

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.

**RESPONDENTS COLVIN AND CFHC'S  
PREHEARING STATEMENT**

NOW COMES Respondents Henry Colvin Jr. ("Colvin") and Colvin Funeral Home & Crematory ("CFHC") (collectively, "Respondents"), by and through counsel, filing its Prehearing Statement in the above-captioned contested case against the North Carolina Board of Funeral Service ("Petitioner"), pursuant to 26 NCAC 03.0104. Respondents reserve the right to supplement, modify, or otherwise amend their Prehearing Statement as these proceedings progress.

**I. ISSUES TO BE RESOLVED**

The issues to be resolved in this matter include whether Petitioner has sufficient factual basis to suspend, revoke, or otherwise discipline Respondent, and if so, what level of discipline is warranted under the circumstances.

**II. A BRIEF STATEMENT OF THE FACTS AND REASONS SUPPORTING RESPONDENT'S POSITION ON EACH MATTER IN DISPUTE**

1. On January 24, 2017, Respondent Cody McCain ("McCain"), as CFHC's location manager, met with Inspector David Hall ("Hall") for a random inspection.

2. During the inspection Hall made recommendations for improvements and noted those recommendations in a report.

3. Numerous items identified by Hall as being missing, however, have been located in other areas of CFHC's office, and copies of said documents will be provided to Petitioner forthwith.

4. With respect to **Paragraph e** of Petitioner's Brief Statement of Facts, Respondents note that both Jeanette Bostick and C. Dorothy Fielder are not deceased. Completed files specifying disposition of remains were located in the cremation files for Lorraine Collins, Glyn K. Lewis, and Deanna Matthews at the time of inspection and will be provided to Petitioner. Complete files for Margie Sue Rutledge are in the records of Affordable Cremations of NC, the performing funeral home.

5. With respect to **Paragraph f** of Petitioner's Brief Statement of Facts, Respondents note that bank statements for Mable E. Council and John T. Council are in the possession and control of Lumbee Guaranty Bank. Respondent was made aware that the bank "does not issue monthly or annual statements" for certificate of deposits. A copy of this bank letter will be provided to Petitioner.

6. With respect to **Paragraph g** of Petitioner's Brief Statement of Facts, Respondents is unaware of any requirement by statute or rule requiring preneed contracts maintained by a crematory licensee to be originals. Notwithstanding, Respondents maintain the original preneed contract of Virginia Blinn.

7. With respect to **Paragraph h** of Petitioner's Brief Statement of Facts, Respondents note that records relating to Glyn Lewis and Margie Rutledge are maintained by Affordable Cremations of NC, the performing funeral home.

8. With respect to **Paragraph i** of Petitioner's Brief Statement of Facts, Respondents note that copies of at-need Statements of Funeral Goods and Services Selected for Virginal Blinn, Lorraine Collins, Deanna Matthews, Margie Rutledge, and Mitchell Thompson are all maintained by Affordable Cremations of NC, the performing funeral home.

9. With respect to **Paragraph j** of Petitioner's Brief Statement of Facts, Respondents note that records for Glyn Lewis, Margie Rutledge are maintained by Affordable Cremations of NC and that Respondents' files contained copies of certificates of performance Lorraine Collins, Robert Gamer, and Mitchell Thompson at the time of inspection.

10. With respect to **Paragraph k** of Petitioner's Brief Statement of Facts, Respondents note that completed certificates for all fifteen (15) individuals listed were all presented to the Insurance and Trust company, but were not faxed to Petitioner. Respondents have paid the statutory fine of \$25.00 in relation to this omission and Petitioner has accepted those funds.

11. With respect to **Paragraph l** of Petitioner's Brief Statement of Facts, Respondents note that the final payout at the time of death for Glyn Lewis was retained by Affordable Cremations of NC, the performing funeral home.

III. **STATUTES, REGULATIONS and POLICIES**

Statutes: N.C.G.S. §§ 90-210, *et seq.*  
N.C.G.S. §§ 150B, *et seq.*

Regulations: 21A NCAC 34C

IV. **PROPOSED WITNESSES**

Respondents have not yet determined who will be called as witnesses. At this time, Respondent's potential witnesses include Henry Colvin, Jr., Cody T. McCain, and any and all witnesses called by Petitioner.

Respondents reserve the right to amend this listing of potential witnesses as further information is obtained through discovery.

V. DISCOVERY

Respondents may engage in discovery.

VI. HEARING LOCATION

Respondents are amenable to a hearing in Fayetteville, North Carolina.

VII. ESTIMATED LENGTH OF HEARING

Respondents estimate a hearing length of one (1) day.

VIII. REPRESENTATION

Respondents are represented by the undersigned counsel.

IX. HEARING DATE

Respondents are amenable to a hearing beginning the week of July 17, 2017.

This the 21<sup>st</sup> day of April, 2017.

Respectfully submitted,

/s/ Quintin D. Byrd  
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**CERTIFICATE OF SERVICE**

The undersigned certifies to this Court that a copy of **RESPONDENTS COLVIN AND CFHC'S PREHEARING STATEMENT** was this day electronically served to the Office of Administrative Hearings using the Electronic Filing Service Provider pursuant to 26 NCAC 3.0502, which will send an electronic notification to Petitioner as listed below:

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This the 21<sup>st</sup> day of April, 2017.

Respectfully submitted,

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