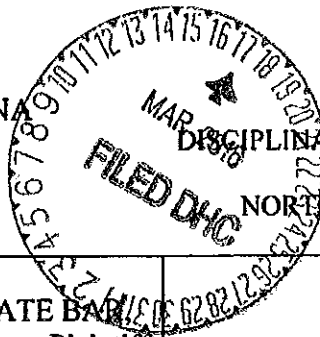


STATE OF NORTH CAROLINA

WAKE COUNTY



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

THE NORTH CAROLINA STATE BAR
Plaintiff

v.

ORDER OF DISCIPLINE

CHRISTINE C. MUMMA, Attorney,
Defendant

This matter was heard on 11 January - 14 January 2016 by a hearing panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, Beverly T. Beal, and Bradley Lail. Leonor Bailey Hodge and Maria J. Brown represented Plaintiff, the North Carolina State Bar. Defendant, Christine C. Mumma, was represented by James P. Cooney, III, Bradley J. Bannon, Alan M. Schneider, and Joseph B. Cheshire, V.

Based upon the evidence presented at the hearing, the Hearing Panel hereby makes by clear, cogent, and convincing evidence the following:

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar ("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 ("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 ("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. The physical evidence introduced by the State at Sledge's trial to connect him to the Davis crime included presumptively African-American pubic hairs located on the exposed abdomen and forehead of Aileen Davis. An FBI hair analysis expert testified that the hair taken from Ms. Davis's body was "microscopically alike in all respects to some of the hairs comprising the known pubic hair sample from [Sledge]."

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

7. 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.

8. In June 2003, Sledge obtained an order directing any state agency involved in the investigation of the Davis crime to search for evidence collected from the Davis crime scene; to arrange for DNA testing of whatever evidence could be located; and, regarding any evidence that could not be located, to submit an affidavit to the court explaining why. For years, no state agency responded to that order.

9. Sledge contacted the NCCAI for assistance with enforcement of the 2003 court order.

10. In 2004, NCCAI agreed to assist Sledge, and Mumma assumed responsibility for Sledge's case on behalf of NCCAI. NCCAI continued to pursue the location and testing of evidence from the Davis crime scene.

11. In 2009 and 2010, partial DNA profiles on the victims' clothing were identified through testing. The results excluded Sledge.

12. In August 2012, the hairs collected from Aileen Davis's body and introduced as physical evidence tying Sledge to the Davis crime were located. Pursuant to previously entered court orders, NCCAI arranged for the hairs to be provided to DNA experts, who then identified the hairs most likely to have been introduced against Sledge at trial for testing. The State consented to the transfers necessary to perform this testing.

13. In December 2012, the results of the DNA tests of those hairs revealed that the hairs did not belong to Sledge.

14. On 5 December 2012, Mumma began communicating directly with Jon David, the District Attorney for the 13th Prosecutorial District ("David"), about pursuing post-conviction relief for Sledge. Mumma provided David with various case documents and offered to provide copies of all of her privileged correspondence with Sledge and NCCAI's entire case file.

15. In February 2012, after initially meeting with Mumma to discuss the details of Sledge's claims of actual innocence, David sought and obtained assistance from

the SBI to assist the District Attorney's Office in its independent investigation of Sledge's claims.

16. On 25 March 2013, Mumma filed a Motion for Appropriate Relief ("MAR") for Sledge.

17. Mumma believed that filing the MAR was necessary to further the goals of her representation of Sledge.

18. David, on behalf of the State of North Carolina, opposed several of the claims advanced on Sledge's behalf in the MAR, including on grounds of procedural default, and argued that a hearing be held as soon as possible on the others.

19. On 6 May 2013, Mumma provided to the North Carolina Innocence Inquiry Commission ("NCIIC") an Initiation of a Claim and Consent to Investigation, Authorization and Release of Files, and Commission Questionnaire in support of a claim of factual innocence on behalf of Sledge. That same day, on behalf of Sledge, Mumma filed a motion to hold the MAR in abeyance in favor of the completion of a more thorough investigation by NCIIC.

