

STATE OF NORTH CAROLINA FILED IN THE GENERAL COURT OF JUSTICE  
 COUNTY OF DURHAM SUPERIOR COURT DIVISION  
 2016 APR 12 P 12:28 01 CRS 24821

STATE OF NORTH CAROLINA BY *[Signature]* MOTION TO COMPEL  
 DISCOVERY RELATED TO ANY AND ALL  
 vs. ) UNDISCLOSED NOTES/ DOCUMENTS/  
 ) EMAILS AND/OR ANY OTHER  
 ) COMMUNICATIONS GENERATED  
 ) BY LAW ENFORCEMENT RELATED  
 MICHAEL IVER PETERSON, ) TO MICHAEL IVER PETERSON  
 )  
 Defendant. )

NOW COMES the Defendant, *Michael Iver Peterson*, by and through his undersigned counsel, Maitri "Mike" Klinkosum, Attorney at Law, and Mary Jude Darrow, Attorney at Law, and hereby move this Honorable Court, pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, *Brady v. Maryland*<sup>1</sup> and its progeny, Article 1 §§ 19 and 23 of the North Carolina Constitution, Article 48 of the North Carolina General Statutes, and N.C. Gen. Stat. § 15-501(6) for an Order from this Court commanding the Durham Police Department, the North Carolina State Bureau of Investigation, the Office of the District Attorney, and any other law enforcement agency involved in the investigation and criminal charging of Michael Iver Peterson to provide to the defense the following:

- I. Any and all notes, documents, emails, and any other recordings or communications regarding, or in any way relating to, Michael Iver Peterson and his criticism of, and/or relationship with, the Durham Police Department, the Durham County District Attorney's Office, or any other law enforcement agency involved in these matters, which were created from July 1, 1997 until December 20, 2001;
- II. Any and all notes, documents, emails, and any other recordings or communications regarding, or in any way relating to, Michael Iver Peterson and his criticism of, and/or relationship with, the Durham Police Department, the Durham County District Attorney's Office, or any other law enforcement agency involved in these matters, which were created after December 20, 2001, but not disclosed to the defense during or after Mr. Peterson's first trial; and
- III. Any and all notes, documents, emails, and any other recordings or communications regarding, or in any way relating to, Michael Iver

<sup>1</sup> 373 U.S. 83, 83 S. Ct. 1194, 10 L.Ed. 2d. 215 (1963).

Peterson and his criticism of, and/or relationship with, the Durham Police Department, the Durham County District Attorney's Office, or any other law enforcement agency involved in this matter, which were created at any time after the date of Mr. Peterson's conviction, October 10, 2003, to the present time.

In support for the foregoing motion, the Defendant would show unto the Court as follows:

1. Michael Iver Peterson was indicted for first-degree murder for the death of his wife, Kathleen Peterson, on December 20, 2001. Mr. Peterson was tried in 2003 and was convicted on October 10, 2003 of first-Degree murder. Mr. Peterson's conviction was affirmed by the North Carolina Supreme Court on November 9, 2007.
2. From the beginning of the investigation into Mrs. Peterson's death, and throughout his now fourteen year battle with the criminal justice system, Mr. Peterson has steadfastly maintained his innocence.
3. Mrs. Peterson died in the early morning hours of December 9, 2001. She was found by Mr. Peterson at the bottom of a staircase in the home they owned. The cause of death was determined to be exsanguination (loss of blood) from injuries to her scalp.
4. The Office of the Medical Examiner assigned "blunt force trauma of the head" as the cause of Mrs. Peterson's death. At Mr. Peterson's first trial, the prosecution argued that Mrs. Peterson died from a beating perpetrated upon her by Mr. Peterson, even though:
  - a. Mrs. Peterson suffered no injuries that caused damage, or direct injury, to her brain;
  - b. Mrs. Peterson suffered no injuries that caused fractures to her skull; and
  - c. Mrs. Peterson suffered no injuries such as broken ribs, broken jaw, broken bones from defending herself, or any broken bones which would typically be associated with blunt force trauma.
5. The investigation into Mrs. Peterson's death was conducted by the Durham Police Department and the North Carolina State Bureau of Investigation, including the North Carolina State Bureau of Investigation Crime Laboratory (now known as the North Carolina State Crime Laboratory).
6. On May 9, 2012, this Court entered an order vacating Mr. Peterson's conviction and ordering a new trial. The Court based its ruling primarily

upon the fact that former SBI Special Agent Peter Duane Deaver committed perjury at Mr. Peterson's 2003 trial regarding his expertise, qualifications, and investigation into the death of Kathleen Peterson.

