

NORTH CAROLINA
DURHAM COUNTY

12-6

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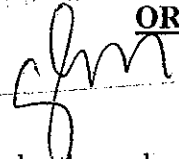
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 12 CVS 1614

2012 JAN 27 PM 3:41

DURHAM COUNTY C.S.C.

IN THE MATTER OF
TRACEY E. CLINE

ORDER



THIS CAUSE came on for review by the undersigned Judge Presiding pursuant to an Order Referring Matter for Consideration signed by the Honorable Orlando F. Hudson, Jr., Senior Resident Superior Court Judge of Judicial District 14, on 24 January 2012. An affidavit has been filed on 18 January 2012 in this matter by attorney and Durham County resident Kerstin Walker Sutton pursuant to N.C. Gen. Stat. § 7A-66 requesting an inquiry into whether District Attorney Tracey E. Cline should be removed or suspended from the Office of District Attorney for the Fourteenth Judicial District.

This Judge Presiding received a commission from the Assistant Director of the Administrative Office of the Courts to conduct a Special Session of Superior Court in Durham County on 26 January 2012 for one day, or until the business of the court is completed. The court is sitting in Durham County on 26 and 27 January 2012 to review the affidavit of Kerstin Walker Sutton dated and filed 18 January 2012 and case files referenced in that affidavit.

Based on a review of the affidavit of Kerstin Walker Sutton dated and filed 18 January 2012 and documents in Durham County file numbers 10 CRS 7851, 98 CRS 5281, 98 CRS 7979-80, 99 CRS 65452, 65406, 65461-62, 01 CRS 24821 (FILE # 4), and 53 subpoenas issued by Tracey E. Cline on 30 Nov. 2011 to members of the Durham County bar, court officials, judicial officials and members of the press, the Court makes the following

FINDINGS OF FACT:

1. Affiant Kerstin Walker Sutton is a citizen and resident of Durham County.
2. Affiant Kerstin Walker Sutton is a North Carolina licensed attorney who has maintained a law office in Durham County since 2001 and who practices regularly in the criminal District and Superior Courts of Durham County and is familiar with the attorneys and staff of the Durham County District Attorney's Office.
3. Affiant Kerstin Walker Sutton is familiar with District Attorney Tracey E. Cline, has known her since before she was elected as the District Attorney for the Fourteenth Judicial District and has known her for at least seven years.
4. This Court does find that there was sufficient evidence before the Court to allow the trial of the case of State v. Derrick Allen, File Number 99 CRS 65467, to go forward in that at least one medical doctor at the hospital and a pathologist at the autopsy of the child concluded that there were tears in the child's vagina and blood in the vaginal vault. At the autopsy a pathologist concluded that from the

bilateral hemorrhaging of both eyes and the subdural bleeding in the brain/skull that the child had died as a result of having been shaken. There is further evidence that a nurse at the hospital observed the Defendant looking at the private parts of the deceased child at a time when no one had indicated that her private parts had been injured. However, there is further evidence that supports the dismissal of the action by the Honorable Orlando F. Hudson, Senior Resident Superior Court Judge of the Fourteenth Judicial District, for discovery violations by the State. This is especially true in that the Honorable David Q. LaBarre had entered an Order in the Allen case on 4 March 1999 and the Honorable Orlando F. Hudson, Jr. had entered Orders on 8 October 2010, 12 November 2010 and 23 November 2010 compelling the State to provide discovery to the Defendant. Full discovery was absolutely necessary due to the lack of confirmatory testing by the SBI Lab for the presence of blood on the panties of the victim. Prior to any retrial, Judge Hudson entered the dismissal Order orally from the bench on 10 December 2010. The State and the Defendant consented to the entry of a written Order at a later date. The State filed a written notice of appeal from the oral dismissal Order on 17 December 2010. The written Order dismissing with prejudice the charges of first degree murder and felony child abuse and statutory sex offense was signed by Judge Hudson on 9 March 2010 and was filed in the Allen court file on 10 March 2011. It is apparent to this Court that the Dismissal of the Derrick Allen case by Judge Hudson was extremely frustrating to the District Attorney in that she had spent several years of her professional career as a prosecutor handling child sex crimes. Thereafter, signals began to appear that Tracey E. Cline was losing her ability to exercise professional restraint and civility toward Judge Hudson. The District Attorney has alleged in the public record a conspiracy between Judge Hudson and the defense attorney in the Allen case, Lisa Williams, together with News and Observer reporter T. Andrew Corliss to foster conduct prejudicial to the administration of justice. See Paragraph 4 on Page 12 of the "State's Request This Honorable Court (Judge Hudson) to Recuse Himself)" that was filed on 17 November 2011 in the David Yearwood file, File No. 99 CRS 65467. This Request was subsequent to a "Motion to Disqualify the Durham County District Attorney that was filed on 3 November 2011 in the Yearwood file by Heather L. Rattelade, post conviction attorney for Yearwood.