20. David, on behalf of the State of North Carolina, objected to Sledge's abeyance motion and requested a hearing on Sledge's MAR as soon as possible.

21. By letter dated 20 May 2013, Mumma formally referred Sledge's case to NCIIC.

22. On 21 May 2013, Mumma provided NCIIC with a copy of NCCAI's file on Sledge.

23. NCIIC accepted Sledge's claim and opened an investigation of the case.

24. On 11 July 2013, Hon. Douglas B. Sasser, Senior Resident Superior Court Judge for the 13th Judicial District, held a status hearing on Sledge's MAR. At the end of the hearing, Judge Sasser entered a 90-day abeyance, indicating the following: "If for some reason things drag out, I can rehear arguments and if all the evidence is available that the Court needs to hear to make ... an informed, intelligent decision in this matter, this Court will schedule a date for hearing."

25. On 13 September 2013, by consent of the parties, Judge Sasser extended the abeyance until 13 January 2014, "at which time [the Court] will further evaluate progress made by [NCIIC]."

26. Representatives of the District Attorney's Office, NCIIC, and NCCAI all believed that it would assist the investigation of Sledge's innocence claim to obtain evidence that showed that the DNA of others, such as alternate suspects, could be linked to items recovered from the Davis crime scene.

27. Based on documents from the initial law enforcement investigation file identifying them as possible suspects, Mumma considered R. Smith and his brother J. Smith ("Smith brothers") to be possible suspects in the Davis crime and thus sought to obtain their DNA so that it could be tested against DNA recovered from the Davis crime scene.

28. Mumma communicated with the District Attorney's Office a minimum of five times with requests to obtain a known DNA sample from the Smith brothers, or a maternal relative of the Smith brothers, so that it could be tested against DNA recovered from the Davis crime scene.

29. The District Attorney's office never obtained the sample.

30. On 8 October 2013, in an email copied to David, Mumma asked NCIIC whether NCIIC had obtained a DNA sample from a Smith family member. Later that day, NCIIC informed Mumma that it had not obtained a DNA sample from a Smith family member and could not confirm when (or even if) they would do so.

31. On 18 October 2013, NCIIC Associate Director Sharon Stellato ("Stellato") sent an email to Mumma and David indicating that that Commission had scheduled another case for hearing in December 2013. Stellato's email continued: "I wanted to inform you both of this because it will likely impact our investigation of the Sledge case. We are not, at this time, placing any case on hold. But, preparing for hearings is very time intensive and our time spent on other active investigations will decrease. Both Lindsey and I are also co-leads on the case scheduled for hearing."

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

33. 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 and his Motion for Appropriate Relief.

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

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

36. Mumma and Evans identified themselves as Joseph Sledge's attorneys and asked Andrus if they could speak with her about the Davis crime.

37. Andrus invited Mumma and Evans into the home and spent about 45 minutes speaking to them.

38. During the meeting, Mumma asked Andrus to provide a voluntary DNA sample. Andrus expressed concern that law enforcement could tamper with DNA

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

39. Andrus declined to give Mumma 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. Mumma knew when she left the meeting that Andrus had refused to provide a DNA sample.

40. When she left Andrus’s home, Mumma inadvertently took with her a half-empty water bottle.

41. When Mumma arrived at her car, she saw that she had left her water bottle in her car and had not brought it into the Andrus residence. At that moment, Mumma realized the water bottle did not belong to her.

42. Mumma decided not to take the water bottle she took out of the Andrus home back to Ms. Andrus. Instead, Mumma decided to take the water bottle with her to contemplate whether to submit it for DNA analysis.

43. 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.

44. The next day, Andrus called Mumma. During that conversation, Andrus informed Mumma that Andrus’s family did not want her to provide a DNA sample to Mumma.

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

46. On 24 October 2013, Mumma submitted the water bottle to Mitotyping Technologies with hopes that Smith family DNA could be recovered from it and compared to the mitochondrial DNA profile from the Davis crime scene evidence.

47. 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 the DNA obtained from the water bottle was not consistent with the mitochondrial DNA profile from the Davis crime scene evidence.

