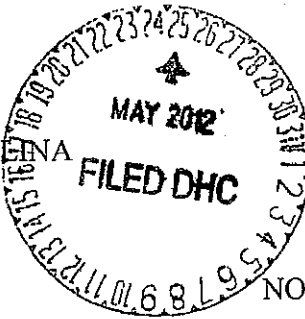


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING
COMMISSION
OF THE
NORTH CAROLINA STATE BAR
12 DHC 22

THE NORTH CAROLINA STATE BAR,

Plaintiff,

v.

TRACEY E. CLINE, Attorney,

Defendant.

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina 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 (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Tracey E. Cline, was admitted to the North Carolina State Bar on 18 August 1989, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar, and the Rules of Professional Conduct.

3. During all times relevant to this complaint, Cline was actively engaged in the practice of law in the State of North Carolina and was District Attorney for the 14th Prosecutorial District in Durham County, North Carolina.

4. In or around 16 September 2011, D.P. Brown, an investigator employed by the 14th Prosecutorial District, acting under the direction and supervision of Cline, sought to obtain prison visitation records from prison authorities for inmates David Yearwood, Angel Richardson and Keith Kidwell.

5. Brown submitted to prison authorities written requests for each inmate's prison visitation records.
6. Brown's written requests contained the following representations:
 - a. "I'm investigating a post conviction Motion for Appropriate [Relief] in that the defendant ... is seeking to attack the jury verdict and the sentence entered by the trial court judge."
 - b. "This [sic] visitation lists are needed to make sure he's in compliance with the pre-approved visitors."
 - c. "Please note that this information is confidential and part of an on-going investigation." (emphasis omitted)
7. Cline authorized or instructed Brown to make these representations.
8. At the time Brown made these representations, Cline knew, or should have known, that none of the inmates identified by Brown had a pending motion for appropriate relief.
9. At the time Brown made these representations, Cline knew, or should have known, that compliance or noncompliance by Yearwood, Richardson and Kidwell with any visitation policy was not relevant to any current or anticipated legal issues relating to any of these inmates' cases.
10. On 6 October 2011, Cline filed in the Superior Court of Durham County three documents, each entitled "Motion for Production of Visitation Records," in the cases of *State v. David Yearwood*, Durham County file no. 99 CRS 065460; *State v. Keith Kidwell*, Durham County file no. 05 CRS 44342; and *State v. Angel Richardson*, Durham County file no. 06 CRS 59344.
11. In the motions Cline represented to the court that each inmate "is seeking to attack the jury verdict and the sentence entered by the trial court judge" and that the information sought "is pertinent to the investigation of the Motion for Appropriate Relief the above-named defendant has filed."
12. As of 6 October 2011, only Yearwood had pending a motion for appropriate relief.
13. Inmate visitation records were not relevant to the issues raised in Yearwood's motion for appropriate relief.

14. As of 6 October 2011, Kidwell's and Richardson's criminal convictions were on appeal to the Court of Appeals and, therefore, the Superior Court had no jurisdiction to enter orders in those inmates' cases.

15. Cline's representations to the court that the inmates were "seeking to attack the jury verdict and the sentence entered by the trial court judge" were misleading.

16. At the time she represented to the court that the inmates were "seeking to attack the jury verdict and the sentence entered by the trial court judge," Cline knew that the representations were misleading.

17. Cline's representations to the court that the visitation records were pertinent to investigations of motions for appropriate relief were false and misleading.

18. At the time she represented to the court that the visitation records were pertinent to investigations of motions for appropriate relief, Cline knew that the representations were false and misleading.

19. In each inmate's case, Cline also prepared and provided to the court a proposed order granting the relief sought.

20. The Honorable James Hardin, Superior Court Judge, signed Cline's proposed orders on 7 October 2011.

21. Cline did not provide copies of the motions or orders to Yearwood, Kidwell, Richardson or their lawyers, and did not give them notice.

22. Cline's communications to the court in the motions and in obtaining the judge's signature on the orders were improper *ex parte* communications with the court.

23. By filing the Motions for Production of Visitation Records and by obtaining from the court orders allowing those motions, Cline attempted to use her position as District Attorney to obtain confidential information to which she was not entitled and which she intended to use for an improper purpose.