5. Affiant Kerstin Walker Sutton, by virtue of her professional role in the cases of State v. Michael Peterson and State v. Clint Pollard, and by her presence at relevant proceedings, and by her review of documents in Durham County court file numbers 10 CRS 7851, 98 CRS 5281, 98 CRS 7979-80, 99CRS 65452, 65406, 65461-62, 01 CRS 24821(FILE #4), and 53 subpoenas issued by Tracey E. Cline on 30 November 2011, has personal knowledge of the statements and actions of District Attorney Tracey E. Cline that Sutton set forth in her affidavit dated 18 January 2012.
6. The Court finds underlying guarantees of truthfulness in the statements set forth in Paragraphs A, B, C, D, E, F, G, Q, R, S, T, U, V, W, and X of Paragraph 6 of the affidavit of Kerstin Walker Sutton in that the documents in the various court files cited corroborate her statements.

7. The Court incorporates by reference into this paragraph as if fully set forth herein the statements itemized in Paragraph 6 of the Findings of Fact in this Order.
8. Affiant Sutton alleges that the conduct of and actions by District Attorney Tracey E. Cline constitute (1) habitual intemperance, and (2) is prejudicial to the administration of justice which brings the office of the Durham County District Attorney into disrepute. Affiant Sutton further alleges in Paragraph 7 of her affidavit that District Attorney Tracey E. Cline knowingly authorized or permitted a former Assistant District Attorney to commit acts constituting grounds for removal, specifically (1) willful misconduct by an officer of the court and (2) conduct prejudicial to the administration of justice which has brought the office of the Durham County District Attorney into disrepute.

Based on the foregoing Findings of Facts, the Court makes the following

CONCLUSIONS OF LAW:

1. This Court has jurisdiction to hear this matter.
2. Kerstin Walker Sutton, the Affiant, seeks relief under N.C. Gen. Stat. § 7A-66.
3. Kerstin Walker Sutton has standing to bring this action.
4. "Probable cause" as used in N.C. Gen. Stat. § 7A-66 is reasonable grounds to believe in the existence and truthfulness of the facts set forth in a sworn statement, based on all of the circumstances presented therein.
5. Habitual intemperance is defined by Black's Law Dictionary as that degree of intemperance from the use of intoxicating drinks which disqualifies the person of a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon an innocent party. This Court does not find that there is probable cause to believe that District Attorney Tracey E. Cline suffers from habitual intemperance as is alleged and as set forth in N.C. Gen. Stat. § 7A-66(4) in that there is absolutely no evidence that she consumes intoxicating drinks.
6. This Court does not find that there is probable cause to believe that District Attorney Tracey E. Cline knowingly authorized or permitted an assistant district attorney to commit acts constituting grounds for removal.
7. This Court does find probable cause to believe that the statements set forth in Paragraphs A, B, C, D, E, F, G, Q, R, S, T, U, V and X of Paragraph 6 of the Sutton affidavit are true and constitute grounds for suspension as set forth in N.C. Gen. Stat. § 7A-66(6) in that the conduct and actions of Tracey E. Cline are prejudicial to the administration of justice which brings the office of the District Attorney into disrepute.

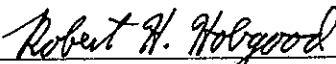
WHEREFORE, IT IS ORDERED that Tracy E. Cline is immediately suspended from performing the duties of the office of District Attorney for the 14th Judicial District until a final determination of the charges on the merits. During this suspension the salary of Tracey E. Cline continues in effect.

A hearing on a final determination on the merits of the charge for which probable cause was found is set before this Judge Presiding in Courtroom 3, Fifth Floor of the Durham County Courthouse, at 10 A.M. on Monday, 13 ~~January~~^{February} 2012. The Court will at that hearing admit into evidence all documents in court files mentioned in this Order. The court will allow Kerstin Walker Sutton, a licensed attorney and Affiant herein, to call witnesses and to testify on her own behalf, subject to cross examination. The Court will allow Tracey E. Cline to testify, subject to cross examination, and to call witnesses. Any finding of fact to establish probable cause in this Order will not automatically become a finding of fact in the final order on the merits.

The Clerk of Superior Court of Durham County shall cause the Sheriff of Durham County to forthwith serve a copy of this Order on the following persons:

1. Tracey E. Cline, Durham County Courthouse, Durham, NC;
2. Kerstin Walker Sutton, ~~P.O. Box 52551~~, Durham, NC 27717; and ^{8m} 3215 Deerchase Dr
3. Honorable Orlando F. Hudson, Jr., Senior Resident Superior Court Judge, Fourteenth Judicial District, Durham County Courthouse, Durham, NC.

This the 27th day of January, 2012.



ROBERT H. HOBGOOD
Judge Presiding

Certificate of Service

I hereby certify that I have served a copy of this Order on Tracey E. Cline by personal delivery.

This the ____ day of January, 2012.

Deputy Sheriff of Durham County