


STATE OF NORTH CAROLINA **FILED** IN THE GENERAL COURT OF JUSTICE
DURHAM COUNTY SUPERIOR COURT DIVISION

11 NOV 17 PM 3:25 FILE NO. 10 CRS 7851

STATE OF NORTH CAROLINA COUNTY, C.S.C.

BY )
) **CONFLICT OF INTEREST**
) **BETWEEN THE STATE**
 V.) **AND**
) **THIS HONORABLE COURT**
)
 MICHAEL DORMAN)

Now Comes the State of North Carolina, by and through, the District Attorney Tracey Cline, and gives **NOTICE of a CONFLICT of INTEREST** between the State of North Carolina and this Honorable Court in that the District Attorney, Tracey Cline has filed a complaint with the Judicial Standards Commission, indicting that this Honorable Court has violated and continues to violate the North Carolina Code of Judicial Conduct, and the District Attorney alleges that this Honorable Court is actively continuing to form foundations to perpetuate future actions which violate the North Carolina Code of Judicial Conduct.

The District Attorney alleges, based upon personal knowledge, and upon information and belief, that this Honorable Court's violations and abuse of discretion is willful misconduct in office as the Senior Resident Superior Court Judge of the Fourteenth Judicial District wherein this Court's improper and wrongful use of the power of his office consist of intentional and malicious acts with **GROSS UNCONCERN** for this conduct and done in **BAD FAITH**.

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 conduct involving moral turpitude, dishonesty and corruption.

The District Attorney also alleges, based upon personal knowledge and upon information and belief, that this Honorable Court harbors animosity toward the District Attorney in that the District Attorney refused to dismiss the case of State of North Carolina v. Derrick Allen, wherein the defendant was charged with First Degree Murder, Felony Child Abuse and First Degree Sexual Offense.

The District Attorney alleges, based upon information and belief, that this Honorable Court's action of attempting to coerce the District Attorney into dismissing Allen and then for this Honorable Court to engaged in retaliatory conduct against the District Attorney and the District Attorney's office after the District Attorney refused to dismiss that case are actions that constitute an improper or wrongful use of the power of this office by acting intentionally and with gross disregard for this conduct and in bad faith. The District Attorney alleges, based on personal knowledge and upon information and belief, that these judicial actions are gross misconduct deemed conduct prejudicial to the Administration of Justice and this malicious misconduct of this Honorable Court brings the judicial office in Disrepute. This is Gross Misconduct.

THE NORTH CAROLINA CODE OF JUDICIAL CONDUCT

The District Attorney alleges, based upon personal knowledge and upon information and belief that this Honorable Court's conduct is in violation of the North Carolina Code of Judicial Conduct, specifically as follows:

Canon 1

A judge should uphold the integrity and independence of the Judiciary.

A judge should participate in establishing, maintaining, and enforcing, and should personally observe, appropriate standards of conduct to ensure that the integrity and independence of the judiciary shall be preserved.

Canon 2

A judge should avoid impropriety in all the judge's activities.

A. A judge should respect and comply with the law and should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow the judge's family, social or other relationships to influence the judge's judicial conduct or judgment. The judge should not lend the prestige of the judge's office to advance the private interest of others; nor should the judge convey or permit others to convey the impression that they are in a special position to influence the judge.

Canon 3

A judge should perform the duties of the judge's office impartially and diligently.

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

A. Adjudicative responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before the judge.

(3) A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in the judge's official capacity, and should require similar conduct of lawyers, and of the judge's staff, court officials and others subject to the judge's direction and control.

(4) A judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither knowingly initiate nor knowingly consider *ex parte* or other communications concerning a pending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about the merits of a pending proceeding in any state or federal court dealing with a case or controversy arising in North Carolina or addressing North Carolina law and should encourage similar abstention on the part of court personnel subject to the judge's direction and control.

B. Administrative responsibilities.

(1) A judge should diligently discharge the judge's administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require the judge's staff and court officials subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. A judge should exercise the judge's power of appointment only on the basis of merit, avoiding nepotism and favoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.

C. Disqualification.

On motion of any party, a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned, including but not limited to

instances where:the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings

This Gross Misconduct is required to be reported by the District Attorney.

That the District Attorney alleges, upon information and belief and personal knowledge, that the District Attorney's refusal to dismiss Allen, ignited a purposeful pattern of abuse of discretion and intentional misconduct of this Honorable Court to misuse his power in retaliation against the District Attorney:

- ◆ To obtain exclusive jurisdiction of other criminal proceedings, to formulate a premature judicial determination of that legal issue prior to the hearing of any evidence or the arguments of counsel
- ◆ To find unsupported facts and erroneous conclusions of law; necessary to allege and / or find a unjustified state action;
- ◆ To attribute the drastic judicial decisions to dismiss serious violations of criminal law to profess "court manufactured prosecutorial misconduct" which is unwarranted and not supported by the record or the applicable law, and;
- ◆ 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.

