

No.

DISTRICT 29A

NORTH CAROLINA COURT OF APPEALS

STATE OF NORTH CAROLINA,)

Plaintiff,)

vs.)

FROM RUTHERFORD COUNTY

Nos. 15 CRS 154, 155, 164

BROOKE MCFADDEN)

COVINGTON, SARAH)

COVINGTON ANDERSON, and)

JUSTIN BROCK COVINGTON,)

Defendants.)

PETITION FOR WRIT OF CERTIORARI

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PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE NORTH CAROLINA COURT OF APPEALS:

Defendants, Brooke McFadden Covington, Sarah Covington Anderson, and Justin Brock Covington (collectively, “Petitioners”), jointly petition the North Carolina Court of Appeals to issue its writ of certiorari pursuant to Rule 21 of the North Carolina Rules of Appellate Procedure to review the following orders of the Honorable Marvin Pope, Jr., Judge Presiding, Rutherford County Superior Court: 1) an order dated August 6, 2015 which disqualified Petitioners’ retained counsel (the “Disqualification Order”) (R. pp. 55-61); 2) an order dated August 27, 2015

denying Petitioners' joint motion for reconsideration of Disqualification Order (R. p. 133), and 3) an order dated August 27, 2015 granting the State's motion to dismiss Petitioners' respective notices of appeal of the Disqualification Order. (R. p. 134). In support of this petition, Petitioners show the following:

FACTS

Petitioners, along with Robert Louis Walker, Jr. and Adam Christopher Bartley, were indicted on January 20, 2015 on criminal charges including second degree kidnapping and simple assault arising from events occurring nearly two years prior involving the alleged assault and kidnapping of Richard Matthew Fenner, III. (R. pp. 2-7).

Following said indictments, these five co-defendants retained attorneys Joshua B. Farmer and Mark N. Morris of the firm Tomblin, Farmer & Morris, PLLC (the "Firm") to represent each of them in these matters, in the process executing detailed fee agreements which included waivers of potential conflicts that might arise from the joint representation. (R. pp. 8-27).

On July 22, 2015, Assistant District Attorney Garland F. Byers, Jr. offered Mr. Bartley a plea arrangement which provided for dismissal of a kidnapping charge in exchange for Mr. Bartley's guilty plea to simple assault and his testifying truthfully in the prosecution of remaining co-defendants. (R. p. 78). Prior to the

plea offer, Mr. Bartley had signed an affidavit asserting his innocence and the innocence of his co-defendants from the charges they faced. (R. pp. 73-74).

Some six months after the indictments and after multiple court appearances by the Firm on behalf of the Petitioners, the State filed a motion on July 24, 2015 asking the trial court to disqualify the Firm from representing the co-defendants, claiming the existence of a non-waivable, concurrent conflict of interest. (R. p. 36). At present, the charges against Petitioners have not yet gone to trial and a number of important pre-trial matters are unresolved.

Upon the State's motion to disqualify, Mr. Bartley immediately retained new legal counsel independent of the Firm. Petitioners – Mrs. Covington, Mr. Covington, and Mrs. Anderson (mother, son, and daughter respectively) – each consulted with independent legal counsel as to the possible risks and advantages of the Firm's continued joint representation of the remaining co-defendants. Petitioners were each advised by independent legal counsel that the Firm's continued joint representation of them was ethical and that a non-waivable, concurrent conflict of interest did not exist. (R. pp. 28-35).

On August 3, 2015, a hearing was held by the Honorable Marvin Pope, Jr., to address the State's motion to disqualify counsel. Mr. Byers argued for the State and Mr. Farmer argued against the motion on behalf of the Petitioners and Mr. Walker. The trial court considered as evidence the written disclosures of potential

conflicts in joint representation and a waiver of conflicts signed by the Petitioners and Mr. Walker as well as the opinion letters of independent counsel. The trial court took the matter under consideration.

On August 6, 2015, the trial court issued the Disqualification Order (R. pp. 55-61) which granted the State's motion to disqualify. The court found as fact that:

The fact that [Bartley] has been offered a plea bargain in exchange for truthful testimony of Mr. Bartley against the other four co-defendants raises the distinct possibility of a conflict of interest, breach of previous confidences to the defense counsel, difficulty in effective cross examination of Mr. Bartley as well as other procedural issues. (R. p. 59).

[T]he potential for conflict of interest where one co-defendant is offered a plea agreement to testify against the other co-defendants is too great of risk to be disregarded by this Court. (R. p. 59).

The court concluded as a matter of law that the Firm's representation of Petitioners and Mr. Walker:

[I]s a concurrent conflict of interest which exists and cannot be waived by a defendant absent knowledge of what a co-defendant may testify on behalf of the State against the remaining co-defendants. (R. p. 60).

On August 13, 2015, Mr. Bartley – now represented by separate counsel – signed a document consenting to the Firm's continued representation of the Petitioners and Mr. Walker despite the Firm's prior representation of him. (R. pp.

76-77). Mr. Bartley signed an affidavit in which he re-affirmed his innocence and the innocence of all co-defendants. (R. pp. 70-72). In this document, Mr. Bartley wrote that he did not intend to testify in any manner inconsistent with his prior protestations of innocence. (Id.). Mr. Bartley then stated that he had no conversations with the Firm in which he made statements that he had not made to anyone else who had asked him about the matter (Id.), the implication being that Mr. Bartley did not relate any confidential statements to the Firm. Mr. Bartley executed a separate document wherein he stated, “I reject any plea offer as I did nothing wrong.” (R. p. 75).

On August 19, 2015, Mr. Walker also retained separate counsel. (R. pp. 79-80). As with Mr. Bartley, Mr. Walker subsequently gave written consent for the Firm to continue its representation of the Petitioners. (R. p. 81). He further executed an affidavit in which he reaffirmed his and his co-defendants’ innocence, declared that he had no intention to testify in any manner inconsistent with prior protestations of innocence, and stated that he had no conversations with the Firm in which he made confidential statements that he had not made to anyone else who had asked him about the matter (also implying that Mr. Walker did not relate any confidential statements to the Firm). (R. pp. 82-83).

On August 18 and 19, 2015, the Petitioners each executed affidavits in which they re-affirmed their innocence and the innocence of their co-defendants.

(R. pp. 84-90). Each further stated that – after further consultation with independent counsel – he or she had no intention or desire to accept a plea offer similar to the one offered to Mr. Bartley. (Id.) Each Petitioner also waived rights to post-conviction appeal for ineffective assistance of counsel based on a conflict of interest due to joint representation. (Id.)

On August 20, 2015, Petitioners, through the Firm as well as Angela Beeker of the Henderson County bar, filed a joint motion asking the trial court to reconsider the Disqualification Order, based on the substantial changes in circumstances since entry of the Disqualification Order. (R. pp. 62-66). Petitioners also filed written notices of appeal from the Disqualification Order (R pp. 94-102) and a joint motion to stay proceedings pending consideration of the appeals (R. pp. 92-93).

On August 24, 2015, the State filed a motion to dismiss Petitioners’ motion for reconsideration. (R. pp. 103-105). The State further filed a motion to strike Petitioners’ August 20 filings and, thus, to dismiss the notices of appeal. (R. pp. 117-127).

On August 27, 2015, following a hearing on the matter in which Mr. Byers and Ms. Beeker argued their respective positions, the trial court entered written orders which, without making findings or conclusions, denied Petitioners’ motion

to reconsider (R. p. 133), granted the State's motion dismissing Petitioners' notices of appeal (R. p. 134), and denied the motion to stay proceedings (R. p. 135).

The undersigned counsel note to the Court that they proceed in this matter with an abundance of caution and with due deference to the trial court's order of disqualification entered August 6, 2015. Since that time, counsel have limited their representation of Petitioners to seeking review of the disqualification order and related orders of the trial court. The undersigned have considered the ethical implications of representing Petitioners in seeking appellate review after having been disqualified in the trial tribunal and rely on N.C. R. Prof'l Conduct 3.4(c), which states: "A lawyer shall not ... knowingly disobey ... an obligation under the rules of a tribunal, except a lawyer acting in good faith may take appropriate steps to test the validity of such an obligation." The undersigned sought guidance from the ethics counsel at the North Carolina State Bar who confirmed that this rule authorizes the actions of the undersigned in seeking review of the rulings below.

At this time, transcripts of the August 3, 2015 and August 27, 2015 hearings are not available. Petitioners have contracted for the transcripts in a timely manner pursuant to N.C. R. App. P. 7.

REASONS WHY WRIT SHOULD ISSUE

The trial court's Disqualification Order of August 6, 2015 and the related orders of August 27, 2015 are interlocutory orders from which a right to appeal may not exist. Petitioners believe review by writ of certiorari is appropriate in the cases at bar for the following reasons:

I. THE RULING OF THE TRIAL COURT TO DISQUALIFY THE FIRM FROM REPRESENTATION OF THE PETITIONERS IS IN CONFLICT WITH DECISIONS OF THIS COURT.

In State v. Yelton, 87 N.C. App. 554, 361 S.E.2d 753 (1987), this Court granted certiorari and reversed a trial court's order that disqualified an attorney from jointly representing father and son co-defendants. This Court held that the State had shown no actual conflict of interest and the co-defendants – insisting on the joint representation – had knowingly waived their right to bring challenge on appeal that they were denied effective assistance of counsel because of the joint representation. This Court acknowledged:

Joint representation is a means of insuring against reciprocal recrimination. A common defense often gives strength against a common attack.

Yelton, 87 N.C. App. at 560-561, 361 S.E.2d at 758 (quoting Holloway v. Arkansas, 435 U.S. 475, 482-83 (1978)). Further, this Court explained:

In joint representation cases, only where there is an actual conflict of interest which denies the defendants the effective assistance of counsel does a problem arise. A *potential* conflict of interest, as

distinguished from an *actual* conflict of interest, is not sufficient to warrant the State's interference with the constitutionally guaranteed right of a criminal defendant to retain and be represented by the counsel of his choice.

Id. at 561.

As with Yelton, the Petitioners here voluntarily chose the Firm to represent them on the felony criminal charges they face – perhaps the most serious matters they have faced in their lives. Petitioners have been thoroughly and repeatedly apprised by the Firm and by independent legal counsel of the potential risks of joint representation. Understanding these risks, Petitioners have insisted on the joint representation and have expressly waived any resultant conflict in a knowing and intelligent manner “with sufficient awareness of the relevant circumstances and likely consequences.” See id. at 558 (quoting Brady v. United States, 397 U.S. 742, 748 (1970)).

Even if Petitioners' waivers were not acceptable to the trial court, the State has failed to show an actual conflict of interest arises from the Firm's continued joint representation. Petitioners and their co-defendants have vigorously maintained the innocence of all co-defendants at all times in these proceedings (R. pp. 68-75, 82-90). As with Yelton, it is unlikely that Petitioners – mother, son and daughter – would testify against each other. See id. at 559. Further, Mr. Bartley and Mr. Walker have denied that the Firm holds any of their confidences,

eliminating the concern of a conflict for the Firm due to its prior representation or a concern of possible breach of those confidences at trial.

The trial court's Disqualification Order found that "the potential for conflict of interest where one co-defendant is offered a plea agreement to testify **against** the other co-defendants is too great of risk to be disregarded by this Court." [emphasis added] (R. p. 59). However, this finding disregarded the plain language of the State's plea offer to Mr. Bartley that he would "provide truthful testimony in the prosecution of the remaining co-defendants." (R. p. 75). The State did not predicate acceptance of its plea offer on Mr. Bartley testifying "against" his co-defendants. In any event, any related concerns of the trial court were rendered null when Mr. Bartley rejected the plea offer. (R. p. 75).

The trial court's Disqualification Order found that joint representation created a "distinct possibility of a conflict of interest, breach of previous confidences to the defense counsel, difficulty in effective cross examination of Mr. Bartley as well as other procedural issues." (R. p. 59). Such "distinct possibility" is not equivalent to an actual conflict sufficient to deny Petitioners their counsel of choice. See id. at 561. Petitioners, analogous to the defendants in Yelton, are in the best "position to know what facts might be developed at trial," and they have concluded that their joint representation is advantageous. Id.

Even if the trial court found that an actual conflict existed due to joint representation, it failed to ground this conclusion in sufficient, competent evidence. This Court in Yelton explained – following well-established jurisprudence of the Supreme Court and United States Supreme Court – that “the [trial] court must conduct a full and searching inquiry to determine whether an actual conflict of interest exists Foremost in the court’s inquiry must be the preservation of the accused’s constitutional rights.” Id. at 557. See also State v. Choudhry, 365 N.C. 215, 717 S.E.2d 348 (2011). In conducting such an inquiry, “the defendants ‘more than anyone, including the court, [are] in a position to know what facts might be developed at trial’” and they can determine that such joint representation is “advantageous.” Yelton, at 561. As the case record herein reflects, the trial court did not conduct such an inquiry, but merely concluded that the joint representation raised too great a possibility for potential conflict of interest in future proceedings.

II. PETITIONERS’ RIGHT TO COUNSEL OF CHOICE IS GUARANTEED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND BY ARTICLE 1, SECTIONS 19 AND 23 OF THE NORTH CAROLINA CONSTITUTION.

Criminal defendants are guaranteed the right to counsel of choice by Article 1, Sections 19 and 23 of the North Carolina Constitution and by the Sixth Amendment to the United States. Id. at 559, (citing Powell v. Alabama, 287 U.S. 45, 53 (1932) and State v. Morris, 275 N.C. 50, 165 S.E.2d 245 (1969)). The

erroneous ruling of the trial court to disqualify the Firm is a violation of these fundamental constitutional protections. In State v. McFadden, the Supreme Court of North Carolina held:

The state should keep to a necessary minimum its interference with the individual's desire to defend himself in whatever manner he deems best, using any legitimate means within his resources and that desire can constitutionally be forced to yield only when it will result in significant prejudice to the defendant or in a disruption of the orderly processes of justice unreasonable under the circumstances of the particular case.

State v. McFadden, 292 N.C. at 613-14, 234 S.E.2d at 746 (1977).

As with McFadden, Petitioners have retained the Firm without intent to “disrupt[] the orderly processes of justice” and are not prejudiced by the Firm’s joint representation. On the contrary, evidence in the record demonstrates that Petitioners have knowingly and unequivocally sought to exercise their constitutional rights to counsel of their choosing. The State has not and cannot show that Petitioners will be actually prejudiced by the joint representation or that the joint representation will result in an unreasonable disruption of these criminal actions.

Petitioners also contend that the State should not be allowed to manufacture an alleged conflict of interest [perhaps by means of a plea offer] or otherwise manipulate the Petitioners into accepting legal counsel not of their own choosing. Allowing undue interference by the State into Petitioners’ constitutional rights

should not be countenanced by our judicial system. The State contends that the mere offer of a plea agreement creates a non-waivable conflict of interest when 1) the offer is made to one of several co-defendants represented by the same law firm, and 2) this co-defendant agrees to testify truthfully as a term of the plea agreement. In essence, the State's contention stands for the principle that in any criminal case where one law firm represents co-defendants, the State could fashion a non-waivable conflict by making a plea offer to one co-defendant.

Petitioners acknowledge there are instances in which a limitation on the right to counsel of choice is appropriate, and further acknowledge a trial court's inherent authority to disqualify attorneys appearing before it. Petitioners believe, however, that the constitutional rights at issue must be carefully safeguarded and thus implore this Court to review the trial court's decision. If Petitioners were forced to endure this criminal trial without counsel in which they reposed their trust and confidence, the very principles of due process of law and right to counsel as established in the United States and North Carolina Constitutions would be tread underfoot.

III. POST-TRIAL REVIEW OF THE DISQUALIFICATION ORDER IS INSUFFICIENT TO ADEQUATELY PROTECT PETITIONERS' CONSTITUTIONAL RIGHTS.

A Sixth Amendment violation which erroneously deprives a criminal defendant of the counsel of his choice, "with consequences that are necessarily

unquantifiable and indeterminate, unquestionably qualifies as ‘structural error’” which is not subject to harmless error analysis. U.S. v. Gonzalez-Lopez, 548 U.S. 140, 141 (2006). “It is impossible to know [post-trial] what different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceedings.” Id.

To erroneously deprive Petitioners of their Constitutional choice of counsel would force them to endure a criminal trial on serious felony charges without the counsel in whom they trust and hope to bring them justice. As established by Gonzalez-Lopez, any conviction that might result would not be subject to harmless error review, but would require a new trial.

CONCLUSION

WHEREFORE, Petitioners respectfully pray this Court to issue its writ of certiorari to the Superior Court of Rutherford County, to permit review of the orders specified above, upon errors to be assigned in the record on appeal constituted in accordance with the Rules of Appellate Procedure; and that the Petitioners have such other relief as to the Court may seem proper.

Respectfully submitted, this 15th day of September, 2015.

TOMBLIN, FARMER & MORRIS, PLLC

Electronically filed

Joshua B. Farmer
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Post Office Box 632
Rutherfordton, North Carolina 28139
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State Bar No. 32669
jfarmer@farmerlegal.com

*I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

TOMBLIN, FARMER & MORRIS, PLLC

Electronically filed

Mark N. Morris
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Post Office Box 632
Rutherfordton, North Carolina 28139
(828) 286-3866
State Bar No. 32846
mmorris@farmerlegal.com

ATTACHMENTS

Attached to this petition for the consideration of the Court are certified copies of the attached:

1. Petitioners' indictments
2. Petitioners' fee agreement/waiver with Firm
3. Second opinions on joint representation
4. State's motion to disqualify with supporting memorandum
5. Petitioners' brief in opposition of State's motion to disqualify
6. August 6, 2015 order disqualifying counsel
7. Petitioners' motion to reconsider order disqualifying counsel, with exhibits
8. Petitioners' motion to stay proceedings
9. Petitioners' notices of appeal
10. State's motion to dismiss Petitioners' motion to reconsider order disqualifying counsel, with supporting memorandum
11. State's motion to strike documents captioned "Notice of Appeal"
12. Petitioners' response to State's motion to dismiss and motion to strike
13. August 27, 2015 order denying Petitioners' motion to reconsider
14. August 27, 2015 order granting State's motion to dismiss appeal
15. August 27, 2015 order denying Petitioners' motion to stay proceedings

VERIFICATION

**STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD**

The undersigned attorney for the Petitioners, after being duly sworn, says:

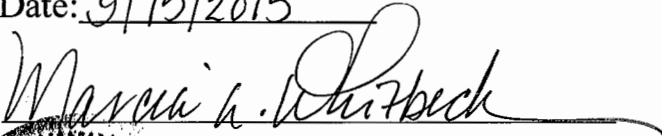
I have read the foregoing **Petition for Writ of Certiorari** and know the material allegations of the petition to be true to the best of my knowledge, except those matters stated upon information and belief and, as to those matters, I believe them to be true.



Joshua B. Farmer
Attorney for Defendants-Petitioners

Sworn to (or affirmed) and subscribed before me by Joshua B. Farmer

Date: 9/15/2015



Marcia A. Whitbeck, Notary Public

My Commission expires: 11/15/2019



VERIFICATION

**STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD**

The undersigned attorney for the Petitioners, after being duly sworn, says:

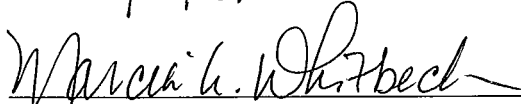
I have read the foregoing **Petition for Writ of Certiorari** and know the material allegations of the petition to be true to the best of my knowledge, except those matters stated upon information and belief and, as to those matters, I believe them to be true.



Mark N. Morris
Attorney for Defendants-Petitioners

Sworn to (or affirmed) and subscribed before me by Joshua B. Farmer

Date: 9/15/2015



Marcia A. Whitbeck, Notary Public

My Commission expires: 11/15/2019



CERTIFICATE OF SERVICE

The undersigned hereby certifies that he/she this day served a copy of the foregoing **PETITION FOR WRIT OF CERTIORARI** upon the Assistant District Attorney of the State of North Carolina by depositing a copy thereof in the United States mail in Rutherfordton, North Carolina, postage prepaid and addressed as set forth below:

Rutherford County District Attorney's Office
Attn: Garland Byers
229 North Main Street
Rutherfordton, NC 28139

This the 15th day of September, 2015.

Electronically filed
Joshua B. Farmer
Attorney for Defendants-Petitioners

STATE OF NORTH CAROLINA

In The General Court Of Justice

RUTHERFORD County

CERTIFICATE OF TRUE COPY

Office of the Clerk of the Superior Court

As Clerk of the Superior Court of this County, State of North Carolina, I certify that the attached copies of the documents described below are true and accurate copies of the originals now on file in this office.

Number And Description Of Attached Documents:

- INDICTMENT 15CR164
- INDICTMENT 15CR154
- INDICTMENT 15CR155
- INDICTMENT 15CR156
- INDICTMENT 15CR153
- FEE AGREEMENT AND AUTHORITY RO REPRESENT (JUSTIN BROCK COVINGTON)
- FEE AGREEMENT AND AUTHORITY TO REPRESENT (SARAH COVINGTON ANDERSON)
- FEE AGREEMENT AND AUTHORITY TO REPRESENT (BROOKE MCFADDEN COVINGTON)
- FEE AGREEMENT AND AUTHORITY TO REPRESENT (ROBERT LOUIS WALKER JR)
- FEE AGREEMENT AND AUTHORITY TO REPRESENT (ADAM CHRISTOPHER BARTLEY)
- SECOND OPINION RE JOINT REPRESENTATION 15CRS164
- JOINT REPRESENTATION- POTENTIAL CONFLICT (BROOKE COVINGTON)
- STATE'S MOTION TO DISQUALIFY
- MEMORANDUM OF LAW
- BRIEF IN OPPOSITION TO STATE'S MOTION TO DISQUALIFY COUNSEL
- ORDER 15CRS153-155,164
- MOTION TO RECONSIDER ORDER
- STATE V. ADAM CHRISTOPHER BARTLEY 15CRS156
- AFFIDAVIT OF ADAM BARTLEY
- AFFIDAVIT OF ADAM BARTLEY
- AFFIDAVIT OF ADAM BARTLEY
- STATE V. ADAM CHRISTOPHER BARTLEY
- STATE V. ADAM CHRISTOPHER BARTLEY
- EXHIBIT 7 INFORMED CONSENT
- EXHIBIT 8 AFFIDAVIT OF ROBERT LOUIS WALKER JR
- EXHIBIT 9 AFFIDAVIT OF SARAH COVINGTON ANDERSON
- EXHIBIT 10 AFFIDAVIT OF BROOKE MCFADDEN COVINGTON
- EXHIBIT 11 AFFIDAVIT OF JUSTIN COVINGTON



SEAL

Witness my hand and the seal of the Superior Court

Date	09-04-2015
Clerk Of Superior Court	CASEY PONCE
Signature	<i>Casey Ponce</i>
<input checked="" type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court

STATE OF NORTH CAROLINA

RUTHERFORD County

File No.

15CR00164

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name And Address Of Defendant

SARAH COVINGTON ANDERSON
207 BREEZE HILL

RUTHERFORDTON NC 28139

INDICTMENT

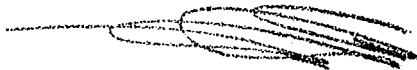
This is a superseding indictment.

Race	Sex	Date Of Birth
W	F	01/14/1987

Offense(s)	Date Of Offense OR Date Range Of Offense	G.S. No.	CL.
I. SECOND DEGREE KIDNAPPING	01/27/2013	14-39	E
II. SIMPLE ASSAULT	01/27/2013	14-33(A)	2
III. ASSAULT INFLICTING PHYSICAL INJURY BY STRANGULATION	01/27/2013	14-32.4(B)	H

I. The jurors for the State upon their oath present that on or about the date(s) of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

kidnap Richard Matthew Fenner III, a person who had attained the age of 16 years by unlawfully confining him, restraining him, and removing him from one place to another, without his consent, and for the purpose of terrorizing him.



II. And the jurors for the State upon their oath present that on or about the date(s) of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

assault and strike Richard Matthew Fenner III by shaking him, pushing him, grabbing his head, and hitting his chest.

(Over)

III. And the jurors for the State upon their oath present that on or about the date(s) of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

assault Richard Matthew Fenner III and inflict physical injury, bruises on his neck, chest, and shoulders, and causing the loss of ability to breathe, by strangulation, by the defendant using her hands to grab and squeeze the throat and neck of Richard Matthew Fenner III.

Signature Of Prosecutor



WITNESSES

<input checked="" type="checkbox"/> J. Keever, RCSD	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

The Witnesses marked "X" were sworn by the undersigned Foreperson of the Grand Jury and, after hearing testimony, this Bill was found to be:

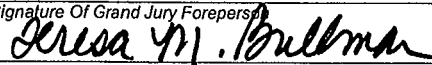
A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreperson of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

NOT A TRUE BILL.

Date

1-20-15

Signature Of Grand Jury Foreperson



STATE OF NORTH CAROLINA

File No.

15CR00154

RUTHERFORD

County

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name And Address Of Defendant

JUSTIN BROCK COVINGTON
207 BREEZE HILL

INDICTMENT

RUTHERFORDTON NC 28139

This is a superseding indictment.

Race W	Sex M	Date Of Birth 11/23/1994
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Offense(s)	Date Of Offense OR Date Range Of Offense	G.S. No.	CL.
I. SECOND DEGREE KIDNAPPING	01/27/2013	14-39	E
II. SIMPLE ASSAULT	01/27/2013	14-33(A)	2

I. The jurors for the State upon their oath present that on or about the date(s) of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

kidnap Richard Matthew Fenner III, a person who had attained the age of 16 years by unlawfully confining him, restraining him, and removing him from one place to another, without his consent, and for the purpose of terrorizing him.

II. And the jurors for the State upon their oath present that on or about the date(s) of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

assault and strike Richard Matthew Fenner III by shaking him, pushing him, grabbing his head, and hitting his chest.

Signature Of Prosecutor



WITNESSES

Det. J. Keever, RCSD

The Witnesses marked "X" were sworn by the undersigned Foreperson of the Grand Jury and, after hearing testimony, this Bill was found to be:

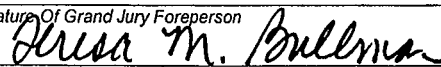
A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreperson of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

NOT A TRUE BILL.

Date

1-20-15

Signature Of Grand Jury Foreperson



STATE OF NORTH CAROLINA

RUTHERFORD

County

File No.

15CR00155

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name And Address Of Defendant

BROOKE MCFADDEN COVINGTON
207 BREEZE HILL

RUTHERFORDTON NC 28139

Race W Sex F Date Of Birth 07/26/1958

INDICTMENT

This is a superseding indictment.

Offense(s)	Date Of Offense OR Date Range Of Offense	G.S. No.	CL.
I. SECOND DEGREE KIDNAPPING	01/27/2013	14-39	E
II. SIMPLE ASSAULT	01/27/2013	14-33(A)	2

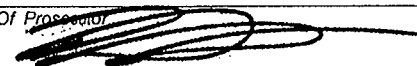
I. The jurors for the State upon their oath present that on or about the date(s) of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

kidnap Richard Matthew Fenner III, a person who had attained the age of 16 years by unlawfully confining him, restraining him, and removing him from one place to another, without his consent, and for the purpose of terrorizing him.

II. And the jurors for the State upon their oath present that on or about the date(s) of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

assault and strike Richard Matthew Fenner III by shaking him, pushing him, grabbing his head, and hitting his chest.

Signature Of Prosecutor



WITNESSES

<input checked="" type="checkbox"/> J. Keever, RCSD	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

The Witnesses marked "X" were sworn by the undersigned Foreperson of the Grand Jury and, after hearing testimony, this Bill was found to be:

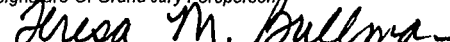
A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreperson of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

NOT A TRUE BILL.