24. During 2010 and 2011, Cline became concerned about rulings and actions of Senior Resident Superior Court Judge Orlando F. Hudson, Jr.

25. Cline filed a complaint against Senior Resident Superior Court Judge Orlando F. Hudson, Jr. with the North Carolina Judicial Standards Commission.

26. Instead of waiting for any investigation and action by the Judicial Standards Commission, Cline made repeated statements about the honesty, integrity and fairness of Judge Hudson.

27. On 17 November 2011, in *State v. Dorman*, Durham County file no. 10 CRS 7851, Cline filed in the Durham County Superior Court a document entitled "Conflict of Interest Between the State and This Honorable Court" that contained the following statements about Judge Hudson:

The District Attorney alleges, based on personal knowledge that this Honorable Court's misconduct involves more than an error of judgment or a mere lack of diligence; this Court's actions encompasses [sic] conduct involving moral turpitude, dishonesty and corruption.

28. Cline's statement that Judge Hudson is corrupt is false. Cline made this statement knowing it was false or with reckless disregard as to whether the statement was true or false.

29. Cline's 17 November 2011 document entitled "Conflict of Interest Between the State and This Honorable Court" also contained the following statements about Judge Hudson:

a. To design a distorted decision necessary to judicially ordain a pretext of prosecutorial misconduct, which manufactures the intended media mayhem; resolute in attempts to ruin reputations, and incidentally creating court casualties of truth, integrity, and justice.

b. [T]his malicious misconduct still continues and will not cease; in that this Honorable Court sacrifices the justice owed to the citizens of Durham County in order to punish the prosecutor

c. [T]his continued constant failure to follow the law for personal privilege to punish the prosecutor is not simple misconduct; this is an appalling action that sacrifices all of the principles of the criminal court system; truth, law, impartiality, and integrity.

d. [T]he State's right to be heard has been striped [sic] away under Orders of this Honorable Court, the victims' rights are lost by this Court's calculated schemes, the chief medical examiner's opinion is clouded by a "court created conspiracy" unsupported by any facts or law; families of murder victims' faith is forfeited by fictitious findings of this Court, and victims of decade old crimes

are being emotionally and relentlessly repeatedly raped by this Court's rulings, based only on retaliation disregarding what is right, and the criminal justice system's credibility is a causality [sic] of this Court's callous misconduct.

e. The District Attorney may personally accept the planned purposeful personal attacks of this Court, but there are some sacrifices that are too great for the District Attorney to accept, kidnapping the rights of victims and their families, holding these rights for hostage until the prosecutor plays the game would bankrupt the credibility of our court system and Justice will not play that Game.

30. On 17 November 2011, in *State v. Yearwood*, Durham County file nos. 99 CRS 65452, 65460, and 65461-62, Cline filed in the Durham County Superior Court a document entitled "Respectfully The State's Request This Honorable Court to Disqualify Himself" that contained the following statements about Judge Hudson:

a. [T]hat such conduct will rot the justice system at its core in that the court is not governed by law, the law is replaced by the whims of the Judge and the associations of the Court; this is a total and radical lack of respect for the rule of law which does not promote public confidence in the court, but fertilizes the "favorite son syndrome" of bias and prejudices that the democratic society has for so long tried to alleviate.

b. [T]his Honorable Court's authority and power are no longer controlled by constitutional limits, morality or conscience.

c. [T]he intentional malicious misconduct of this Court is covered by the robe, and rationally relied on by reporters and the public. Then media mayhem - another prosecutor withheld evidence; this shameful disgraceful conduct is unimaginable, but true with this Honorable Court. This is gross judicial misconduct. (emphasis omitted)

d. [T]his Honorable Court as Senior Resident Superior Court Judge for the Fourteenth Judicial District has not remained faithful to the law and the principles of justice for all, his almost daily degradation of the constitutional rights of victims and the State retards any and all professional confidence in the application of the law by this Court.

e. [T]he clandestine claims of misconduct, invented in spite of truth and contrary to the application of the law, which are cowardly conceived by deeds in the dark afraid of the bright light of truth are

clearly inconsistent with truth and justice and this Honorable Court knows that this is not consistent with the Administration of Justice. This Honorable Court must acknowledge this. Justice is not ashamed of the light of truth and the right of confrontation. Hiding behind hidden emails, clandestine communications, and staying stone silent are not the testaments of truth and are legally illegitimate to an impartial and fair Court.

