

STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR

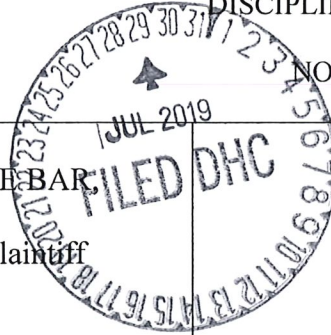
Plaintiff

v.

GREGORY A. NEWMAN, Attorney,

Defendant

BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
19 DHC 14



COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

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

2. Defendant, Gregory A. Newman, was admitted to the North Carolina State Bar in February 2000 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 or part of the relevant periods referred to herein, Defendant was engaged in the practice of law in the State of North Carolina and was employed as the District Attorney for what was then Prosecutorial District 29B¹ which included Henderson, Polk and Transylvania counties.

Upon information and belief:

4. On or about June 12, 2014, V.O., a minor, and her mother, reported to the Henderson County Sheriff's Department that V.O. had been sexually assaulted by James Sapp ("Sapp").

5. On or about June 16, 2014, the detective assigned to the Sapp investigation interviewed V.O.

6. In that interview, V.O. described Sapp as having certain distinctive markings in the area below his belly.

¹ Prosecutorial District 29B was subsequently renumbered as Prosecutorial District 42.

7. The detective consulted the Office of the District Attorney for Prosecutorial District 29B (“D.A.’s Office”) and the D.A.’s Office requested that the detective obtain a search warrant for photographs of Sapp.

8. On or about August 6, 2014, the court issued a search warrant authorizing the taking of photographs of Sapp’s naked body.

9. On or about August 6, 2014, law enforcement executed the search warrant and took photographs of Sapp’s naked body.

10. On September 3, 2014, Sapp was charged with Rape of a Child by an Adult (a felony) – Henderson County file no. 14 CR 053796.

11. On or about September 5, 2014, an employee of the D.A.’s Office called and spoke with V.O.’s mother to explain the court process and to provide notification of the court date, September 23, 2014.

12. During that September 5th telephone call, V.O.’s mother stated that she planned to attend the September 23rd court date and every subsequent court date.

13. Also on September 5th, the D.A.’s Office mailed a Victim Impact Statement to V.O.

14. V.O.’s mother appeared for the September 23rd court date.

15. V.O. and her parents were interested in the prosecution of the Sapp case.

16. On or about September 23, 2014, the detective assigned to the investigation provided the D.A.’s Office with a 36-page document entitled “Initial Certification of Lead Officer” and CDs of the interview with V.O. and photographs obtained from the execution of the search warrant.

17. On May 18, 2015, the Henderson County Grand Jury indicted Sapp on the following charges:

(a) Rape of a Child by an Adult – Henderson County file no. 14 CRS 053796;

(b) Sex Offense with a Child by an Adult – Henderson County file no. 15 CRS 000441;

(c) Indecent Liberties with a Child – Henderson County file no. 15 CRS 000442;

(d) Indecent Liberties with a Child – Henderson County file no. 15 CRS 000443; and

(e) Indecent Liberties with a Child – Henderson County file no. 15 CRS 000444.

18. All of these indictments were signed by Defendant as prosecutor.

19. The alleged victim in the charges mentioned in paragraph 17 above was V.O.

20. Sometime after law enforcement provided the photographs of Sapp to the D.A.’s Office, V.O. met with Defendant at the D.A.’s Office.

21. At the meeting, Defendant showed V.O. the photographs of Sapp.
22. At the time of this meeting, Defendant indicated to V.O. that the photographs were good evidence for the case.
23. V.O. told Defendant she wanted to be present at court hearings and at sentencing.
24. Prior to October 13, 2015, the D.A.'s Office informed V.O. and her parents that the criminal case against Sapp would be scheduled for November 2, 2015.
25. On or about October 13, 2015, Defendant signed a misdemeanor statement of charges charging Sapp with Assault on a Female. The victim identified in the misdemeanor statement of charges was V.O.
26. Neither Defendant nor anyone acting on his behalf informed V.O. or her parents that Defendant signed a misdemeanor statement of charges charging Sapp with Assault on a Female.
27. On or about October 13, 2015, Sapp pled guilty in Henderson County District Court to one count of misdemeanor Assault on a Female in which V.O. was the victim – Henderson County file no. 15 CR 840.
28. Neither Defendant nor anyone acting on his behalf informed V.O. or her parents that Sapp would enter a guilty plea or that the case was scheduled to be resolved on October 13, 2015.
29. V.O. had informed Defendant that she wanted to present her victim impact statement to the court prior to entry of judgment in the Sapp case.
30. Defendant represented the State of North Carolina at the plea proceeding.
31. N.C. Gen. Stat. §15A-832(c) states: "The district attorney's office shall notify a victim of the date, time, and place of all trial court proceedings of the type that the victim has elected to receive notice. All notices required to be given by the district attorney's office shall be given in a manner that is reasonably calculated to be received by the victim prior to the date of the court proceeding."
32. At the plea proceeding, the presiding judge inquired of the State whether the victim had been advised of the plea and wished to be heard.
33. Defendant informed the court that the victim had been advised of the plea and did not want to be heard.
34. As a result of Defendant's representation to the court, the judge wrote on the judgment: "State said victim had been advised of plea and did not want to be heard."
35. Defendant did not inform V.O. or her parents that Sapp would enter a guilty plea or that the case was scheduled to be resolved on October 13, 2015.
36. Defendant's statement that the victim had been advised of the plea and did not want to be heard was false.