Date

1-20-15

Signature Of Grand Jury Foreperson



STATE OF NORTH CAROLINA

File No.

15CR00156

RUTHERFORD

County

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name And Address Of Defendant

ADAM CHRISTOPHER BARTLEY
207 BREEZE HILL

INDICTMENT

RUTHERFORDTON NC 28139

This is a superseding indictment.

Race O Sex M Date Of Birth 11/16/1989

Offense(s)	Date Of Offense OR Date Range Of Offense	G.S. No.	CL.
I. SECOND DEGREE KIDNAPPING	01/27/2013	14-39	E
II. SIMPLE ASSAULT	01/27/2013	14-33(A)	2


I. The jurors for the State upon their oath present that on or about the date(s) of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

kidnap Richard Matthew Fenner III, a person who had attained the age of 16 years by unlawfully confining him, restraining him, and removing him from one place to another, without his consent, and for the purpose of terrorizing him.

II. And the jurors for the State upon their oath present that on or about the date(s) of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

assault and strike Richard Matthew Fenner III by shaking him, pushing him, grabbing his head, and hitting his chest.

Signature Of Prosecutor



WITNESSES

<input checked="" type="checkbox"/> Det. J. Keever, RCSD	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

The Witnesses marked "X" were sworn by the undersigned Foreperson of the Grand Jury and, after hearing testimony, this Bill was found to be:

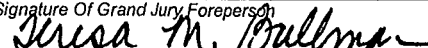
A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreperson of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

NOT A TRUE BILL.

Date

1-20-15

Signature Of Grand Jury Foreperson



STATE OF NORTH CAROLINA

RUTHERFORD

County

File No.

15CR00153

In The General Court Of Justice
Superior Court Division

STATE VERSUS

Name And Address Of Defendant

ROBERT LOUIS WALKER, JR
109 NEW FLYNN DRIVE

SPINDALE

NC

28160

Race

B

Sex

M

Date Of Birth

07/19/1988

INDICTMENT

This is a superseding indictment.

Offense(s)	Date Of Offense OR Date Range Of Offense	G.S. No.	CL.
I. SECOND DEGREE KIDNAPPING	01/27/2013	14-39	E
II. SIMPLE ASSAULT	01/27/2013	14-33(A)	2

I. The jurors for the State upon their oath present that on or about the date(s) of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

kidnap Richard Matthew Fenner III, a person who had attained the age of 16 years by unlawfully confining him, restraining him, and removing him from one place to another, without his consent, and for the purpose of terrorizing him.

II. And the jurors for the State upon their oath present that on or about the date(s) of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

assault and strike Richard Matthew Fenner III by shaking him, pushing him, grabbing his head, and hitting his chest.

Signature Of Prosecutor

WITNESSES

Det. J. Keever, RCSD

The Witnesses marked "X" were sworn by the undersigned Foreperson of the Grand Jury and, after hearing testimony, this Bill was found to be:

A TRUE BILL by twelve or more grand jurors, and I the undersigned Foreperson of the Grand Jury, attest the concurrence of twelve or more grand jurors in this Bill of Indictment.

NOT A TRUE BILL.

Date

1-20-15

Signature Of Grand Jury Foreperson

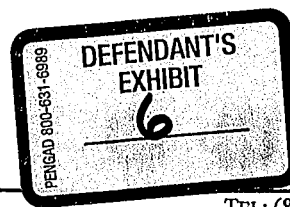
AOC-CR-122, Rev. 1/13

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TOMBLIN, FARMER & MORRIS, PLLC

187 NORTH WASHINGTON STREET - POST OFFICE BOX 632
RUTHERFORDTON, NORTH CAROLINA 28139

TEL: (828) 286-3866
FAX: (828) 286-4820



FEE AGREEMENT AND AUTHORITY TO REPRESENT

Justin Brock Covington, ("Client") hereby retains and employs the services of TOMBLIN, FARMER & MORRIS, PLLC, ("the Firm") as legal counsel to represent Client in the Rutherford County criminal matter regarding allegations made by Richard Matthew Fenner III, file number 15 CRS 154, arising from an incident that occurred on January 27, 2013.

1. Client is responsible for costs and expenses. However, the Firm in its sole discretion may choose to absorb any cost or expense. If the Firm is not able to absorb a cost or expense, the Firm agrees to obtain Client's authorization prior to incurring a cost or expense that exceeds \$100.
2. It is agreed and understood that if Client needs additional services, other than those specifically delineated above, a new agreement will be necessary.
3. Client shall cooperate with the Firm in every way possible in the presentation of this legal matter, including, but not limited to, the location of witnesses, documents and other forms of evidence to be used in this case.
4. The Firm shall have no obligation to represent Client beyond the conclusion of the general/specific purpose for which employed; at the conclusion of said representation, any and all responsibility on the Firm's part shall terminate.
5. Client agrees that any partner or associate of the Firm may be designated to handle any or all portions of Client's case, within the sole discretion of the Firm.
6. No guarantee or promises concerning the outcome or results of this matter or any decisions by any courts have been made by the Firm.
7. Client hereby grants power and authority to the Firm to represent him/her in the above referenced matter.

**NOTICE AND WAIVER OF CONFLICT OF INTEREST
CONSENT TO JOINT REPRESENTATION**

In addition to the representation of Client, the Firm is also representing four other defendants in matters arising from the incident referenced above. All of the co-defendants in this

matter are Brooke McFadden Covington, Justin Brock Covington, Sarah Covington Anderson, Robert Louis Walker Jr., and Adam Christopher Bartley. Because the Firm is representing more than one defendant in this case, Client acknowledges that he/she has been fully informed of the possibility that a conflict of interest may arise in the future between co-defendants. The Firm has no reason at this time to expect any of these or similar problems to arise in this case. Nevertheless, the ethical rules governing the conduct of lawyers require that the Firm explains to each Client the problems that could arise if all clients are represented simultaneously and that the Firm obtains Client's consent to this joint representation. The following paragraphs delineate Client's understanding of the representation.

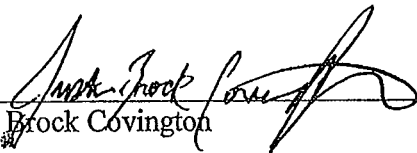
1. Client understands that each defendant in a criminal case has the right to conflict-free assistance of counsel by his/her own lawyer. Client also understands that each defendant may also waive that right.
2. Client believes that his/her mutual interests will be best served by sharing documents, factual material, and other information regarding this matter between and with the above-mentioned co-defendants. These materials and other shared communications are privileged from disclosure to adverse or other parties as a result of the attorney-client privilege, the attorney work-product privilege, and other applicable privileges. Under the circumstances of the referenced action, Client agrees to allow the Firm to exchange information, communications, and other materials between the above referenced co-defendants to further the common interests of everyone represented by the Firm in this matter.
3. Although the interests of all co-defendants in this matter are generally consistent, Client recognizes and understands that differences may exist or become evident during the course of this representation. Client confirms that despite this possibility, he/she still believes that it is in his/her best interest, as well as in the best interests of all co-defendants, to have a single law firm represent them jointly in connection with said matter.
4. Client understands that the Firm reasonably believes that it will be able to provide competent and diligent representation to each defendant in this case; that the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation; and that the representation of multiple co-defendants in the same criminal case is not prohibited by law.
5. Client understands that he/she has the right to confer with his/her own, separate attorney on the question of conflicts. As a matter of fact, the Firm advises Client to review this letter and discuss the conflict issue with his/her own attorney before signing it. In addition, during the course of the Firm's representation of Client, if Client feels the need to consult his/her own attorney to discuss the services being provided, Client is encouraged to do so.
6. Client agrees that if, at any time, he/she feels that a conflict has arisen or may arise, he/she will inform the Firm immediately. The Firm agrees to do the same. In any event, the Firm will consider the option to withdraw its representation of any co-defendant who the conflict may involve.

7. Client understands that there are potential dangers that may exist for each defendant when represented by counsel with a conflict of interest from representing two or more defendants in the same case. These potential dangers include, but are not limited to, the following examples:
 - a. The state might offer to recommend a lesser sentence to one defendant if he cooperates with them. His lawyer should advise him whether or not to accept the offer. If the lawyer advises him to accept, his cooperation may harm the case of the other defendants whom the lawyer also represents.
 - b. The state might permit a defendant, who is not as involved as other defendants, to plead guilty to lesser charges than the other defendants. After the guilty plea, however, the state may require the defendant to testify. The lawyer who represents more than one defendant in this situation may then have a conflict in that if the first defendant does not plead guilty then this will in some way protect the other defendants he represents. Conversely, if the lawyer recommends that the first defendant plead guilty, the case of the other defendants may be harmed.
 - c. One of the defendants represented by the lawyer may take the stand to testify in his own behalf. In order to represent the other defendants fairly, the lawyer should question the defendant on the stand as completely as possible. He may not be able to do so because he cannot ask this defendant about anything the defendant told him in confidence.
 - d. Evidence that helps one defendant might harm another defendant's case. When one lawyer represents two or more defendants, there may be a conflict in that it may be harmful when the lawyer would be forced to decide whether to not offer or object to evidence that could help one defendant if it harmed the other defendant's case.
8. Client understands that he/she may revoke consent and, like any other client, may terminate the Firm's representation at any time. If Client revokes consent to this representation, the Firm retains the right to continue representing other clients, subject to the consideration of factors such as: the nature of the conflict; whether Client revoked consent because of a material change in circumstances; the reasonable expectations of the other clients; whether material detriment to the other clients or the Firm would result; whether it is patently clear that the existing representation will not be adversely affected by the subsequent representation; and whether the subsequent representation would result in disclosure or use of information imparted by Client in the representation existing at the time of the waiver, or any subsequent representation of Client.
9. Client understands that even if he/she seeks to withdraw this waiver and obtain other counsel, permission may be denied by the Court if postponement of the trial is required.
10. Client understands that in the event a conflict does arise, even if he/she does not revoke consent or terminate the Firm's representation, the Firm, at all times, retains the right to withdraw representation from one or more of the affected clients without withdrawing

representation from the remaining clients.

11. Client agrees to have the Firm represent him/her jointly with the above-mentioned co-defendants connected to this matter. This will also confirm that all of the above mentioned co-defendants have each agreed to waive any conflict of interest arising out of the Firm's joint representation of said co-defendants in this matter.

By signing below, Client acknowledges that he/she has: (1) read and understands this contract; (2) been explained the risks and advantages of representation burdened with a conflict of interest, as well as reasonably available alternatives; (3) been afforded a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns; and (4) been made aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on his/her interests. Furthermore, this writing is intended to impress upon Client the seriousness of the decision he/she is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of this writing.

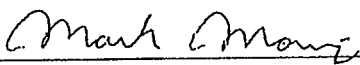

Justin Brock Covington

3/1/15
Date

ACCEPTANCE

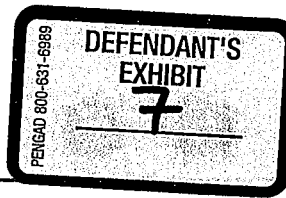
Employment for the handling of this case on the basis proposed is hereby accepted by TOMBLIN, FARMER & MORRIS, PLLC, this 1 day of March, 2015.

TOMBLIN, FARMER & MORRIS, PLLC


Attorney Signature

TOMBLIN, FARMER & MORRIS, PLLC

187 NORTH WASHINGTON STREET - POST OFFICE BOX 632
RUTHERFORDTON, NORTH CAROLINA 28139



TEL: (828) 286-3866
FAX: (828) 286-4820

FEE AGREEMENT AND AUTHORITY TO REPRESENT

Sarah Covington Anderson, ("Client") hereby retains and employs the services of TOMBLIN, FARMER & MORRIS, PLLC, ("the Firm") as legal counsel to represent Client in the Rutherford County criminal matter regarding allegations made by Richard Matthew Fenner III, file number 15 CRS 164, arising from an incident that occurred on January 27, 2013.

1. Client is responsible for costs and expenses. However, the Firm in its sole discretion may choose to absorb any cost or expense. If the Firm is not able to absorb a cost or expense, the Firm agrees to obtain Client's authorization prior to incurring a cost or expense that exceeds \$100.
2. It is agreed and understood that if Client needs additional services, other than those specifically delineated above, a new agreement will be necessary.
3. Client shall cooperate with the Firm in every way possible in the presentation of this legal matter, including, but not limited to, the location of witnesses, documents and other forms of evidence to be used in this case.
4. The Firm shall have no obligation to represent Client beyond the conclusion of the general/specific purpose for which employed; at the conclusion of said representation, any and all responsibility on the Firm's part shall terminate.
5. Client agrees that any partner or associate of the Firm may be designated to handle any or all portions of Client's case, within the sole discretion of the Firm.
6. No guarantee or promises concerning the outcome or results of this matter or any decisions by any courts have been made by the Firm.
7. Client hereby grants power and authority to the Firm to represent him/her in the above referenced matter.

**NOTICE AND WAIVER OF CONFLICT OF INTEREST
CONSENT TO JOINT REPRESENTATION**

In addition to the representation of Client, the Firm is also representing four other defendants in matters arising from the incident referenced above. All of the co-defendants in this

matter are Brooke McFadden Covington, Justin Brock Covington, Sarah Covington Anderson, Robert Louis Walker Jr., and Adam Christopher Bartley. Because the Firm is representing more than one defendant in this case, Client acknowledges that he/she has been fully informed of the possibility that a conflict of interest may arise in the future between co-defendants. The Firm has no reason at this time to expect any of these or similar problems to arise in this case. Nevertheless, the ethical rules governing the conduct of lawyers require that the Firm explains to each Client the problems that could arise if all clients are represented simultaneously and that the Firm obtains Client's consent to this joint representation. The following paragraphs delineate Client's understanding of the representation.

1. Client understands that each defendant in a criminal case has the right to conflict-free assistance of counsel by his/her own lawyer. Client also understands that each defendant may also waive that right.
2. Client believes that his/her mutual interests will be best served by sharing documents, factual material, and other information regarding this matter between and with the above-mentioned co-defendants. These materials and other shared communications are privileged from disclosure to adverse or other parties as a result of the attorney-client privilege, the attorney work-product privilege, and other applicable privileges. Under the circumstances of the referenced action, Client agrees to allow the Firm to exchange information, communications, and other materials between the above referenced co-defendants to further the common interests of everyone represented by the Firm in this matter.
3. Although the interests of all co-defendants in this matter are generally consistent, Client recognizes and understands that differences may exist or become evident during the course of this representation. Client confirms that despite this possibility, he/she still believes that it is in his/her best interest, as well as in the best interests of all co-defendants, to have a single law firm represent them jointly in connection with said matter.
4. Client understands that the Firm reasonably believes that it will be able to provide competent and diligent representation to each defendant in this case; that the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation; and that the representation of multiple co-defendants in the same criminal case is not prohibited by law.
5. Client understands that he/she has the right to confer with his/her own, separate attorney on the question of conflicts. As a matter of fact, the Firm advises Client to review this letter and discuss the conflict issue with his/her own attorney before signing it. In addition, during the course of the Firm's representation of Client, if Client feels the need to consult his/her own attorney to discuss the services being provided, Client is encouraged to do so.
6. Client agrees that if, at any time, he/she feels that a conflict has arisen or may arise, he/she will inform the Firm immediately. The Firm agrees to do the same. In any event, the Firm will consider the option to withdraw its representation of any co-defendant who the conflict may involve.

7. Client understands that there are potential dangers that may exist for each defendant when represented by counsel with a conflict of interest from representing two or more defendants in the same case. These potential dangers include, but are not limited to, the following examples:
 - a. The state might offer to recommend a lesser sentence to one defendant if he cooperates with them. His lawyer should advise him whether or not to accept the offer. If the lawyer advises him to accept, his cooperation may harm the case of the other defendants whom the lawyer also represents.
 - b. The state might permit a defendant, who is not as involved as other defendants, to plead guilty to lesser charges than the other defendants. After the guilty plea, however, the state may require the defendant to testify. The lawyer who represents more than one defendant in this situation may then have a conflict in that if the first defendant does not plead guilty then this will in some way protect the other defendants he represents. Conversely, if the lawyer recommends that the first defendant plead guilty, the case of the other defendants may be harmed.
 - c. One of the defendants represented by the lawyer may take the stand to testify in his own behalf. In order to represent the other defendants fairly, the lawyer should question the defendant on the stand as completely as possible. He may not be able to do so because he cannot ask this defendant about anything the defendant told him in confidence.
 - d. Evidence that helps one defendant might harm another defendant's case. When one lawyer represents two or more defendants, there may be a conflict in that it may be harmful when the lawyer would be forced to decide whether to not offer or object to evidence that could help one defendant if it harmed the other defendant's case.
8. Client understands that he/she may revoke consent and, like any other client, may terminate the Firm's representation at any time. If Client revokes consent to this representation, the Firm retains the right to continue representing other clients, subject to the consideration of factors such as: the nature of the conflict; whether Client revoked consent because of a material change in circumstances; the reasonable expectations of the other clients; whether material detriment to the other clients or the Firm would result; whether it is patently clear that the existing representation will not be adversely affected by the subsequent representation; and whether the subsequent representation would result in disclosure or use of information imparted by Client in the representation existing at the time of the waiver, or any subsequent representation of Client.
9. Client understands that even if he/she seeks to withdraw this waiver and obtain other counsel, permission may be denied by the Court if postponement of the trial is required.
10. Client understands that in the event a conflict does arise, even if he/she does not revoke consent or terminate the Firm's representation, the Firm, at all times, retains the right to withdraw representation from one or more of the affected clients without withdrawing

representation from the remaining clients.

11. Client agrees to have the Firm represent him/her jointly with the above-mentioned co-defendants connected to this matter. This will also confirm that all of the above mentioned co-defendants have each agreed to waive any conflict of interest arising out of the Firm's joint representation of said co-defendants in this matter.

By signing below, Client acknowledges that he/she has: (1) read and understands this contract; (2) been explained the risks and advantages of representation burdened with a conflict of interest, as well as reasonably available alternatives; (3) been afforded a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns; and (4) been made aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on his/her interests. Furthermore, this writing is intended to impress upon Client the seriousness of the decision he/she is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of this writing.

Sarah Covington Anderson 3/1/15
Sarah Covington Anderson Date

ACCEPTANCE

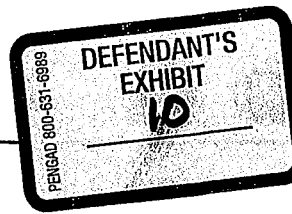
Employment for the handling of this case on the basis proposed is hereby accepted by TOMBLIN, FARMER & MORRIS, PLLC, this 1 day of ~~January~~, 2015.
March, 2015

TOMBLIN, FARMER & MORRIS, PLLC

Mark Maus
Attorney Signature

TOMBLIN, FARMER & MORRIS, PLLC

187 NORTH WASHINGTON STREET - POST OFFICE BOX 632
RUTHERFORDTON, NORTH CAROLINA 28139



TEL: (828) 286-3866
FAX: (828) 286-4820

FEE AGREEMENT AND AUTHORITY TO REPRESENT

Brooke McFadden Covington, ("Client") hereby retains and employs the services of TOMBLIN, FARMER & MORRIS, PLLC, ("the Firm") as legal counsel to represent Client in the Rutherford County criminal matter regarding allegations made by Richard Matthew Fenner III, file number 15 CRS 155, arising from an incident that occurred on January 27, 2013.

1. Client is responsible for costs and expenses. However, the Firm in its sole discretion may choose to absorb any cost or expense. If the Firm is not able to absorb a cost or expense, the Firm agrees to obtain Client's authorization prior to incurring a cost or expense that exceeds \$100.
2. It is agreed and understood that if Client needs additional services, other than those specifically delineated above, a new agreement will be necessary.
3. Client shall cooperate with the Firm in every way possible in the presentation of this legal matter, including, but not limited to, the location of witnesses, documents and other forms of evidence to be used in this case.
4. The Firm shall have no obligation to represent Client beyond the conclusion of the general/specific purpose for which employed; at the conclusion of said representation, any and all responsibility on the Firm's part shall terminate.
5. Client agrees that any partner or associate of the Firm may be designated to handle any or all portions of Client's case, within the sole discretion of the Firm.
6. No guarantee or promises concerning the outcome or results of this matter or any decisions by any courts have been made by the Firm.
7. Client hereby grants power and authority to the Firm to represent him/her in the above referenced matter.

**NOTICE AND WAIVER OF CONFLICT OF INTEREST
CONSENT TO JOINT REPRESENTATION**

In addition to the representation of Client, the Firm is also representing four other defendants in matters arising from the incident referenced above. All of the co-defendants in this matter are Brooke McFadden Covington, Justin Brock Covington, Sarah Covington Anderson, Robert Louis Walker Jr., and Adam Christopher Bartley. Because the Firm is representing more than one defendant in this case, Client acknowledges that he/she has been fully informed of the possibility that a conflict of interest may arise in the future between co-defendants. The Firm has no reason at this time to expect any of these or similar problems to arise in this case. Nevertheless, the ethical rules governing the conduct of lawyers require that the Firm explains to each Client the problems that could arise if all clients are represented simultaneously and that the Firm obtains Client's consent to this joint representation. The following paragraphs delineate Client's understanding of the representation.

1. Client understands that each defendant in a criminal case has the right to conflict-free assistance of counsel by his/her own lawyer. Client also understands that each defendant may also waive that right.
2. Client believes that his/her mutual interests will be best served by sharing documents, factual material, and other information regarding this matter between and with the above-mentioned co-defendants. These materials and other shared communications are privileged from disclosure to adverse or other parties as a result of the attorney-client privilege, the attorney work-product privilege, and other applicable privileges. Under the circumstances of the referenced action, Client agrees to allow the Firm to exchange information, communications, and other materials between the above referenced co-defendants to further the common interests of everyone represented by the Firm in this matter.
3. Although the interests of all co-defendants in this matter are generally consistent, Client recognizes and understands that differences may exist or become evident during the course of this representation. Client confirms that despite this possibility, he/she still believes that it is in his/her best interest, as well as in the best interests of all co-defendants, to have a single law firm represent them jointly in connection with said matter.
4. Client understands that the Firm reasonably believes that it will be able to provide competent and diligent representation to each defendant in this case; that the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation; and that the representation of multiple co-defendants in the same criminal case is not prohibited by law.
5. Client understands that he/she has the right to confer with his/her own, separate attorney on the question of conflicts. As a matter of fact, the Firm advises Client to review this letter and discuss the conflict issue with his/her own attorney before signing it. In addition, during the course of the Firm's representation of Client, if Client feels the need to consult his/her own attorney to discuss the services being provided, Client is encouraged to do so.
6. Client agrees that if, at any time, he/she feels that a conflict has arisen or may arise, he/she will inform the Firm immediately. The Firm agrees to do the same. In any event, the Firm will consider the option to withdraw its representation of any co-defendant who the conflict

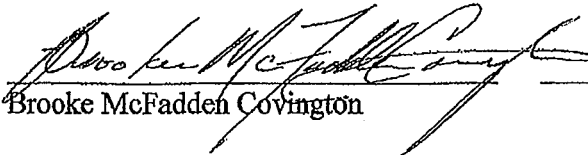
may involve.

7. Client understands that there are potential dangers that may exist for each defendant when represented by counsel with a conflict of interest from representing two or more defendants in the same case. These potential dangers include, but are not limited to, the following examples:
 - a. The state might offer to recommend a lesser sentence to one defendant if he cooperates with them. His lawyer should advise him whether or not to accept the offer. If the lawyer advises him to accept, his cooperation may harm the case of the other defendants whom the lawyer also represents.
 - b. The state might permit a defendant, who is not as involved as other defendants, to plead guilty to lesser charges than the other defendants. After the guilty plea, however, the state may require the defendant to testify. The lawyer who represents more than one defendant in this situation may then have a conflict in that if the first defendant does not plead guilty then this will in some way protect the other defendants he represents. Conversely, if the lawyer recommends that the first defendant plead guilty, the case of the other defendants may be harmed.
 - c. One of the defendants represented by the lawyer may take the stand to testify in his own behalf. In order to represent the other defendants fairly, the lawyer should question the defendant on the stand as completely as possible. He may not be able to do so because he cannot ask this defendant about anything the defendant told him in confidence.
 - d. Evidence that helps one defendant might harm another defendant's case. When one lawyer represents two or more defendants, there may be a conflict in that it may be harmful when the lawyer would be forced to decide whether to not offer or object to evidence that could help one defendant if it harmed the other defendant's case.
8. Client understands that he/she may revoke consent and, like any other client, may terminate the Firm's representation at any time. If Client revokes consent to this representation, the Firm retains the right to continue representing other clients, subject to the consideration of factors such as: the nature of the conflict; whether Client revoked consent because of a material change in circumstances; the reasonable expectations of the other clients; whether material detriment to the other clients or the Firm would result; whether it is patently clear that the existing representation will not be adversely affected by the subsequent representation; and whether the subsequent representation would result in disclosure or use of information imparted by Client in the representation existing at the time of the waiver, or any subsequent representation of Client.
9. Client understands that even if he/she seeks to withdraw this waiver and obtain other counsel, permission may be denied by the Court if postponement of the trial is required.
10. Client understands that in the event a conflict does arise, even if he/she does not revoke

consent or terminate the Firm's representation, the Firm, at all times, retains the right to withdraw representation from one or more of the affected clients without withdrawing representation from the remaining clients.

11. Client agrees to have the Firm represent him/her jointly with the above-mentioned co-defendants connected to this matter. This will also confirm that all of the above mentioned co-defendants have each agreed to waive any conflict of interest arising out of the Firm's joint representation of said co-defendants in this matter.

By signing below, Client acknowledges that he/she has: (1) read and understands this contract; (2) been explained the risks and advantages of representation burdened with a conflict of interest, as well as reasonably available alternatives; (3) been afforded a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns; and (4) been made aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on his/her interests. Furthermore, this writing is intended to impress upon Client the seriousness of the decision he/she is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of this writing.

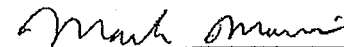

Brooke McFadden Covington

3-1-15
Date

ACCEPTANCE

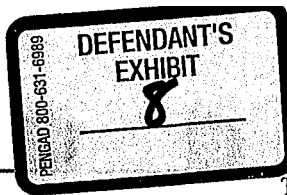
Employment for the handling of this case on the basis proposed is hereby accepted by TOMBLIN, FARMER & MORRIS, PLLC, this 1 day of ~~January~~, 2015.
March, 2015

TOMBLIN, FARMER & MORRIS, PLLC


Attorney Signature

TOMBLIN, FARMER & MORRIS, PLLC

187 NORTH WASHINGTON STREET - POST OFFICE BOX 632
RUTHERFORDTON, NORTH CAROLINA 28139



TEL: (828) 286-3866
FAX: (828) 286-4820

FEE AGREEMENT AND AUTHORITY TO REPRESENT

Robert Louis Walker, Jr., ("Client") hereby retains and employs the services of TOMBLIN, FARMER & MORRIS, PLLC, ("the Firm") as legal counsel to represent Client in the Rutherford County criminal matter regarding allegations made by Richard Matthew Fenner III, file number 15 CRS 153, arising from an incident that occurred on January 27, 2013.

1. Client is responsible for costs and expenses. However, the Firm in its sole discretion may choose to absorb any cost or expense. If the Firm is not able to absorb a cost or expense, the Firm agrees to obtain Client's authorization prior to incurring a cost or expense that exceeds \$100.
2. It is agreed and understood that if Client needs additional services, other than those specifically delineated above, a new agreement will be necessary.
3. Client shall cooperate with the Firm in every way possible in the presentation of this legal matter, including, but not limited to, the location of witnesses, documents and other forms of evidence to be used in this case.
4. The Firm shall have no obligation to represent Client beyond the conclusion of the general/specific purpose for which employed; at the conclusion of said representation, any and all responsibility on the Firm's part shall terminate.
5. Client agrees that any partner or associate of the Firm may be designated to handle any or all portions of Client's case, within the sole discretion of the Firm.
6. No guarantee or promises concerning the outcome or results of this matter or any decisions by any courts have been made by the Firm.
7. Client hereby grants power and authority to the Firm to represent him/her in the above referenced matter.

