

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
17 BMS 02004

COUNTY OF CUMBERLAND

NORTH CAROLINA BOARD OF)
FUNERAL SERVICE,)
Petitioner,)
)
v.)
)
CODY T. MCCAIN, HENRY COLVIN, JR., and)
COLVIN FUNERAL HOME & CREMATORY,)
Respondents.)

**PETITIONER'S RESPONSE TO RESPONDENTS' JOINT MOTION TO CONTINUE
HEARING AND DISCOVERY**

NOW COMES Petitioner North Carolina Board of Funeral Service ("Petitioner"), by and through the undersigned counsel, and hereby responds and objects to Respondents' Joint Motion to Continue Hearing and Discovery ("Motion"), and offers for consideration in support of this objection as follows:

1. On March 22, 2017, Petitioner filed a Petition for Contested Case Hearing ("Petition") in the above-captioned case in the Office of Administrative Hearings.
2. On March 24, 2017, a Scheduling Order was issued, setting a discovery deadline of June 26, 2017, and setting a hearing date of July 17, 2017.
3. During the mediated settlement conference of the above-captioned case, held on May 24, 2017, Counsel for Petitioner conveyed the full settlement authority she was authorized to offer on behalf of Petitioner.
4. Also during the mediation on May 24, 2017, Counsel for Petitioner stated that she did not believe Petitioner would agree to different settlement terms, but that Respondents would be welcome to appear before Petitioner to request different settlement terms. At that time,

Counsel for Respondents indicated their intention to appear before Petitioner during its July Board meeting to make such a request.

5. Also during the mediation on May 24, 2017, all parties agreed to a joint motion requesting a first continuance of the above-captioned case.
6. On June 15, 2017, an Order Continuing Hearing and Amending Scheduling Order was issued, continuing the discovery deadline until July 24, 2017, and continuing the hearing until August 14, 2017.
7. On July 7, 2017, all counsel discussed various scheduling conflicts via electronic correspondence, and it was discovered that Respondents would not be able to appear before Petitioner during its July Board meeting as planned.
8. Also on July 7, 2017, Counsel for Petitioner offered two alternative options for Respondents to appear before Petitioner. Respondents were given the choice to appear before Petitioner's Disciplinary Committee, which routinely reviews proposed settlement agreements in contested cases and then makes recommendations to the full Board thereon, on Monday, July 10, 2017; or to appear at Petitioner's next monthly Board meeting on August 9, 2017.
9. Also on July 7, 2017, both Mr. Coker and Counsel for Respondent Cody T. McCain selected to appear before Petitioner on August 9, 2017. Respondents were aware, pursuant to the previously issued Order Continuing Hearing and Amending Scheduling Order, of the continued hearing date at the time they selected to appear on August 9 instead of July 10, 2017.

10. During the electronic correspondences thread referenced in Paras. 7, 8, and 9, *supra*, no mention regarding a possible request for a second continuance was made by any of the parties or their respective counsel. **See attached Exhibit A.**
11. At no point prior to Friday, July 21, 2017, did any of the parties or their respective counsel notify the undersigned Counsel for Petitioner of their intent to request a second continuance. **See attached Exhibit B.**
12. Respondents could have elected to serve discovery at any time after the Petition was filed on March 22, 2017. That Respondents failed to do so before the continued discovery deadline of July 24, 2017 does not constitute "good cause," as that term is used in 26 NCAC 03 .0118, for a second continuance.
13. Counsel for Petitioner did not, at any time, agree to any continuances of the above-captioned matter apart from consenting to the first joint motion to continue, which resulted in the discovery deadline being continued from June 26, 2017 until July 24, 2017; and the hearing being continued from July 17, 2017 until August 14, 2017.

WHEREAS, Respondents have failed to demonstrate good cause for a second continuance, as is required by 26 NCAC 03 .0118 and, therefore, Petitioner respectfully requests that Respondents' Joint Motion to Continue Hearing and Discovery be denied.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

RESPECTFULLY SUBMITTED, this the 25th day of July, 2017.



