

STATE OF NORTH CAROLINA

File No. 11 CVS 26

Orange County

FILED

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff 1
Dumonts Williams
Tax ID/SSN

2011 JAN -7 A 11: 16

GENERAL

Name Of Plaintiff 2
Robert Quinn
Tax ID/SSN

ORANGE COUNTY, C.S.C. CIVIL ACTION COVER SHEET

INITIAL FILING SUBSEQUENT FILING

Rule 5(b), Rules of Practice For Superior and District Courts

Name Of Plaintiff 3
Tax ID/SSN

Name And Address Of Attorney Or Party, If Not Represented
Ralph Frasier 100 E. Pamph ST Suite 350 Durham, NC 27701
James D. Williams 3900 Crossdail DL Durham, NC 27701

VERSUS

Name Of Defendant 1
ELAINE Marshall
Tax ID/SSN

Attorney Bar No. 23397 9035
Initial Appearance in Case Change of Address

Name Of Defendant 2
Rodney Muddox
Tax ID/SSN

Name Of Firm Frasier & Coffman PLLC LAW OFFICE OF JAMES D. WILLIAMS
Tax ID No. Telephone No. 919-680-4034 FAX No. 919-382-8115

Name Of Defendant 3
Tax ID/SSN

Counsel for All Plaintiffs All Defendants Only (List party(ies) represented)

Jury Demanded In Pleading
Complex Litigation

Amount in controversy does not exceed \$15,000
Stipulate to arbitration

TYPE OF PLEADING

CLAIMS FOR RELIEF FOR:

(check all that apply)

- Amended Answer/Reply (AMND-Response)
Amended Complaint (AMND)
Answer/Reply (ANSW-Response)
Complaint (COMP)
Confession of Judgment (CNFJ)
Counterclaim vs. (CTCL)
Crossclaim vs. (List on back) (CRSS)
Extend Statute of Limitations, Rule 9 (ESOL)
Extend Time For Answer (MEOT-Response)
Extend Time For Complaint (EXCO)
Rule 12 Motion In Lieu Of Answer (MDLA)
Third Party Complaint (List Third Party Defendants on Back) (TPCL)
Other: (specify)

- Administrative Appeal (ADMA)
Appointment of Receiver (APRC)
Attachment/Garnishment (ATTC)
Claim and Delivery (CLMD)
Collection on Account (ACCT)
Condemnation (CNDM)
Contract (CNTR)
Discovery Scheduling Order (DSCH)
Injunction (INJU)
Medical Malpractice (MDML)
Minor Settlement (MSTL)
Money Owed (MNYO)
Negligence - Motor Vehicle (MVNG)
Negligence - Other (NEGO)
Motor Vehicle Lien G.S. 44A (MVLN)
Limited Driving Privilege - Out-of-State Convictions (PLD)
Possession of Personal Property (POPP)
Product Liability (PROD)
Real Property (RLPR)
Specific Performance (SPPR)
Other: (specify)

motion to Quash subpoena

NOTE: Small claims are exempt from cover sheets.

Date 1/7/11

Signature Of Attorney/Party

NOTE: The initial filing in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts...

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
SPECIAL PROCEEDINGS
NO: _____

DEUNTA WILLIAMS
ROBERT T. QUINN
Petitioners

v.

ELAINE MARSHALL
SECRETARY OF STATE
RODNEY MADDOX
CHIEF DEPUTY SECRETARY OF STATE
Respondents

FILED
2011 JAN -7 A 11:16
ORANGE COUNTY, C.S.C.
BY _____

**MOTION TO QUASH SUBPOENA TO PRODUCE RECORDS OF THE
UNIVERSITY OF NORTH CAROLINA ATHLETIC DEPARTMENT
AS IT RELATES TO RECORDS AND DOCUMENTS OF
DEUNTA WILLIAMS AND ROBERT T. QUINN, PETITIONERS**

NOW COMES, Deunta Williams and Robert Quinn, Petitioners by and through their undersigned counsel James D. Williams, Jr. and Ralph K. Fraiser, who move this Honorable Court for an Order quashing subpoenas issued by the Secretary of State for the University of North Carolina Athletic Department Records as they relate to information contained in the Department Records and investigatory notes relative to Deunta Williams and Robert Quinn, Petitioners.