**NOTICE AND WAIVER OF CONFLICT OF INTEREST
CONSENT TO JOINT REPRESENTATION**

In addition to the representation of Client, the Firm is also representing four other defendants in matters arising from the incident referenced above. All of the co-defendants in this

matter are Brooke McFadden Covington, Justin Brock Covington, Sarah Covington Anderson, Robert Louis Walker Jr., and Adam Christopher Bartley. Because the Firm is representing more than one defendant in this case, Client acknowledges that he/she has been fully informed of the possibility that a conflict of interest may arise in the future between co-defendants. The Firm has no reason at this time to expect any of these or similar problems to arise in this case. Nevertheless, the ethical rules governing the conduct of lawyers require that the Firm explains to each Client the problems that could arise if all clients are represented simultaneously and that the Firm obtains Client's consent to this joint representation. The following paragraphs delineate Client's understanding of the representation.

1. Client understands that each defendant in a criminal case has the right to conflict-free assistance of counsel by his/her own lawyer. Client also understands that each defendant may also waive that right.
2. Client believes that his/her mutual interests will be best served by sharing documents, factual material, and other information regarding this matter between and with the above-mentioned co-defendants. These materials and other shared communications are privileged from disclosure to adverse or other parties as a result of the attorney-client privilege, the attorney work-product privilege, and other applicable privileges. Under the circumstances of the referenced action, Client agrees to allow the Firm to exchange information, communications, and other materials between the above referenced co-defendants to further the common interests of everyone represented by the Firm in this matter.
3. Although the interests of all co-defendants in this matter are generally consistent, Client recognizes and understands that differences may exist or become evident during the course of this representation. Client confirms that despite this possibility, he/she still believes that it is in his/her best interest, as well as in the best interests of all co-defendants, to have a single law firm represent them jointly in connection with said matter.
4. Client understands that the Firm reasonably believes that it will be able to provide competent and diligent representation to each defendant in this case; that the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation; and that the representation of multiple co-defendants in the same criminal case is not prohibited by law.
5. Client understands that he/she has the right to confer with his/her own, separate attorney on the question of conflicts. As a matter of fact, the Firm advises Client to review this letter and discuss the conflict issue with his/her own attorney before signing it. In addition, during the course of the Firm's representation of Client, if Client feels the need to consult his/her own attorney to discuss the services being provided, Client is encouraged to do so.
6. Client agrees that if, at any time, he/she feels that a conflict has arisen or may arise, he/she will inform the Firm immediately. The Firm agrees to do the same. In any event, the Firm will consider the option to withdraw its representation of any co-defendant who the conflict may involve.

7. Client understands that there are potential dangers that may exist for each defendant when represented by counsel with a conflict of interest from representing two or more defendants in the same case. These potential dangers include, but are not limited to, the following examples:
 - a. The state might offer to recommend a lesser sentence to one defendant if he cooperates with them. His lawyer should advise him whether or not to accept the offer. If the lawyer advises him to accept, his cooperation may harm the case of the other defendants whom the lawyer also represents.
 - b. The state might permit a defendant, who is not as involved as other defendants, to plead guilty to lesser charges than the other defendants. After the guilty plea, however, the state may require the defendant to testify. The lawyer who represents more than one defendant in this situation may then have a conflict in that if the first defendant does not plead guilty then this will in some way protect the other defendants he represents. Conversely, if the lawyer recommends that the first defendant plead guilty, the case of the other defendants may be harmed.
 - c. One of the defendants represented by the lawyer may take the stand to testify in his own behalf. In order to represent the other defendants fairly, the lawyer should question the defendant on the stand as completely as possible. He may not be able to do so because he cannot ask this defendant about anything the defendant told him in confidence.
 - d. Evidence that helps one defendant might harm another defendant's case. When one lawyer represents two or more defendants, there may be a conflict in that it may be harmful when the lawyer would be forced to decide whether to not offer or object to evidence that could help one defendant if it harmed the other defendant's case.
8. Client understands that he/she may revoke consent and, like any other client, may terminate the Firm's representation at any time. If Client revokes consent to this representation, the Firm retains the right to continue representing other clients, subject to the consideration of factors such as: the nature of the conflict; whether Client revoked consent because of a material change in circumstances; the reasonable expectations of the other clients; whether material detriment to the other clients or the Firm would result; whether it is patently clear that the existing representation will not be adversely affected by the subsequent representation; and whether the subsequent representation would result in disclosure or use of information imparted by Client in the representation existing at the time of the waiver, or any subsequent representation of Client.
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10. Client understands that in the event a conflict does arise, even if he/she does not revoke consent or terminate the Firm's representation, the Firm, at all times, retains the right to withdraw representation from one or more of the affected clients without withdrawing

representation from the remaining clients.

11. Client agrees to have the Firm represent him/her jointly with the above-mentioned co-defendants connected to this matter. This will also confirm that all of the above mentioned co-defendants have each agreed to waive any conflict of interest arising out of the Firm's joint representation of said co-defendants in this matter.

By signing below, Client acknowledges that he/she has: (1) read and understands this contract; (2) been explained the risks and advantages of representation burdened with a conflict of interest, as well as reasonably available alternatives; (3) been afforded a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns; and (4) been made aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on his/her interests. Furthermore, this writing is intended to impress upon Client the seriousness of the decision he/she is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of this writing.

Robert L Walker Jr 3/1/2015
Robert Louis Walker, Jr. Date

ACCEPTANCE

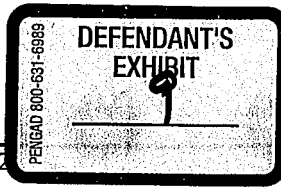
Employment for the handling of this case on the basis proposed is hereby accepted by TOMBLIN, FARMER & MORRIS, PLLC, this 1 day of ~~January~~, 2015.
March, 2015

TOMBLIN, FARMER & MORRIS, PLLC

Mark Morris
Attorney Signature

TOMBLIN, FARMER & MORRIS, PLLC

187 NORTH WASHINGTON STREET - POST OFFICE BOX 632
RUTHERFORDTON, NORTH CAROLINA 28139



TEL: (828) 286-3866
FAX: (828) 286-4820

FEE AGREEMENT AND AUTHORITY TO REPRESENT

Adam Christopher Bartley, ("Client") hereby retains and employs the services of TOMBLIN, FARMER & MORRIS, PLLC, ("the Firm") as legal counsel to represent Client in the Rutherford County criminal matter regarding allegations made by Richard Matthew Fenner III, file number 15 CRS 156, arising from an incident that occurred on January 27, 2013.

1. Client is responsible for costs and expenses. However, the Firm in its sole discretion may choose to absorb any cost or expense. If the Firm is not able to absorb a cost or expense, the Firm agrees to obtain Client's authorization prior to incurring a cost or expense that exceeds \$100.
2. It is agreed and understood that if Client needs additional services, other than those specifically delineated above, a new agreement will be necessary.
3. Client shall cooperate with the Firm in every way possible in the presentation of this legal matter, including, but not limited to, the location of witnesses, documents and other forms of evidence to be used in this case.
4. The Firm shall have no obligation to represent Client beyond the conclusion of the general/specific purpose for which employed; at the conclusion of said representation, any and all responsibility on the Firm's part shall terminate.
5. Client agrees that any partner or associate of the Firm may be designated to handle any or all portions of Client's case, within the sole discretion of the Firm.
6. No guarantee or promises concerning the outcome or results of this matter or any decisions by any courts have been made by the Firm.
7. Client hereby grants power and authority to the Firm to represent him/her in the above referenced matter.

**NOTICE AND WAIVER OF CONFLICT OF INTEREST
CONSENT TO JOINT REPRESENTATION**

In addition to the representation of Client, the Firm is also representing four other defendants in matters arising from the incident referenced above. All of the co-defendants in this

matter are Brooke McFadden Covington, Justin Brock Covington, Sarah Covington Anderson, Robert Louis Walker Jr., and Adam Christopher Bartley. Because the Firm is representing more than one defendant in this case, Client acknowledges that he/she has been fully informed of the possibility that a conflict of interest may arise in the future between co-defendants. The Firm has no reason at this time to expect any of these or similar problems to arise in this case. Nevertheless, the ethical rules governing the conduct of lawyers require that the Firm explains to each Client the problems that could arise if all clients are represented simultaneously and that the Firm obtains Client's consent to this joint representation. The following paragraphs delineate Client's understanding of the representation.

1. Client understands that each defendant in a criminal case has the right to conflict-free assistance of counsel by his/her own lawyer. Client also understands that each defendant may also waive that right.
2. Client believes that his/her mutual interests will be best served by sharing documents, factual material, and other information regarding this matter between and with the above-mentioned co-defendants. These materials and other shared communications are privileged from disclosure to adverse or other parties as a result of the attorney-client privilege, the attorney work-product privilege, and other applicable privileges. Under the circumstances of the referenced action, Client agrees to allow the Firm to exchange information, communications, and other materials between the above referenced co-defendants to further the common interests of everyone represented by the Firm in this matter.
3. Although the interests of all co-defendants in this matter are generally consistent, Client recognizes and understands that differences may exist or become evident during the course of this representation. Client confirms that despite this possibility, he/she still believes that it is in his/her best interest, as well as in the best interests of all co-defendants, to have a single law firm represent them jointly in connection with said matter.
4. Client understands that the Firm reasonably believes that it will be able to provide competent and diligent representation to each defendant in this case; that the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation; and that the representation of multiple co-defendants in the same criminal case is not prohibited by law.
5. Client understands that he/she has the right to confer with his/her own, separate attorney on the question of conflicts. As a matter of fact, the Firm advises Client to review this letter and discuss the conflict issue with his/her own attorney before signing it. In addition, during the course of the Firm's representation of Client, if Client feels the need to consult his/her own attorney to discuss the services being provided, Client is encouraged to do so.
6. Client agrees that if, at any time, he/she feels that a conflict has arisen or may arise, he/she will inform the Firm immediately. The Firm agrees to do the same. In any event, the Firm will consider the option to withdraw its representation of any co-defendant who the conflict may involve.

7. Client understands that there are potential dangers that may exist for each defendant when represented by counsel with a conflict of interest from representing two or more defendants in the same case. These potential dangers include, but are not limited to, the following examples:
 - a. The state might offer to recommend a lesser sentence to one defendant if he cooperates with them. His lawyer should advise him whether or not to accept the offer. If the lawyer advises him to accept, his cooperation may harm the case of the other defendants whom the lawyer also represents.
 - b. The state might permit a defendant, who is not as involved as other defendants, to plead guilty to lesser charges than the other defendants. After the guilty plea, however, the state may require the defendant to testify. The lawyer who represents more than one defendant in this situation may then have a conflict in that if the first defendant does not plead guilty then this will in some way protect the other defendants he represents. Conversely, if the lawyer recommends that the first defendant plead guilty, the case of the other defendants may be harmed.
 - c. One of the defendants represented by the lawyer may take the stand to testify in his own behalf. In order to represent the other defendants fairly, the lawyer should question the defendant on the stand as completely as possible. He may not be able to do so because he cannot ask this defendant about anything the defendant told him in confidence.
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10. Client understands that in the event a conflict does arise, even if he/she does not revoke consent or terminate the Firm's representation, the Firm, at all times, retains the right to withdraw representation from one or more of the affected clients without withdrawing

representation from the remaining clients.

11. Client agrees to have the Firm represent him/her jointly with the above-mentioned co-defendants connected to this matter. This will also confirm that all of the above mentioned co-defendants have each agreed to waive any conflict of interest arising out of the Firm's joint representation of said co-defendants in this matter.

By signing below, Client acknowledges that he/she has: (1) read and understands this contract; (2) been explained the risks and advantages of representation burdened with a conflict of interest, as well as reasonably available alternatives; (3) been afforded a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns; and (4) been made aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on his/her interests. Furthermore, this writing is intended to impress upon Client the seriousness of the decision he/she is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of this writing.

Adam C Bartley 3-12-15
Adam Christopher Bartley Date

ACCEPTANCE

Employment for the handling of this case on the basis proposed is hereby accepted by TOMBLIN, FARMER & MORRIS, PLLC, this _____ day of January, 2015.

TOMBLIN, FARMER & MORRIS, PLLC

Mark Morris
Attorney Signature

Clifford C. Marshall, Jr.¹
Philip J. Roth¹
Lyman J. Gregory, III
Gay P. Vinson

¹DRC Certified Mediator -
Superior Court



Direct e-mail:
proth@mrglawfirm.com

Direct voice:
(828) 281-2100 x203

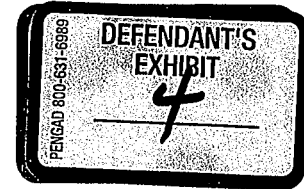
A Professional Corporation

August 2, 2015

via email only

Ms. Sarah Anderson
221 Brooke Breeze Ln
Rutherfordton, NC 28139

RE: 15 CRS 164 (Rutherford County)
Second Opinion re Joint Representation



Dear Sarah:

In follow-up to our consultation in my office, and per your request, I have reviewed the ethical considerations of whether Mr. Josh Farmer may ethically represent you, Brooke Covington and Justin Covington in the matter of *State v. Covington et al.*, No. 15 CRS 164.

Conclusion

Mr. Farmer may competently and ethically represent you in this matter unless and until it is clear to Mr. Farmer that his duty of loyalty to you risks being compromised by his concurrent duty to Brook or Justin or his former clients, Bartley and Walter, or until you yourself elect to terminate his representation.

As you have explained the situation to me, no such compromise appears on the horizon.

Factual Predicate

I understand that Mr. Farmer originally undertook the representation of all five defendants who have been indicted in the alleged assault upon Matthew Fenner during "powerful prayer"; and that before jointly agreeing to retain his firm, Mr. Farmer:

- discussed with all of you the potential conflict of interest that might arise in the course of the case (for example, one co-defendant eventually testifying against another as part of a plea bargain);
- advised each co-defendant to seek an independent opinion from separate counsel as to the comparative merits of proceeding with joint counsel;
- reduced his discussion of potential conflicts of interest to writing in his Fee Agreement letter that included a comprehensive "Notice and Waiver of Conflict of Interest; Consent to Joint Representation" (hereinafter "Notice") outlining the various conflicts that can arise in such matters; and

90 Southside Avenue • Suite 100 • Post Office Box 769 • Asheville, NC 28802 • Tel 828.281.2100 • Fax 828-281-2120

www.MRGLawFirm.com

- required you to acknowledge those risks and agree to waive them in writing by signing the *Fee Agreement* and *Notice*.

I further understand that co-defendants Robert Louis Walker, Jr. And Adam Christopher Bartley, though initially represented by Mr. Farmer, have since retained separate counsel. In Mr. Bartley's case, this may be on account of the fact that he has been offered a plea bargain by the prosecutor. In any event, it is your opinion that neither Mr. Walker nor Mr. Bartley will offer evidence at the trial of this matter contrary to your interests.

Research

In rendering my opinion, I have reviewed the applicable North Carolina Rules of Professional Conduct – principally Rules 1.7, 1.8 and 1.9 – related ethics opinions, a treatise on North Carolina Criminal Procedure, and case law bearing on the issues presented in this matter.

I have, moreover, carefully reviewed the *Fee Agreement* and *Notice and Waiver of Conflict of Interest; Consent to Joint Representation* you signed.

Analysis

Allow me to begin this analysis with a general caveat: as expressed in a comment to the primary Rule of Professional Conduct:

"The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that *ordinarily* a lawyer should decline to represent more than one codefendant."

Rule 1.7, Comment 23 (emphasis added). Indeed, that joint representation of criminal defendants is *ordinarily* ill-advised runs through the relevant law – and treatises on the law – on the subject for the simple reason that co-defendants, facing imprisonment, all too frequently "turn state's evidence" in a plea bargain that compels them to testify (albeit truthfully) against their fellow co-defendants, placing the defense attorney in an untenable position of having to cross-examine his own client or former client, or risk failing to "zealously" represent his remaining clients in the face of hostile testimony.

That said, and the merits of separate representation notwithstanding, it is generally lawful for co-defendants to be jointly represented, and to "waive" potential and actual conflicts in that joint representation provided the waiver is reduced to writing and executed with informed consent.

This is so, in part, because the Sixth Amendment to the United States Constitution, as interpreted by the courts, guarantees that criminal defendants are entitled to counsel *of their choice* where, as here, the defendants have the financial wherewithal to retain their own counsel (as opposed to appointment of a public defender). North Carolina has acknowledged this principle in the seminal case of *State v. Yelton*, 87 N.C. App. 554 (1987) where the Court of Appeals stated:

"A *potential* conflict of interest, as distinguished from an *actual* conflict of interest, is not sufficient to warrant the State's interference with the constitutionally guaranteed right of a criminal defendant to retain and be represented by counsel of his choice."

(emphasis added.) This is a powerful affirmation of your right to choose your own counsel despite the possibility of a conflict potentially, or actually, arising "down the road." Indeed, the law generally relies on the defense attorney's judgment regarding his ethical responsibilities in

Marshall, Roth & Gregory

the given matter, rather than the prosecutor's opinion, as to whether he has a conflict of interest in the joint representation. (As is obvious from the Instant *Motion to Disqualify*, however, the superior court retains a "trump" card and can in fact disqualify Mr. Farmer's firm if it disagrees with his judgment.)

Based on my conversation with Mr. Farmer, as well as reviewing his *Notice*, it is my opinion that Mr. Farmer has very carefully evaluated the various nuances as to whether he can zealously and diligently represent the co-defendants, and communicated that evaluation to them, allowing them to execute the *Notice* with informed consent. I note, for example, that Mr. Farmer advised you ahead of time of the potential for a conflict arising precisely in the manner in which it has: the state offering Mr. Bartley a plea bargain.

But even in the face of an *actual* conflict of interest – not yet present in your circumstance, in my opinion – clients can nonetheless waive the conflict of interest and allow their jointly-retained counsel to continue to represent them. You and your co-defendants have done this by signing the above-referenced *Notice*. Such waivers, moreover, can legally apply to *future* conflicts that arise.

The foregoing analysis applies where all of the co-defendants are current clients of the lawyer. The situation potentially changes when one or more of the co-defendants retains their own counsel. Having done just that, Messrs. Bartley and Walter are now "former clients" of Mr. Farmer's for purposes of evaluating his ethical constraints.

Rule 1.9 governs the ethical considerations regarding a lawyer's continuing duties to former clients. That rule provides:

A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same . . . matter in which that person's interests are *materially adverse* to the interests of the former client *unless* the former client gives informed consent, confirmed in writing.

Rule 1.9(a)(emphasis added). For practical purposes, the way in which a conflict may arise in this situation is where either Mr. Bartley or Walter turn "state's evidence" and testify against you. As stated in a comment to this Rule, generally a lawyer cannot continue to represent a client after a "dispute" has arisen among the clients *unless* each client and former client consent in writing to the continued representation *or* the continued representation of some clients is not "materially adverse" to the interest of the former clients. *Comment 1*.

Thus, this rule provides two scenarios in which Mr. Farmer may continue to represent you in the face of this turn of events:

1. Each of his remaining and former clients *consent* to his continued representation; or
2. Mr. Farmer concludes that his continuing representation of you is not "materially adverse" to the interests of his former clients.

Assuming Messrs. Bartley and Walter have signed a *Notice* similar to your own, they have knowingly consented to Mr. Farmer continuing to represent you and your fellow co-defendants. I think the *Notice* itself is legally sufficient to have provided those gentlemen with sufficient notice of the types of potential conflict to allow them to have provided their "informed" consent.

Marshall, Roth & Gregory

Ms. Sarah Anderson
August 2, 2015
Page 4 of 4


Even were that not my opinion, Mr. Farmer could nonetheless continue to represent you if he felt that his representation of you is not "material adverse" to the interests of his former clients. And as I understand the situation, that is precisely the case so far.

For all of the foregoing reasons – but noting the general proposition that criminal defendants should ordinarily retain separate counsel – I am of the opinion that Mr. Farmer may continue to represent you in this matter.

Please do not hesitate to contact me if you have any continuing questions or concerns, or you believe the circumstances have changed such that you feel separate counsel is warranted.

With your permission I am emailing a copy of this letter simultaneously to Mr. Farmer.

Sincerely,



Philip J. Roth
Attorney at Law

c/email: Josh Farmer, Esq.

LONG, PARKER, WARREN, ANDERSON & PAYNE, P.A.

ATTORNEYS AT LAW
14 SOUTH PACK SQUARE, SUITE 600
ASHEVILLE, NORTH CAROLINA 28801

(828) 258-2296

ROBERT B. LONG, JR.
WILLIAM A. PARKER
STEVE R. WARREN
PHILIP S. ANDERSON
RONALD K. PAYNE
ANDREW B. PARKER
ANNES. SALTER

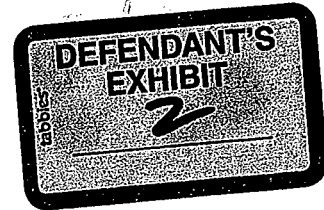
MAILING ADDRESS
Post Office Box 7216
Asheville, NC 28802

FACSIMILE
(828) 253-1073

August 2, 2015

Via Email and U.S. Mail

Brooke McFadden Covington
207 Breeze Hill
Rutherfordton, NC 28139



Re: Joint Representation – Potential Conflict of Interest

Dear Brooke,

You have conferred with me regarding questions of conflict of interest arising out of the joint representation of you and your two adult children Sarah Covington Anderson and Justin Brock Covington in a pending criminal matter by the law firm of Tomblin, Farmer & Morris, PLLC through its attorneys Joshua Farmer and Mark Morris. Specifically, your inquiry requests my opinion on whether it is legally and ethically possible for you (and presumably your two adult children) to continue to be represented jointly by these attorneys of your choice through a written waiver of any potential conflict of interest that might be involved in such joint representation. The question now arises as a result of a motion by the 29A District Attorney to disqualify your attorneys from appearing for you all in the matter.

In order to give you my opinion in that regard, I have reviewed your indictment and discussed the background of the case with both you and Josh Farmer, one of your attorneys. I have also reviewed Rule 1.7 of the Revised Rules of Professional Conduct of the North Carolina State Bar and comments thereunder and your Fee Agreement which contained an extensive "NOTICE AND WAIVER OF CONFLICT OF INTEREST CONSENT TO JOINT REPRESENTATION" signed by you and the law firm on or about March 1, 2015. In the course of the discussions with you and Mr. Farmer, I learned one Co-Defendant had been offered a favorable plea arrangement to a Class II misdemeanor and dismissal of the pending felony charge against him and it is likely other such plea arrangements might be offered to other Co-Defendants including perhaps your adult children.

After full discussion of the matter and the possible conflicts which could arise from joint representation in this criminal matter, you indicated to me you desired to continue the joint representation by the attorneys of Tomblin, Farmer & Morris, PLLC of you and your adult children for several reasons including, but not limited to, the following:

1) You have known Josh Farmer practically all of his life and for the entire time he has practiced law, and you believe you know the legal abilities and diligence of Josh and his law firm in the representation of clients, including you and your children.

2) As a result of your knowledge of the law firm, the attorneys in it, and their legal abilities and diligence in representation, you have strong feelings that these attorneys of your choice should continue to represent you and your children in the pending criminal matter, as you "would trust them with your life."

3) These allegations and the defense of them involve religious practices at the Word of Faith Fellowship which the Farmers know and about which the law firm would not have to be educated as would any other lawyer or law firm.

4) The fee arrangements made with Tomblin, Farmer & Morris, PLLC are satisfactory to you and to start over with another lawyer or law firm would be an economic hardship on you and your two children as you all definitely want attorneys of your choice and not court appointed attorneys.

5) Your knowledge of the true facts at the time of the alleged events and your knowledge of what your children have consistently maintained about these same events make you believe there is no real conflict of interest in the joint representation by your current law firm of you and your children.

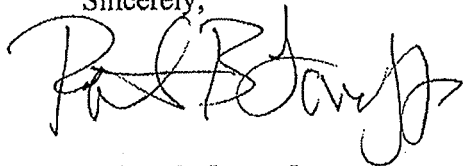
6) In the event something arises which could represent a change in the potential for a conflict of interest, you trust Josh Farmer and his law firm to bring it to your attention.

Based upon my review above and our discussion, I believe you have the constitutional right to counsel of your choice, Tomblin, Farmer & Morris, PLLC, to represent you and your children in the pending criminal matter provided you continue to adhere to the extensive Waiver of Potential Conflict of Interest previously executed by you.

In the event you have any questions at this time or in the future regarding this matter, please feel free to contact me.

Again, as stated in our conversation, it was good to speak with you again. Please tell your folks I said hello.

Sincerely,

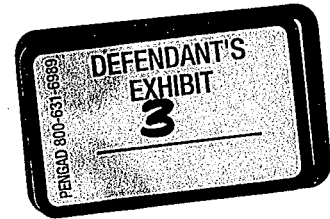
A handwritten signature in black ink, appearing to read "Robert B. Long, Jr.", written in a cursive style.

Robert B. Long, Jr.

Cc: Joshua Farmer, Esq.

TIN FULTON WALKER & OWEN

July 30, 2015



Justin Covington
221 Brook Breeze Lane
Rutherfordton, NC 28139

RE: Consultation – Joint Representation in State v. Covington

Dear Mr. Covington:

After my review of the indictment in this matter, the Fee Agreement, the Notice and Waiver of Conflict of Interest and Consent to Joint Representation that you executed with the firm of Tomblin, Farmer & Morris, PLLC and or conference, I see no reason for you to obtain new counsel.

My opinion is based on the following:

1. From our conference it appears that you had the opportunity to individually review the fee and conflict documents with an attorney from the firm and that in the review you had read and fully understood the documents. The Notice is well drawn, understandable and far more detailed than notices used by firms with which I am familiar.

2. Based on our review of the facts of your involvement in the powerful prayer that Richard Matthew Fenner, III and the location and position of your sister and mother during the prayer, it does not appear that there is a potential for conflicting testimony or any issue of the possibility of any degree of culpability on the part of these other defendants.

3. You have trust in your present counsel and believe that he understands the facts and circumstances surrounding the allegation against you.

4. You understand that the "optics" of the joint representation of Word of Faith members by an attorney who is also a member could have an impact on some potential jurors, but have made a judgment that the other factors set out in our conference outweigh this concern.

With your permission I am providing a copy of this letter to your current counsel.

Noell P. Tin

*Shirley L. Fulton

*Nancy E. Walker

C. Melissa Owen

*Adam Stein

*Jonathan P. Wallas

John W. Gresham

F. Lane Williamson

William G. Simpson, Jr.

S. Luke Largess

Sam McGee

Mark J. Kleinschmidt

Katherine L. Parker

Jacob H. Sussman

Matthew G. Pruden

Sarah E. Bennett

*Of Counsel

°Retired

301 East Park Avenue

Charlotte, NC 28203

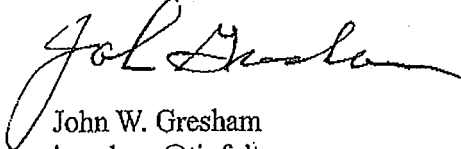
tel 704.338.1220

fax 704.338.1312

www.tinfulton.com

I wish you well in the defense of this matter. If you have any further questions about this matter or your representation, please contact me.