7. Along with the North Carolina State Bureau of Investigation, the Durham Police Department played a central and critical role in the investigation of Mrs. Peterson's death and the prosecution of Mr. Peterson.
8. Due to the central role played by the Durham Police Department, in reviewing this motion and the relief requested herein, the Court should consider the contentious relationship that existed between Michael Peterson, the Durham Police Department, and the Durham County District Attorney's Office in the years and months leading up to Mrs. Peterson's death.
9. When considering the level of acrimony between the Durham Police Department, the Durham County District Attorney's Office, and Mr. Peterson, in the years and months preceding the death of Mrs. Peterson, the Court will understand that both agencies likely held strong biases against Mr. Peterson, due to his continued criticism of both agencies.

**Michael Peterson's Documented Criticism Directed at the  
Durham Police Department, the Durham District Attorney's Office, and  
Durham City and County Leadership**

10. From July, 1997 until August, 1999, Mr. Peterson wrote a column for the Durham-Herald Sun. He used his column as a sounding board for airing numerous criticisms and denunciations against the political leadership of Durham. His criticisms often involved allegations of corruption and inappropriate political dealings, which he believed had negative repercussions for the citizens of Durham.
11. Mr. Peterson created colorful fictional characters to illustrate his points about the social and political problems plaguing Durham in the late 1990's. He often employed acerbic and barbed rhetoric to rail against those problems and verbally assail Durham's political institutions and its leaders.
12. In one of his first columns, Mr. Peterson, in criticizing the County of Durham for selling Durham Regional Hospital to Duke University, compared Duke University, due to the financial leverage it held against the county, to an 800 pound gorilla.<sup>2</sup>

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<sup>2</sup> "Shylock tries to get me a hospital; gorilla wins." Durham-Herald Sun 8 Aug. 1997: 1 Print. (See attached *Defendant's Exhibit 1*)

13. However, while Mr. Peterson directed much of his criticism towards various problems affecting Durham, many of his most pointed charges were directed towards the Durham Police Department and the Durham County District Attorney's Office.
14. In one column, he excoriated both the Durham Police Department and the Durham District Attorney's office for cracking down on commercial Bingo games in the City of Durham, instead of dealing with the more pressing societal issues of drugs and violence:

**Hispanics are being murdered, blinded, and paralyzed in this city and nobody does a thing. There's corruption downtown that would make Gomorrah look righteous, and you want to tell my mama she can't play bingo because the DA and the cops think it's a crime?<sup>3</sup>**

15. Mr. Peterson also attacked the Durham Police Department's mistreatment of African-American citizens. His fictional character, Lashon Monteel, illustrated the continued problem of the Durham Police Department's racial profiling of African-American motorists:

**I [Lashon Monteel] told him [Michael Peterson] about Driving While Black, 'They use all kind of setups. License checks, etc. But it all boils down to harassment.'**

**'The courts throw that stuff out now,' he said. 'And when they go too far you can sue. Two black women got \$300,000 from the city.'**

**'But the city gave \$500,000 to lawyers to cover their sorry butts, and never did admit they did anything wrong. When you have law enforcers breaking the law, you have a lawless society.'**

**'It's a small price to pay to have cops protect us,' Mike said.**

**'Not when the price is the Bill of Rights and the Constitution. Folks don't understand that when they don't care what the police do, the police do anything. Pretty soon, they start carrying toilet plungers.'**

**'That couldn't happen in Durham,' Mike said. 'It's a long way from illegal stops, DWBs and DWDs to cops attacking people with toilet plungers.'**

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<sup>3</sup> "DA, Police hit nerve-aggravation jackpot with bingo busts." *Durham-Herald Sun* 15 Aug. 1997: 1. Print. (See attached *Defendant's Exhibit 2*)

