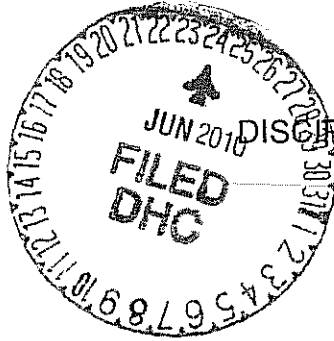


WAKE COUNTY  
NORTH CAROLINA



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
10 DHC 2

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THE NORTH CAROLINA STATE BAR )  
Plaintiff )

v. )

SAMANTHA E. ALSUP, ATTORNEY )  
Defendant )

ORDER  
OF DISCIPLINE

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THIS MATTER was heard on June 11, 2010 before a hearing panel of the Disciplinary Hearing Commission composed of Tommy W. Jarrett, Chair, Donna R. Rascoe, and Donald G. Willhoit pursuant to 27 N.C.A.C. 1B §.0114 of the Rules and Regulations of the North Carolina State Bar. Defendant, Samantha E. Alsup, was represented by James B. Maxwell. Plaintiff was represented by Deputy Counsel Margaret Cloutier.

Based upon the record and the evidence introduced at the hearing, the hearing panel finds by clear, cogent and convincing evidence the following

#### FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar (hereinafter "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, Samantha E. Alsup (hereinafter "Alsup" or "Defendant"), was admitted to the North Carolina State Bar on August 23, 1991 and is, and was at all times referred to herein, an Attorney at Law licensed to practice in

North Carolina, 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. Defendant was properly served with process and the matter came before the hearing panel with due notice to all parties.

4. During the times relevant herein, Defendant was actively engaged in the practice of law in the State of North Carolina and was employed as an Assistant District Attorney in the Thirteenth Prosecutorial District covering Brunswick, Bladen and Columbus Counties, North Carolina.

5. During the times relevant herein, Defendant was assigned to prosecute *State of North Carolina v. Talmadge Dozier*, a 2006 arson case pending in Columbus County.

6. In July 2006 Judy Faye Platt, a woman with whom Mr. Dozier was visiting at the time of the arson, gave a statement to Jeremy Barber, the detective investigating the case.

7. Detective Barber prepared a handwritten statement that Ms. Platt signed. According to the statement:

a. Mr. Dozier was at Ms. Platt's home when she left to run errands at 8:30 a.m.;

b. Ms. Platt was at the Dollar Store in Tabor City at 10:00 a.m. when she received a telephone call from her daughter telling her the victim's house was on fire; and

c. Mr. Dozier was at Ms. Platt's home when she returned at 11:00 or 11:30 a.m.

8. Early in the pendency of the case Defendant provided a copy of Ms. Platt's July 2006 statement to Randy Cartrette, Mr. Dozier's attorney.

9. In November 2007 Defendant interviewed Ms. Platt by telephone. Defendant's notes of that conversation say that:

a. Ms. Platt said she went to Tabor City that day and was gone from her home for twenty minutes;

b. Ms. Platt said when she returned Mr. Dozier was at her home;

c. Ms. Platt said she did not tell Detective Barber that she returned at 11:00 or 11:30 a.m.; and

d. In response to Defendant pointing out that the statement she signed in July 2006 stated she received the call from her daughter at 10:00 a.m., Ms. Platt then said ok, but she was on her way home when she got that call.

10. In February 2009 Defendant interviewed Ms. Platt in person. Defendant's notes of that conversation say that:

a. Ms. Platt went to the IGA and nowhere else;

b. Ms. Platt's daughter called to tell her about the fire when Ms. Platt was on her way home; and

c. Mr. Dozier was driving the gold Infiniti.

11. At the February 2009 meeting, Ms. Platt also told Defendant that Ms. Platt was gone from her home for 30 to 45 minutes. Defendant's notes do not reflect that statement.

12. At the February 2009 meeting with Ms. Platt, Defendant also spoke with Ms. Platt's grandson. Ms. Platt's grandson had not previously made any statements to law enforcement. Defendant took no notes of her conversation with Ms. Platt's grandson and did not make any record of his comments prior to the commencement of the trial.

13. Pursuant to state statute and federal case law the information noted above from Ms. Platt's November 2007 and February 2009 statements, as well as her grandson's statement, was information required to be provided to Mr. Dozier's attorney before Mr. Dozier's April 13, 2009 trial.