Sincerely yours,



John W. Gresham
jgresham@tinfulton.com

JWG

Copy: Josh Farmer

FILED

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF JUSTICE
2015 JUL 24 SUPERIOR COURT DIVISION
FILE No.: 15-CRS-153-156, 164
RUTHERFORD COUNTY, C.B.C.

STATE OF NORTH CAROLINA,

Plaintiff,

vs.

BROOKE McFADDEN COVINGTON,
SARAH COVINGTON ANDERSON,
JUSTIN BROCK COVINGTON,
ROBERT LOUIS WALKER, JR., and
ADAM CHRISTOPHER BARTLEY,

Defendants.

STATE'S MOTION
TO DISQUALIFY COUNSEL

NOW COMES the State of North Carolina and moves the Court to disqualify Attorneys Mark Morris, Joshua Farmer, Andrea Farmer, the law firm of Tomblin, Farmer & Morris, P.L.L.C., and their associates, from representing any of the above-named defendants in the matters captioned above upon the grounds that the aforesaid counsel have a non-waivable, concurrent, conflict of interest.

This the 24th day of July, 2015.

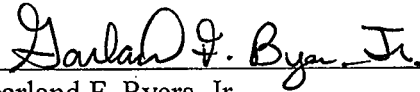
Ted Bell
District Attorney
N.C. Prosecutorial District 29-A

By: Garland F. Byers, Jr.
Garland F. Byers, Jr.
Assistant District Attorney
N.C. State District Attorney's Office
Rutherford County
P.O. Box 70
Rutherfordton, North Carolina 28139
Telephone: (828) 288-6110
Facsimile: (828) 288-6111
Email: Garland.F.Byers@nccourts.org

CERTIFICATE OF SERVICE

I hereby certify that I served the attached Motion upon the Defendants in this cause by depositing a copy thereof in the Clerk's Office Mailbox of the Defendants' Attorneys of Record, as permitted by the Local Rules of Practice and by informal agreement between local counsel.

This the 24th day of July, 2015.



Garland F. Byers, Jr.
Assistant District Attorney
N.C. State District Attorney's Office
Rutherford County
P.O. Box 70
Rutherfordton, North Carolina 28139
Telephone: (828) 288-6110
Facsimile: (828) 288-6111
Email: Garland.F.Byers@nccourts.org

FILED

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
COUNTY OF RUTHERFORD 2015 JUL 31 AM 11:58 SUPERIOR COURT DIVISION
RUTHERFORD COUNTY, C.S.C. FILE No.: 15-CRS-153-156, 164

STATE OF NORTH CAROLINA,)
)
 Plaintiff,)
)
 vs.)
)
 BROOKE McFADDEN COVINGTON,)
 SARAH COVINGTON ANDERSON,)
 JUSTIN BROCK COVINGTON,)
 ROBERT LOUIS WALKER, JR., and)
 ADAM CHRISTOPHER BARTLEY,)
)
 Defendants.)

MEMORANDUM OF LAW
IN SUPPORT OF THE
STATE'S MOTION
TO DISQUALIFY COUNSEL

NOW COMES the State of North Carolina, by and through the undersigned Assistant District Attorney, and moves the Court to disqualify Attorneys Mark Morris, Joshua Farmer, Andrea Farmer, the law firm of Tomblin, Farmer & Morris, P.L.L.C., and their associates, from representing any of the above-named defendants in the matters captioned above. In support of this Motion, the State respectfully shows the following:

Procedural History and Factual Basis for Motion

1. Attorneys Joshua Farmer, Andrea Farmer & Mark Morris are members of the Law Firm of TOMBLIN, FARMER & MORRIS, P.L.L.C.
2. The aforementioned lawyers have all participated in and appeared as counsel for each of the above-named defendants in the above-styled criminal actions. Further, the Firm has, as an entity authorized to practice law by the North Carolina State Bar, entered a formal appearance for each defendant in these matters. N.C. Gen. Stat. § 15A-141 (2).
3. On or about May 20, 2015, I spoke with Mark Morris about the cases pending against the defendants. These cases are:

Brooke Covington	Second Degree Kidnapping Simple Assault	Class E Felony Class 1 Misdemeanor
Sarah C. Anderson	Second Degree Kidnapping	Class E Felony

	Simple Assault	Class 1 Misdemeanor
	Assault Inflicting Serious Injury by Strangulation	Class H Felony
Justin Covington	Second Degree Kidnapping	Class E Felony
	Simple Assault	Class 1 Misdemeanor
Robert Walker, Jr.	Second Degree Kidnapping	Class E Felony
	Simple Assault	Class 1 Misdemeanor
Adam Bartley	Second Degree Kidnapping	Class E Felony
	Simple Assault	Class 1 Misdemeanor

4. In the conversation with Mr. Morris, I informed Morris that I believed that he individually had a direct, nonwaivable, conflict of interest and that this conflict of interest also included Attorneys Joshua Farmer, Andrea Farmer, and the law firm of TOMBLIN, FARMER & MORRIS, P.L.L.C.
5. I informed Mr. Morris that, as the Assistant District Attorney assigned with prosecuting these matters for the State, I wished to extend a plea offer to one of the co-defendants and that the offer would include a requirement for the defendant receiving the offer to provide truthful testimony against the other co-defendants in these cases.
6. I told Mr. Morris that I did not believe that he could ethically advise the defendant receiving the offer not to take the offer if, in fact, it was objectively determined to be in that defendant's best interest to accept the offer. I further told Mr. Morris that I did not believe that he could ethically advise the defendant receiving the offer to accept the offer because of his ethical duty of loyalty to his other clients and his duty to not do anything that would harm their legal best interest in these cases. Clearly, advising one client to testify against four other clients in a criminal case would violate this most basic duty of loyalty.
7. Mr. Morris responded by saying that he had previously had each client execute a written waiver of any and all potential conflicts and that he had also electronically mailed the North Carolina State Bar for an ethics opinion. Mr. Morris said that the Bar had indicated that neither he, nor his law firm, had any conflict of interest which would preclude them from representing all of the co-defendants in these matters.
8. I told Mr. Morris that I had not yet issued a plea offer to his client so that I might address the conflict of interest issue with him personally before putting him in that situation. Mr. Morris indicated that he would take another look at the issue, but that

neither he nor his Law Firm had any conflict of interest. As of the filing of this motion, no Motion to Withdraw as Counsel has been filed by defense counsel.

9. On July 22, 2015, at 11:02 a.m., I delivered a written plea offer in the case of Adam Christopher Bartley to Caleb Farmer, an attorney at law and member of TOMBLIN, FARMER & MORRIS, P.L.L.C. A copy of this offer is attached hereto as "State's Exhibit 1."
10. The Defendant presented with the offer, Adam Christopher Bartley, is a Level III for Felony Sentencing purposes with 6 prior points. His prior convictions include: (1) Possession/Consumption of Beer/Wine on Unauthorized Premises (Class 1 Misdemeanor); (2) Felony Breaking and Entering (Class H Felony); (3) Felony Breaking and Entering (Class H Felony); (4) Possession of Marijuana (Class 3 Misdemeanor); (5) Misdemeanor Larceny (Class 1 Misdemeanor); and (6) Assault on a Female (Class A1 Misdemeanor).
11. Should the Defendant, Adam Bartley, be convicted of Second Degree Kidnapping, he would receive a mandatory active sentence of a minimum of 26 – 44 months (presumptive) up to 41 – 62 months (aggravated).
12. All of the remaining co-defendants have no prior criminal record and possibly could be given probation in the discretion of the court.
13. The defense lawyers involved as well as their Law Firm also represent the Word of Faith Fellowship Church which is where the crimes are alleged to have occurred. The State has subpoenaed video records from WOFF in these matters and the same Law Firm represents the Church in opposing turning the records over to State in compliance with the Subpoena. I actually spoke personally with Josh Farmer about this Subpoena.

This Court has the Authority to Grant the State's Motion

14. Both federal and State courts have the power to disqualify an attorney from continuing to represent a client. Disqualification effectively requires that an attorney withdraw his representation. Disqualification is not professional discipline of an attorney, although it is well established that the courts of this State have inherent power to discipline attorneys practicing before them. *In re Burton*, 257 N.C. 534, 126 S.E.2d 581 (1962); *In re Delk*, 336 N.C. 421, 444 S.E.2d 198 (1994). These cases make it clear that such inherent power is not abridged by the disciplinary powers of the North Carolina State Bar. The power of the courts to supervise and regulate the attorneys practicing before them is well established and codified in N.C. Gen. Stat. § 84-36, which provides: "Nothing contained in this Article shall be construed as disabling or abridging the inherent powers of the court to deal with its attorneys."

15. "Disqualification, where appropriate, ensures that the case is well presented in court, that confidential information of present or former clients is not misused, and that a client's substantial interest in a client's loyalty is protected." RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 6 cmt. i (2000). See *In re Dresser Indus.*, 972 F.2d 540, 543 (5th Cir. 1992) (noting that courts should consider whether the "likelihood of public suspicion from the impropriety outweighs any social interests which will be served by the lawyer's continued participation in the case.>").
16. North Carolina State courts can refer to the Revised Rules of Professional Conduct of the North Carolina State Bar in deciding whether to disqualify an attorney. Although the Revised Rules provide guidelines to the court, they are not *controlling* guidelines. For instance, the fact that an attorney violates a disciplinary rule does not automatically disqualify the attorney from representing a client. "... violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation." Revised Rule 0.2. [7].
17. Similarly, a court has the power, under appropriate circumstances, to disqualify an attorney even though he or she had not violated a specific disciplinary rule." Revised Rule 0.2 [3]. In doing so, courts may consider not only the Revised Rules of Professional Conduct, but also the ABA Model Rules of Professional Conduct, the ABA Model Code of Professional Conduct, and the Restatement (Third) of the Law Governing Lawyers. See *In re American Airlines, Inc.*, 972 F.2d 605, 610 (5th Cir. 1992), *cert. denied*, 507 U.S. 912 (1993).

The State has Standing to bring this Motion

18. "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate; the prosecutor's duty is to seek justice, not merely to convict. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence." Revised Rule 3.8 [1].
19. The State of North Carolina has a compelling interest in insuring that a defendant's due process rights are protected. This interest is safeguarded and accomplished by and through the District Attorneys and Assistant District Attorneys of this State. "The prosecutor represents the sovereign and therefore should use restraint in the discretionary exercise of government powers . . ." Revised Rule 3.8 [2].
20. Rule 8.3 requires that a violation of the Revised Rules of Professional Conduct be reported by a lawyer when that lawyer knows of the violation. "Although the North Carolina State Bar is always an appropriate place to report a violation of the Rules of Professional Conduct, the courts of North Carolina have concurrent jurisdiction over

the conduct of the lawyers who appear before them. Therefore, a lawyer's duty to report may be satisfied by reporting to the presiding judge . . ."

21. My duty as a government lawyer is to seek justice in these cases and to see that the defendants are accorded procedural justice requires the filing of this motion. The Revised Rules of Professional Conduct clearly support this action and illustrate the standing of the State to bring this motion.
22. "... [T]he conduct of the defense lawyers in this case need not constitute a violation of the North Carolina Rules of Professional Conduct, and not rise to the level of professional negligence in order to warrant disqualification." *Chemcraft Holdings Corp. v. Shayban*, 2006 NCBC 13; 2006 LEXIS 15.

*This Court should Disqualify Defense Counsel because a
Concurrent Conflict of Interest Exists which cannot be Waived*

23. Rule 1.7(a) of the Revised Rules of Professional Conduct provides that "[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest." The Rule then defines a "concurrent conflict of interest" as the following:
 - a. A case where the representation of one client will be directly adverse to another client; or
 - b. A case where the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.
24. Rule 1.7(b) of the Revised Rules of Professional Conduct specifies the only exception to the rule stated in subsection (a) as set forth above. Specifically, subsection (b) provides that a lawyer may represent a client despite a concurrent conflict of interest if:
 - a. The lawyer *reasonably* believes that the lawyer will be able to provide competent and diligent representation to each affected client; and
 - b. The representation is not prohibited by law; and
 - c. The representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - d. Each affected client gives informed consent, confirmed in writing.

(Emphasis added)

25. “[S]ome conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client’s consent.” Revised Rule 1.7 [14]. The State alleges that this is the situation in these criminal cases.

26. Note 15 of Revised Rule 1.7 provides:

Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), *representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).* (Emphasis added).

27. More importantly and to the point, “The potential for conflicts of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant.” Revised Rule 1.7 [23].

The Court should Disqualify Counsel because Failure to do so will Undermine the Public Confidence in the Justice System

28. It is the responsibility of the courts and the members of the bar to maintain the confidence of the public in our system of justice. N.C. Revised Rules of Professional Conduct, Rule 0.1[6] (“[A] lawyer should further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.”).

29. The focus of an inquiry into disqualification thus rests on the perception created by the lawyer’s conduct. *Chemcraft Holdings Corp. v. Shayban*, 2006 NCBC 13; 2006 LEXIS 15.

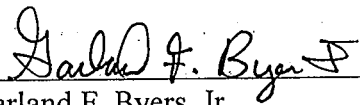
30. Defense counsel filed a Motion for Change of Venue in each of these matters on February 16, 2015. In this motion, they allege: “Defendant is a member of the Word of Faith Fellowship, a church that for nearly two decades has been the subject of extraordinary persecution, hatred, bigotry, and discrimination in this county, spurred

by *Inside Edition* tabloid news; local, national, and international news media coverage, as well as continued social media postings.”

31. Given that public perception is key to this motion, the State respectfully shows that defense counsels’ own allegations support the State’s position in bringing the motion to disqualify counsel.
32. As to this, the State draws this Honorable Court’s attention to the fact that *all of defense counsel are members* of Word of Faith Fellowship. As such, the State respectfully shows that it has not ruled out whether it will call one, more than one, or all of defense counsel as witnesses to the events leading up to the incident giving rise to these cases. This is yet an additional reason for defense counsel to have, *on their own*, voluntarily, declined representation in these cases.

WHEREFORE, the State respectfully moves the Court to enter an Order disqualifying all of the named Attorneys at Law from serving as defense counsel for all and any one of the Defendants in these matters.

This the 31st day of July, 2015.



Garland F. Byers, Jr.
Assistant District Attorney
N.C. State District Attorney’s Office
Rutherford County
P.O. Box 70
Rutherfordton, North Carolina 28139
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Email: Garland.F.Byers@nccourts.org

FILED

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

2015 JUL 31 AM 9:58
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NUMBERS: 15-CRS-153-155, 164
RUTHERFORD COUNTY, C.S.C.

STATE OF NORTH CAROLINA, *CP*

Plaintiff,

vs.

BROOKE McFADDEN COVINGTON,
SARAH COVINGTON ANDERSON,
JUSTIN BROCK COVINGTON,
ROBERT LOUIS WALKER, JR.,

Defendants.

BRIEF IN OPPOSITION TO STATE'S
MOTION TO DISQUALIFY COUNSEL

NOW COME the Defendants in the above captioned matters, by and through their attorneys Mark N. Morris and Joshua B. Farmer of Tomblin, Farmer & Morris, PLLC, responding in opposition to the State's Motion to Disqualify Counsel which was filed in the above-captioned matter on July 24, 2015, and the Memorandum of Law in Support of the State's Motion to Disqualify Counsel, which was filed on July 31, 2015.

BACKGROUND

Tomblin, Farmer & Morris, PLLC (hereinafter described as the "Firm") currently represents four Co-Defendants ("the Co-Defendants") in the above-captioned matter as follows: Brooke McFadden Covington ("Mrs. Covington"), Sarah Covington Anderson ("Mrs. Anderson"), Justin Brock Covington ("Mr. Covington"), and Robert Louis Walker, Jr. ("Mr. Walker"). The Firm previously represented a fifth co-defendant Adam Christopher Bartley ("Mr. Bartley"), but Mr. Bartley is now represented by other counsel and the Firm has filed a motion to withdraw from his representation.

The Firm has been actively involved in the representation of all the Co-Defendants since December 2014, when the first indictments were issued. The Firm has assisted the Co-Defendants in each step of their cases, and the Co-Defendants have a relationship of trust with the Firm and its attorneys.

Mindful of their ethical obligations, Farmer & Morris presented each Co-Defendant and Mr. Bartley during his representation with a "Notice and Waiver of Conflict of Interest" and "Consent to Joint Representation," (the "Waiver"), which included extensive explanations of the

material advantages and disadvantages of the Firm's joint representation of the Co-Defendants, discussed the clients' options and alternatives, and described potential conflicts of interest that may arise in the course of joint representation. Each Co-Defendant and Mr. Bartley signed the Waiver after explanation from attorneys of the Firm and opportunity to carefully review the document.

Prior to July 22, 2015, no conflict of interest arose between or among the Co-Defendants and Mr. Bartley as each individual maintained their innocence and maintained defenses to the criminal charges brought against them not inconsistent with each other.

On July 22, 2015, Rutherford County Assistant District Attorney Garland F. Byers, Jr. (the "Assistant District Attorney") made a plea offer to Mr. Bartley. On July 24, 2015, the Assistant District Attorney brought the State's Motion to Disqualify Counsel in this case, claiming that the Firm has a non-waivable, concurrent, conflict of interest based on the State's contention that a non-waivable conflict arises by the very existence of the joint representation of the Co-Defendants and – further – by the existence of a plea offer made to one defendant.

The Co-Defendants contend that the State's Motion to Disqualify Counsel should be denied for the reasons discussed below.

ARGUMENT

The Firm does not have a non-waivable, concurrent conflict of interest in this case. As the United States Supreme Court has aptly established, "a common defense...gives strength against a common attack." Cuyler v. Sullivan, 446 U.S. 335, 348 (1980). Indeed, joint representation can sometimes benefit criminal defendants by helping them maintain a "united front." This Court should deny the State's Motion to Disqualify Counsel based on the following: 1) the Firm has consistently complied with North Carolina Rules of Professional Conduct, specifically to include Rules 1.7(b), 1.8(g), and 1.9; 2) the Co-Defendants in this case have a right to be represented by the Firm, the counsel of their own choosing, safeguarded by the Sixth Amendment to the United States Constitution; and 3) the Assistant District Attorney's argument that the Firm has no right to represent the Co-Defendants in this case due to his plea offer to Mr. Bartley and the Co-Defendants' attorneys' affiliation with the Co-Defendants' church is unfounded.

I. THE FIRM HAS CONSISTENTLY COMPLIED WITH NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT, SPECIFICALLY RULES 1.7(B), 1.8(G), AND 1.9.

A. The Firm's Compliance with NCRPC Rule 1.7

The Firm is in compliance with the North Carolina Rules of Professional Conduct ("NCRPC") Rule 1.7 which relates to conflict of interest with current clients. The Firm met the requirements of NCRPC 1.7 (b), notwithstanding the presence of a conflict, as follows:

- 1) The Firm reasonably believed that it would be able to provide competent and diligent representation to each affected client.
- 2) The Firm's representation was not prohibited by law.
- 3) The Firm's representation did not involve the assertion of a claim by one client against another client represented by the Firm in the same litigation or other proceeding before a tribunal; and
- 4) Each affected client gave informed consent for the Firm's representation, confirmed in writing.

The Firm reasonably believes that it would be able to provide competent and diligent representation to each Co-Defendant. An "attorney representing two defendants in a criminal matter is in the best position professionally and ethically to determine when a conflict of interest exists or will probably develop in the course of a trial." Holloway v. Arkansas, 435 U.S. 475, 485 (1978). It is thus the Firm's obligation to the Co-Defendants to assess concurrent conflicts, and the Firm is in the best position to ascertain or foresee any conflicts that may arise.

The Firm's representation of the Co-Defendants is not prohibited by any law. There is no statutory or regulatory stricture forbidding the Firm's representation of the Co-Defendants.

The Firm's representation does not involve the assertion of a claim by one client against another client represented by the firm in the same litigation or other proceeding before a tribunal. All Co-Defendants maintain their own innocence and the innocence of each other. All Co-Defendants' positions in this matter are compatible and there are not material discrepancies in their factual accounts relating to the allegations.

Each above-referenced Co-Defendant signed a "Notice and Waiver of Conflict of Interest" and "Consent to Joint Representation," ("the Waiver"), which included extensive explanations of the material advantages and disadvantages of the Firm's representation and a discussion of the clients' options and alternatives. By signing the Waiver, each Co-Defendant acknowledged that he had (1) read and understood the contract; (2) been explained the risks and advantages of representation burdened with a conflict of interest, as well as reasonably available alternatives; (3) been afforded a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns; and (4) been made aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on his/her interests. Furthermore, the Waivers made clear that their purpose was to impress upon the Co-Defendants

the seriousness of the decision they were being asked to make and to avoid disputes or ambiguities that might later occur in the absence of the Waiver.

B. The Firm's Compliance with NCRPC Rule 1.8

NCRPC Rule 1.8(g) further strengthens the Co-Defendants' position that there is no "non-waivable" concurrent conflict of interest in this case. The Assistant District Attorney would argue that the State's offer of a plea bargain to one of the defendants in exchange for his promise to testify truthfully in the case creates an automatic "non-waivable" conflict that would disallow the Firm from jointly representing all of the Co-Defendants in this case.

NCRPC Rule 1.8(g) provides as follows:

A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

This rule inherently rejects the proposition that when a plea bargain is offered to one co-defendant among others who are all jointly represented by the same attorney, there is an automatic "non-waivable" concurrent conflict of interest. If a lawyer could no longer jointly represent multiple defendants once a plea bargain was offered to any one of the jointly represented defendants, NCRPC Rule 1.8(g) would be of no purpose as that issue could never present itself.

C. The Firm's Compliance with NCRPC 1.9

Additionally, NCRPC Rule 1.9 must be considered in this case. Since Mr. Bartley has retained Rob Denton as his new attorney, he would be considered a former client to the Firm and thus any potential conflicts of interest must be analyzed under NCRPC 1.9. Under NCRPC 1.9(a), a lawyer should not represent a client in a matter that is substantially related to a matter in which the lawyer represented a former client if the latter client's interests are materially adverse to the interests of the former client, "unless (emphasis added) the former client gives informed consent, confirmed in writing." Matters are considered substantially related for the purposes of this Rule if they involve the same transaction or legal dispute, or if there is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. Interests may be considered materially adverse if (1) the attorney acquired confidences during the course of representing the

former client and (2) use of the former client's confidences in the latter client's case cause significant harmful impact to the former client. This is a high burden to establish—even moderately adverse is not sufficient.

While there is little doubt that Mr. Bartley's interest and the other Co-Defendants' interests are substantially related, the Firm is permitted to continue representation of the remaining Co-Defendants unless (1) the interests of the remaining Co-Defendants become materially adverse to Mr. Bartley's interests, and (2) the Firm does not obtain Mr. Bartley's informed consent, confirmed in writing. In order for the State's motion to be granted, it would have to establish both of these elements. However, neither of them can be shown here. First, during the course of its representation of Mr. Bartley, the Firm has not learned any confidences that are not already public record (e.g., Mr. Bartley's criminal record). Even if the Court were to find that the Firm has acquired "confidences" during its representation of Mr. Bartley, those "confidences" will not be used to cause significant harmful impact to the former client. Therefore, the remaining Co-Defendants' interests are not materially adverse to Mr. Bartley's. Second, even if the remaining Co-Defendants' interests were to be materially adverse to Mr. Bartley's interests, the Firm is still permitted to continue representation of the remaining Co-Defendants because Mr. Bartley has given informed consent for the remaining Co-Defendants to be represented by the Firm in the Waiver which contemplates continued representation by the Firm of the other defendants in the event the Firm withdraws from the representation of one or more of them.

The Firm is fully aware of its obligations under NCRPC 1.9(c), and fully intends to comply with this rule with regard to any information related to Mr. Bartley.

II. THE DEFENDANTS IN THIS CASE HAVE THE SIXTH AMENDMENT RIGHT TO BE REPRESENTED BY THE FIRM, THE COUNSEL OF THEIR OWN CHOOSING.

The Court's interest of conducting a fair and unbiased legal proceeding must be balanced with the important constitutionally-granted right under the Sixth Amendment for the defendants in this case to have an attorney of their own choosing. State v. Bruton, 344 N.C. 381, 474 (1996). A single attorney's joint representation of co-defendants is not a *per se* violation of the Sixth Amendment right to effective assistance of counsel. Holloway, 435 U.S. at 482. "This principle recognizes that in some cases multiple defendants can appropriately be represented by one attorney; indeed, in some cases, certain advantages might accrue from joint representation." Id. The Sixth Amendment right to conflict-free representation can be waived by a defendant, if done knowingly, intelligently and voluntarily. U.S. v. Swartz, 975 F.2d 1042 (4th Cir. 1992), U.S. v. Akinseye, 802 F.2d 740, 744-45 (4th Cir. 1986).

The Supreme Court has recognized the Sixth Amendment right to counsel and has declined to give trial courts the unchecked discretion to force criminal co-defendants to seek independent counsel. See Holloway, 435 U.S. at 482. When a party challenges an attorney's representation contending that a conflict of interest exists, "a hearing should be conducted, 'to determine whether there exists such a conflict of interest that the defendant will be prevented from receiving advice and assistance sufficient to afford him the quality of representation guaranteed by the sixth amendment.'" State v. James, 111 N.C. App. 785, 791, 433 S.E.2d 755, 758 (1993) (quoting U.S. v. Cataldo, 625 F.Supp. 1255, 1257 (S.D.N.Y.1985)).

All of the Co-Defendants in this case made the fully informed decision, confirmed in writing, to join together with a "united front" against a united attack arising from the same allegations. Each Co-Defendant has developed an important mutual trust relationship with the Firm and its attorneys over the past eight months. No disqualifying non-waivable conflicts have arisen to date, neither are there any foreseeable disqualifying conflicts in this case.

It should be further noted that severe prejudice would be created by forcing the Co-Defendants Mrs. Covington, Mrs. Anderson, Mr. Covington, and Mr. Walker to find new counsel, against their own will or desires, at this stage in the defense. The Co-Defendants would be deprived of their mutual trust relationship with the Firm, the counsel of their own choosing. Mrs. Covington and her adult children Mrs. Anderson and Mr. Covington have a very close family relationship with one another, and neither Mrs. Anderson nor Mr. Covington have the independent financial means to be able to secure separate counsel. The Co-Defendants' defense in this case is truly the most important matter in their lives at this time, and these Co-Defendants have the undeniable Sixth Amendment right to choose their defense counsel without harassment.

III. THE ASSISTANT DISTRICT ATTORNEY'S ARGUMENT THAT THE FIRM HAS NO RIGHT TO REPRESENT THE CO-DEFENDANTS IN THIS CASE DUE TO HIS PLEA OFFER TO MR. BARTLEY AND THE CO-DEFENDANTS' ATTORNEYS' AFFILIATION WITH THE CO-DEFENDANTS' CHURCH IS UNFOUNDED.

The Assistant District Attorney has suggested by the statements in the Memorandum of Law in Support of the State's Motion to Disqualify Counsel (the "State's Memorandum") that because the state has made a plea offer to Mr. Bartley, the Firm cannot properly advise Mr. Bartley to testify "against" the Co-Defendants. However, compliance with the State's plea offer does not require Mr. Bartley to testify "against" the Co-Defendants, but rather calls for his "truthful testimony." The Firm no longer represents Mr. Bartley, and so the State's contentions are now completely without basis. There are no plea offers made to any of the other Co-Defendants. As noted before, all Co-Defendants' accounts have been consistently compatible and free from material discrepancies, and no account is "against" the accounts of the other Co-Defendants.

There is no North Carolina Rule of Professional Conduct and there is no North Carolina ethical opinion that supports the State's position that in all cases under all circumstances the State's offer of a plea to one co-defendant creates an automatic non-consentable conflict. To follow the State's logic would in essence create an unchecked power in the State to eliminate counsel representing co-defendants any time the State chooses to do so by merely making a plea offer to any one defendant.