37. Defendant dismissed the felony charges described in paragraph 17 above.
38. Defendant did not subsequently advise the court that V.O. wished to be heard and had not been notified that Sapp would enter a guilty plea or that the case was scheduled to be resolved on October 13, 2015.
39. On or about April 3, 2017, the State Bar opened a grievance file in this matter, grievance file no. 17G0363.
40. On or about May 19, 2017, Defendant was served with a Letter of Notice in connection with grievance file no. 17G0363.
41. In Defendant's May 30, 2017 response to the Letter of Notice, he stated the following regarding the plea proceeding:
- (a) "I had my victim/witness staff person prepare a bill of information and contact the mother of the victim."
 - (b) "I handled the plea in District Court instead of Superior Court, where a jury trial was underway."
 - (c) "I explained this situation to [V.O.'s father] on the day the plea occurred."
 - (d) "Our file shows that the mother never returned the call."
42. Defendant's statements set out in paragraph 41 were false.
43. A victim/witness staff person did not contact the mother of the victim prior to the October 13, 2015 court date.
44. There was not a jury trial underway in Superior Court on October 13, 2015.
45. Defendant did not communicate with V.O.'s father the day the plea was entered.
46. Neither Defendant nor anyone acting on his behalf had placed a call to V.O.'s mother relating to the October 13, 2015 court date and therefore there was no call for V.O.'s mother to return.
47. On October 13, 2015, V.O. and her parents still believed that Sapp's criminal case was scheduled for November 2, 2015.
48. In connection with the grievance investigation, Defendant provided the State Bar with a copy of the D.A.'s Office file in the Sapp case.
49. The D.A.'s Office file does not reflect that Defendant or anyone acting on Defendant's behalf placed a telephone call to V.O.'s mother about the October 13, 2015 court date.
50. The D.A.'s Office file does not reflect that V.O.'s mother failed to return a call from the D.A.'s Office about the October 13, 2015 court date.

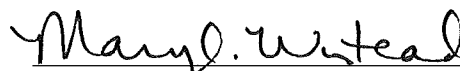
THEREFORE, Plaintiff alleges that by making false statements about the Sapp case to the State Bar during the grievance investigation, Defendant's actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(3) and that Defendant's foregoing actions constitute grounds for discipline 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:

- (a) By falsely informing the court that the victim had been notified of the plea and did not want to be heard, Defendant knowingly made a false statement of material fact to a tribunal in violation of Rule 3.3(a)(1), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (b) By failing to inform V.O. of the scheduled guilty plea before resolving the case despite her request to be heard, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d);
- (c) By failing to inform the court that his statement that the victim had been notified of the plea and did not wish to be heard was false, Defendant knowingly failed to correct a false statement of material fact previously made to the tribunal in violation of Rule 3.3(a)(1) and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d); and
- (d) By making false statements about the Sapp case to the State Bar during the grievance investigation, Defendant knowingly made false statements of material fact in connection with a disciplinary matter in violation of Rule 8.1(a), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer in violation of Rule 8.4(c), and engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

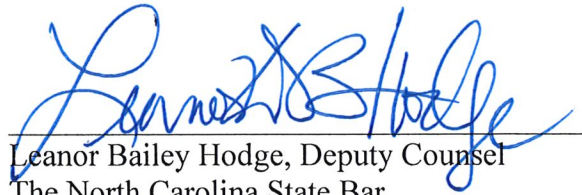
WHEREFORE, Plaintiff prays that:

- (1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28 as the evidence on hearing may warrant;
- (2) Defendant be taxed with the administrative fees and costs permitted by law in connection with this proceeding; and
- (3) For such other and further relief as is appropriate.

The 29th day of July, 2019.



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Leann Bailey Hodge, Deputy Counsel
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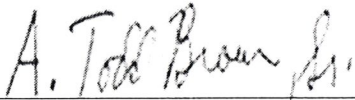
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Attorneys for Plaintiff

Signed pursuant to 27 N.C. Admin. Code 1B
§ .0113(n) and §.0105(a)(10).



A. Todd Brown, Chair
Grievance Committee