In support of this Motion, counsel would respectfully inform the Court of the following:

I. FACTUAL BACKGROUND

1. On December 16, 2010, the Secretary of State of North Carolina by Rodney S. Maddox, issued and served Leslie Chambers Strohm, Vice Chancellor and General

Counsel a subpoena, (Attachment A) to produce information relative to Deunta Williams and Robert Quinn, Petitioners.

2. That Deunta Williams and Robert Quinn, Petitioners were sent a letter from the University General Counsel informing them of the subpoena and the request for information relating to their involvement in an investigation conducted by the University Athletic Department.
3. That the subpoena in pertinent parts requests a number of personal and confidential communications from the Petitioners to the NCAA and the University.
4. That at all times the University and the NCAA assured the Petitioners that any information he provided would be strictly confidential and would not be disseminated to a person or agency.
5. That the information being sought is both personal and confidential as it relates to their email account, financial account and telephone records, receipts and other data.
6. No consent has been granted to anyone at the University by the Petitioners or their parents, to release any of this information to any agency requesting this information pursuant to any subpoena.

II. BASES FOR MOTION

Petitioners move to quash the subpoena as it relates to information requested concerning these Petitioners.

- A. **This Subpoena does not comply with the provision of 33 C.F.R.99.31 (Hereinafter referred to as “FERPA”)** Title 20, United States Code, Section 1232g(b) and (d), portions of F.E.R.P.A., and the Federal Regulations promulgated pursuant to FERPA, found at 33 C.F.R. 99.31 (a) (9) (I) does not authorize disclosure

“to comply with a judicial order or lawfully issued subpoena”. However, 33 C.F.R. 99.31 (a) (9) (ii) (B) provides:

“Any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence of the contents of the subpoena or the information furnished in response not be disclosed”.

Nothing in this subpoena indicates that the provisions of this section have been complied with, nor has any provision been made for either safeguarding the information or controlling its dissemination if disclosed.

Further, for the reasons stated in the factual section above, this subpoena is clearly in the nature of a fishing expedition for information about the Petitioners and others when there is no bases for the retrieval of this information.

As there is no criminal or civil case filed against any one and no clear nexus between the information requested and any law enforcement exception this subpoena is improvidently issued as it relates to information requested about these Petitioners.

Additionally, and in a slightly different context, the North Carolina Court of Appeals has held that F.E.R.P.A. makes students education records, “privileged and confidential” for the purposes of North Carolina’s “Open Meetings” law. *DTH PUBLISHING COMPANY v. University of North Carolina*, and the *UNC-CH Undergraduated Court*, 128 N.C. App. 534, 496, S.E. 2nd 8 (1998).

The subpoena should be quashed for non-compliance with the provision of 34 C.F.R..99.31, and for the additional reasons stated below:

B. The subpoena is improvidently issued, and violates the Movant’s privacy rights;

the subpoena violates North Carolina and federal common law relating to

privacy, protection against disclosure of private information, and common law prohibiting against “fishing expeditions” as they relate to the use of subpoenas duces tecum.

There has been absolutely no showing necessity, probable cause or need on the face of the subpoena, and no restrictions placed upon the dissemination of the information other than that the place to deliver it to is the Secretary of State. There has been no application to a Court of competent jurisdiction or any other legal entity. No protections, whatsoever, have been placed, and the lack of any factual basis for the requested information makes the subpoena unconstitutionally over broad and vague, and therefore improper and subject to being quashed.