In Paragraph 13 of the State's Memorandum, the Assistant District Attorney inaccurately states that "the defense lawyers involved...also represent the Word of Faith Fellowship Church." The Co-Defendants have a legitimate interest in this subpoena issued their case, and any discussion with the Assistant District Attorney regarding this subpoena was engaged solely on behalf of the Co-Defendants.

The Assistant District Attorney implies that the current motion is being brought "to seek justice," and indicates that the State has "a compelling interest in insuring that a defendant's due process rights are protected." State's Memorandum, Paragraphs 18-19, 21. Indeed, the State should be allowing the Co-Defendants to seek appropriate defense counsel of their choice and exercise their Constitutional rights, including the right to counsel of their choosing; instead the Assistant District Attorney is seeking a result that would inhibit these rights in the guise of seeking justice.

The case cited by the Assistant District Attorney in Paragraph 22 of the State's Memorandum, Chemcraft Holdings Corp. v Shayban, 2006 NCBC 13, is not controlling law in this Court, and it is not relevant to the case at bar. Chemcraft was a case involving prior representation of the defendant by the plaintiff's current attorney in a complex business dispute, and did not involve a defendant's Sixth Amendment right to counsel.

In Paragraph 26 of the State's Memorandum, the Assistant District Attorney suggests and implies that even allowing the Co-Defendants to have the counsel of their choice, that the Firm cannot reasonably conclude that it will be able to provide competent and diligent representation. As discussed previously, the Firm has taken sufficient precautionary measures to ensure that the Co-Defendants have been informed of all potential risks in their representation and have knowingly and voluntarily waived these potential conflicts.

In response to Paragraphs 30, 31, and 32 of the State's Memorandum, the Assistant District Attorney is suggesting that the Firm be disqualified based on the Firm's members' church membership. Attempting to involve the attorneys' religious affiliations with this matter has absolutely no bearing whatsoever on the material issues of this case.

Further, the Assistant District Attorney has absurdly suggested that the Firm's members may be witnesses in the case. The speculation by the Assistant District Attorney that members of the Firm may be called as witnesses provides not a shred of specificity as to what events the Firm's members would be called upon to testify regarding. More to that point, after being involved in these cases for more than eight months, no one from the District Attorney's office or the Rutherford County Sheriff's Department, the investigating agency in this case, has ever suggested that the Firm's members were witnesses to events relevant to the allegations at bar. Notably, the witness list created by the State's purported victim and provided to the Firm in the discovery process omits any mention of members of the Firm as potential witnesses to the alleged events which predicated these cases.

Even if the Firm's members had been identified as possible witnesses for this case, the law in North Carolina specifically recognizes that the defendant's Sixth Amendment right to choose his/her counsel is more important than the State's interest in disqualifying an attorney who may be called as a witness:

Similarly, in balancing our defendant's interests in retaining counsel of his choice against that of the State's in disqualifying the [defendant's attorney] during pre-trial proceedings, we believe defendant's "Sixth Amendment right ... is too important to be denied on the basis of a mere, though substantial, possibility" that a [defendant's attorney] might be called as a witness. Id. In making this decision, we have considered the fact that if the [attorney] were disqualified this early in the proceedings and a pre-trial hearing determines that either [state's witness] can not testify on behalf of the State or that the attorney-client privilege prohibits the [defendant's attorney] from testifying, defendant will have lost his constitutional right for no good reason.

State v. Shores, 102 N.C. App. 473, 475-76, 402 S.E.2d 162, 164 (1991). The Shores court recognized that even where the possibility that the attorney may be called as a witness is substantial, this is insufficient to disqualify an attorney from the case. There is no allegation that even remotely suggests that Joshua B. Farmer, Andrea G. Farmer, Mark N. Morris, or any other associate of the Firm has any personal knowledge of the alleged events giving rise to these cases.

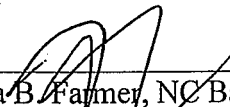
CONCLUSION

In conclusion, there is not a "non-waivable" concurrent conflict of interest in this case. As set forth in this brief, the Firm has scrupulously complied with the North Carolina Rules of Professional Conduct. Rule 1.7 has been fully complied with throughout the representation of the Co-Defendants, as the Firm reasonably believes that even if there may be concurrent conflict of interest, competent and diligent representation can and will be provided to each affected client


throughout the course of the representation, aided in no small part by the Co-Defendants' maintenance of the innocence of themselves and of each other. Moreover, each affected client has given informed consent, confirmed in writing to the joint representation, waiving any conflict of interest. Therefore, the States' Motion to Disqualify Counsel should be denied. At this juncture, while Mr. Bartley will be represented by separate counsel from this point forward, NCRPC 1.9 permits the Firm to continue representation of the remaining Co-Defendants because (1) the interests of the remaining Co-Defendants are not materially adverse to Mr. Bartley's interests, and (2) the Firm has received Mr. Bartley's informed consent, confirmed in writing. The court should further find that Attorneys Mark N. Morris, Joshua B. Farmer, Andrea G. Farmer, and the other associates of the Firm should not be disqualified from the case, based upon an entirely unfounded suggestion from the Assistant District Attorney that the Firm's members may be called as witnesses in this case.

Furthermore, upon a balancing of the Court's interest of conducting a fair and unbiased trial with the Sixth Amendment constitutional right of each defendant to have the attorney of his own choosing, justice requires that the Court not disqualify the Firm and its attorneys. The Co-Defendants would not suffer any prejudice by the concurrent representation. Rather, they would be prejudiced if they were not allowed to be jointly represented. Disqualifying the Firm would impose grave hardships upon the Co-Defendants in mounting their own defense. Over the course of the past several months, a great amount of trust and confidence has been built between the attorneys and their clients. Forcing each client to seek independent counsel would break down their chosen united front to fight for their liberty.

This is the 3 day of August, 2015.



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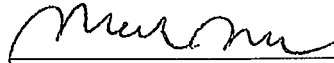


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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this document in the above entitled action upon all other parties to this cause by hand delivery to an associate or employee with the Rutherford County District Attorney's Office.

This the 3 day of August, 2015.



Mark Morris

STATE OF NORTH CAROLINA
 COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF JUSTICE
 SUPERIOR COURT DIVISION
 FILE #: 15 CRS 153-155, 164

STATE OF NORTH CAROLINA,

VS.

ORDER

BROOKE McFADDEN COVINGTON,
 SARAH COVINGTON ANDERSON,
 JUSTIN BROCK COVINGTON,
 ROBERT LOUIS WALKER, JR.
 Defendants.

.....

THIS CAUSE coming on to be heard and being heard before the undersigned Judge Presiding over the Criminal Session of Rutherford County, State of North Carolina during the August 3, 2015 Session Criminal Term of Court upon Motion of the State of North Carolina to Disqualify the Attorneys for the Defendants, to wit: Mark Morris, Joshua Farmer, Andrea Farmer and the law firm of Tomblin, Farmer & Morris, P.L.L.C. (hereinafter referred to as "Law Firm") filed July 24, 2015. After a review of the Court file, testimony of Mr. John Byrd, Attorney, designated as an Expert in the field of criminal law, hearing of legal arguments by counsel for the State and the Defendants, the Court hereby makes the following

FINDINGS OF FACT:

1. The Defendants have been charged with the following offenses:

Defendant:	Charge:	Felony Class:	Misdemeanor Class:	Date of Offense:
Brooke Covington	Second Degree Kidnapping	E		January 27, 2013
"	Simple Assault		2	
Sarah C. Anderson	Second Degree Kidnapping	E		January 27, 2013
"	Simple Assault		2	
"	Assault Inflicting Serious Injury by Strangulation	H		

Justin Covington	Second Degree Kidnapping	E		January 27, 2013
"	Simple Assault		2	
Robert Walker, Jr.	Second Degree Kidnapping	E		January 27, 2013
"	Simple Assault		2	
Adam Bartley	Second Degree Kidnapping	E		January 27, 2013
"	Simple Assault		2	

2. The alleged victim in each of the above criminal charges is one Richard Matthew Fenner III.
3. True Bills of Indictment were returned on the above respective Defendants on or about January 20, 2015. The Defendants voluntarily appeared, were arrested on or about January 30, 2015. The Word of Faith Fellowship, Inc. posted bond for each of their release from custody.
4. Each of the Defendants as well as each of the aforesaid Attorneys for the Defendants is a member of The Word of Faith Fellowship, Inc.
5. Subsequent thereto, the Defendants each waived their right to assigned counsel and employed the aforesaid attorneys, indiscriminately, in the law firm of Tomblin, Farmer & Morris, P.L.L.C. to represent them in the defense of these criminal charges.
6. In the course of employment of the law firm of Tomblin, Farmer & Morris, P.L.L.C, each of the aforesaid Defendants executed extensive and exhaustive Fee Agreement and Authority to Represent each and every Defendant in the defense of these criminal allegations. In addition thereto and as part of the Fee Agreement and Authority to Represent the Defendants, each Defendant executed a Notice and Waiver of Conflict of Interest, Consent to Joint Representation (hereinafter referred to as "Notice & Waiver").
7. This Notice & Waiver disclosed to each Defendant the possibility that a conflict of interest could arise in the joint representation of all the Defendants. Each Defendant acknowledged that they understood the following:
 - a. Each Defendant has a right to a conflict-free assistance of counsel by his/her own lawyer;
 - b. Each Defendant believes that his/her mutual interests will be best served by the sharing of information, documents, factual information, etc. with the other Defendants and that the Law Firm is free to exchange this information with the other Defendants.
 - c. Even though the interests of the Defendants is generally consistent, the Defendant acknowledges that differences may arise in the future but that it

- is in all of the Defendants' best interests to have the single law firm represent them.
- d. The Law Firm believes that it will be able to provide competent and diligent representation to each Defendant, this representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation and that the representation of multiple co-defendants in the same criminal case is not prohibited by law.
 - e. Defendants can consult with their own separate outside attorney at any time during the litigation of these criminal cases.
 - f. Each Defendant will inform the Law Firm if the Defendant feels that a conflict has arisen immediately and vice-versa. The Law Firm will consider the option to withdraw its representation of any co-defendant who the conflict may involve.
 - g. Potential dangers are considered in the multiple representation of co-defendants including the State's offer of a plea bargain to a defendant and the potential harm it could cause to the remaining defendants. State's offer of a plea to a lesser charge in exchange for testimony against the other defendants and the harm this could cause.
 - h. If a defendant is called to testify in his own behalf, the limitations placed upon the attorney to interrogate the defendant balancing matters that the defendant has told the attorney in confidence.
 - i. The offer of evidence that could be potentially harmful to a defendant's case and the conflict presented when the attorney must elect to object to such evidence, allow the same to come into evidence without objection or offer evidence which may be harmful to other co-defendants.
 - j. The right of the individual defendant to revoke this consent but the right of the Law Firm to continue representing the remaining co-defendants.
 - k. If a defendant withdraws consent, the fact that the Court may deny permission to withdraw if postponement of the trial is required.
 - l. The Law Firm retains the right to withdraw representation at any time without withdrawing representation from all of the co-defendants.
8. The aforesaid attorneys and Law Firm have appeared on behalf of the five defendants at various stages of the proceedings and have filed pleadings on their behalf.
 9. The Defendants, Sarah Anderson, Justin Covington and Brooke McFadden Covington have sought and obtained opinions from various law firms which have indicated that each of them is free to employ the services of the Law Firm and the respective attorneys subject to the aforesaid Fee Agreement and extensive Waiver of Potential Conflict of Interest set forth above and executed by each of them. While this is an opinion of the individual attorney employed by the respective co-defendant and this Court has considered the respective opinions, this Court is not convinced that these potential conflict of interest issues are waivable by the co-defendants due to the number of defendants,

the issues involved in the trial of this matter and potential for breach of confidence of one or more co-defendants against the interests of another co-defendant(s).

10. Attorney Joshua Farmer indicated that he contacted the N.C. State Bar inquiring about the potential conflict of interest in the representation of five co-defendants and that the personnel of the State Bar indicated that he and his Law Firm could ethically represent these five co-defendants.
11. Mr. Garland Byers, Assistant District Attorney, responsible for the prosecution of these criminal indictments, consulted with Mr. Mark Morris and indicated to Mr. Morris that a potential non-waiverable conflict of interest existed in the representation of five co-defendants. In addition, Mr. Byers informed Mr. Morris that he would be extending a favorable plea offer to one of the co-defendants, Mr. Adam Christopher Bartley, who had a more extensive criminal record than the other co-defendants. This plea offer included dismissal of the felony charge and allowed Defendant Bartley to plead to the misdemeanor charge in exchange for truthful testimony against the other co-defendants. This plea offer was extended to Mr. Morris, Attorney for Defendant Bartley on or about July 22, 2015.
12. On August 3, 2015, Defendant Bartley executed an Informed Consent to allow the Law Firm to continue representation of the remaining co-defendants even though this continued representation of the Law Firm for the remaining four co-defendants may become material adverse to the interests of Defendant Bartley.
13. On August 3, 2015, the Law Firm filed a Motion to Withdraw from representation of the Defendant Bartley due to the fact that Defendant Bartley had retained other counsel to represent Defendant Bartley in this matter, to wit: Robert Denton of Morganton, NC.
14. Mr. John Byrd, Attorney was qualified as an Expert in Criminal Law having more than 40 years in the practice of criminal law primarily as a defense attorney handling every type of case from speeding tickets to many serious cases including first degree murders. In addition, Mr. Byrd served as a District Court Bar Councilor for District 29A for three years. As a Bar Councilor, Mr. Byrd dealt with committees considering charges against lawyers by the public. Mr. Byrd testified concerning the difficulty of handling cases of co-defendants represented by the same defense attorney or defense law firm. Mr. Byrd correctly explained that in a criminal trial, one of the primary concerns of counsel is to avoid a conflict of interest with co-defendants. This is the reason for appointment of different counsel for each defendant allegedly participating in the same criminal activity. Each defendant has a right to present their own story as to the events or non-events which have occurred. In addition, testimony of one defendant may implicate

or exculpate another co-defendant. A conflict of interest in this type of case can occur at any time during the trial, resulting in a defense attorney being placed in a difficult situation of breaching confidences with another co-defendant. Once a trial begins and a conflict of interest arises, it is difficult to correct resulting in a mistrial of the action and misuse of judicial resources. These are some of the reasons that the Court almost always appoints separate legal counsel for each co-defendant in a case arising out of the same alleged criminal activity. The appointment of separate counsel usually occurs in the initial phase of criminal proceedings to preserve the right of the defendant to confidence with his/her own attorney. In counties with a public defender office, the public defender will customarily only represent one defendant in a case involving multiple defendants, farming out the other defendants to other defense counsel thereby eliminating the possibility of a conflict of interest.

15. The Office of the District Attorney is charged with the responsibility of representing the citizens of the State of North Carolina and also to assure the Defendant receives a fair trial as well as insuring that the due process rights of a defendant are protected.
16. Rule 1.7 of the Canons of Ethics for the N.C. State Bar states as follows:

A lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A "concurrent conflict of interest" is defined as:

 - a. A case where the representation of one client will be directly adverse to another client or
 - b. A case where the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by a personal interest of the lawyer.
17. Revised Rule 1.7(23) states: "The potential for conflicts of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one co-defendant".
18. The fact that Co-Defendant Adam Christopher Bartley has been offered a plea bargain in exchange for truthful testimony of Mr. Bartley against the other four co-defendants raises the distinct possibility of a conflict of interest, breach of previous confidences to the defense counsel, difficulty in effective cross examination of Mr. Bartley as well as other procedural issues.
19. While the co-defendants have apparently each stated their contention of complete and total innocence to members of the Law Firm, the extensive waivers executed by the co-defendants to the Law Firm, and the potential for conflict of interest where one co-defendant is offered a plea agreement to testify against the other co-defendants is too great of risk to be disregarded by this Court.

20. Another more substantial risk is a claim by one or more of the co-defendants is a later allegation of ineffective assistance of counsel. This enhances the possibility of reversal by an appellate court, motion for appropriate relief which results in a second trial dealing with these matters.

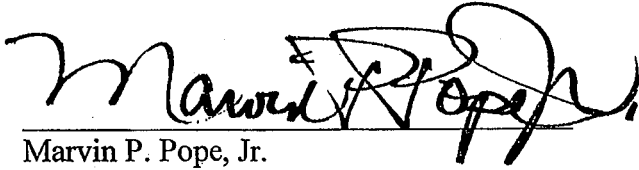
BASED UPON THE FOREGOING FINDINGS OF FACT, THE COURT MAKES THE FOLLOWING CONCLUSIONS OF LAW:

- 1. This matter is properly before the Court, by Consent of the parties, and the Court has jurisdiction of the subject matter of this action.
- 2. A Superior Court Judge has concurrent jurisdiction with the N.C. State Bar with regard to disqualification of attorneys to represent defendants in particular cases and matters per N.C.G.S 84-36. Such disqualification, where appropriate assures that a client's substantial interest in a client's loyalty is protected. The disqualification of an attorney by the court does not mean that the attorney has violated a specific disciplinary rule.
- 3. The representation of five co-defendants in this cause of action (now four co-defendants) is a concurrent conflict of interest which exists and cannot effectively be waived by a defendant absent knowledge of what a co-defendant may testify on behalf of the State against the remaining co-defendants.

BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW IT IS HEREBY ORDERED AND DECREED AS FOLLOWS:

- 1. The State of North Carolina's Motion to Disqualify Counsel be and is hereby **GRANTED**.
- 2. The Law Firm of Tomblin, Farmer & Morris, P.L.L.C, Attorneys Mark Morris, Joshua Farmer, Andrea Farmer and their associates are disqualified from representing any of the above named defendants in the matters captioned above.
- 3. The District Attorney is hereby directed to calendar this matter for hearing to allow the Court to advise the respective remaining co-defendants of their right to counsel, either appointed or execution of a waiver of counsel.

DATE: August 6, 2015



 Marvin P. Pope, Jr.
 Superior Court Judge

Cc: Garland F. Byers, Jr., Assistant District Attorney
Joshua B. Farmer, Attorney for the Defendants
Mark N. Morris, Attorney for the Defendants

STATE OF NORTH CAROLINA, RUTHERFORD COUNTY, C.B.C.

Plaintiff,)

vs.)

BROOKE McFADDEN COVINGTON,)
SARAH COVINGTON ANDERSON, and)
JUSTIN COVINGTON)

Defendants.)

MOTION TO RECONSIDER ORDER
DISQUALIFYING COUNSEL

COMES NOW defendants in the above-captioned matters, Brooke McFadden Covington, Sarah Covington Anderson and Justin Covington (collectively, "Movants"), by and through their attorneys Mark N. Morris and Joshua B. Farmer of Tomblin, Farmer & Morris, PLLC, and Angela Beeker of F.B. Jackson & Associates Law Firm, PLLC, pursuant to the 6th and 14th Amendments to the United States Constitution, Section 23 of the North Carolina Constitution, asking this Court to reconsider its previous order of August 6, 2015 which granted the State's Motion to Disqualify Counsel. Defendants aver there has been a substantial change in circumstances warranting this Court's reconsideration of the prior order and denial of the State's motion. In support of this motion to reconsider, the undersigned show unto the Court the following:

1. On August 6, 2015, the Honorable Marvin P. Pope, Jr. entered an order granting the State's Motion to Disqualify Counsel ("the Order").
2. Prior to entry of the Order, a plea offer had been transmitted by the State to co-defendant Adam Bartley ("Bartley") by letter dated July 22, 2015 (the "Plea Offer," attached hereto as "Exhibit 1").
3. The Plea Offer had not been accepted by Bartley at the time the Order was entered.
4. The Plea Offer provided in part that, in exchange for the State dismissing the charge of Second Degree Kidnapping, Bartley would provide truthful testimony in the prosecution of his remaining co-defendants, Brooke Covington, Sarah Covington Anderson, Justin Covington and Robert Walker, Jr. (collectively, "the Co-Defendants").
5. In the Order, the Court found as fact that the Plea Offer "raises the distinct possibility of a conflict of interest, breach of previous confidences of to the defense counsel, difficulty in effective cross-examination of Mr. Bartley, as well as other procedural issues." ¶ 18.

6. The Court thus concluded that joint representation of the Co-Defendants “is a concurrent conflict of interest which exists and cannot effectively be waived by a defendant absent knowledge of what a co-defendant may testify on behalf of the State against the remaining co-defendants.” ¶ 3.
7. On November 28, 2014, Bartley had executed an affidavit (“Affidavit I”, attached hereto as “Exhibit 2”) in which he declared his innocence and the innocence of the co-defendants.
8. On August 13, 2015, Bartley signed another affidavit (“Affidavit II”, attached hereto as “Exhibit 3”) in which he describes, among other things, the facts and circumstances surrounding his signing Affidavit I.
9. In Affidavit II, Bartley states: “Previous to and at the time of signing Affidavit I on November 28, 2014: (1) I was not a client of Tomblin, Farmer & Morris, PLLC, Joshua Farmer, Mark Morris, Andrea Farmer, or other associates of Tomblin, Farmer & Morris, PLLC (“the Firm”); (2) I had not discussed and I did not discuss any matters relating to this case with Firm; (3) I had not and I did not discuss the contents of Affidavit I with the Firm.” ¶4. Bartley further states: “I signed Affidavit I in the presence of Dewitt and Andra Prince, who are personal friends of mine.” ¶ 5. Bartley further states that: “...Affidavit I was not intended to constitute a confidential communication between myself and the Firm” and “that I do not consider Affidavit I to be protected by the attorney-client privilege.” ¶¶ 7-8.
10. Bartley in Affidavit II further indicates the Firm does not hold Bartley’s confidential information. See Bartley’s statement in which he states “I have had no conversations with the Firm in which I have made statements that I did not make to anyone else who has asked me about this matter.” ¶ 9.
11. In Affidavit II, Bartley – now represented by Rob Denton of the Burke County bar – knowingly and voluntarily rejected the Plea Offer and indicated that he does “not intend to testify in any manner inconsistent with Affidavit I and [his] prior protestations of innocence.” ¶ 14. *See also* Exhibit B to Affidavit II.
12. On August 13, 2015, Bartley executed a document entitled “Informed Consent of Adam Bartley for Tomblin, Farmer & Morris to Continue Representation of Co-Defendants” (attached hereto as “Exhibit 4”). In this document, Bartley consents to the Firm’s continued representation of the Co-Defendants in these criminal actions, even if Bartley’s interests become materially adverse to those of the Co-Defendants. Bartley also acknowledges the possibility that the Firm may cross-examine Bartley’s testimony while still complying with

the Firm's duties to Bartley under Rule 1.9 of the North Carolina Rules of Professional Conduct.

13. On August 13, 2015, Bartley wrote by his own hand on the Plea Offer that he rejects the Plea Offer and reasserts his innocence (*see* attached hereto as "Exhibit 5").
14. On August 18, 2015, Robert Louis Walker, Jr. ("Walker") retained the services of Matthew Cabe ("Cabe") of the Burke County bar. Cabe filed a Notice of Appearance in that related case on August 18, 2015 (attached hereto as "Exhibit 6").
15. After retaining Cabe, Walker executed a document on August 18, 2015, entitled "Informed Consent of Robert Louis Walker, Jr. for Tomblin, Farmer & Morris to Continue Representation of Co-Defendants" (attached hereto as "Exhibit 7"). In this document, Walker consents to the Firm's continued representation of the Movants in these criminal actions, even if Walker's interests become materially adverse to those of the Movants. Walker also acknowledges the possibility that the Firm may cross-examine Walker's testimony while still complying with the Firm's duties to Walker under Rule 1.9 of the North Carolina Rules of Professional Conduct.
16. Further, after retaining Cabe, Walker executed an affidavit on August 18, 2015 ("Walker Affidavit", attached hereto as "Exhibit 8") in which Walker indicates the Firm does not hold Walker's confidential information. See Walker's statement in which he states "I have had no conversations with the Firm in which I have made statements that I did not make to anyone else who has asked me about this matter." ¶ 2.
17. On August 18, 2015, Sarah Anderson, and on August 19, 2015, Brooke Covington and Justin Covington – after individual consultation with independent counsel other than the undersigned – did each execute affidavits which, in pertinent part, state that each Movant: (1) reviewed the Order with independent counsel; (2) discussed with independent counsel the possibility of incrimination by other co-defendants; (3) discussed among themselves and reiterated to each other Movants' innocence in these matters; (4) expressed Movants' intentions to reject any plea offer(s) made to them similar to the Plea Offer advanced to Bartley; and (5) declared Movants' intentions to "waive any right ... to appeal a conviction in this matter based on grounds of ineffective assistance of counsel stemming from a conflict of interest of the Firm and its attorneys related to the Firm's joint representation of myself and the other co-defendants in this matter." Said affidavits are attached hereto as "Exhibit 9", "Exhibit 10," and "Exhibit 11."
18. Movants also rely on the opinion of the North Carolina Court of Appeals in *State v. Yelton*, 87 N.C. App. 554, 361 S.E.2d 753 (1987), in which the Court of Appeals granted certiorari of a pre-trial order for disqualification of counsel jointly representing a father and son

accused of the same or similar offenses. After granting certiorari, the Court overturned the ruling of the trial court after finding that the defendants knowingly waived the right to bring a post-conviction challenge based on ineffective assistance of counsel stemming from a conflict of interest, such waivers having been executed by Movants herein. Furthermore the Court stated as follows:

In joint representation cases, only where there is an actual conflict of interest which denies the defendants the effective assistance of counsel does a problem arise. A *potential* conflict of interest, as distinguished from an *actual* conflict of interest, is not sufficient to warrant the State's interference with the constitutionally guaranteed right of a criminal defendant to retain and be represented by the counsel of his choice.

Yelton, 87 N.C. App. at 561, 361 S.E.2d at 758.

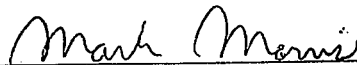
19. The Movants further contend that the State of North Carolina did not have standing to bring the State's Motion to Disqualify Counsel. Standing to raise the issue of disqualification lies with the clients to whom the Firm owes its professional obligations.
20. In light of the averments contained herein as supported by the Exhibits attached hereto, Movants respectfully submit that the Order's findings and conclusions referenced above cannot be sustained. Movants thus move the Court to reconsider the findings and conclusions pronounced in the Order and deny the State's motion to disqualify counsel.

WHEREFORE, Movants pray that the Court reconsider its previous order granting the State's Motion to Disqualify Counsel in this matter based upon a substantial change in circumstances from those existing at the time of the entry of the Order and deny the State's motion to disqualify counsel.

This is the 20 day of August, 2015.



Joshua B. Farmer, NC Bar #32669
TOMBLIN, FARMER & MORRIS, PLLC
Attorney for Defendants/Movants
187 North Washington Street
Post Office Box 632
Rutherfordton, North Carolina 28139
Telephone: (828) 286-3866
Facsimile: (828) 286-4820



Mark N. Morris, NC Bar #32846
TOMBLIN, FARMER & MORRIS, PLLC
Attorney for Defendants/Movants
187 North Washington Street
Post Office Box 632
Rutherfordton, North Carolina 28139
Telephone: (828) 286-3866
Facsimile: (828) 286-4820

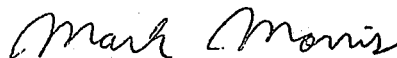


Angela S. Beeker, NC Bar #18420
F.B. JACKSON AND ASSOCIATES LAW FIRM, PLLC
Attorney for Defendants/Movants
Post Office Box 1666
Hendersonville, North Carolina 28793
Telephone: (828) 697-5410

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this document in the above entitled action upon all other parties to this cause by hand delivery to an associate or employee with the Rutherford County District Attorney's Office.

This the 20 day of August, 2015.



