

NORTH CAROLINA
WAKE COUNTY

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09-SP- 5626

PETITION IN THE NATURE OF A
SPECIAL PROCEEDING

In re: SUBPOENA ISSUED TO
ATTORNEY C. RUFFIN POOLE BY
THE NORTH CAROLINA BOARD
OF ELECTIONS IN A
PROCEEDING ENTITLED
"INVESTIGATION INTO
ALLEGATIONS OF POSSIBLE
VIOLATIONS OF ELECTIONS
LAWS, INCLUDING BUT NOT
LIMITED TO, ILLEGAL
CONTRIBUTIONS AND
INACCURATE REPORTING IN
CAMPAIGN FINANCE REPORTS
BY THE MIKE EASLEY
COMMITTEE AND THE NORTH
CAROLINA DEMOCRATIC
PARTY"

2009 OCT 26 A 9 38
WAKE COUNTY, CSC

NOW COMES C. Ruffin Poole (hereinafter "Petitioner"), through undersigned counsel, and files this action in the nature of the Special Proceeding, seeking an order from this Court quashing a subpoena served upon him by the North Carolina Board of Elections, seeking his testimony at 1:00 p.m. on Monday, October 26, 2009, in Raleigh, North Carolina, at a proceeding entitled "Investigation Into Allegations of Possible Violations of Elections Laws, Including but Not Limited to, Illegal Contributions and Inaccurate Reporting In Campaign Finance Reports By the Mike Easley Committee and The North Carolina Democratic Party." A copy of the Board of Elections subpoena at issue is attached hereto as Exhibit A. Petitioner requests a hearing and requests that the Superior Court conduct an *in camera* inspection of an affidavit offered by Petitioner, to be filed under seal, in support of the order he seeks.

In support of this Petition, Petitioner alleges the following:

1. This Court has jurisdiction over this proceeding, wherein an attorney seeks an order quashing a subpoena from the North Carolina Board of Elections on the grounds of privilege, under N.C.G.S. § 1-394 and the principles set out in *In Re: The Investigation of the Death of Eric Miller*, 357 N.C. 316, 584 S.E.2d 772 (2003).

2. Petitioner is an attorney licensed by the State of North Carolina, and has been since 1998. From January 2001 to January 2009, Petitioner served as counsel to Governor Michael Easley.

3. On the evening of Wednesday, October 21, 2009, Petitioner was served the subpoena from the North Carolina Board of Elections attached hereto as Exhibit A. This subpoena seeks to require the testimony of Petitioner at a proceeding being held by the State Board of Elections in Raleigh, North Carolina on Monday, October 26, 2009 at 11:00 a.m. Subsequent correspondence from the State Board of Elections informed Petitioner that he was to appear pursuant to this subpoena at 1:00 p.m. on Monday, October 26, 2009.

4. The subpoena from the Board of Elections states that it is issued under the authority of N.C.G.S. § 163-278, which states "It shall be the duty of the State Board of Elections and the district attorneys to investigate any violations of this Article, and the Board and the district attorneys are authorized and empowered to subpoena and compel the attendance of any person before them for the purpose of making such investigation."

5. Rule 45(c)(5) of the North Carolina Rules of Civil Procedure, entitled "Subpoena", provides as follows:

A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a

motion to quash the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

Subdivision (3) of section (c) of Rule 45 states that “[e]ach of the following grounds may be sufficient for objecting to a subpoena:

- a. The subpoena fails to allow reasonable time for compliance.
- b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
- c. The subpoena subjects a person to an undue burden.
- d. The subpoena is otherwise unreasonable or oppressive.
- e. The subpoena is procedurally defective.

Under Rule 45(c)(5), this Court is the appropriate tribunal to hear Petitioner’s objections to the subpoena issued to him by the North Carolina Board of Elections, as the subpoena seeks to require his testimony in Wake County, North Carolina.

6. The subpoena issued to Petitioner should be quashed under Rule 45(c) and this Court’s inherent authority, on the grounds that the subpoena seeks matters that are subject to privilege for two reasons, as follows:

- a. the subpoena seeks testimony from Petitioner about matters protected by the attorney-client privilege and the attorney work product doctrine, such privileges being matters that Petitioner is required to raise under Rule 1.6 of the North Carolina Rules of Professional Conduct governing the conduct of attorneys in this state, and Petitioner has received no waiver of these privileges from the client; and

b. for the reasons of privilege set out in an affidavit to be submitted for review *in camera* by the Court at the hearing of this matter and to be filed under seal. Petitioner respectfully requests that the affidavit be filed under seal and considered *in camera* for the reasons set out therein, as Petitioner submits that the law requires that such material be considered under seal.