14. Defendant did not provide the substance of Ms. Platt's November 2007 and February 2009 statements, or the substance of her grandson's statement, to Mr. Dozier's attorney before Mr. Dozier's April 13, 2009 trial.

15. After jury selection had been completed, Mr. Dozier's attorney made a motion to the court seeking a mistrial wherein he alleged he had only learned the previous evening that Ms. Platt had spoken with Defendant in November 2007 and February 2009 and that during those conversations Ms. Platt had told Defendant that Ms. Platt's original signed statement to Detective Barber was wrong as to how long she was gone from home on the morning of the arson and that Ms. Platt had been gone a much shorter period of time.

16. After an evidentiary hearing on the circumstances of the statements, the court declared a mistrial. The trial court in its order granting the mistrial found that Defendant engaged in prosecutorial misconduct.

17. Defendant told Detective Barber before the trial that Ms. Platt had changed her story with reference to the time frames that she was gone from her home.

18. Applicable state law requires that the substance of the conversations Defendant had with Ms. Platt and the grandson in November 2007 and February 2009 be timely reduced to writing and turned over to Mr. Dozier's attorney.

19. The information Defendant obtained in her conversations with Ms. Platt and the grandson that Defendant did not turn over to Mr. Dozier's defense counsel was material to his defense because 1) some of the information was exculpatory to him, 2) some of the information related to impeachment of potential state's witnesses, and 3) some of the information related to new information not previously disclosed.

20. Rather than mere oversight, Defendant's failure to turn over the substance of the conversations was a conscious act not to disclose this otherwise discoverable information to Mr. Dozier's attorney.

21. Defendant's conduct caused a mistrial in Mr. Dozier's criminal case which needlessly used court resources and necessitated another trial that has not taken place as of the date of this hearing. The mistrial has given Mr. Dozier a colorable double jeopardy defense that he otherwise would not have had.

Based upon the foregoing Findings of Fact, the hearing panel enters the following:

#### CONCLUSIONS OF LAW

1. All parties are properly before the Disciplinary Hearing Commission and the Disciplinary Hearing Commission has jurisdiction over Defendant, Samantha E. Alsup, and the subject matter of this proceeding.

2. Defendant's conduct, as set out in the Findings of Fact above, constitutes grounds for discipline pursuant to N.C.G.S. §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 failing to provide the substance of Ms. Platt's and her grandson's statements to Mr. Dozier's attorney before trial as required by statute and case law,

i. Defendant concealed a document or material having potential evidentiary value in violation of Rule 3.4(a),

ii. Defendant failed to disclose evidence or information that she knew, or reasonably should have known, was subject to disclosure under applicable law, rules of procedure or evidence, or court opinions in violation of Rule 3.4(d)(3), and

iii. Defendant failed to make timely disclosure to the defense of all evidence or information required to be disclosed by applicable law, rules of procedure, or court opinions in violation of Rule 3.8(d).

b. By failing to disclose evidence or information to the Dozier defense as required by statute and case law and thereby causing a mistrial, Defendant engaged in conduct prejudicial to the administration of justice in violation of Rule 8.4(d).

3. The panel does not find by clear, cogent and convincing evidence that Defendant engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and that allegation of the State Bar's complaint should be dismissed with prejudice.

Based upon the evidence presented at the hearing, the hearing panel also finds by clear, cogent and convincing evidence the following

#### ADDITIONAL FINDINGS REGARDING DISCIPLINE

1. District attorneys and their duly appointed assistants represent the State through their public offices and are critical to maintaining the public trust and confidence in our judicial system. The courts, the general public, criminal defendants, victims and witnesses all expect and are entitled to have district attorneys who adhere to the highest ethical standards.

2. Defendant's misconduct caused a mistrial under circumstances that have given Mr. Dozier a colorable double jeopardy defense that he otherwise would not have had. Accordingly, the State's interest in pursuing justice through a trial on the merits in the case is potentially harmed.

3. Defendant's misconduct denied Mr. Dozier a fair and speedy trial in April 2009.

4. Defendant gave inconsistent and contradictory explanations in her testimony before the hearing panel, her Answer to the Complaint in this action, her written response to the Grievance Committee, and her explanation to the trial judge.