31. On 23 November 2011 in *State v. Peterson*, Durham County file no. 01 CRS 24821, Cline filed in the Durham County Superior Court a document entitled "Respectfully The State's Request This Honorable Court to Disqualify Himself" that contained the following statements about Judge Hudson:

a. Such abuse of power, without legal consciousness of right and wrong, having a total and reckless disregard of the law, and a reprobate mind of a monarch, aims to destroy and will destroy, the heart of our justice system if left unchecked.

b. [T]hat in these cases this Honorable Court's agenda is to impede the Administration of Justice, attack the calendaring authority of the District Attorney, and appease friends or associates who share his common agenda of falsifying prosecutorial misconduct to make and mold a media mania of unsupported and unwarranted allegations of prosecutorial misconduct, and generally whatever actions in this Court's power whether ethical or not to clandestinely hinder the operation of the District Attorney's Office and to draw a media light to the mayhem this Court personally manufactured.

c. [T]he willful misconduct of this Honorable Court is Judicial Power fueled by vengeance and unrestrained power, without responsibility or the regard of the rights of others, or even the basic sense of right and wrong.

d. [T]he District Attorney confidently without hesitation indicates based on Personal Knowledge that this Honorable Court is no longer fair and impartial and can not [sic] and will not perform the duties required of him, in an impartial manner. Moreover, this Honorable Court's blatant intentional misconduct destroys the dignity of his office, but worst of all justice becomes a joke in that this unrestrained power is without principles. (emphasis omitted)

e. [T]his Honorable Court totally disregards the interests of the State to be heard in these matters and the District Attorney cannot

foresee any possibility of this conduct changing anytime in the near or distant future.

f. [S]uch abuse of discretion and misuse of authority in total disregard of the facts, the applicable law, by trading reason and common sense for irrational revenge refusing to rely on what is right to seek selfish satisfaction is a cancer in this justice system. (emphasis omitted)

g. The true facts and the application of the law are irrelevant to the insolence of this Court.

h. [T]his Honorable Court is in total and complete violation of the North Carolina Code of Judicial Conduct and . . . will continue to violate the North Carolina Code of Judicial Conduct with no regard to the rights of others, no regard of the constitutional protections of the victims of crime, and no regard to the simple difference between right and wrong.

i. Orders full of false findings are relayed to and relied upon by the press to agitate or ignite even more distrust in the prosecutors, law enforcement and the entire criminal justice system and for the root of this unjustified contempt to be conceived in the womb of justice, a judge, sworn to be fair and impartial, destroys the dignity of the office of this Honorable Court and for those who use this Court for special situations outside the lines of right and wrong; don't hide your dirty hands; and to those who have seen, and know, yet turn a blind eye, acknowledge your hands are covered with the blood of justice. And be ashamed.

32. On 14 December 2011, Judge Hardin issued the following admonition to Cline regarding the Motions for Production of Visitation Records she had previously filed:

And I know that you are certainly aware that a lawyer shall not knowingly make a false statement of a material fact to the tribunal. . . . And, in essence, I think that rule is designed for a lot of reasons, but in particular it relates to ensuring the integrity of the Court, as a practical matter. As professionals, we have to rely upon each other's integrity and character and reputation for truthfulness, and if that's lost it's very difficult, if not impossible, to regain. So with respect to motions that appear before this Court and any other Court of North Carolina, please ensure that they are factual, that they contain no material misstatements of fact, and you will consider this a warning and a public admonition as it relates to that.

33. Subsequent to that 14 December 2011 warning and public admonition, Cline continued to make inflammatory and false statements about Judge Hudson that were unsupported by facts.

34. On 9 January 2012 in *State v. Pollard*, Durham County file no. 09 CRS 53103, Cline filed in the Durham County Superior Court a document entitled "Amended State's Request for Judge Orlando F. Hudson, Jr. to Recuse Himself" that contained the following statements about Judge Hudson:

[T]his Honorable Court uses his power to retaliate against the District Attorney in total disregard of the facts and law; the legal rights of victims and/or victim's [sic] families, and even the horrific impact these actions have on the integrity of the justice system.