Mark Morris



State of North Carolina
General Court of Justice
Prosecutorial District 29A

21 South Main Street
Marion, NC 28752
(828) 655-4110

TED BELL

District Attorney

P.O. Box 70
Rutherfordton, NC 28139
(828) 288-6110

July 22, 2015

Mr. Mark Morris, Esq.
Joshua B. Farmer, Esq.
Tomblin, Farmer & Morris, PLLC
187 North Washington Street
Rutherfordton, North Carolina 28139

By Hand Delivery

AT 11:02 AM TO

CALEB FARMER

DFB

RE: State v. Adam Christopher Bartley
Rutherford County File No. 15-CRS-156

Gentlemen:

I am writing to convey a plea offer to your client, Adam Christopher Bartley, in the above-referenced case. The offer is as follows:

The State will dismiss Count I of the Indictment, Second Degree Kidnapping, a Class E Felony and the defendant will plead guilty to Simple Assault, a Class 2 Misdemeanor. The Defendant will provide truthful testimony in the prosecution of the remaining co-defendants, to wit: Brooke McFadden Covington, Sarah Covington Anderson, Robert Louis Walker, Jr., and Justin Brock Covington. In addition, the defendant will cooperate fully with law enforcement in the ongoing investigation into this incident as well as any others which become known during said investigation. The Defendant will receive a suspended sentence with no active period of confinement and will be placed on supervised probation under such additional terms as the court may require.

As I previously informed you, I believe that this offer presents you, your Firm, and your associates, with a non-waivable concurrent conflict of interest and I therefore respectfully request that you withdraw from this representation immediately.

I look forward to your reply.

Sincerely,

Garland F. Byers, Jr.
Assistant District Attorney

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF RUTHERFORD

THE STATE OF NORTH CAROLINA

vs.

BROOKE COVINGTON, SARAH
COVINGTON ANDERSON, JUSTIN
COVINGTON, ROBERT LOUIS WALKER,
JR. & ADAM BARTLEY

AFFIDAVIT OF ADAM BARTLEY


The affiant, being duly sworn, deposes and says:

1. I was born on November 16, 1989 and I live at 3005 Sunlight Path Drive, Monroe, North Carolina 28110.
2. I was a member of Word of Faith Fellowship Church located at 207 Old Flynn Road, Spindale, North Carolina ("Church") from February 2010 until August 2013.
3. I am one of the potential defendants named in the caption of this affidavit and I am familiar with the other potential defendants named in the caption of this affidavit.
4. I lived with Kent Covington ("Kent") & Brooke Covington ("Brooke") at 207 Breeze Hill, Rutherfordton, North Carolina from August 2012 until August 2013.
5. Matthew Fenner ("Matthew") lived with Kent & Brooke from the time when I moved in with them until he left in January 2013.
6. I was at the Church on the evening of January 27, 2013. After the evening service was over, I came into the sanctuary. Brooke, Sarah Anderson ("Sarah") and Nick Anderson ("Nick") were in the sanctuary foyer talking to Matthew.
7. Shortly thereafter, Matthew came back into the sanctuary and sat down and began praying.
8. Several members of our household gathered around, including me, to pray with him. I was standing behind Matthew who was seated toward the rear of the right section of the seats in the sanctuary of the Church.

9. When prayer was over, Matthew smiled, gave Sarah, Nick and Danielle Cordes ("Danielle") hugs and thanked everyone for praying for him.
10. I asked Sarah if I could ride home with her. Sarah told me that Matthew was riding home with her and wanted to talk to her so I needed to go with someone else.
11. At no time during the prayer session nor during the time that I saw Matthew talking to Brooke, Sarah and Nick in foyer, was Matthew slapped, choked, touched with force or touched against his will. Neither was he held down, dragged or threatened in any way. There were no marks of any kind that could be seen on Matthew's face or about his neck.
12. At no time during the prayer session was Matthew's sexual orientation criticized, threatened or addressed.
13. Matthew participated in the prayer session voluntarily and was free to leave at any time. During the prayer session, I remember Matthew saying "these devils are coming out of me".

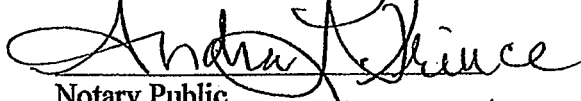
Further the affiant sayeth naught.

This the 28th day of November, 2014.


Adam Bartley

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

Sworn to and subscribed before me this the 28th day of November, 2014.


Notary Public

My commission expires: 2/18/16

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

COUNTY OF RUTHERFORD

2015 CRS 156

STATE OF NORTH CAROLINA

vs.

ADAM BARTLEY

AFFIDAVIT OF ADAM BARTLEY


The affiant, upon solemn affirmation, deposes and says that the following is a truthful statement about the matter(s) contained herein:

1. I was born on November 16, 1989 and I live at 3005 Sunlight Path Drive, Monroe, North Carolina 28110.
2. Attached as Exhibit A is a true and accurate representation of the affidavit I signed under oath on November 28, 2014 ("Affidavit I").
3. This affidavit ("Affidavit II") describes the facts and circumstances surrounding the signing of Affidavit I.
4. Previous to and at the time of signing Affidavit I on November 28, 2014: (1) I was not a client of Tomblin, Farmer & Morris, PLLC, Joshua Farmer, Mark Morris, Andrea Farmer, or other associates of Tomblin, Farmer & Morris, PLLC ("the Firm"); (2) I had not discussed and I did not discuss any matters relating to this case with Firm; and (3) I had not and I did not discuss the contents of Affidavit I with the Firm.
5. I signed Affidavit I in the presence of Dewitt and Andra Prince, who are personal friends of mine.
6. Subsequent to the signing of Affidavit I, I retained the Firm to represent me in this matter.
7. As such, Affidavit I was not intended to constitute a confidential communication between myself and the Firm and I do not consider it as such.

8. Therefore, I do not consider Affidavit I to be covered by the attorney-client privilege.
9. I have had no conversations with the Firm in which I have made statements that I did not make to anyone else who has asked me about this matter.
10. Attached as Exhibit B is a copy of a plea offer to me made by the District Attorney's office and transmitted to my counsel at the time, Joshua Farmer and Mark Morris (the "Plea Offer").
11. I am now represented by Rob Denton of the Burke County bar, and I am no longer represented by the Firm.
12. I was present on August 3, 2015 for the argument and consideration of the motion to disqualify the Firm brought by the District Attorney's office. At that hearing, I heard the debate between counsel and judge about the hypothetical possibility that I might accept the Plea Offer and testify in a manner that may criminally implicate my co-defendants in related matters, Brooke Covington, Sarah Covington Anderson, Justin Covington and/or Robert Walker, Jr (my "Co-Defendants").
13. After consultation with my present counsel, I wish to reaffirm the assertion of my innocence of my Co-Defendants and all other statements contained in Affidavit I.
14. Further, I wish to declare that I have no intention of accepting the Plea Offer and that I do not intend to testify in any manner inconsistent with Affidavit I and my prior protestations of innocence.

Further the affiant sayeth naught.

This the 13 day of August, 2015.

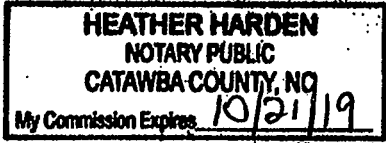

Adam Bartley

STATE OF NORTH CAROLINA
COUNTY OF ~~RUTHERFORD~~ Burke

Affirmed to and subscribed before me this the 13 day of August, 2015.

Heather Harden
Notary Public

My commission expires: 10/21/19



STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF RUTHERFORD

THE STATE OF NORTH CAROLINA

vs.

BROOKE COVINGTON, SARAH
COVINGTON ANDERSON, JUSTIN
COVINGTON, ROBERT LOUIS WALKER,
JR. & ADAM BARTLEY**AFFIDAVIT OF ADAM BARTLEY**

The affiant, being duly sworn, deposes and says:

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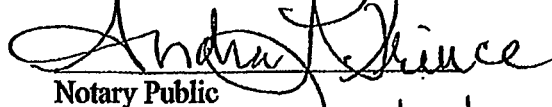
Further the affiant sayeth naught.

This the 28th day of November, 2014.


Adam Bartley

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

Sworn to and subscribed before me this the 28th day of November, 2014.


Notary Public

My commission expires: 2/18/16



State of North Carolina
General Court of Justice
Prosecutorial District 29A

21 South Main Street
Marion, NC 28762
(828) 656-4110

TED BELL
District Attorney

P.O. Box 70
Rutherfordton, NC 28139
(828) 288-6110

July 22, 2015

Mr. Mark Morris, Esq.
Joshua B. Farmer, Esq.
Tomblin, Farmer & Morris, PLLC
187 North Washington Street
Rutherfordton, North Carolina 28139

By Hand Delivery

AT 11:02 AM TO
CALEB FARMER
SFB

RE: State v. Adam Christopher Bartley
Rutherford County File No. 15-CRS-156

Gentlemen:

I am writing to convey a plea offer to your client, Adam Christopher Bartley, in the above-referenced case. The offer is as follows:

The State will dismiss Count I of the Indictment, Second Degree Kidnapping, a Class E Felony and the defendant will plead guilty to Simple Assault, a Class 2 Misdemeanor. The Defendant will provide truthful testimony in the prosecution of the remaining co-defendants, to wit: Brooke McFadden Covington, Sarah Covington Anderson, Robert Louis Walker, Jr., and Justin Brock Covington. In addition, the defendant will cooperate fully with law enforcement in the ongoing investigation into this incident as well as any others which become known during said investigation. The Defendant will receive a suspended sentence with no active period of confinement and will be placed on supervised probation under such additional terms as the court may require.

As I previously informed you, I believe that this offer presents you, your Firm, and your associates, with a non-waivable concurrent conflict of interest and I therefore respectfully request that you withdraw from this representation immediately.

I look forward to your reply.

Sincerely,
Garland F. Byers, Jr.
Garland F. Byers, Jr.
Assistant District Attorney

Robert Denton discussed this plea w/ me on 8/13/15. He explained my choices and I understand the same. I reject any plea offer as I did nothing wrong.

Adam C. [Signature]
Adam Bartley
[Signature]
witness


**INFORMED CONSENT OF ADAM BARTLEY FOR TOMBLIN, FARMER & MORRIS
TO CONTINUE REPRESENTATION OF CO-DEFENDANTS**

I, Adam Christopher Bartley, have previously retained and employed the services of Tomblin, Farmer & Morris, PLLC, ("the Firm") as legal counsel to represent me in the Rutherford County criminal matter regarding allegations made by Richard Matthew Fenner III, file number 15 CRS 156. In addition to representing me, the Firm was also representing other co-defendants in matters arising from the allegations referenced above. Because the Firm was representing more than one defendant in said case, I knowingly acknowledged in a prior waiver that I had been fully informed of the possibility that a conflict of interest might arise in the future between co-defendants. However, I do not believe a conflict ever arose or ever will arise in this matter.

At the present time, I have now retained new legal counsel and understand that the Firm no longer represents me. I understand that the Firm will continue to represent any or all of the other co-defendants, Brooke Covington, Sarah Anderson, Justin Covington, and Robert Louis Walker ("co-defendants"). I understand that the Firm no longer represents my interests in this matter and that I am no longer relying on their representation. I understand that the Firm only represents the interests of any or all of my co-defendants. I further understand that it is possible that the interests of co-defendants may, in the future, become materially adverse to my interests. In that event, I understand the possibility that the Firm may cross-examine my testimony while still complying with their duty to me as a former client under North Carolina Rules of Professional Conduct ("NCRPC") 1.9.

Furthermore, I understand that the Firm will follow the NCRPC with regard to any confidential information that they learned during their limited representation of me. However, pursuant to an affidavit executed of even date herewith, I indicated that during the course of my representation by the Firm, I had no conversations with the Firm in which I made statements that I did not make to anyone else who has asked me about this matter. Therefore, I never held an expectation that anything I said to the Firm would or should constitute a confidential communication. I further understand that the Firm retains the right to use any information that has become generally known regarding my interests in this case. I also understand that the Firm may reveal a limited amount of information relating to their representation of me, subject to the NCRPC. I also previously waived the confidentiality of my communications with the Firm to the extent that said communications may be shared with co-defendants to further the common interests of everyone represented by the Firm.

Understanding all this, I hereby knowingly and voluntarily consent to the Firm continuing to represent co-defendants Brooke Covington, Sarah Anderson, Justin Covington, and Robert Louis Walker.


Adam Christopher Bartley

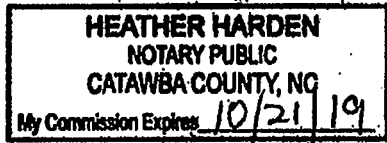
8-13-15
Date

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD *Burke*

Affirmed to and subscribed before me this the 13 day of August, 2015.

Heather Harden
Notary Public

My commission expires: 10/21/19





State of North Carolina
General Court of Justice
Prosecutorial District 29A

21 South Main Street
Marion, NC 28762
(828) 656-4110

TED BELL
District Attorney

P.O. Box 70
Rutherfordton, NC 28139
(828) 288-6110

July 22, 2015

Mr. Mark Morris, Esq.
Joshua B. Farmer, Esq.
Tomblin, Farmer & Morris, PLLC
187 North Washington Street
Rutherfordton, North Carolina 28139

By Hand Delivery

AT 11:02 AM TO
CALEB FARMER
SFB

RE: State v. Adam Christopher Bartley
Rutherford County File No. 15-CRS-156

Gentlemen:

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As I previously informed you, I believe that this offer presents you, your Firm, and your associates, with a non-waivable concurrent conflict of interest and I therefore respectfully request that you withdraw from this representation immediately.

I look forward to your reply.

Sincerely,

Garland F. Byers, Jr.
Garland F. Byers, Jr.
Assistant District Attorney

Robert Denton discussed this plea w/ me on 8/13/15. He explained my choices and I understand the same. I reject any plea offer as I did nothing wrong.

Adam C. [Signature]
Adam Bartley
[Signature]
witness

FILED

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

RUTHERFORD COUNTY 2015 AUG 19 AM 11:40 File No.: 15 CrS 153

STATE OF NORTH CAROLINA RUTHERFORD COUNTY, C&G.

vs.



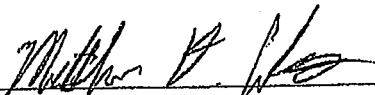
NOTICE OF APPEARANCE

ROBERT LOUIS WALKER, JR.

TAKE NOTICE that the undersigned makes an Appearance on behalf of the above named Defendant, and further requests that the Clerk of Superior Court reflect the same upon this file and that the undersigned be forwarded calendars when this matter is scheduled to be tried.

This the 18th day of August, 2015.

LAW OFFICE OF BOB A. LEDFORD
ATTORNEY FOR DEFENDANT

By: 

MATTHEW D. CABE
P.O. Drawer 2247
Morganton, North Carolina 28680
(828) 433-7380

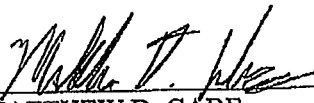
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Notice of Appearance was this date served upon the following person by hand delivery or by depositing a copy of same to said person in the United States mail, postage prepaid, in Morganton, North Carolina, and addressed as follows:

Assistant District Attorney
229 North Main Street
Rutherfordton, North Carolina 28139

This the 19th day of August, 2015.

LAW OFFICE OF BOB A. LEDFORD
ATTORNEY FOR PETITIONER

By: 
MATTHEW D. CABE
P.O. Drawer 2247
Morganton, North Carolina 28680
(828) 433-7380

INFORMED CONSENT OF ROBERT LOUIS WALKER, JR. FOR TOMBLIN, FARMER & MORRIS TO CONTINUE REPRESENTATION OF CO-DEFENDANTS

I, Robert Louis Walker, Jr., have previously retained and employed the services of Tomblin, Farmer & Morris, PLLC, ("the Firm") as legal counsel to represent me in the Rutherford County criminal matter regarding allegations made by Richard Matthew Fenner III, file number 15 CRS 153. In addition to representing me, the Firm was also representing other co-defendants in matters arising from the allegations referenced above. Because the Firm was representing more than one defendant in said case, I knowingly acknowledged in a prior waiver that I had been fully informed of the possibility that a conflict of interest might arise in the future between co-defendants. However, I do not believe a conflict ever arose or ever will arise in this matter.

At the present time, I have now retained new legal counsel and understand that the Firm no longer represents me. I understand that the Firm will continue to represent any or all of the other co-defendants, Brooke Covington, Sarah Anderson, and Justin Covington ("co-defendants"). I understand that the Firm no longer represents my interests in this matter and that I am no longer relying on their representation. I understand that the Firm only represents the interests of any or all of my co-defendants. I further understand that it is possible that the interests of co-defendants may, in the future, become materially adverse to my interests. In that event, I understand the possibility that the Firm may cross-examine my testimony while still complying with their duty to me as a former client under North Carolina Rules of Professional Conduct ("NCRPC") 1.9.

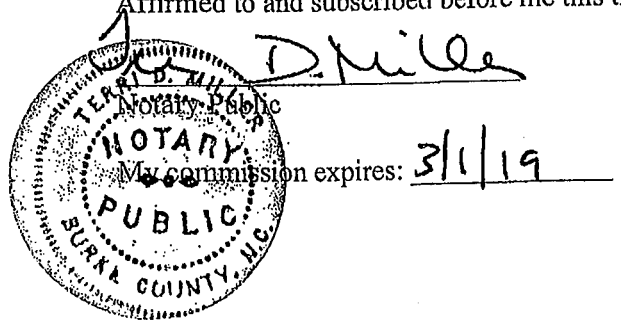
Furthermore, I understand that the Firm will follow the NCRPC with regard to any confidential information that they learned during their limited representation of me. However, I have had no conversations with the Firm in which I made statements that I did not make to anyone else who has asked me about this matter. Therefore, I did not have an expectation that anything I said to the Firm would or should constitute a confidential communication. I further understand that the Firm retains the right to use any information that has become generally known regarding my interests in this case. I also understand that the Firm may reveal a limited amount of information relating to their representation of me, subject to the NCRPC. I also previously waived the confidentiality of my communications with the Firm to the extent that said communications may be shared with co-defendants to further the common interests of everyone represented by the Firm.

Understanding all this, I hereby knowingly and voluntarily consent to the Firm continuing to represent co-defendants Brooke Covington, Sarah Anderson, and Justin Covington.

Robert L Walker Jr 8/18/2015
Robert Louis Walker, Jr. Date

STATE OF NORTH CAROLINA
COUNTY OF BURKE

Affirmed to and subscribed before me this the 18th day of August, 2015.



STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
2015 CRS 153

STATE OF NORTH CAROLINA

vs.

ROBERT LOUIS WALKER, JR.


AFFIDAVIT OF ROBERT LOUIS WALKER, JR.

The affiant, upon solemn affirmation, deposes and says that the following is a truthful statement about the matter(s) contained herein:

- I have previously been represented by the law firm of Tomblin, Farmer & Morris, PLLC and its attorneys, Joshua Farmer, Mark Morris, Andrea Farmer, or other associates of Tomblin, Farmer & Morris, PLLC (“the Firm”)
- I have had no conversations with the Firm in which I have made statements that I did not make to anyone else who has asked me about this matter.
- I am now represented by Matthew Cabe of the Burke County bar, and I am no longer represented by the Firm.
- I was present on August 3, 2015 for the argument and consideration of the motion to disqualify the Firm brought by the District Attorney’s office. At that hearing, I heard the debate between counsel and judge about the hypothetical possibility that a co-defendant might testify in a manner that may criminally implicate other co-defendants in related matters, Brooke Covington, Sarah Covington Anderson, Justin Covington and/or Adam Bartley (my “Co-Defendants”).
- After consultation with my present counsel, I wish to reaffirm the assertion of my innocence and that of my Co-Defendants.
- Further, I wish to declare that I do not intend to testify in any manner inconsistent my prior protestations of the innocence of myself and my Co-Defendants.

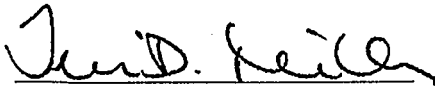
Further the affiant sayeth naught.

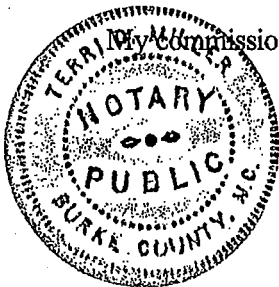
This the 18 day of August, 2015.


Robert Louis Walker, Jr.

**STATE OF NORTH CAROLINA
COUNTY OF BURKE**

Affirmed to and subscribed before me this the 18th day of August, 2015.


Notary Public



My commission expires: 3/1/19

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
2015 CRS 164

STATE OF NORTH CAROLINA

vs.

SARAH COVINGTON ANDERSON

AFFIDAVIT OF SARAH COVINGTON ANDERSON

The affiant, upon solemn affirmation, deposes and says that the following is a truthful statement about the matter(s) contained herein:

1. I am the defendant in the above-captioned criminal action (the "Matter").
2. I had retained the services of Tomblin, Farmer & Morris, PLLC (the "Firm") as legal counsel to represent me in this matter.
3. On August 6, 2015, the Court ordered that the Firm was disqualified from continuing to represent me in this Matter.
4. I have since discussed these circumstances with an attorney independent of the Firm, Philip Roth of the law firm Marshall Roth & Gregory.
5. Mr. Roth reviewed the Court's order from August 6, 2015. We discussed the Court's concerns about the possibility of co-defendants turning against one another and attempting to incriminate one another in this Matter.
6. I have further discussed the allegations made in this case with Brooke McFadden Covington and Justin Covington who both are co-defendants in this Matter. All of us know and maintain that our actions were proper and that we engaged in no criminal conduct.
7. My family and I have discussed that if any of us were to be offered a plea agreement similar to that offered to co-defendant Adam Bartley, none of us have any intention or desire to accept such an offer. My family and I have also discussed the fact that Mr. Bartley has rejected the plea agreement offered to him.
8. After consulting with Mr. Roth about the matter, I wish to waive any right I might have to

appeal a conviction in this matter based on grounds of ineffective assistance of counsel stemming from a conflict of interest of the Firm and its attorneys related to the Firm's joint representation of myself and the other co-defendants in this matter. As in my previous consultation with Mr. Roth about the issue of my selection of counsel in this case, we discussed the advantages and potential consequences of joint representations.

9. Thus, after consulting with independent counsel, I reiterate my desire to continue being represented by the Firm in this Matter.

Further the affiant sayeth naught.

This the 18 day of August, 2015.

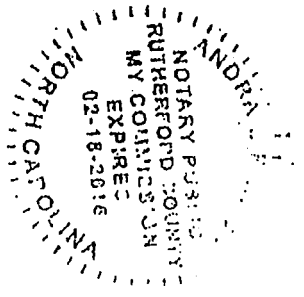
Sarah Anderson
Sarah Anderson

**STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD**

Affirmed to and subscribed before me this the 18th day of August, 2015.

Andra J. Prince
Notary Public

My commission expires: 2/18/16



STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
2015 CRS 155

STATE OF NORTH CAROLINA

vs.

BROOKE MCFADDEN COVINGTON

AFFIDAVIT OF BROOKE MCFADDEN COVINGTON

The affiant, upon solemn affirmation, deposes and says that the following is a truthful statement about the matter(s) contained herein:

1. I am the defendant in the above-captioned criminal action and my two children along with two unrelated individuals have been similarly charged in other cases pending in the Superior Court of Rutherford County.
2. I had retained the services of Tomblin, Farmer & Morris, PLLC (the "Firm") and its attorneys Joshua Farmer and Mark Morris as legal counsel to represent me in this matter and my two children along with the other two unrelated individuals, had also retained the Firm to represent them on the similar charges.
3. After the office of the District Attorney raised questions of conflict of interest with respect to the joint representation by the Firm of my children, the other two individuals, and me, the other unrelated defendants have sought and now have their own separate counsel to represent them in their companion cases.
4. On August 6, 2015, the Court ordered that the Firm was disqualified from continuing to represent me and my two children in this Matter.
5. I have since consulted again about my right to be represented by counsel of my choice along with my two children with an attorney not associated with the Firm. The attorney is Bob Long, Jr. of The law firm Long, Parker, Warren, Anderson & Payne, P.A. in Asheville with whom I am familiar because of his representation of a relative of mine in an unrelated matter a number of years ago.
6. After Mr. Long reviewed the Court's order from August 6, 2015, he and I had discussed the Court's concerns about the possibility of co-defendants testifying in a manner which could

possibly incriminate another co-defendant in this matter and the limitations such an occurrence must place on the Firm to effectively represent me or my children as the case might be.

7. I have further discussed the allegations made in this case with my children Sarah Covington Anderson and Justin Covington who both are similarly charged in companion cases. The three of us know what occurred on the occasion in question and continue to maintain that our actions at the time referenced in the allegations in our similar charges were proper and that we engaged in no criminal conduct on that occasion
8. My family and I have discussed that if any of us were to be offered a plea agreement similar to that offered to co-defendant Adam Bartley, none of us have any intention or desire to accept such an offer. My family and I have also been informed that Mr. Bartley who was offered a plea agreement has now rejected that plea agreement offered to him by the District Attorney Office through his now separately retained attorney.
9. To my knowledge, there is absolutely no actual conflict of interest between my children and me that could in any way prohibit the Firm and its attorneys Joshua Farmer and Mark Morris from representing me and my children jointly in the related charges against us. Further, I have been fully informed, both before and after entry of the Courts order on August 6, 2015, of all of the possibilities for potential conflict of interest arising out of the joint representation of my children and me by the Firm and its attorneys and based on my knowledge, the potential for conflict of interest arising between my children and me is highly unlikely and one that I am willing to waive as hereinafter set out.
10. After fully consulting with my independent counsel, Bob Long, Jr. of Asheville, I reiterate my desire to continue to be represented by the Firm and its attorneys Joshua Farmer and Mark Morris in my case jointly with the cases of my children for all of the reasons previously expressed to Mr. Long originally and after my latest consultation with him wherein all of the disadvantages and advantages of joint representation have been fully discussed.
11. After consulting with Mr. Long about the potential conflict, I hereby waive any right I might have to appeal or otherwise seek to set aside any conviction of me in this case based on grounds of ineffective assistance of counsel stemming from a potential conflict of interest of the Firm and its attorneys related to the Firm's joint representation of my children and me going forward and the prior representation of the other co-defendants with similar charges.
12. In short, being fully informed and waiving any potential conflict of interest going forward with respect to the Firm and its attorneys, I desire to exercise my constitutional right to have retained counsel of my choosing which in this case is the Firm and its attorneys Joshua

Farmer and Mark Morris.

This the 19 day of August, 2015.

Brooke Covington
Brooke Covington

STATE OF NORTH CAROLINA
COUNTY OF Rutherford

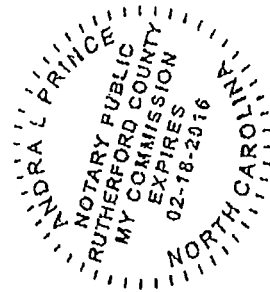
I, Andra L. Prince, a Notary Public for said State and County, certify that
Brooke Covington appeared before me this day and acknowledged to me
that she voluntarily signed the foregoing document for the purpose stated therein, in the county and state
indicated above. The undersigned has personal knowledge of the identity of the principal or satisfactory
evidence of the principal's identity by having inspected a picture identification.

This the 19th day of August, 2015.

Andra L. Prince

Andra L. Prince, Notary Public
(printed or typed name)

My commission expires: 2/18/16



STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
2015 CRS 154

STATE OF NORTH CAROLINA

vs.