That the District Attorney alleges, based upon personal knowledge, and upon information and belief, that the intentional acts of misconduct by this Court, while clearly designed to discredit the District Attorney, nonetheless, the real and concrete injustice lies in the inconceivable sacrifices this Court is willing to make like the life of 2 year old Adesha Artis, and also the confidence that the public has in the integrity of criminal justice system

*Disposition of cases for reasons other than an honest appraisal of Facts and Law,
as disclosed by the evidence presented, will amount to conduct
prejudicial to the proper
Administration of Justice which in due course will bring
The Judicial Office into disrepute.*

That the District Attorney alleges that this Honorable Court is in violation of the North Carolina Code of Judicial Conduct in that this Honorable Court's has not remained faithful to the law even though he has professional competence in the law; this Honorable Court intentionally failed and refused to apply the law; that this Honorable Court's application of the law is swayed by partisan interests, public clamor, or fear of criticism and by this Honorable Court's own bias and prejudice specifically as it relates to the application of the law in State v. Allen; State v. Yearwood; State v. Dorman; State v. Lyons, State v. Harwell, State v. Pollard, and other unnamed criminal cases in the Fourteenth Judicial District.

The District Attorney alleges, upon information and belief, that this 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; this Honorable Court dismissed two murder cases without any supporting facts or applicable law. This extreme abuse of discretion and power destroys the integrity of the entire

criminal justice system and must be controlled and restrained from this purposeful poisoning of the court system.

Allen

That after the Swecker and Wolfe Report, the only changed circumstances were that with several items the blood tests were not confirmed; that information was given to Allen on March 4, 1999 by Tracey Cline and the Swecker Wolfe Report indicates that anyone who received the notes could see the results. This Honorable Court found that the State should have interpreted what a dash before a named test means.

The 2 year old child's vagina was still torn and bleeding as observed and documented by the ER doctor. Also a nurse saw the defendant looking at the deceased child's vagina prior to there being any indication of sexual assault. The medical examiner also documented the tearing and blood pooling in the 2 year old's vagina. If there is no blood on the underwear but there is vaginal tearing and pooling of blood in the child's vaginal vault area, whether the blood is transferred to clothes, is irrelevant and does not destroy or distort the vaginal injuries or the blood pooling in her vagina. She was two years old.

This Court found that the fact that the passing of a polygraph by witness, who heard the child screaming in the bathroom with the defendant, saw the child come out trembling and crying uncontrollably and limping when the child tried to walk, is evidence of third party guilt. The defendant was provided with the fact that the witness passed the polygraph a decade ago.

This Court found that the SBI intentionally and systematically wrote the reports with the intent to deceive; even though the Swecker and Wolfe report indicates that there was no evidence that there was any systematic intent to deceive by the agents or the SBI in the way the reports were written or how the information was recorded.

Dorman

There was no conspiracy between the District Attorney, Durham Police Department, the State of North Carolina Victim Compensation Services, and the Victim's sister to destroy evidence. The Attorney General indicated to the North Carolina Court of Appeals that this Honorable Court's findings are contrary to well settled law and the North Carolina Court of Appeals Stayed that dismissal even though the North Carolina General Statutes indicate that there is no stay allowed for a criminal dismissal by the Court.

This Honorable Court determined in this case for the first time in his career that the Victim Compensation Services file was a prosecutorial file and should have been given in discovery by the State. In order for this Court to get the file, he had to prepare a Court order himself and obtain it. This information is protected by law. After receiving the file, this Court found that it should have been provided in August of 2010. Of the forty pages only one was in existence as of that date. All of the other letters to the victim's family were created after that date. In that the agency was helping the family with counseling and trying to locate other family members.

The Court spoke about a "surprise email". On August 10, 2011, the surprise email along with the entire Durham Victim Services file was provided in discovery to the defendant. The State received it that day from Victim Services and immediately gave it to the defendant.

Yearwood

Mother of 12 year old victim comes home at lunch hears her daughter scream out Mom help and goes to her bedroom to see her daughter crying, her panties torn on the floor, her dress torn and being held up trying to cover her body and the defendant is there buttoning his pants.

The North Carolina Court of Appeals, in State v. Yearwood, determined that there was NO ERROR and affirmed the trial court's decision and application of law. Then on October 8, 2004, a Motion for Appropriate Relief in the above captioned case was DENIED. And the defendant's Petition for Writ of Certiorari was also DENIED by the North Carolina Court of Appeals. That the facts of this case and the actions of the prosecutor have been reviewed four times and the conviction has not been reversed. That the appellate courts have reviewed this case two times and each time did not overturn this conviction.

The SBI lab was able to determine that there were chemical indications for salvia on the victim's vaginal area. The report indicated that it was inconclusive. The presence of another's DNA on a victim means that that person had contact with the victim; however, the lack of an analysis revealing the presence of that person's DNA does not mean that it is impossible that this person was in contact with that victim. The failure of an analysis to reveal the DNA of another person other than the victim does not mean that contact did not occur. 1. It can mean that there was no contact with the victim and that person, or 2. It can also be an indication that there was contact between the person and the victim but there was no transfer of DNA, or 3. It can mean that contact occurred and there was a transfer of DNA but the amount was insufficient to be measured in light of the overwhelming presence of the victim's DNA.