Christina Cress McLaurin
N.C. State Bar No. 45963
NORTH CAROLINA BOARD OF
FUNERAL SERVICE
Attorney for Petitioner Board
1033 Wade Avenue, Suite 108
Raleigh, NC 27605
Telephone: 919-715-0905
Facsimile: 919-733-8271
Email: cmclaurin@ncbfs.org

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing **Petitioner's Response to Respondents' Joint Motion to Continue Hearing and Discovery** upon the following counsel of record by depositing a copy of the foregoing document in the United States Mail, first class, postage prepaid, as follows:

Quintin D. Byrd, Esq.
The Charleston Group
P.O. Box 1762
Fayetteville, NC 28302
*Attorney for Colvin Funeral Home and Crematory
and Henry Colvin, Jr.*

Benn A. Brewington, III, Esq.
Brewington Law Group PLLC
434 Fayetteville Street, Suite 2330
Raleigh, North Carolina 27601
Attorney for Cody T. McCain

This the 25th day of July, 2017.


Christina Cress McLaurin

Christina McLaurin

From: Jose Coker <JCoker@charlestongroup.com>
Sent: Friday, July 7, 2017 4:01 PM
To: Christina McLaurin; Benn A. Brewington III; Quintin D. Byrd
Cc: Catherine Lee; Lily Robertson
Subject: RE: Colvin Funeral Home, Fayetteville

You the same. Thank you Mrs. McLaurin.

Jose

-----Original Message-----

From: Christina McLaurin [mailto:CMcLaurin@ncbfs.org]
Sent: Friday, July 07, 2017 3:48 PM
To: Benn A. Brewington III; Jose Coker; Quintin D. Byrd
Cc: Catherine Lee; Lily Robertson
Subject: RE: Colvin Funeral Home, Fayetteville

Great, we will plan to see you both on August 9th then. Have a nice weekend.

Christina Cress McLaurin
General Counsel
NC Board of Funeral Service
1033 Wade Ave., Suite 108
Raleigh, NC 27605
919-733-9380 (phone)
919-733-8271 (fax)

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-----Original Message-----

From: Benn A. Brewington III [mailto:bennbrewington@brewingtonlawgroup.com]
Sent: Friday, July 7, 2017 3:37 PM
To: 'Jose Coker' <JCoker@charlestongroup.com>; Christina McLaurin <CMcLaurin@ncbfs.org>; 'Quintin D. Byrd' <QByrd@charlestongroup.com>
Cc: Catherine Lee <CLee@ncbfs.org>; 'Lily Robertson' <LRobertson@charlestongroup.com>
Subject: RE: Colvin Funeral Home, Fayetteville

Christina:

August 9th will likely be the best option for us as well as I will be out of town on Monday, on West Coast time.

Benn

Benn A. Brewington III
Managing Attorney

Brewington Law Group PLLC
434 Fayetteville Street - Suite 2330
Raleigh, NC 27601

Telephone: 919.828.9778
Facsimile: 919.828.9779
bennbrewington@brewingtonlawgroup.com

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-----Original Message-----

From: Jose Coker [mailto:JCoker@charlestongroup.com]
Sent: Friday, July 07, 2017 3:30 PM
To: Christina McLaurin; Benn A. Brewington III; Quintin D. Byrd
Cc: Catherine Lee; Lily Robertson
Subject: RE: Colvin Funeral Home, Fayetteville

Christina:

Thank you for the options. We will tentatively agree to August 9, 2017, because I am waiting to hear back from Mr. Colvin as to his availability that day.

Jose

Please consider the environment before printing this email.

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-----Original Message-----

From: Christina McLaurin [mailto:CMcLaurin@ncbfs.org]
Sent: Friday, July 07, 2017 3:12 PM
To: Benn A. Brewington III; Quintin D. Byrd
Cc: Catherine Lee; Jose Coker
Subject: RE: Colvin Funeral Home, Fayetteville

Given that July 11 will not work for either of you and July 12 will no longer work for the Board, I can offer two options. You are welcome to call in to the Board's Disciplinary Committee meeting, which is scheduled to occur at 9 a.m. on Monday, July 10. The Board's Disciplinary Committee has the authority to make settlement recommendations that would then be subject to approval by the full Board. Alternatively, you are welcome to appear at the Board's next meeting, which is scheduled for Wednesday, August 9.