**'Not when the police won't admit throwing pregnant women on the ground and shackling them is wrong.'**<sup>4</sup>

16. Mr. Peterson used his column to address the problem of rampant crime in Durham and, in doing so, often criticized the Durham Police Department for failing to solve reported crimes.<sup>5</sup>
17. He attacked failing crime related policies such as "zero tolerance to crime."<sup>6</sup>
18. He attached city leaders for failing to implement programs to stem the rising drug abuse epidemic as well as crime:

**Howard Clement blathers on about the flag and Floyd McKissik proposes entrance signs – "gateways" – with flowers and shrubs to make Durham look pretty. And Floyd's the smart one on the Council. God help us.**

**We don't need new entrance signs to the city either. We have got to start holding our elected officials responsible; stop letting them get away with cheap rhetoric about flags and cows and signs. It's *our* city. It's our youth and our future.**<sup>7</sup>

19. One column cited statistical data regarding crime, and criticized the Durham Police Department for failing to solve crimes. Such criticism led the Durham Police Chief, Teresa Chambers, to send an email to Mr. Peterson on July 19, 1999, which read in part:

**Your data was from 1997 - - as I refer to it "B.T.C." - - as in "before my time" - - shame on you.**

**Only you, though, can repair the damage done to the good work of my officers and to this agency that resulted from last week's article. I've spent a great deal of time stroking bruised egos and hurt feelings of employees who have moved this agency light years ahead in the short span of 18 months. Your**

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<sup>4</sup> "Lashon Monteel fills in this week on DWBs – and DWDs." *Durham-Herald Sun* 26 Sept. 1997: 1. Print. (See attached *Defendant's Exhibit 3*)

<sup>5</sup> "Phoebe's mother considers no-risk career move – crime!" *Durham-Herald Sun* 10 April 1998: 1. Print. (See attached *Defendant's Exhibit 4*);

<sup>6</sup> "POOP PAC goes to the mat for everybody; another DA bust." *Durham-Herald Sun* 21 Nov. 1997: 1. Print. (See attached *Defendant's Exhibit 5*)

<sup>7</sup> "We *all* know where drugs are – so why are drugs still here?" *Durham-Herald Sun* 29 May 1998: 1. Print. (See attached *Defendant's Exhibit 6*)

assistance in getting out the real story will help our employees put this behind them.<sup>8</sup>

20. In response to the email from Chief Chambers, Mr. Peterson penned another column wherein he admitted his mistake in using incorrect statistics. Yet, he followed that with a still more criticism of the Durham Police Chief's decision to "suppress public records about the police":

**...I still don't think the city should spend \$14 million so cops can take home patrol cars, and I am not remotely impressed with the chief's arguments to suppress public information about the police...That's right – your fender bender will be posted on the Internet, and sold to anyone who wants to learn about you – your address, insurance company, etc., etc. How about that for a double standard – censoring property information about police officers but posting citizen's accidents on the Internet?<sup>9</sup>**

21. The Durham District Attorney's Office was not spared Mr. Peterson's verbal wrath. In a column entitled "*And the winners are...Presenting the Stupid Award in Durham,*"<sup>10</sup> Mr. Peterson wrote:

**What about District Attorney Jim Hardin and the hanky-panky in his office? Cutting deals with DWI dentists in courthouse corridors? At least it's consistent with the DA's policy: The dentist had a lawyer – one of the DA's original campaign managers! The DA doesn't always cut deals to people without lawyers. You there, sober and without a lawyer – no breaks!**

22. By August of 1999, Mr. Peterson, fed up with the problems he saw harming the City and County of Durham (included political corruption,<sup>11</sup> racism,<sup>12</sup> and uncontrolled crime), and tired of simply carping about the problems, announced his candidacy for Mayor of Durham in the hope of being able to help solve such problems.
23. In his last column for the *Durham-Herald Sun*, in which he announced his candidacy for Mayor of Durham, Mr. Peterson, yet again, leveled further criticism at the Durham Police Department:

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<sup>8</sup> See attached *Defendant's Exhibit 7*.

<sup>9</sup> "Feedback from last week: I make mistakes and write garbage" *Durham-Herald Sun* 30 July 1999: 1. Print. (See attached *Defendant's Exhibit 8*)

<sup>10</sup> *Durham-Herald Sun* 5 March 1999: 1 Print. (See attached *Defendant's Exhibit 9*).