35. Cline's statements about Judge Hudson set forth in the preceding paragraphs are not supported by facts and have brought the office of the Durham County District Attorney into disrepute.

36. Cline's statements about Judge Hudson set forth in the preceding paragraphs are not supported by the evidence, are not truthful, and were made by Cline with reckless disregard for the truth.

37. Cline's statements about Judge Hudson set forth in the preceding paragraphs contain inappropriate language, are intemperate, are inflammatory, and tend to lessen public confidence in our legal system.

38. On 18 January 2012, Attorney Kerstin Walker Sutton filed in the Durham County Superior Court an Affidavit seeking Cline's removal as the elected District Attorney for Durham County pursuant to N. C. Gen. Stat. §7A-66, in Durham County Superior Court file no. 12 CVS 1614.

39. Beginning on 20 February 2012, the Honorable Robert H. Hobgood, Superior Court Judge, held a hearing in file no. 12 CVS 1614.

40. Judge Hobgood entered an order in 12 CVS 1614 removing Cline from office and making findings of fact and conclusions of law consistent with paragraphs 25, 26, 28, 33, 35 and 36 above. The standard of proof was clear, cogent and convincing evidence.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:


1. By authorizing or instructing Brown to make false representations, Defendant knowingly made a false statement of material fact or law to a third person in violation of Rule 4.1, violated the Rules of Professional Conduct through the acts of another in violation of Rule 8.4(a), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).
2. By filing the Motions for Production of Visitation Records that contained false and misleading statements, by submitting to the court proposed orders allowing those motions, and by failing to provide copies to opposing counsel, Defendant brought a proceeding or asserted an issue for which there was no basis in law or fact in violation of Rule 3.1, engaged in improper *ex parte* communications with the court in violation of Rule 3.5(a)(3), knowingly made false statements of material fact or law to a tribunal in violation of Rule 3.3(a)(1), engaged in conduct involving dishonesty or misrepresentation in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).
3. By filing the document entitled "Respectfully The State's Request This Honorable Court to Disqualify Himself" in *State v. Yearwood*, the document entitled "Conflict of Interest Between the State and This Honorable Court" in *State v. Dorman*, the document entitled "Respectfully the State's Request This Honorable Court to Disqualify Himself" in *State v. Peterson*, and the document entitled "Amended State's Request for Judge Orlando F. Hudson, Jr. to Recuse Himself" in *State v. Pollard*, all of which contained false statements, Defendant asserted frivolous issues for which there was no basis in law or fact in violation of Rule 3.1 and knowingly made false statements of material fact or law to a tribunal in violation of Rule 3.3(a)(1).
4. By filing the document entitled "Respectfully The State's Request This Honorable Court to Disqualify Himself" in *State v. Yearwood*, the document entitled "Conflict of Interest Between the State and This Honorable Court" in *State v. Dorman*, the document entitled "Respectfully the State's Request This Honorable Court to Disqualify Himself" in *State v. Peterson*, and the document entitled "Amended State's Request for Judge Orlando F. Hudson, Jr. to Recuse Himself" in *State v. Pollard*, all of which contained false statements, Defendant engaged in conduct involving dishonesty or misrepresentation in violation of Rule 8.4(c) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

5. By filing the document entitled "Respectfully The State's Request This Honorable Court to Disqualify Himself" in *State v. Yearwood*, the document entitled "Conflict of Interest Between the State and the Honorable Court" in *State v. Dorman*, the document entitled "Respectfully the State's Request This Honorable Court to Disqualify Himself" in *State v. Peterson*, and the document entitled "Amended State's Request for Judge Orlando F. Hudson, Jr. to Recuse Himself" in *State v. Pollard*, all of which contained false statements about Judge Hudson, Defendant made statements knowing they were false or with reckless disregard for their truth or falsity concerning the qualifications or integrity of a judge in violation of Rule 8.2(a).


WHEREFORE, Plaintiff prays that:

1. Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;
2. Defendant be taxed with the costs and administrative fees permitted by law in connection with this proceeding; and
3. For such other and further relief as is appropriate.

The 25 day of May 2012.


Margaret M. Hunt, Chair
Grievance Committee

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