That to imply that the absence of DNA of a suspect means he is not guilty would mean that the Court of Appeals failed to overturn that conviction because of lack of DNA; and when the Court of Appeals indication that there was abundant evidence that the child victim had been sexually assaulted is wrong.

In Yearwood, the trial attorney hired a DNA expert who indicated that he could not find any discrepancies in any SBI protocol and that there was nothing to change his opinion about the inconclusiveness of the exam. The expert also indicated to the trial lawyer that he could not say that the DNA of Yearwood was not there; he could only say that it was inconclusive.

Dr. Phillips a therapist indicated that the child's actions were consistent with someone who had been sexual assaulted; the Sexual Assault Nurse Examiner indicated that the physical findings of the child were consistent with the incidents as described by the child.

That in State v. Yearwood, the North Carolina Court of Appeals had determined that there was NO ERROR and determined that "In addition, there was abundant evidence, even without the testimony of Dr. Phillips, that the child victim had been sexually assaulted."

CONCLUSION and PRAY for RELIEF

Therefore, the District Attorney, alleges upon personal knowledge, and upon information and belief that, this 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 principals of the criminal court system; truth, law, impartiality, and integrity

The District Attorney alleges that this Court action indicate that, No sacrifice is too great to punish the prosecutor.

That the District Attorney alleges, based upon information and belief, that this 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; this Court's 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.

The District Attorney alleges, based upon information and belief and personal knowledge, that the State's right to be heard has been striped 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 of this Court's callous misconduct.

This is power without responsibility or conscious.

The District Attorney alleges, upon information and belief, that this is not Justice; these actions are not done in the Interest of Justice; they are done in spite of justice. This is Gross Misconduct of this Court

That the District Attorney alleges, based on personal knowledge and upon information and belief, that seeking Justice in Durham County is far too often hindered by this Honorable Court's intentional misconduct; in that this Court knowingly misuses his office with gross unconcern for his conduct and the impact it has on the community and this Court acts in bad faith and continuing to allow this Honorable Court to exercise this awesome power without the restraints of the law or the responsibility for the rights of others is a travesty to Justice, the Durham County Judicial District, and the entire justice system of our nation.

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.

Justice demands a fair and impartial judge.

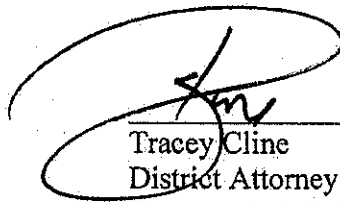
Power without responsibility lacks reason and respect for right; the District Attorney has no other recourse than to report this consistent and constant, continuing malicious misconduct of this Honorable Court which is in violation of the North Carolina Code of Judicial Conduct. This creates an immediate and present clear Conflict of Interest

between this Honorable Court and the State of North Carolina which impairs this Court's ability to be fair and impartial in any and all matters involving the Durham District Attorney's Office.

Moreover, until this Conflict of Interest is resolved the District Attorney alleges that this Honorable Court should not preside over any criminal matters in Durham County which are presently pending or will be pending in the future, all criminal presently pending post conviction matters or post conviction criminal matters which may be pending before the allegations of violation of the North Carolina Code of Judicial Conduct are addressed.

Respectfully Submitted,

This the 17th Day of November, 2011.

A handwritten signature in black ink, appearing to read 'Tracey Cline', is written over a horizontal line. The signature is stylized and somewhat cursive.

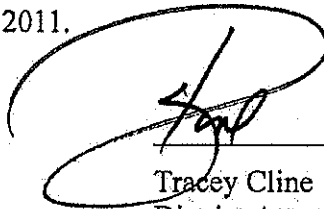
Tracey Cline
District Attorney
Fourteenth Judicial District

CERTIFICATE OF SERVICE

I hereby certify that I have served, Judge Orlando F. Hudson, Jr., Senior Resident Superior Court Judge for the Fourteenth Judicial District this Notice of Conflict of Interest by delivering a copy to the Court's legal assistant or personal delivery to this Court.

Respectfully Submitted,

This the 17th Day of November, 2011.

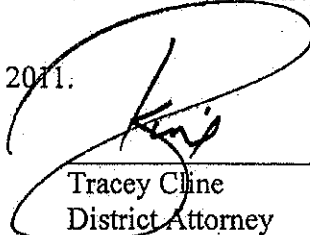


Tracey Cline
District Attorney
Fourteenth Judicial District

CERTIFICATE OF SERVICE

I hereby certify that I have served, Lawrence Campbell, attorney for the defendant, Dorman this Notice of Conflict of Interest with Judge Orlando F. Hudson, Jr. by placing a copy in US mail or delivering a copy to the attorney for the defendant or by serving the receptionist in the Public Defender's Office or by causing it to be served on her personally by the receptionist in the District Attorney's Office.

This the 17th Day of November, 2011.



Tracey Cline
District Attorney
Fourteenth Judicial District