5. Defendant has no prior discipline issued in this or any other jurisdiction.

Based upon the Findings of Fact, Conclusions of Law, and Additional Findings Regarding Discipline, the hearing panel also enters the following

#### CONCLUSIONS REGARDING DISCIPLINE

1. The hearing panel has considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(3) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

- a. The absence of any prior disciplinary offenses committed by Defendant in this state or any other jurisdiction;
- b. Defendant committed multiple offenses;
- c. Defendant's full and free disclosure to the hearing panel and cooperative attitude toward the proceedings;
- d. Defendant's outstanding reputation for good character within the legal community;
- e. Defendant's substantial experience in the practice of law in that she has been employed as an Assistant District Attorney for eighteen years; and
- f. Defendant's inconsistent and contradictory explanations about why she failed to disclose the discovery to the defense.

2. The hearing panel has also considered all of the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(1) of the Rules and Regulations of the North Carolina State Bar and finds the following factors are applicable in this matter:

- a. The intent of Defendant to commit acts where the harm or potential harm was foreseeable;
- b. The negative impact of Defendant's actions on the client's – that is, the State of North Carolina – and the public's perception of the profession;
- c. The negative impact of Defendant's actions on the administration of justice;
- d. The impairment of her client the State of North Carolina's ability to achieve the goals of the representation; and

e. The effect of Defendant's conduct on a third party, Mr. Dozier.

3. The hearing panel has considered the factors enumerated in 27 N.C.A.C. 1B §.0114(w)(2) of the Rules and Regulations of the North Carolina State Bar and finds that none of the factors are established by the evidence in this case. The panel therefore does not consider disbarment to be necessary to protect the public in this case.

4. The hearing panel has carefully considered all of the different forms of discipline available to it. An admonition, reprimand, or censure would not be sufficient discipline because of the gravity of the harm Defendant's conduct caused to the public, the administration of justice, and the legal profession.

5. The panel finds that discipline short of suspension would not adequately protect the public, the legal profession or the administration of justice for the following reasons:

a. The factors under Rule .0114(w)(1) that are established by the evidence in this case are of a nature that support imposition of a suspension as the appropriate discipline; and

b. Entry of an order imposing less serious discipline would fail to acknowledge the seriousness of the offenses Defendant committed and would send the wrong message to attorneys and to the public regarding the conduct expected of members of the Bar of this state.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Findings Regarding Discipline, the hearing panel enters the following

#### ORDER OF DISCIPLINE

1. The license to practice law in the State of North Carolina of Defendant Samantha E. Alsup is hereby suspended for one year from the date this Order of Discipline is served upon her.

2. The period of suspension is stayed for one year as long as Defendant complies and continues to comply with the following conditions:

a. Defendant shall not violate any state or federal laws or any provisions of the Rules of Professional Conduct during the period of the stayed suspension;

b. Defendant shall respond to all State Bar requests for information by the earlier of the deadline stated in the communication or within 30 days, as required by Rule 8.1(b) of the Rules of Professional Conduct;

c. Defendant shall timely comply with all State Bar membership and Continuing Legal Education requirements; and

d. Defendant shall keep the North Carolina State Bar membership department advised of her current home and business street (not P.O. Box) addresses and telephone numbers.

3. If the stay granted herein is revoked or the suspension of Defendant's license is activated for any reason, before seeking reinstatement of her license to practice law, Defendant must show by clear, cogent and convincing evidence that she has complied with each of the following conditions:

a. Submitted her license and membership card to the Secretary of the North Carolina State Bar within thirty days after the date of the order lifting the stay and/or activating the suspension of her law license;

b. Complied with all provisions of 27 N.C.A.C. 1B § .0124 of the State Bar Discipline and Disability Rules on a timely basis following the order lifting the stay and/or activating the suspension of her law license;

c. Paid all due and owing membership fees, Client Security Fund assessments and costs assessed by the DHC or the State Bar and complied with all continuing legal education requirements imposed by the State Bar; and

e. Complied with the conditions set forth in Paragraph 2(a) through (d) above.

4. The allegations of a violation of Rule 8.4(c) contained in the State Bar's Complaint are dismissed with prejudice.

5. Defendant is taxed with the costs of this action as assessed by the Secretary, including reasonable and necessary expenses for depositions taken by Plaintiff, which shall be paid within ninety days of service of the notice of costs upon Defendant.

Signed by the undersigned Chair of the hearing panel with the full knowledge and consent of the other panel members, this the 23rd day of JUNE, 2010.

  
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Tommy W. Jarrett, Chair  
Disciplinary Hearing Panel