<sup>11</sup> "Beware! Menace to democracy: Council member Miller" *Durham-Herald Sun* 12 March 1999. 1. Print. (See attached *Defendant's Exhibit 10*)

<sup>12</sup> "2 men, white and black; how far apart do you think they are?" *Durham-Herald Sun* 23 July 1999, 1. Print. (See attached *Defendant's Exhibit 11*)

Four times in the past year I've written about Dr. Curtis Bowens' dental practice, burned down by drug dealers because he called the cops every time he saw drug dealing in his neighborhood. One of my columns was titled, "Where is the outrage?" No one ever expressed outrage – no politicians or public figure – and the police never solved the crime.<sup>13</sup>

24. As a mayoral candidate, Mr. Peterson purchased space in the Durham-Herald Sun and continued his written condemnations of Durham's leadership and its police department and to rally support for his campaign:

A perfect example of divisiveness is the last City Council meeting. W.G. Pearson Elementary School playground was torched by druggies. An elementary school! A playground! For the longest time, Chief Chambers told me this wasn't a police matter. It was a Fire Department matter! Now – TWO MONTHS – after the incident, Crimestoppers is asking for information. And posting a reward...This nonsense is a pathetic embarrassment. Help me end it.<sup>14</sup>

**Michael Peterson Was Investigated, Charged, and Prosecuted by Agencies He Had Vociferously Attacked in His Durham-Herald Sun Column**

25. In the article announcing the cessation Michael Peterson's column from the newspaper due to his mayoral candidacy, Geoffrey M. Graybeal of the *Durham-Herald Sun* remarked that Mr. Peterson's "...barbed columns and colorful characters have outraged and amused Herald-Sun readers since July 1997."
26. As stated above, one of Mr. Peterson's articles so outraged Durham Police Chief Teresa Chambers that she felt compelled to write an email correcting the information in the article and berating Mr. Peterson for bruising the egos of her employees.
27. There can be little doubt that Michael Peterson's continual and sharply worded criticism of both the Durham Police Department and the Durham District Attorney's Office rankled the leadership and employees of both agencies.

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<sup>13</sup> "How things work in Durham; it isn't pretty, and it must stop" *Durham-Herald Sun* 4 August 1999. 1. Print. (See attached *Defendant's Exhibit 12*)

<sup>14</sup> "Race and crime. Same 'ol, Same 'ol" *Durham-Herald Sun* 13 August 1999. 1. Print. (See attached *Defendant's Exhibit 13*)

28. Thus, on December 9, 2001, when Mrs. Peterson was found dead, the Durham Police Department, upon which Mr. Peterson had heaped much criticism in the preceding years, assumed immediate control of the investigation into Mrs. Peterson's death and, from the beginning, targeted Mr. Peterson for the charge of murder.
29. Within minutes and hours of arriving at the Peterson home, the Durham Police Department began treating Mr. Peterson like a suspect. They directed Mr. Peterson not to speak to his son who was present in the home. They separated an obviously grieving husband from one of his closest family members, his son, and directed him not to speak with him.
30. The Durham Police Department treated Mr. Peterson like a suspect and his home like a crime scene, despite the fact that the medical examiner on duty, Kenneth Snell, examined Mrs. Peterson's body at the scene, and formed an initial opinion that her injuries resulted from a fall down the stairs.
31. The Durham Police Department, within a few hours after having been called to the Peterson residence, declared the home a crime scene and obtained a search warrant to scour the house and grounds looking for evidence of a crime.
32. Then, within a few hours, the North Carolina State Bureau of Investigation, namely former Special Agent Peter Duane Deaver, was brought in and became central to the investigation.
33. The day after Mrs. Peterson's death, December 10, 2001, approximately thirty (30) police officers descended on the Peterson residence to look for a murder weapon, finding nothing.
34. On December 12, 2001, just before the visitation for Mrs. Peterson and her wake, the police come to the Peterson residence with another search warrant, thereby preventing Mr. Peterson from attending his wife's visitation.
35. Within less than two weeks after Mrs. Peterson's death, on December 20, 2001, the Durham District Attorney's office called a special session of the Durham County grand jury and presented only one case – State of North Carolina vs. Michael Iver Peterson, for which the grand jury promptly indicted Mr. Peterson for first-degree murder.
36. The manner in which Mrs. Peterson's death was investigated by the Durham Police Department and the North Carolina State Bureau of Investigation, as well as the speed with which the Durham District Attorney sought to indict Michael Peterson, indicate that there was an overwhelming desire to charge Mr. Peterson with the death of his wife.