If you choose to attend the Disciplinary Committee's teleconference this coming Monday morning, please let me know so that I can share the call-in number and passcode with you in advance.

Thanks.

Christina Cress McLaurin
General Counsel
NC Board of Funeral Service
1033 Wade Ave., Suite 108
Raleigh, NC 27605
919-733-9380 (phone)
919-733-8271 (fax)

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General Statutes.

-----Original Message-----

From: Benn A. Brewington III [mailto:bennbrewington@brewingtonlawgroup.com]
Sent: Friday, July 7, 2017 2:57 PM
To: Christina McLaurin <CMcLaurin@ncbfs.org>; 'Quintin D. Byrd' <QByrd@charlestongroup.com>
Cc: Catherine Lee <CLee@ncbfs.org>; 'Jose Coker' <JCoker@charlestongroup.com>
Subject: RE: Colvin Funeral Home, Fayetteville

And I am out of state on July 11, 2017.

Benn A. Brewington III
Managing Attorney

Brewington Law Group PLLC
434 Fayetteville Street - Suite 2330
Raleigh, NC 27601

Telephone: 919.828.9778
Facsimile: 919.828.9779
bennbrewington@brewingtonlawgroup.com

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-----Original Message-----

From: Christina McLaurin [mailto:CMcLaurin@ncbfs.org]
Sent: Friday, July 07, 2017 2:12 PM
To: Quintin D. Byrd
Cc: Catherine Lee; Jose Coker; bennbrewington@brewingtonlawgroup.com
Subject: RE: Colvin Funeral Home, Fayetteville

All,

As of just a few minutes ago, it appears that the Board will no longer have any hearings going forward on Wednesday, July 12. Because the only items on the Board's meeting agenda for Wednesday, 7/12, were hearings and your presentation on behalf of Colvin et al., I am writing to let you know that we must move your presentation to the Board's meeting agenda on Tuesday, July 11.

I apologize for any inconvenience this may cause, and we will do our best to find a time that is agreeable to all parties on Tuesday, 7/11. Please let us know at your earliest convenience if 11:30 a.m. on Tuesday, 7/11, will work. If we need to speak by telephone, I can be reached any time this afternoon/evening or over the weekend at (919) 715-0905. Thank you.

Christina Cress McLaurin
General Counsel

NC Board of Funeral Service
1033 Wade Ave., Suite 108
Raleigh, NC 27605
919-733-9380 (phone)
919-733-8271 (fax)

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General Statutes.

-----Original Message-----

From: Quintin D. Byrd [mailto:QByrd@charlestongroup.com]
Sent: Friday, July 7, 2017 12:09 PM
To: Christina McLaurin <CMcLaurin@ncbfs.org>
Cc: Catherine Lee <CLee@ncbfs.org>; Jose Coker <JCoker@charlestongroup.com>;
bennbrewington@brewingtonlawgroup.com
Subject: RE: Colvin Funeral Home, Fayetteville

Ms. McLaurin! Thank you for sending these materials and we will work to get everything to you prior to the meeting. And, of course, if anything changes, we will notify you promptly. We do not object to Benn presenting first.

Regards,

Quintin

-----Original Message-----

From: Christina McLaurin [mailto:CMcLaurin@ncbfs.org]
Sent: Friday, July 07, 2017 11:44 AM
To: Quintin D. Byrd
Cc: Catherine Lee; Jose Coker; bennbrewington@brewingtonlawgroup.com
Subject: FW: Colvin Funeral Home, Fayetteville

Quintin,

As we discussed yesterday, it is our understanding that your firm plans to appear on behalf of Colvin Funeral Home before the Board at its meeting at 9 a.m. on Wednesday, July 12, to discuss the possible informal resolution of the allegations against Respondents. If your plans to appear change for any reason, please do let Board staff know as soon as possible. Benn, you are of course also welcome to appear at 9 a.m. on Wednesday, 7/12, on behalf of Mr. McCain.