JUSTIN COVINGTON

AFFIDAVIT OF JUSTIN COVINGTON

The affiant, upon solemn affirmation, deposes and says that the following is a truthful statement about the matter(s) contained herein:

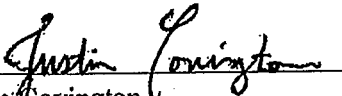
1. I am the defendant in the above-captioned criminal action (the "Matter").
2. I had retained the services of Tomblin, Farmer & Morris, PLLC (the "Firm") as legal counsel to represent me in this matter.
3. I was present on August 3, 2015 when the Motion to Disqualify Counsel was heard by the Court and I have reviewed the Court's Order that the Firm was disqualified from continuing to represent me in this Matter.
4. I have since discussed these matters with an attorney independent of the Firm, John Gresham of the law firm Tin Fulton Walker & Owen. I had previously conferred with John Gresham concerning a possible conflict of interest with joint representation by the Firm.
5. Mr. Gresham was present at the August 3rd hearing and had reviewed the court order from August 6, 2015. We discussed the Court's concerns about the possibility of co-defendants turning against one another and attempting to incriminate one another in the trial of this case.
6. I have also learned that the other non-family co-defendant, Robert Louis Walker, Jr. has now retained separate counsel.
7. I have further discussed the allegations made in this case with my family, including with my sister Sarah Covington Anderson and Brooke Covington who both are co-defendants in this Matter. All of us know and maintain that our actions were proper and that we engaged in no

criminal conduct.

8. My family and I have discussed that if any of us were to be offered a plea agreement similar to that offered to co-defendant Adam Bartley, none of us have any intention or desire to accept such an offer. My family and I have also discussed the fact that Mr. Bartley has rejected the plea agreement offered to him.
9. After consulting with Mr. Gresham about the matter, I wish to waive any right I might have to appeal a conviction in this matter based on grounds of ineffective assistance of counsel stemming from a conflict of interest of the Firm and its attorneys related to the Firm's joint representation of myself and the other co-defendants in this matter. As in my previous consultation with Mr. Gresham about the issue of my selection of counsel in this case, we discussed the advantages and potential consequences of joint representations.
10. Thus, after consulting with independent counsel Gresham, I reiterate my desire to continue being represented by the Firm in this Matter.

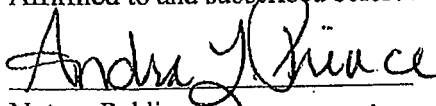
Further the affiant sayeth naught.

This the 19 day of August, 2015.

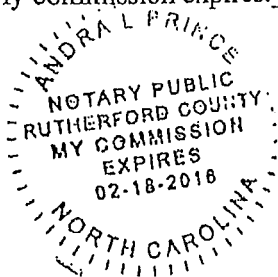

Justin Covington

**STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD**

Affirmed to and subscribed before me this the 19th day of August, 2015.


Notary Public

My commission expires: 2/18/16



STATE OF NORTH CAROLINA

In The General Court Of Justice

RUTHERFORD County

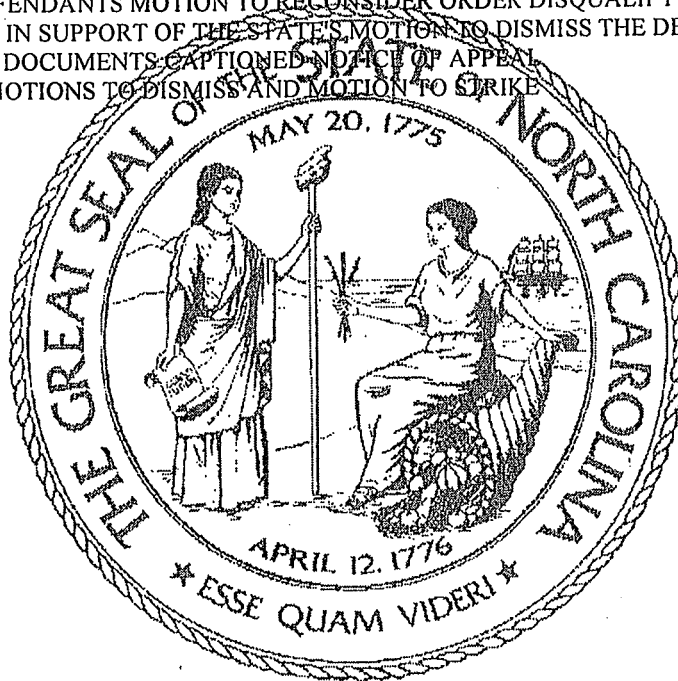
**CERTIFICATE OF
TRUE COPY**

Office of the Clerk of the Superior Court

As Clerk of the Superior Court of this County, State of North Carolina, I certify that the attached copies of the documents described below are true and accurate copies of the originals now on file in this office.

Number And Description Of Attached Documents:

- MOTION TO STAY PROCEEDINGS
- NOTICE OF APPEAL 15CRS154
- NOTICE OF APPEAL 15CRS155
- NOTICE OF APPEAL 15CRS164
- MOTION TO DISMISS DEFENDANTS MOTION TO RECONSIDER ORDER DISQUALIFYING COUNSEL
- MEMORANDUM OF LAW IN SUPPORT OF THE STATE'S MOTION TO DISMISS THE DEFENDANT'S
- MOTION TO STRIKE THE DOCUMENTS CAPTIONED NOTICE OF APPEAL
- RESPONSE TO STATE'S MOTIONS TO DISMISS AND MOTION TO STRIKE
- ORDER



SEAL

Witness my hand and the seal of the Superior Court

Date	09-04-2015
Clerk Of Superior Court	CASEY PONCE
Signature	<i>Casey Ponce</i>
<input checked="" type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC
<input type="checkbox"/> Clerk Of Superior Court	

FILED

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NUMBERS: 15-CRS-154, 155 & 164

2015 AUG 20 AM 8:54

RUTHERFORD COUNTY, C.S.C.

STATE OF NORTH CAROLINA,

Plaintiff,

vs.

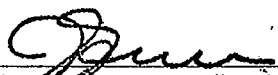
BROOKE McFADDEN COVINGTON,
SARAH COVINGTON ANDERSON, and
JUSTIN COVINGTON

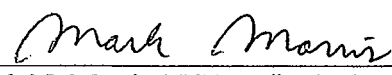
Defendants.

MOTION TO STAY PROCEEDINGS

COMES NOW defendants in the above-captioned matters, Brooke McFadden Covington, Sarah Covington Anderson and Justin Covington (collectively, "Movants"), by and through their attorneys Mark N. Morris and Joshua B. Farmer of Tomblin, Farmer & Morris, PLLC, and Angela Beeker of F.B. Jackson & Associates Law Firm, PLLC, asking this Court to stay proceedings in these cases until all appellate matters are resolved with respect to the Court's August 6, 2015 disqualification order ("Disqualification Order") with the exception of ruling on the Movants Motion for Reconsideration of the Disqualification Order, which is now pending. Movants further request that the Court allow Mark N. Morris and Joshua B. Farmer of Tomblin, Farmer & Morris, PLLC to remain counsel of record for Movants during the pendency of the appellate proceedings.

This is the 20th day of August, 2015.


Joshua B. Farmer, NC Bar #32669
TOMBLIN, FARMER & MORRIS, PLLC
Attorneys for Defendants/Movants
187 North Washington Street
Post Office Box 632
Rutherfordton, North Carolina 28139
Telephone: (828) 286-3866
Facsimile: (828) 286-4820


Mark N. Morris, NC Bar #32846
TOMBLIN, FARMER & MORRIS, PLLC
Attorneys for Defendants/Movants
187 North Washington Street
Post Office Box 632
Rutherfordton, North Carolina 28139
Telephone: (828) 286-3866
Facsimile: (828) 286-4820

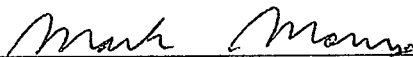


Angela S. Becker NC Bar #18420
F.B. JACKSON and Associates Law Firm, PLLC
Attorneys for Defendants/Movants
Post Office Box 1666
Hendersonville, NC 28793
Telephone: (828) 697-5410

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this document in the above entitled action upon all other parties to this cause by hand delivery to an associate or employee with the Rutherford County District Attorney's Office.

This the 20th day of August, 2015.



Mark Morris

STATE OF NORTH CAROLINA **FILED** IN THE GENERAL COURT OF
COUNTY OF RUTHERFORD JUSTICE

2015 AUG 20 AM 8:55 SUPERIOR COURT DIVISION
FILE NUMBERS: 15-CRS-154

STATE OF NORTH CAROLINA, ~~RUTHERFORD COUNTY, C.S.C.~~

OS

Plaintiff,)
vs.)
JUSTIN BROCK COVINGTON,)
Defendant.)
_____)

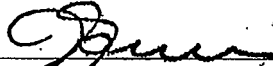
NOTICE OF APPEAL

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Defendant-Appellant, Justin Brock Covington, appeals to the North Carolina Court of Appeals, from the Order disqualifying the Law Firm of Tomblin, Farmer & Morris, P.L.L.C, Attorneys Mark Morris, Joshua Farmer, Andrea Farmer and their associates, entered by Judge Marvin P. Pope, Jr. on August 6, 2015, in favor of the State of North Carolina and against the Defendant, Justin Brock Covington.

By this appeal, the Defendant, Justin Brock Covington, will ask the North Carolina Court of Appeals to reverse the Order disqualifying counsel entered on August 6, 2015, and to remand the cause for further proceedings.

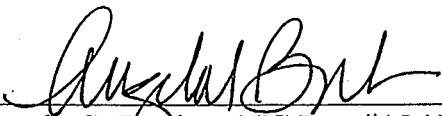
This is the 20th day of August, 2015.



Joshua B. Farmer, NC Bar #32669
TOMBLIN, FARMER & MORRIS, PLLC
Attorney for Defendants/Appellants
187 North Washington Street
Post Office Box 632
Rutherfordton, North Carolina 28139
Telephone: (828) 286-3866
Facsimile: (828) 286-4820



Mark N. Morris, NC Bar #32846
TOMBLIN, FARMER & MORRIS, PLLC
Attorney for Defendants/Appellants
187 North Washington Street
Post Office Box 632
Rutherfordton, North Carolina 28139
Telephone: (828) 286-3866
Facsimile: (828) 286-4820

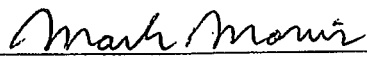


Angela S. Becker, NC Bar #18420
F.B. JACKSON AND ASSOCIATES LAW FIRM, PLLC
Attorney for Defendants/Movants
Post Office Box 1666
Hendersonville, North Carolina 28793
Telephone: (828) 697-5410

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing NOTICE OF APPEAL on the Assistant District Attorney of the State of North Carolina by hand delivery to an associate or employee with the Rutherford County District Attorney's Office.

This the 20th day of August, 2015.



Mark Morris

STATE OF NORTH CAROLINA **FILED** IN THE GENERAL COURT OF
COUNTY OF RUTHERFORD JUSTICE

2015 AUG 20 AM 8:51

SUPERIOR COURT DIVISION

FILE NUMBERS: 15-CRS-155

STATE OF NORTH CAROLINA,
RUTHERFORD COUNTY, C.S.C.

DS

Plaintiff,

vs.

BROOKE MCFADDEN
COVINGTON,

Defendant.

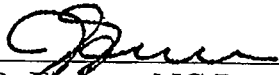
NOTICE OF APPEAL

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

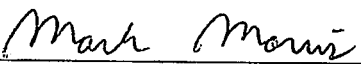
Defendant-Appellant, Brooke McFadden Covington, appeals to the North Carolina Court of Appeals, from the Order disqualifying the Law Firm of Tomblin, Farmer & Morris, P.L.L.C, Attorneys Mark Morris, Joshua Farmer, Andrea Farmer and their associates, entered by Judge Marvin P. Pope, Jr. on August 6, 2015, in favor of the State of North Carolina and against the Defendant, Brooke McFadden Covington.

By this appeal, the Defendant, Brooke McFadden Covington, will ask the North Carolina Court of Appeals to reverse the Order disqualifying counsel entered on August 6, 2015, and to remand the cause for further proceedings.

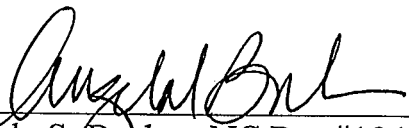
This is the 20th day of August, 2015.



Joshua B. Farmer, NC Bar #32669
TOMBLIN, FARMER & MORRIS, PLLC
Attorney for Defendants/Appellants
187 North Washington Street
Post Office Box 632
Rutherfordton, North Carolina 28139
Telephone: (828) 286-3866
Facsimile: (828) 286-4820



Mark N. Morris, NC Bar #32846
TOMBLIN, FARMER & MORRIS, PLLC
Attorney for Defendants/Appellants
187 North Washington Street
Post Office Box 632
Rutherfordton, North Carolina 28139
Telephone: (828) 286-3866
Facsimile: (828) 286-4820

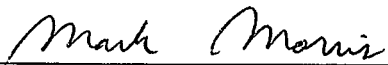


Angela S. Becker, NC Bar #18420
F.B. JACKSON AND ASSOCIATES LAW FIRM, PLLC
Attorney for Defendants/Movants
Post Office Box 1666
Hendersonville, North Carolina 28793
Telephone: (828) 697-5410

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing NOTICE OF APPEAL on the Assistant District Attorney of the State of North Carolina by hand delivery to an associate or employee with the Rutherford County District Attorney's Office.

This the 20th day of August, 2015.



Mark Morris

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF
JUSTICE

FILED
2015 AUG 20 AM 8:55

SUPERIOR COURT DIVISION
FILE NUMBERS: 15-CRS-164

STATE OF NORTH CAROLINA
RUTHERFORD COUNTY, O.S.C.

Plaintiff,

vs.

SARAH COVINGTON
ANDERSON,

Defendant.

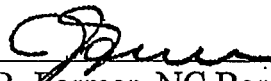
NOTICE OF APPEAL

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

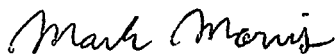
Defendant-Appellant, Sarah Covington Anderson, appeals to the North Carolina Court of Appeals, from the Order disqualifying the Law Firm of Tomblin, Farmer & Morris, P.L.L.C, Attorneys Mark Morris, Joshua Farmer, Andrea Farmer and their associates, entered by Judge Marvin P. Pope, Jr. on August 6, 2015, in favor of the State of North Carolina and against the Defendant, Sarah Covington Anderson.

By this appeal, the Defendant, Sarah Covington Anderson, will ask the North Carolina Court of Appeals to reverse the Order disqualifying counsel entered on August 6, 2015, and to remand the cause for further proceedings.

This is the 20th day of August, 2015.



Joshua B. Farmer, NC Bar #32669
TOMBLIN, FARMER & MORRIS, PLLC
Attorney for Defendants/Appellants
187 North Washington Street
Post Office Box 632
Rutherfordton, North Carolina 28139
Telephone: (828) 286-3866
Facsimile: (828) 286-4820



Mark N. Morris, NC Bar #32846
TOMBLIN, FARMER & MORRIS, PLLC
Attorney for Defendants/Appellants
187 North Washington Street
Post Office Box 632
Rutherfordton, North Carolina 28139
Telephone: (828) 286-3866
Facsimile: (828) 286-4820



Angela S. Beeker, NC Bar #18420
F.B. JACKSON AND ASSOCIATES LAW FIRM, PLLC
Attorney for Defendants/Movants
Post Office Box 1666
Hendersonville, North Carolina 28793
Telephone: (828) 697-5410

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of the foregoing NOTICE OF APPEAL on the Assistant District Attorney of the State of North Carolina by hand delivery to an associate or employee with the Rutherford County District Attorney's Office.

This the 20th day of August, 2015.

Mark Morris

Mark Morris

FILED

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF JUSTICE
2015 AUG 24 AM 9:32 SUPERIOR COURT DIVISION
RUTHERFORD COUNTY, C.C.C. FILE No.: 15-CRS-154-155, 164

STATE OF NORTH CAROLINA,)
)
Plaintiff,)
)
vs.)
)
BROOKE MCFADDEN COVINGTON,)
SARAH COVINGTON ANDERSON, and)
JUSTIN BROCK COVINGTON,)
)
Defendants.)
_____)

LR

MOTION TO DISMISS DEFENDANTS'
MOTION TO RECONSIDER ORDER
DISQUALIFYING COUNSEL

NOW COMES the State of North Carolina, by and through the undersigned Assistant District Attorney, and moves the Court to dismiss the above-named defendants' Motion to Reconsider Order Disqualifying Counsel upon the following grounds:

1. The "substantial change of circumstances" that defendants suggest to the Court as a basis for reconsidering the Court's Order of August 6 are all the result of acts which are in violation of the Court's lawful Order. There are 33 separate acts of representation which the State alleges to be in violation of the Court's Order. As to this, the State alleges and incorporates herein by reference the contents of its' Motion to Strike which is filed simultaneously herewith as if fully set forth herein.
2. The conflicts of interest which exist on the part of disqualified counsel are concurrent nonwaivable conflicts of interest that are actual conflicts and not merely possible conflicts as suggested by disqualified counsel. Consequently, the *Yelton* case that they rely on as their sole basis of appellate precedent is inapplicable.
3. The Court is vested with the authority to do all things that are reasonably necessary for the proper administration of justice. *Beard v. North Carolina State Bar*, 320 N.C. 126, 357 S.E.2d 694 (1987). The proper standard of review for an act of the trial court in the exercise of its inherent authority is abuse of discretion. *Couch v. Private Diagnostic Clinic*, 146 N.C. App. 658,

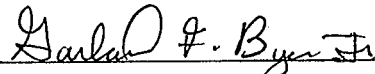
554 S.E.2d 356 (2001). This Honorable Court did not abuse its discretion in disqualifying counsel from representing the defendants in these matters.

4. The waivers signed by the defendants are ineffective and, further, they are contrary to the law of this State and of the United States. This Court should decline to accept them, which renders the defendants' Motion to Reconsider moot.

This the 24th day of August, 2015.

Respectfully submitted,

FOR THE STATE:



GARLAND F. BYERS, JR.

Assistant District Attorney

N.C. State District Attorney's Office

Rutherford County

P.O. Box 70

Rutherfordton, North Carolina 28139

Telephone: (828) 288-6110

Facsimile: (828) 288-6111

Email: Garland.F.Byers@nccourts.org

CERTIFICATE OF SERVICE

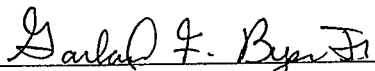
This is to certify that I have this day served Angela S. Beeker, Post Office Box 1666, Hendersonville, NC 28793, counsel for Brooke McFadden Covington, Sarah Covington Anderson & Justin Brock Covington, in the foregoing matter with a copy of the attached document by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon in the manner prescribed by Chapter 15A of the North Carolina General Statutes.

This is to certify that I have this day served Joshua Farmer, Mark Morris, and the law firm of TOMBLIN, FARMER & MORRIS, PLLC, in the foregoing matter with a copy of the attached document by hand-delivery.

This the 24th day of August, 2015.

Respectfully submitted,

FOR THE STATE:



GARLAND F. BYERS, JR.
Assistant District Attorney
N.C. State District Attorney's Office
Rutherford County
P.O. Box 70
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FILED

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

2015 AUG 24 PM 1: 20

RUTHERFORD COUNTY, C.S.C.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE No.: 15-CRS-154-155, 164

STATE OF NORTH CAROLINA, # LT)

Plaintiff,)

vs.)

BROOKE MCFADDEN COVINGTON,)

SARAH COVINGTON ANDERSON, and)

JUSTIN BROCK COVINGTON,)

Defendants.)

**MEMORANDUM OF LAW
IN SUPPORT OF
THE STATE'S MOTION TO DISMISS
THE DEFENDANTS' MOTION
FOR RECONSIDERATION**

NOW COMES the State of North Carolina, by and through the undersigned Assistant District Attorney, and submits this Memorandum of Law in Support of the State's Motion to Dismiss the Defendants' Motion for Reconsideration. The State respectfully shows the following:

Procedural History and Material Facts

1. On August 3, 2015, this Honorable Court heard the State's Motion to Disqualify Counsel in Rutherford County Superior Court. After hearing the arguments of counsel, reviewing the briefs of counsel, and the hearing of evidence in support of said motion, the Court retired to consider the matter and to review the various cases submitted by defense counsel during the hearing.
2. On August 6, 2015, the Court entered an Order disqualifying Mark Morris (State Bar #32846), Josh Farmer (State Bar #32669), Andrea Farmer (State Bar #32668), the law firm of TOMBLIN, FARMER & MORRIS, PLLC (SOSID #0746187), and their associates (hereinafter referred to individually and collectively as "disqualified counsel" or "opposing counsel"), from representing the above-named defendants in these criminal cases.
3. Thereafter on August 20, 2015, despite being removed from these cases by the Court and being ordered to cease representation of the defendants in these matters, disqualified counsel continued representation of the

defendants by filing a document captioned "Notice of Appeal" in each of these three cases. This document purported to appeal the Court's Order of August 6 to the North Carolina Court of Appeals. Defendants asserted that, in appealing the Court's Order they proposed to "... ask the North Carolina Court of Appeals to reverse the Order disqualifying counsel entered on August 6, 2015, and to remand the cause for further proceedings."

4. Disqualified counsel also filed a document captioned "Motion to Stay Proceedings" – a pre-trial motion in the substantive cause of each case – on the same date that they filed the aforesaid "Notice of Appeal." In this document, disqualified counsel moves the Court "... to stay proceedings in these cases until all appellate matters are resolved ... with the exception of ruling on the Movants Motion for Reconsideration of the Disqualification Order. . . ."
5. Continuing on, disqualified counsel also on August 20 filed a "Motion to Reconsider Order Disqualifying Counsel." In this document, they assert "... there has been a substantial change in circumstances warranting this Court's reconsideration of the prior order and denial of the State's motion." In this motion, disqualified counsel go on *to detail their continued and uninterrupted representation* of the defendants after the entry of the Court's Order on August 6 up to and including the present.
6. A total of **9 separate acts** of representation appear in the official record **as filings** on the part of disqualified counsel after the entry of the Court's Order of August 6 which disqualified them all as legal counsel in these matters. This number does not include the drafting and execution of the Affidavits or other supporting documents which are included in the defendants' Motion for Reconsideration, nor does it include the number of meetings conducted with the defendants to advance the documents filed and other acts surrounding these prohibited filings. This number also does not include their appearance before the Court to advance these causes on behalf of the defendants.
7. A total of **24 separate acts** of representation that are reflected and appear in the official record **as exhibits** which were prepared by disqualified counsel after the entry of the Court's Order of August 6 which disqualified them as legal counsel in these matters.
8. Altogether, a total of **33 separate acts** of representation appear in the official record by disqualified counsel after this Court ordered them removed as counsel. These include the following in chronological order:

- a. *Informed Consent of Adam Bartley for Tomblin, Farmer & Morris to Continue Representation of Co-Defendants on behalf of Sarah Covington Anderson* – executed August 13, 2015;
- b. *Informed Consent of Adam Bartley for Tomblin, Farmer & Morris to Continue Representation of Co-Defendants on behalf of Brooke McFadden Covington* – executed August 13, 2015;
- c. *Informed Consent of Adam Bartley for Tomblin, Farmer & Morris to Continue Representation of Co-Defendants on behalf of Justin Brock Covington* – executed August 13, 2015;
- d. *Informed Consent of Adam Bartley for Tomblin, Farmer & Morris to Continue Representation of Co-Defendants on behalf of Robert Louis Walker* – executed August 13, 2015;
- e. *Informed Consent of Adam Bartley for Tomblin, Farmer & Morris to Continue Representation of Co-Defendants on behalf of Adam Bartley* – executed August 13, 2015;
- f. *Rejection of Plea Offer to Adam Christopher Bartley on behalf of Sarah Covington Anderson* – obtained on or about August 13, 2015;
- g. *Rejection of Plea Offer to Adam Christopher Bartley on behalf of Brooke McFadden Covington* – obtained on or about August 13, 2015;
- h. *Rejection of Plea Offer to Adam Christopher Bartley on behalf of Justin Brock Covington* – obtained on or about August 13, 2015;
- i. *Rejection of Plea Offer to Adam Christopher Bartley on behalf of Adam Christopher Bartley* – obtained on or about August 13, 2015;
- j. *Informed Consent of Robert Louis Walker, Jr., for Tomblin, Farmer & Morris to Continue Representation of Co-Defendants on behalf of Sarah Covington Anderson* – executed August 18, 2015;
- k. *Informed Consent of Robert Louis Walker, Jr., for Tomblin, Farmer & Morris to Continue Representation of Co-Defendants on behalf of Brooke McFadden Covington* – executed August 18, 2015;

- l. *Informed Consent of Robert Louis Walker, Jr., for Tomblin, Farmer & Morris to Continue Representation of Co-Defendants on behalf of Justin Brock Covington* – executed August 18, 2015;
- m. *Affidavit of Robert Louis Walker, Jr., obtained on behalf of Sarah Covington Anderson* – executed August 18, 2015;
- n. *Affidavit of Robert Louis Walker, Jr., obtained on behalf of Brooke McFadden Covington* – executed August 18, 2015;
- o. *Affidavit of Robert Louis Walker, Jr., obtained on behalf of Justin Brock Covington* – executed August 18, 2015;
- p. *Affidavit of Sarah Covington Anderson on behalf of Sarah Covington Anderson* – executed August 18, 2015;
- q. *Affidavit of Sarah Covington Anderson on behalf of Brooke McFadden Covington* – executed August 18, 2015;
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- s. *Affidavit of Brooke McFadden Covington on behalf of Sarah Covington Anderson* – executed August 19, 2015;
- t. *Affidavit of Brooke McFadden Covington on behalf of Brooke McFadden Covington* – executed August 19, 2015;
- u. *Affidavit of Brooke McFadden Covington on behalf of Justin Brock Covington* – executed August 19, 2015;
- v. *Affidavit of Justin Brock Covington on behalf of Sarah Covington Anderson* – executed August 19, 2015;
- w. *Affidavit of Justin Brock Covington on behalf of Brooke McFadden Covington* – executed August 19, 2015;
- x. *Affidavit of Justin Brock Covington on behalf of Justin Brock Covington* – executed August 19, 2015;

- y. *Notice of Appeal on behalf of Sarah Covington Anderson* – filed August 20, 2015;
 - z. *Notice of Appeal on behalf of Brooke McFadden Covington* – filed August 20, 2015;
 - aa. *Notice of Appeal on behalf of Justin Brock Covington* – filed August 20, 2015;
 - bb. *Motion to Stay Proceedings on behalf of Sarah Covington Anderson* – filed August 20, 2015;
 - cc. *Motion to Stay Proceedings on behalf of Brooke McFadden Covington* – filed August 20, 2015;
 - dd. *Motion to Stay Proceedings on behalf of Justin Brock Covington* – filed August 20, 2015;
 - ee. *Motion to Reconsider Order Disqualifying Counsel on behalf of Sarah Covington Anderson* – filed August 20, 2015;
 - ff. *Motion to Reconsider Order Disqualifying Counsel on behalf of Brooke McFadden Covington* – filed August 20, 2015; and
 - gg. *Motion to Reconsider Order Disqualifying Counsel on behalf of Justin Brock Covington* – filed August 20, 2015.
9. As the official record of these cases indicates, disqualified counsel's representation of the defendants has continued without interruption and in clear violation of the Order of this Court which remains in effect. The fact that disqualified counsel have another hearing before this Court, ***to advance a cause on behalf of forbidden clients***, illustrates the gravity of the situation.
10. Angela S. Beeker (State Bar #18420), Attorney at Law, of the Henderson County Bar, signed the aforesaid documents along with disqualified counsel as attorney for the defendants. Attorney Beeker has, in doing so, entered a general and unlimited appearance as counsel for the captioned defendants in these ongoing criminal matters as provided for by N.C. Gen. Stat. § 15A-141(2). The State takes due notice thereof and will proceed accordingly.