Article 48 of the North Carolina General Statutes, N.C. Gen. Stat. § 15-501(6),  
and the Principles of Constitutional Discovery Require Disclosure  
of Any and All Notes/Documents/Emails and Any Other Documentation Relating to  
Mr. Peterson and His Criticism of, and/or Relationship With, the Durham Police  
Department, the Durham County District Attorney's Office,  
and/or Any Other Law Enforcement Agency Involved in These Matters

37. The investigation, indictment, trial, and conviction of Michael Peterson took place between December 20, 2001 and October 10, 2003. Thus, the Peterson trial took place before the creation and implementation of Article 48 of the North Carolina General Statutes, more commonly referred to as the "open file discovery statutes."<sup>15</sup>
38. Mr. Peterson's first defense team pursued discovery in this matter under the statutes which governed the provision of discovery in criminal matters in Superior Court prior to the enactment of the open-file discovery statutes in 2004.
39. As Mr. Peterson was granted new trial in 2011, and the case now proceeds under the open-file discovery statutes, the prosecution is required to provide to the defense:

**...the complete files of all law enforcement agencies, investigatory agencies, and prosecutors' offices, involved in the investigation of the crimes committed or the prosecution of the defendant.<sup>16</sup>**

40. As stated in N.C. Gen. Stat. § 15A-903(a)(1)(a):

The term 'file' includes the defendant's statements, the codefendants statements, witness statements, investigating officers' notes, results of tests and examinations, *or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant.*  
(emphasis added)

41. Further, along with the passage of the open-file discovery statutes in 2004, the General Assembly also enacted N.C. Gen. Stat. § 15-501(6), requiring law enforcement to "make available to the [prosecution] on a timely basis all materials and information acquired in the course of all felony investigations."

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<sup>15</sup> N.C. Gen. Stat. § 15A-901 through § 15A-910.

<sup>16</sup> N.C. Gen. Stat. § 15A-903(a)(1).

42. The purpose of N.C. Gen. Stat. § 15-501(6) is to ensure that the prosecution has all of the necessary information and discovery, in order to provide the same to the defense pursuant to the open-file discovery laws.
43. From a review of the files undersigned counsel has received from Mr. Peterson's previous counsel, it appears that the first prosecutorial team disclosed a large amount of discovery to Mr. Peterson's first defense team.
44. However, in light of the fact that, prior to 2004, neither the prosecution nor law enforcement were required to provide the defense with all of the information generated from the investigation into Mrs. Peterson's death, it is possible that the defense was not provided with the entirety of information generated by the Durham Police Department, the Durham County District Attorney's Office, or any other law enforcement organization involved in these matters.
45. In light of the fact that prior to 2004, law enforcement was not under any statutory obligation to provide the prosecution with "all materials and information acquired during the course of all felony investigations,"<sup>17</sup> it is probable that the prosecution team was not provided with all information regarding the Durham Police Department's and/or the North Carolina State Bureau of Investigation's work concerning Mrs. Peterson's death.
46. Similarly, due to the period of time in which Mr. Peterson's first trial took place, it is probable that the Durham Police Department, or any other law enforcement agency involved in these matters, would have provided the prosecution with any notes, documents, emails or any other recordings or communications relating to Mr. Peterson and/or his column in the Durham-Herald Sun.
47. If there were any communications, written or otherwise, that were generated within the Durham Police Department, or any other law enforcement agency, evincing any animosity towards, or bias against, Mr. Peterson as a result of his criticism of law enforcement, it is doubtful the Durham Police Department would have disclosed the same to the prosecution.
48. However, such communications now are required to be disclosed pursuant to the North Carolina statutes governing open-file discovery.
49. In addition, any communications, written or otherwise, generated within the Durham Police Department, or any other law enforcement agency, evincing any animosity towards, or bias against, Mr. Peterson as a result

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<sup>17</sup> N.C. Gen. Stat. § 15-501(6).

of his criticism of law enforcement, are required to be disclosed pursuant to *Brady v. Maryland*<sup>18</sup> and its progeny.