Further, the Secretary of State office is apparently on a “fishing expedition” as it relates to this Petitioner. This subpoena is not a trial subpoena, but is being used in an effort to further the Secretary of State investigation. The intended purpose of a subpoena duces tecum is to require the production of a specific document or item patently material to the inquiry or as a notice to produce the original of a document. *Vaughan v. Broadfoot*, 267 N.C.691,149 S.E. 2d 37 (1966) consequently, the subpoena duces tecum “must specify with as much precision as is fair and feasible, the particular documents desired”. *“A party is not entitled to have a mass of records and other documents brought into court in order to search them for evidence”*. *Id.* *State v. Love*, 395 S.E. 2d 429, 100 N. C. App. 226 (N.C. App. 1990), at 395 S.E.2d 431. *State v. Newell*, 348 S.E. 2d 158, 82 N.C. App. 707 (1986).

Further, the Secretary of State’s attempted use of subpoena duces tecum is inappropriate for the apparently intended purpose. It is rudimentary under our law that the required method for attempting to procure the information sought is to procure an Order of the Court, but there is not

any court action. Even then it would be supported by an affidavit and application in support thereof. Specifically, the Secretary must demonstrate that the disclosure of the protected and privileged material serves the ends of justice. Whatever proposed law enforcement interests are assessed by the Secretary must then be weighed against significant privacy interests involved here. The Secretary's subpoena, if honored by the University, would subvert this necessary inquiry.

Further, as the majority of information mentioned in the subpoena is private information of the Petitioners being held in the possession of the University, Petitioners contend that the subpoena be quashed, additionally on the basis that the Secretary has not complied with the requirements of Pennsylvania v. Ritchie, 480 U.S. 39,107 S.Ct. 989, 94 L. Ed. 2d 40 (1987), regarding protection of Movant's privacy rights. In addition to the North Carolina case law cited above regarding the prohibition against fishing expeditions in the use of subpoenas duces tecum, the Secretary has not sought any court approval and supervision over the requested records by making application to the Court, and independent judicial review of the reason the Secretary is seeking private information of the Petitioners. There is no: (1) showing of materiality; (2) no showing that the information sought cannot be gained by other, non-invasive procedures, (3) no showing or application explaining why, in the absence of objective evidence of materiality and relevance to this investigation documents should be produced.

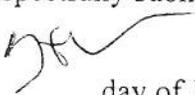
Further, the mere potential for criminal proceeding being brought against this Petitioners and not being afforded any of their constitutional rights and privileges should be grounds alone to quash this subpoena.

III. RELIEF REQUESTED

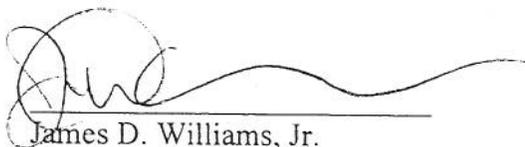
This subpoena as it relates to these Petitioners should be quashed in its entirety. A hearing

is requested on this motion for such relief as the Court deems fit and proper.

Respectfully submitted,

This the  day of January, 2011.

THE LAW OFFICES OF JAMES D. WILLIAMS, JR., P.A.



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^{s/}
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CERTIFICATE OF SERVICE

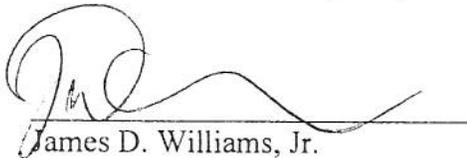
The undersigned certifies that he has mailed a copy of the foregoing Motion to Quash, to the following:

Secretary of State
P. O. Box 29622
Raleigh, North Carolina

Leslie Chambers Strohm
The University of North Carolina Chapel Hill
University Counsel
110 Bynum Hall
Chapel Hill, North Carolina 27599

This the 5th day of January, 2011.

THE LAW OFFICES OF JAMES D. WILLIAMS, JR., P.A.



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