Per your request, please see the below and attached regarding the status of outstanding items and/or deficiencies not yet rectified to my knowledge.

This information was shared with you all at mediation, and it was my understanding that your client would be submitting to my attention all additional missing documentation. I am not aware that our staff has received any such documentation.

Also per your request, attached please find copies of the two prior Board decisions shared with all parties at mediation.

Thank you.

Christina Cress McLaurin
General Counsel
NC Board of Funeral Service
1033 Wade Ave., Suite 108
Raleigh, NC 27605
919-733-9380 (phone)
919-733-8271 (fax)

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General Statutes.

-----Original Message-----

From: Lyn Cochrane
Sent: Wednesday, May 24, 2017 7:29 AM
To: Christina Cress <CCress@ncbfs.org>
Subject: Colvin Funeral Home, Fayetteville

Attached is the letter that was sent to them after the 2016 Preneed Annual Report review. This letter also included 2015 certificates of performance that had not been provided. They have paid the late fee for all certificates of performance as required.

Lorraine Fairley is the only COP that is outstanding.

Charlie Collins trust has been transferred from First South Bank to Lumbee Guaranty Bank and we still do not have Bank Transfer Memorandum.

None of the information requested for the lapsed/cancelled/revoked contracts have been provided; therefore, they are still showing as active contracts on the database.

Lyn R. Cochrane
Executive Assistant
NC Board of Funeral Service
1033 Wade Avenue, Suite 108
Raleigh, NC 27605-1158
Direct Line: (919) 715-0903
Phone: (919) 733-9380
Fax: (919) 733-8271

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Christina McLaurin

From: Christina McLaurin
Sent: Friday, July 21, 2017 2:03 PM
To: Quintin D. Byrd
Cc: bennbrewington@brewingtonlawgroup.com; Jose Coker; Catherine Lee
Subject: RE: Joint Motion to Continue

Board staff disagrees with your position that good cause exists for any additional continuances of the hearing in this matter. As such, I cannot consent to your proposed motion for second continuance. Thanks.

Christina Cress McLaurin
General Counsel
NC Board of Funeral Service
1033 Wade Ave., Suite 108
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919-733-8271 (fax)

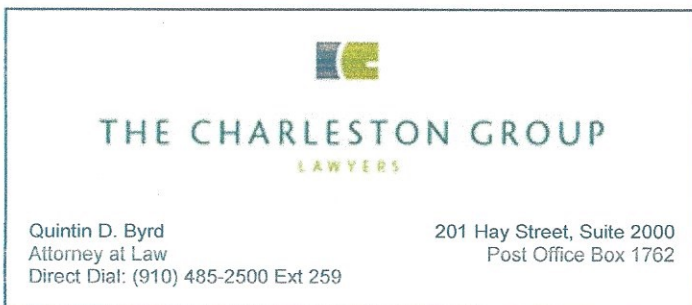
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From: Quintin D. Byrd [mailto:QByrd@charlestongroup.com]
Sent: Friday, July 21, 2017 1:41 PM
To: Christina McLaurin <CMcLaurin@ncbfs.org>; Catherine Lee <CLee@ncbfs.org>
Cc: bennbrewington@brewingtonlawgroup.com; Jose Coker <JCoker@charlestongroup.com>
Subject: Joint Motion to Continue

All,

Please see the attached proposed joint motion to continue. Given that the meeting in August would be a week before trial, I thought we would continue the matter as previously done. I discussed this briefly with Catherine and she advised that I should bring this to your attention, Christina, as you are running point on this case. I do not think this motion will affect anything filed earlier in the day. If everyone is amenable, I would like to get this filed today.

Regards,



gbyrd@charlestongroup.com
www.charlestongroup.com

Fayetteville, NC 28302-1762
Fax: (910) 485-2599



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