7. Petitioner seeks a hearing on this matter and the opportunity to provide the above-mentioned affidavit to the court, under seal, for *in camera* review. Petitioner respectfully submits that the law requires that his affidavit be considered under seal.

8. Petitioner further seeks an order staying enforcement of the subpoena served upon him by the North Carolina Board of Elections until such time as this Court has heard this Petition, as this proceeding would be rendered moot by any requirement by the Board of Elections that Petitioner comply with the subpoena prior to ruling by this Court.

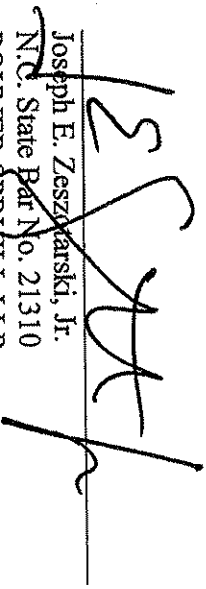
9. For these reasons, the subpoena issued to Petitioner by the North Carolina Board of Elections should be quashed.

WHEREFORE, Petitioner prays of the Court as follows:

- 1) That the court issue an order quashing the subpoena issued to Petitioner by the North Carolina Board of Elections;
- 2) That the court issue an order staying enforcement of the subpoena until after ruling on this Petition;
- 3) That Petitioner be permitted to file an affidavit under seal in this matter for *in camera* review by the court in support of his Petition;
- 4) That the court accept a sealed application in support the sealing of Petitioner's affidavit; and

5) For such other and further relief as the Court may deem just and proper.

This the 26 day of October, 2009.



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Counsel for Petitioner

EXHIBIT A

State of North Carolina
County of Wake

State Board of Elections

Subpoena

(N.C. Gen. Stat. §§163-278, 278.22, 278.29 & 278.33)

IN RE: INVESTIGATION OF ALLEGATIONS)
OF POSSIBLE VIOLATIONS OF)
ELECTION LAWS, INCLUDING BUT)
NOT LIMITED TO, ILLEGAL)
CONTRIBUTIONS AND INACCURATE)
REPORTING IN CAMPAIGN FINANCE)
REPORTS BY THE MIKE EASLEY)
COMMITTEE AND THE NORTH)
CAROLINA DEMOCRATIC PARTY)

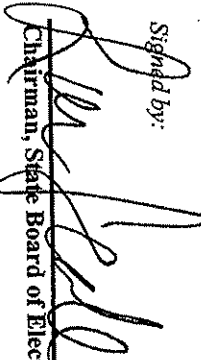
To appear in Person
 To produce papers, books,
records or other evidence

TO:

RUFFIN POOLE
Name of Person Being Served
513 SPRING VALLEY ROAD
RALEIGH, NC 27609
City/State/Zip/Telephone

BY ORDER OF THE STATE BOARD OF ELECTIONS, YOU ARE COMMANDED TO:

Appear and testify in the above-entitled hearing at the place, date and time indicated below.
 Produce the following items at the place, date and time indicated below:

<p>Location of Hearing: Clarion Hotel State Capital 320 Hillsborough Street Raleigh, NC 27603</p>	<p>Name of Person Requesting Subpoena: Deputy Director Kim Westbrook Strach, Campaign Finance Division, NC State Board of Elections Name</p>
<p>Date and Time to Appear/Produce Monday, October 26, 2009 at 11:00am</p>	<p>506 N. Harrington St. Street/Post Office Box</p>
<p>Failure to appear and/or produce may lead to sanctions pursuant to G. S. § 163-24.</p>	<p>Raleigh, N.C. 27603 City/State/Zip</p>
<p>Issued on the 19th day of October 2009</p>	<p>(919) 715-2334 Telephone Number</p>
<p>Signed by:  Chairman, State Board of Elections</p>	<p>Deliver Return of Service to the State Board of Elections P.O. Box 27255, Raleigh, N.C. 27611 c/o KIM STRACH</p>
<p>North Carolina State Board of Elections P.O. Box 27255, Raleigh, N.C. 27611 (919) 733-7371</p>	