48. After learning that the mitochondrial DNA profile obtained from the water bottle was inconsistent with the mitochondrial DNA from the Davis crime scene evidence, Mumma sought to determine whether the DNA on the water bottle could have been contributed by someone maternally unrelated to the Smith brothers. 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.

49. After chatting with Andrus briefly, Mumma inquired of Andrus as to whether Andrus's daughters who were present in the home during the October 23rd interview were her biological children, in an effort to determine whether the results of the water bottle DNA analysis would be sufficient to rule out the Smith brothers as perpetrators of the Davis crime. 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 her nephew and someone else might have been in the home during the interview.

50. Mumma concluded her call with Andrus by again asking Andrus to provide a DNA sample. Mumma did not mention to Andrus that she had retained a water bottle from inside Andrus's home and had it analyzed, or that DNA from the water bottle was inconsistent with the DNA from the Davis crime scene evidence.

51. On 4 November 2013, Mumma sent an email to NCIIC staff and David informing them that she had submitted a water bottle that came from an unknown source within the Andrus home to Mitotyping for DNA analysis, and reiterating that she still believed that getting a reliable DNA sample from a maternal relative of the Smith brothers was an important investigative step in the Sledge case. Attached to the same email, Mumma also provided NCIIC staff and David with memos of her interactions with Andrus.

52. In December 2013, the District Attorney's Office agreed to hold the MAR in abeyance for the duration of NCIIC's investigation of Sledge's claim.

53. In October 2014, NCIIC obtained a non-testimonial order from the court compelling a member of the Smith family to provide a DNA sample. NCIIC obtained a DNA sample from another sibling of the Smith brothers, a brother, which showed that the Smith brothers' DNA was not a match to evidence from the Davis crime scene.

54. In December 2014, NCIIC held a hearing on Sledge's claim of factual innocence. At the conclusion of this hearing, NCIIC unanimously concluded that there was sufficient evidence of factual innocence to merit judicial review and referred Sledge's case for hearing before a three-judge panel.

55. On 23 January 2015, David agreed to a finding of actual innocence and joined in the defense motion to dismiss with prejudice the murder charges against Sledge, and Sledge was exonerated.

Based upon the foregoing Findings of Fact, the Hearing Panel hereby enters the following:

CONCLUSIONS OF LAW

1. All parties are properly before the Hearing Panel and the Panel has jurisdiction over Defendant, Christine C. Mumma.

2. Defendant's conduct, as set forth in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct as follows:

a) By retaining the water bottle, after inadvertently taking it from Andrus's home without her permission, and then having DNA recovered from the bottle compared to the Davis crime scene evidence against Andrus's wishes that her family's DNA remain private, Mumma used methods of obtaining evidence that violated the legal rights of a third person, Andrus, in violation of Rule 4.4(a), specifically the right to privacy recognized by the civil law of North Carolina.

3. The allegation of violation of Rule 8.4(c) – engaging in conduct involving dishonesty, fraud, deceit or misrepresentation – was not proven by clear, cogent, and convincing evidence.

4. The allegations of violation of Rule 8.4(d) – engaging in conduct prejudicial to the administration of justice – were not proven by clear, cogent, and convincing evidence.

Based upon the foregoing Findings of Fact, Conclusions of Law, and the consent of the parties the Hearing Panel hereby enters the following:

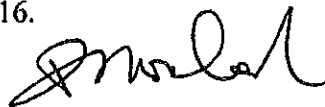
ORDER OF DISCIPLINE


1. The discipline to be imposed in this matter is an admonition. An admonition, which is the least serious form of discipline authorized, is imposed in cases in which an attorney has committed a minor violation of the Rules of Professional Conduct.

2. Defendant, Christine C. Mumma, is hereby admonished by the Disciplinary Hearing Commission for her professional misconduct.

3. Each party shall bear her/its own costs in this matter.

Signed by the Chair with the consent of the other Hearing Panel members this the 17th day of March, 2016.



 3/17/16

Fred M. Morelock., Chair
Disciplinary Hearing Panel