50. Any communications, written or otherwise, generated within the Durham Police Department, or any other law enforcement agency that investigated the death of Mrs. Peterson, evincing any animosity towards, or bias against, Mr. Peterson due to his criticism of law enforcement, are now required to be disclosed pursuant to both the open-file discovery statutes, as well as *Brady v. Maryland*<sup>19</sup> and its progeny.
51. As such, the Court should order the Durham Police Department, the North Carolina State Bureau of Investigation, the Durham County District Attorney's Office, and any other law enforcement or prosecutorial agency involved in this matter to disclose to the defense the following:
  - a. Any and all notes, documents, emails, and any other recordings or communications regarding, or in any way relating to, Michael Iver Peterson and his criticism/relationship with the Durham Police Department, the Durham County District Attorney's Office, or any other law enforcement agency involved in this matter, which was generated from 1997 forward;
  - b. Any and all notes, documents, emails, and any other recordings or communications regarding, or in any way relating to, Michael Iver Peterson and his criticism/relationship with the Durham Police Department, the Durham County District Attorney's Office, or any other law enforcement agency involved in this matter, which were created after Mr. Peterson was charged with first degree-murder in 2001, but not disclosed to the defense during or after Mr. Peterson's first trial; and
  - c. Any and all notes, documents, emails, and any other recordings or communications regarding, or in any way relating to, Michael Iver Peterson and his criticism/relationship with the Durham Police Department, the Durham County District Attorney's Office, or any other law enforcement agency involved in this matter, which was generated from the date of Mr. Peterson's conviction on October 10, 2003 to the present time.

**WHEREFORE**, the Defendant respectfully prays unto this Honorable Court enter an order providing for the following relief:

1. That the Durham Police Department, the North Carolina State Bureau of Investigation, the Durham County District Attorney's Office, and any

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<sup>18</sup> 373 U.S. 83, 83 S. Ct. 1194, 10 L.Ed. 2d. 215 (1963).

<sup>19</sup> Id.

other law enforcement agency involved in this matter provide to the defense any and all notes, documents, emails, and any other recordings or communications regarding, or in any way relating to, Michael Iver Peterson and his criticism/relationship with the Durham Police Department, the Durham County District Attorney's Office, or any other law enforcement agency involved in this matter, which was generated from 1997 forward;

2. That the Durham Police Department, the North Carolina State Bureau of Investigation, the Durham County District Attorney's Office, and any other law enforcement agency involved in this matter provide to the defense any and all notes, documents, emails, and any other recordings or communications regarding, or in any way relating to, Michael Iver Peterson and his criticism/relationship with the Durham Police Department, the Durham County District Attorney's Office, or any other law enforcement agency involved in this matter, which were created after Mr. Peterson was charged with first degree-murder in 2001, but not disclosed to the defense during or after Mr. Peterson's first trial;
3. That the Durham Police Department, the North Carolina State Bureau of Investigation, the Durham County District Attorney's Office, and any other law enforcement agency involved in this matter provide to the defense any and all notes, documents, emails, and any other recordings or communications regarding, or in any way relating to, Michael Iver Peterson and his criticism/relationship with the Durham Police Department, the Durham County District Attorney's Office, or any other law enforcement agency involved in this matter, which was generated from the date of Mr. Peterson's conviction on October 10, 2003 to the present time; and
4. For such other and further relief to which the Defendant may be entitled and which this Court may deem just and proper.

This the 2<sup>nd</sup> day of May, 2016.

By: 

*Maitri "Mike" Klinkosum*

Attorney at Law

State Bar No.: 25052

**TIN FULTON WALKER & OWEN, PLLC**

127 W. Hargett Street, Suite 705

Raleigh, NC 27601

Telephone: (919) 720-4201

Facsimile: (919) 720-4640

Email: [mklinkosum@tinfulton.com](mailto:mklinkosum@tinfulton.com)

By: 

*Mary Jude Darrow (by Maitri "Mike" Klinkosum)*

Attorney at Law

State Bar No.: 34645

P.O. Box 41308

Raleigh, NC 27629-1308

Telephone: (919) 696-3332

Facsimile: (919) 845-0822

Email: [maryjude@mjdarrowlaw.com](mailto:maryjude@mjdarrowlaw.com)