample from a Smith family member and could not confirm that they would do so.

21. Mumma had become aware that the Smith brothers had a sister, M. Andrus ("Andrus"), who lived in North Carolina.

22. Mumma believed that as a maternal relative of the Smith brothers, Andrus's DNA could be sufficient to link the Smith brothers to evidence from the Davis crime scene and thus strengthen Sledge's claims of innocence.

23. Accordingly, Mumma sought to obtain a DNA sample from Andrus.

24. On 23 October 2013, Mumma and NCCAI employee M. Evans went to Andrus's home unannounced in an effort to obtain a DNA sample from her.

25. During the meeting, Andrus expressed concern that Mumma was looking for a "scapegoat."

26. Mumma denied that she was looking for a scapegoat and told Andrus that giving a DNA sample could "eliminate her family as suspects."

27. Andrus declined to provide Mumma with a DNA sample on October 23rd and indicated that she wanted to speak with other members of her family before making her final decision on the matter.

28. Mumma knew when she left the meeting that Andrus refused to provide a DNA sample.

29. Mumma took with her when she left Andrus's home a half-empty water bottle that Mumma knew at the time may not have belonged to Mumma.

30. When Mumma got to her car, she confirmed that the water bottle she had taken from the Andrus residence did not belong to Mumma. Mumma had left her water bottle in her car. She did not bring it into the Andrus residence.

31. When Mumma realized she had a cool, half-empty water bottle that might yield a sample of Smith family DNA, she decided not to take it back into the home, but to take it with her to contemplate whether to submit it for DNA analysis.

32. Despite the fact that Andrus declined to provide Mumma with a DNA sample, Mumma decided to keep the water bottle she'd taken from Andrus's home.

33. Mumma took steps to preserve the water bottle during the car ride until she could get back to her office and obtain more specific information about how to properly preserve any DNA that might be on the water bottle.

34. When Mumma returned to her office on the 23rd, she contacted a DNA testing lab with which she had previously worked and obtained instructions on how to properly preserve the water bottle so that DNA could be retrieved from it.

35. The next day, Andrus called Mumma and informed her that the Smith family would not provide a DNA sample to Mumma.

36. After Andrus told Mumma that she did not want her family's DNA tested, Mumma decided to submit the water bottle for testing.

37. Despite the fact that the NCIIC was investigating Sledge's claim of innocence, on or about 24 October 2013, Mumma submitted the water bottle to Mitotyping Technologies with hopes that Smith family DNA could be recovered from it and tested against Davis crime scene evidence.

38. NCIIC had the ability to obtain a non-testimonial order from the court compelling a member of the Smith family to provide a DNA sample. NCIIC ultimately obtained such an order and another sibling of the Smith brothers, a brother, provided a DNA sample which showed that the Smith brothers' DNA was not a match to evidence from the Davis crime scene.

39. On 1 November 2013, Mumma received confirmation from the lab that it was able to obtain DNA from the water bottle Mumma had taken from the Andrus residence and preserved.

40. The DNA obtained from the water bottle did not match the evidence recovered from the Davis crime scene and thus did not link the Smith brothers to the crime.

41. After learning that the DNA obtained from the water bottle did not match the DNA on the evidence recovered from the Davis crime scene, Mumma sought to determine whether the DNA on the water bottle could have been contributed by someone who was unrelated to the Smith brothers.

42. Accordingly, Mumma contacted Andrus by phone. Mumma stated to Andrus that she was calling to confirm that Andrus had received and reviewed documents that Mumma had emailed to her.

43. After chatting with Andrus briefly, Mumma inquired of Andrus as to whether Andrus's daughters were her biological children in an effort to determine whether the results of the test Mumma had performed on the water bottle would be sufficient to rule out the Smith brothers as perpetrators of the Davis crime.

44. Mumma then inquired further of Andrus as to whether anyone other than Andrus and her daughters had been in the home during the interview. Andrus informed Mumma that she was not sure if anyone else was in her home during the interview.

45. Mumma concluded her call with Andrus by again asking Andrus to provide a DNA sample. Mumma never mentioned to Andrus that she had already

obtained a DNA sample that may have been Smith family DNA that was tested which did not match DNA from Davis crime scene evidence.

46. Mumma also failed to inform Andrus that she had obtained the DNA she had tested by taking a water bottle from Andrus's home and submitting it for DNA testing.

47. Andrus again denied Mumma's request for a DNA sample.

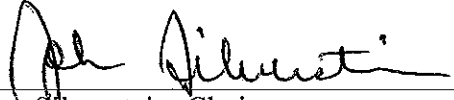
THEREFORE, the State Bar alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that Defendant violated one or more of the Rules of Professional Conduct in effect at the time of her actions as follows:

- a) By taking the water bottle from Andrus's home without her permission and having DNA recovered from it tested against evidence from the Davis crime scene against Andrus's wishes, Mumma used methods of obtaining evidence that violate the legal rights of a third person in violation of Rule 4.4(a);
- b) By concealing from Andrus that she had taken a water bottle that did not belong to her from the Andrus home without permission and had DNA obtained from this water bottle tested against evidence from the Davis crime scene without the consent of the owner of the bottle, Mumma engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d); and
- c) By obtaining evidence in a manner that violated Andrus's rights, Mumma engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d).

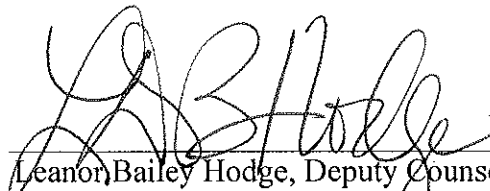
WHEREFORE, Plaintiff prays that:

1. Disciplinary action be taken against Defendant in accordance with N.C.G.S. § 84-28 (c) and 27 N. C. Admin. Code 1B § .0114 as the evidence on hearing may warrant;
2. Defendant be taxed with the administrative fees and with actual costs permitted by law in connection with the proceeding; and
3. For such other and further relief as the Hearing Panel deems appropriate.

THIS the 5th day of May, 2015.



John Silverstein, Chair
Grievance Committee



Leanon Bailey Hodge, Deputy Counsel
Attorney for Plaintiff

State Bar #27253

The North Carolina State Bar

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