*The Defendants Waiver of Ineffective Assistance
of Counsel is Forbidden under the Revised Rules
of Professional Conduct of the North Carolina State Bar*

11. The defendants allege that the *Yelton* case is controlling authority for this Court and that this Court erred in refusing to follow the holding in *Yelton*. This is incorrect and the defendants misapply the law - - specifically the current state of the law - - as it intersects with this case.

12. In disqualified counsel's own words:

After granting certiorari, the Court overturned the ruling of the trial court after finding that the defendants knowingly waived the right to bring a post-conviction challenge based on ineffective assistance of counsel stemming from a conflict of interest, **such waivers having been executed by Movants herein.**

(Defendants Motion to Reconsider Paragraph. 18)
(Emphasis added)

13. Exhibit 9 to the defendants' Motion to Reconsider is a document captioned "Affidavit of Sarah Covington Anderson." Paragraph 8 of that document reads as follows:

After consulting with Mr. Roth about the matter, I wish to waive any right I might have to appeal a conviction in this matter **based on grounds of ineffective assistance of counsel** stemming from a conflict of interest of the Firm and its attorneys related to the Firm's joint representation of myself and the other co-defendants in this matter.

(Emphasis added).

14. Exhibit 10 to the defendants' Motion to Reconsider is a document captioned "Affidavit of Brooke McFadden Covington." Paragraph 11 of that document reads as follows:

After consulting with Mr. Long about the potential

conflict, I hereby waive any right I might have to **appeal** or otherwise seek to set aside any conviction of me in this case **based on grounds of ineffective assistance of counsel** stemming from a potential conflict of interest of the Firm and its attorneys related to the Firm's joint representation of my children and me going forward and the prior representation of the other co-defendants with similar charges.

(Emphasis added)

15. Exhibit 11 to the defendants' Motion to Reconsider is a document captioned "Affidavit of Justin Covington." Paragraph 9 of that document reads as follows:

After consulting with Mr. Gresham about the matter, I wish to **waive any right** I might have to **appeal** a conviction in this matter **based on grounds of ineffective assistance of counsel** stemming from a conflict of interest of the Firm and its attorneys related to the Firm's joint representation of myself and the other co-defendants in this matter.

(Emphasis added).

16. *State v. Yelton*, 87 N.C. App. 554, 361 S.E.2d 753 (1987) was heard in the North Carolina Court of Appeals on September 29, 1987, and filed as an opinion of that Court on November 17, 1987.
17. From November 17, 1987, through the year 1992, the State believes that the conduct of disqualified counsel was probably acceptable. However, the state of the law changed dramatically on January 15, 1993, when the North Carolina State Bar published an ethical opinion on the issue in the form of **RPC 129**. A copy of RPC 129 is attached hereto and incorporated herein by reference as "State's Exhibit 1."
18. The preamble to RPC 129 reads as follows: "Opinion rules that prosecutors and defense attorneys may negotiate plea agreements in which appellate and postconviction rights are waived, **except in regard to allegations of**

ineffective assistance of counsel or prosecutorial misconduct.”
(Emphasis added).

19. The opinion goes on to say that “. . . the waiver of rights arising from the **ineffective assistance of counsel . . . appears to be, and shall be prospectively deemed to be, in conflict with the ethical duties express or implied in the rules.**” (Emphasis added).

20. Additionally, the opinion states: “Attorneys are **expressly prohibited** from making agreements prospectively limiting their liability for malpractice. Rule 5.8.” (Emphasis added).

21. The opinion also specifically addresses its application in the criminal context:

In the context of a criminal case, a logical and appropriate interpretation of the rules is a **prohibition** against agreements waiving the client’s right to complain about an attorney’s incompetent representation of misconduct.

(Emphasis added).

22. Thus, the aforementioned waivers of claims for ineffective assistance of counsel that were signed by the named defendants herein are “. . . in conflict with the ethical duties [of disqualified counsel] express or implied in the rules” and disqualified counsel was “. . . expressly prohibited from making agreements prospectively limiting their liability for malpractice” under RPC 129.

23. The waivers are, therefore, worthless and invalid and there has been no “substantial change in circumstances warranting this Court’s consideration.”

24. Based upon the foregoing, the State moves to dismiss the defendants’ Motion for Reconsideration.

*The State had Standing to Bring the Motion
to Disqualify Counsel as Supported by
the Yelton Case which the Defendants “Rely On”*

25. In Paragraph 19 of the defendants’ Motion to Reconsider, the defendants allege the following:

The Movants further contend that the State of North Carolina did not have standing to bring the State's Motion to Disqualify Counsel. Standing to raise the issue of disqualification lies with the clients to whom the Firm owes its professional obligations.

26. In the *Yelton* case, which defendants themselves cite, the issue of disqualification of the defense lawyer was actually raised by the State and our Court of Appeals had no problem with the State doing so. The case opinion reads:

On 17 October 1986 the State filed a motion requesting the trial court determine whether Mr. Lamb's representation of both petitioners was proper under the circumstances.

...

In effect, the State merely brings the conflict issue to the court's attention. Through the course of the hearing the trial court will determine whether an attorney who jointly represents co-defendants must be disqualified from representing either of them.

...

27. Further, the *Yelton* Court referenced the fact that this procedure is appropriate under the law of the 4th Circuit United States Court of Appeals as well as the United States Supreme Court:

Once a motion by the State or the defense, or the court on its own motion, raises a possible conflict of interest in a dual representation situation, the trial court must conduct a hearing. *Cuyler*, 446 U.S. at 346. *See also United States v. Duklewski*, 567 F.2d 255 (4th Cir. 1977)

...

28. The State thus had standing to bring the issue of conflict of interest to the attention of the trial court by appropriate motion and the defendants' argument is without merit.

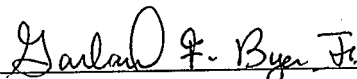
Conclusion

Wherefore, the State of North Carolina respectfully requests that this Honorable Court dismiss the defendants' Motion to Reconsider Order Disqualifying Counsel.

This the 24th day of August, 2015.

Respectfully submitted,

FOR THE STATE:



GARLAND F. BYERS, JR.

Assistant District Attorney

N.C. State District Attorney's Office

Rutherford County

P.O. Box 70

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Telephone: (828) 288-6110

Facsimile: (828) 288-6111

Email: Garland.F.Byers@nccourts.org

CERTIFICATE OF SERVICE

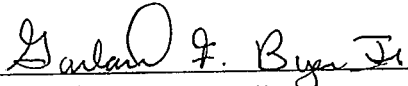
This is to certify that I have this day served Angela S. Beeker, Post Office Box 1666, Hendersonville, NC 28793, counsel for Brooke McFadden Covington, Sarah Covington Anderson & Justin Brock Covington, in the foregoing matter with a copy of the attached document by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon in the manner prescribed by Chapter 15A of the North Carolina General Statutes.

This is to certify that I have this day served Joshua Farmer, Mark Morris, and the law firm of TOMBLIN, FARMER & MORRIS, PLLC, in the foregoing matter with a copy of the attached document by placing a copy thereof in the mailbox for said counsel which is located in the Rutherford County Clerk's Office as permitted by agreement between counsel and the State.

This the 24th day of August, 2015.

Respectfully submitted,

FOR THE STATE:



GARLAND F. BYERS, JR.
Assistant District Attorney
N.C. State District Attorney's Office
Rutherford County
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FILED

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF JUSTICE
2015 AUG 24 AM 9:32 SUPERIOR COURT DIVISION
FILE No.: 15-CRS-154-155, 164
RUTHERFORD COUNTY, C.S.C.

STATE OF NORTH CAROLINA,

W) *CD*

Plaintiff,

vs.

BROOKE MCFADDEN COVINGTON,
SARAH COVINGTON ANDERSON, *and*
JUSTIN BROCK COVINGTON,

Defendants.

MOTION TO STRIKE
THE DOCUMENTS CAPTIONED
"NOTICE OF APPEAL"
AND
"MOTION TO STAY PROCEEDINGS"

NOW COMES the State of North Carolina, by and through the undersigned Assistant District Attorney, and moves the Court to issue an Order striking the above-named defendants' purported Notices of Appeal and corresponding Motion to Stay Proceedings from the official record in this cause upon the grounds that there is no basis in law or fact for the documents to be filed and that the documents are of no legal effect. In support thereof, the State shows the following:

Procedural History and Material Facts

1. On August 3, 2015, this Honorable Court heard the State's Motion to Disqualify Counsel in Rutherford County Superior Court. After hearing the arguments of counsel, reviewing the briefs of counsel, and the hearing of evidence in support of said motion, the Court retired to consider the matter and to review the various cases submitted by defense counsel during the hearing.
2. On August 6, 2015, the Court entered an Order disqualifying Mark Morris (State Bar #32846), Josh Farmer (State Bar #32669), Andrea Farmer (State Bar #32668), the law firm of TOMBLIN, FARMER & MORRIS, PLLC (SOSID #0746187), and their associates (hereinafter referred to individually and collectively as "disqualified counsel" or "opposing counsel"), from representing the above-named defendants in these criminal cases.

3. Thereafter on August 20, 2015, despite being removed from these cases by the Court and being ordered to cease representation of the defendants in these matters, disqualified counsel continued representation of the defendants by filing a document captioned "Notice of Appeal" in each of these three cases. This document purported to appeal the Court's Order of August 6 to the North Carolina Court of Appeals. Defendants asserted that, in appealing the Court's Order they proposed to ". . . ask the North Carolina Court of Appeals to reverse the Order disqualifying counsel entered on August 6, 2015, and to remand the cause for further proceedings."
4. Disqualified counsel also filed a document captioned "Motion to Stay Proceedings" – a pre-trial motion in the substantive cause of each case – on the same date that they filed the aforesaid "Notice of Appeal." In this document, disqualified counsel moves the Court ". . . to stay proceedings in these cases until all appellate matters are resolved . . . with the exception of ruling on the Movants Motion for Reconsideration of the Disqualification Order. . ."
5. Continuing on, disqualified counsel also on August 20 filed a "Motion to Reconsider Order Disqualifying Counsel." In this document, they assert ". . . there has been a substantial change in circumstances warranting this Court's reconsideration of the prior order and denial of the State's motion." In this motion, disqualified counsel go on *to detail their continued and uninterrupted representation* of the defendants after the entry of the Court's Order on August 6 up to and including the present.
6. A total of 9 separate acts of representation appear in the official record as filings on the part of disqualified counsel after the entry of the Court's Order of August 6 which disqualified them all as legal counsel in these matters. This number does not include the drafting and execution of the Affidavits or other supporting documents which are included in the defendants' Motion for Reconsideration, nor does it include the number of meetings conducted with the defendants to advance the documents filed and other acts surrounding these prohibited filings. This number also does not include their appearance before the Court to advance these causes on behalf of the defendants.
7. A total of 24 separate acts of representation that are reflected and appear in the official record as exhibits which were prepared by disqualified counsel after the entry of the Court's Order of August 6 which disqualified them as legal counsel in these matters.

8. Altogether, a total of **33 separate acts** of representation appear in the official record by disqualified counsel after this Court ordered them removed as counsel. These include the following in chronological order:
- a. *Informed Consent of Adam Bartley for Tomblin, Farmer & Morris to Continue Representation of Co-Defendants on behalf of Sarah Covington Anderson* – executed August 13, 2015;
 - b. *Informed Consent of Adam Bartley for Tomblin, Farmer & Morris to Continue Representation of Co-Defendants on behalf of Brooke McFadden Covington* – executed August 13, 2015;
 - c. *Informed Consent of Adam Bartley for Tomblin, Farmer & Morris to Continue Representation of Co-Defendants on behalf of Justin Brock Covington* – executed August 13, 2015;
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- v. *Affidavit of Justin Brock Covington on behalf of Sarah Covington Anderson* – executed August 19, 2015;
- w. *Affidavit of Justin Brock Covington on behalf of Brooke McFadden Covington* – executed August 19, 2015;

- x. *Affidavit of Justin Brock Covington on behalf of Justin Brock Covington* – executed August 19, 2015;
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 - gg. *Motion to Reconsider Order Disqualifying Counsel on behalf of Justin Brock Covington* – filed August 20, 2015.
9. As the official record of these cases indicates, disqualified counsel's representation of the defendants has continued without interruption and in clear violation of the Order of this Court which remains in effect. The fact that disqualified counsel have another hearing before this Court, *to advance a cause on behalf of forbidden clients*, illustrates the gravity of the situation.
10. Angela S. Beeker (State Bar #18420), Attorney at Law, of the Henderson County Bar, signed the aforesaid documents along with disqualified counsel as attorney for the defendants. Attorney Beeker has, in doing so, entered a general and unlimited appearance as counsel for the captioned defendants in

these ongoing criminal matters as provided for by N.C. Gen. Stat. § 15A-141(2). The State takes due notice thereof and will proceed accordingly.

*North Carolina Law does not Authorize an
Appeal as a Matter of Right from an Interlocutory Order
in a Criminal Case*

11. Subsection (a) of North Carolina General Statute § 15A-1444, *which became law in 1977*, provides in pertinent part: “A defendant who has entered a plea of not guilty to a criminal charge, and who has been found guilty of a crime, is entitled to appeal as a matter of right when final judgment has been entered.” (Emphasis added).
12. The Official Commentary to this Statute states: “Subsection (a) states the *familiar rule* of appellate practice that **appeal**, as a matter of right, is **available when final judgment has been entered.**” (Emphasis added).
13. The defendants have not, as of yet, been found guilty of a crime in these cases and no final judgment has been entered against them. There is, therefore, no factual basis which would support the filing of the purported Notice of Appeal by the defendants in these cases.
14. Subsection (e) of § 15A-1444 provides in pertinent part that “[E]xcept as provided in subsection (a) . . . the defendant is not entitled to appellate review as a matter of right . . . in the superior court.” There is, therefore, no legal basis which would permit the filing of the purported Notice of Appeal by the defendants and their counsel in these cases.
15. “The right to appeal in a criminal proceeding is purely statutory. Generally, there is no right to appeal in a criminal case except from a conviction or upon a plea of guilty.” *State v. Shoff*, 118 N.C. App. 724, 725, 456 S.E.2d 875, 876 (1995) (citation omitted), *aff’d per curiam*, 342 N.C. 638, 466 S.E.2d 277 (1996).
16. An interlocutory order is one made during the pendency of a case, which does not dispose of the matter but leaves it for further action by the trial court. *Id.* (quoting *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950)).
17. In *State v. Williams*, the North Carolina Court of Appeals dismissed the defendant’s appeal because the defendant was not entitled to appellate

review as a matter of right under subsection (a1) of G.S. § 15A-1444. *State v. Williams*, 116 N.C. App. 354, 447 S.E.2d 437, *cert. denied*, 338 N.C. 523, 452 S.E.2d 823 (1994).

18. In *State v. Waters*, because the defendant had no appeal as of right, and he had not petitioned for a writ of certiorari, his notice of appeal was a nullity, and the appellate court had no jurisdiction. *State v. Waters*, 122 N.C. 504, 470 S.E.2d 545 (1996).
19. This Honorable Court's Order of August 6 is interlocutory. The Defendants have no right to appeal from that interlocutory order. Accordingly, the documents captioned "Notice of Appeal" filed by the defendants in each of the cases captioned above should be stricken from the record as being a nullity. Further, the defendants' Motion to Stay Proceedings also has no basis in law or fact and should likewise be stricken.

*The Sole Method to Obtain Appellate Review of
an Interlocutory Order in a NC Criminal Case is
a Petition for a Writ of Certiorari*

20. North Carolina General Statute § 15A-1444 (e) provides in pertinent part that: "Except as provided . . . [a] defendant is not entitled to appellate review as a matter of right . . . but he may petition the appellate division for review by writ of certiorari."
21. "Review by writ of certiorari is available when provided for by this Chapter, by other rules of law, or by rule of the appellate division." N.C. Gen. Stat. § 15A-1444 (g).
22. Rule 21(a)(1) of the North Carolina Rules of Appellate Procedure, as amended effective April 10, 2015, provides as follows:

(a) Scope of the Writ.

*(1) Review of the Judgments and Orders of Trial
Tribunals.* The writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action, or when no right of appeal from an

interlocutory order exists, or for review pursuant to N.C.G.S. § 15A-1422(c)(3) of an order of the trial court ruling on a motion for appropriate relief.

(emphasis added)

23. Certiorari is one of the “extraordinary” writs issued by the appellate courts. It is a “. . . discretionary writ, to be issued only for good and sufficient cause shown.” *State v. Grundler*, 251 N.C. 177, 189, 111 S.E.2d 1, 9 (1959). See also, *State v. Rousen*, ___ N.C. App. ___, 741 S.E.2d 470 (2013) (denying petition for writ of certiorari and dismissing appeal for failure “to present a meritorious claim or reveal error in the proceeding below.”).
24. A writ of certiorari is issued only by the North Carolina Court of Appeals or the North Carolina Supreme Court by virtue of Rule 21(a)(1) of the North Carolina Rules of Appellate Procedure cited hereinabove.
25. Disqualified counsel and defense counsel did not follow the proper procedure in attempting to obtain appellate review. The defendants’ aforesaid filed documents should, therefore, be stricken.

*Disqualified Counsel & Defense Counsel Cited the
Proper Procedure in the Defendants’ Motion to Reconsider
but Didn’t Follow It*

26. Paragraph 18 of the defendants’ Motion to Reconsider Order Disqualifying Counsel reads in pertinent part as follows:

Movants also rely on the opinion of the North Carolina Court of Appeals in *State v. Yelton*, 87 N.C. App. 554, 361 S.E.2d 753 (1987), in which the Court of Appeals **granted certiorari** of a **pre-trial order for disqualification of counsel** jointly representing a father and son accused of the same or similar offenses. **After granting certiorari**, the Court overturned the ruling of the trial court after finding that the defendants knowingly waived the right to bring a post-conviction challenge based on ineffective assistance of counsel stemming from a conflict of interest, such waivers having been executed by Movants herein.

. . . (Emphasis added).

27. Disqualified counsel, as well as attorney Beeker, each individually assert: (1) they have read the foregoing case; (2) they understand the foregoing case; (3) that the foregoing case represents controlling authority in these matters; and (4) they wish for this Court to follow the law as set forth in that case.

28. Curiously, opposing counsel excerpt the very clear and unambiguous language from the *Yelton* case noted above without appearing to recognize its importance.

29. The following is excerpted from the *Yelton* case to illustrate that counsel should have been alerted that a Notice of Appeal was not proper in this situation procedurally:

“On writ of certiorari . . .” (*not on appeal of right*)

“Defendants sought review of the pre-trial order of the Superior Court. . .” (*just like this one*)

“Defendants brought their petition for writ of certiorari to review the order of the trial court . . .” (*not a direct appeal*)

“The petitioners in this action. . .” (*not appellants*)

“. . . filed writs of supersedeas and certiorari with the Court of Appeals. . .” (*the most obvious*)

“Petitioners contend. . .” (*not appellants*)

“Petitioners first assign as error . . .” (*not appellants*)

30. In effect, disqualified counsel, as well as attorney Beeker, each individually request this Court to follow the law set forth in a case **they themselves cite** when doing so **requires** the dismissal of the defendants’ purported appeal. The defendants have essentially stepped on a land mine which their own attorneys have laid.

31. Opposing counsel misapply the law as set forth in the *Yelton* case as to the facts of the Court’s Order of August 6. However, as far as the stated procedure goes, the State of North Carolina agrees that the writ of certiorari

is the proper mechanism to obtain appellate review of an interlocutory order in a criminal case and therefore moves this Court to strike the defendants' filings as captioned hereinabove.

Conclusion

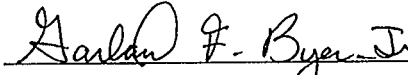
Wherefore, the State of North Carolina:

1. Moves the Court to strike the document captioned "Notice of Appeal" which was filed by the defendants on August 20, 2015; and
2. Moves the Court to strike the document captioned "Motion to Stay Proceedings" which was filed by the defendants on August 20, 2015; and

This the 24th day of August, 2015.

Respectfully submitted,

FOR THE STATE:



GARLAND F. BYERS, JR.
Assistant District Attorney
N.C. State District Attorney's Office
Rutherford County
P.O. Box 70
Rutherfordton, North Carolina 28139
Telephone: (828) 288-6110
Facsimile: (828) 288-6111
Email: Garland.F.Byers@nccourts.org

CERTIFICATE OF SERVICE

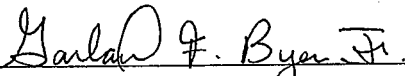
This is to certify that I have this day served Angela S. Beeker, Post Office Box 1666, Hendersonville, NC 28793, counsel for Brooke McFadden Covington, Sarah Covington Anderson & Justin Brock Covington, in the foregoing matter with a copy of the attached document by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon in the manner prescribed by Chapter 15A of the North Carolina General Statutes.

This is to certify that I have this day served Joshua Farmer, Mark Morris, and the law firm of TOMBLIN, FARMER & MORRIS, PLLC, in the foregoing matter with a copy of the attached document by hand-delivery.

This the 24th day of August, 2015.

Respectfully submitted,

FOR THE STATE:



GARLAND F. BYERS, JR.

Assistant District Attorney

N.C. State District Attorney's Office

Rutherford County

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Rutherfordton, North Carolina 28139

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STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NUMBERS: 15-CRS-154, 155 & 164

STATE OF NORTH CAROLINA,)

Plaintiff,)

vs.)

BROOKE McFADDEN COVINGTON,)
SARAH COVINGTON ANDERSON, and)
JUSTIN COVINGTON)

Defendants.)

RESPONSE TO STATE'S MOTIONS TO
DISMISS and MOTION TO STRIKE

FILED
2015
AUG 26 PM 5:01
RUTHERFORD COUNTY CSC

COME NOW defendants in the above-captioned matters, Brooke McFadden Covington, Sarah Covington Anderson and Justin Covington (collectively, the "Defendants"), by and through their attorneys Mark N. Morris and Joshua B. Farmer of Tomblin, Farmer & Morris, PLLC (the "Firm"), and Angela Beeker of F.B. Jackson & Associates Law Firm, PLLC ("Beeker"), responding to the State's "Motion to Dismiss Defendants' Motion to Reconsider Order Disqualifying Counsel," "Memorandum of Law in Support of State's Motion to Dismiss the Defendants' Motion for Reconsideration," and the "Motion to Strike the Defendants' Notice of Appeal and Motion to Stay Proceedings," all of which were filed in these criminal actions on August 24, 2015. The Defendants respectfully present to the Court as follows:

*The Firm has not acted in violation of the
Court's Order of August 6, 2015*

1. The State argues that adherence to the Court's August 6 Order prohibits certain actions reflected in certain filings made in the above-captioned criminal actions subsequent to the August 6 Order. Defendants respectfully disagree. Any actions taken have merely been in an effort to seek review of the Court's August 6 Order. Such review is being sought first with this trial court, and subsequently with the appropriate appellate court.

2. Any related decisions made by Defendants and any related documents executed by Defendants have – as is evident from the filings with the Court – been made with the full benefit and advice of counsel independent of the Firm.

3. The State's arguments on this point ignore the fact that these filings have also been signed by attorney Angela Beeker, who was not disqualified by the August 6 Order.

4. The undersigned believe it to be a fundamental principle as well as common practice that an attorney may seek review or reconsideration of a court's prior order, either with the court itself or with an appellate court. This principle seems especially relevant in instances where there has been a substantial change in circumstances underlying the court's decision.

5. The Motion to Reconsider the Order Disqualifying Counsel, Motion to Stay Proceedings and Notice of Appeal do not involve the merits of the Defendants' cases, but rather is limited to seeking review of the August 6 Order disqualifying the Defendants' choice of retained counsel. This does not equal to "advanc[ing] a cause on behalf of forbidden clients," as the State suggests.

6. *State v. Yelton*, 87 N.C. App. 554, 361 S.E.2d 753 (1987) is a case which has been frequently referenced in these pleadings, which case involved joint representation, the initial disqualification of defense counsel in the trial court and a subsequent reversal of the disqualification order by the North Carolina Court of Appeals. In *Yelton*, the disqualified attorney himself filed writs of certiorari and supersedeas with the North Carolina Court of Appeals. The actions of defense counsel in *Yelton* are similar to the actions of the Firm, in the sense of his seeking review in some capacity of the trial judge's order of disqualification. In *Yelton's* Court of Appeals decision and underlying record on appeal, no issue was raised that defense counsel's actions in advancing the appeal were in violation of the Superior Court's order disqualifying him. In contrast, the Court of Appeals agreed with the position advanced by the previously-disqualified attorney.

7. The State suggests that the rejection of a plea offer by Co-Defendant Adam Bartley was somehow the product of the Firm's efforts. Such assertion is erroneous. Mr. Bartley retained Robert Denton as counsel on August 3, 2015, and has not been represented by the Firm in any capacity since that date. Further, Mr. Bartley's written rejection of the plea offer states on its face: "Robert Denton discussed this plea with me on 8/13/15. He explained my choices and I understand the same...."

8. Since the Court's Order of August 6, The Firm has limited its representation of the Defendants to seeking review of said Order. The Firm has not proceeded with any act of representation addressed to the merits of these criminal actions. Thus, the Firm has not violated the August 6 Order in any way.

*This Court lacks jurisdiction over any challenge to the Defendants'
appeal as to the Court's Order of August 6, 2015*

9. The State takes the position that Defendants are not entitled to appellate review of the August 6 Order as a matter of right, but may only petition the appellate division for review by writ of certiorari.

10. Defendants respectfully submit that the proper forum for the State to contest appellate jurisdiction is before the appellate division itself. "The general rule is that an appeal takes the case out of the jurisdiction of the trial court." *In re Duke Energy Corp*, 760 S.E.2d 740, 743, quoting *Estrada v. Jaques*, 70 N.C. App. 627,637, 321 S.E.2d 240, 247 (1984).

11. The State cites *State v. Williams*, 116 N.C. App. 354, 447 S.E.2d 437 (1994) and *State v. Waters*, 122 N.C. 504, 470 S.E.2d 545 (1996) to support its assertion that Defendants have no right of appeal. These cases are both distinguishable on the facts and procedural histories involved. More importantly to the instant proceeding, the issue of appellate jurisdiction in both *Williams* and *Waters* was argued before and decided upon by the North Carolina Court of Appeals and the North Carolina Supreme Court, respectively.

*The Defendants' recent waivers are in accord with the North
Carolina Rules of Professional Conduct*

12. The State's Motion to Dismiss alleges that certain waivers recently signed by Defendants and provided to the Court on August 20, 2015 in affidavits by the Defendants are "ineffective," "contrary to the law," and "worthless and invalid." In its supporting memorandum, the State's rather spurious reading of the law on this subject is founded in RPC 129, an ethical opinion of the North Carolina State Bar published on January 15, 1993. RPC 129 references Rule 5.8 of the North Carolina Rules of Professional Conduct [as no such numbered rule now exists, Defendant's assume this to be a reference to a prior revision of the Rules of Professional Conduct. Defendants further assume that Rule 5.8 is now embodied in Rule 1.8 of the current revision of the Rules].

13. RPC 129 is entitled "Waiver of Appellate and Postconviction Rights in Plea Agreement." The hypothetical proposed in RPC 129 specifically relates to plea negotiations between prosecutor and defense attorney. Here, Defendants' waivers have no relation whatsoever to any negotiated or proposed plea agreement.

14. The State additionally cites a portion of RPC 129 which says that "[a]ttorneys are expressly prohibited from making agreements prospectively limiting their liability for malpractice. Rule 5.8." Defendants' waivers are not an agreement with the Firm. The waivers, entered into upon the advice of legal counsel independent of the Firm, essentially state that each Defendant wishes to be represented by the Firm and that they each "wish to waive any right I might have to appeal a conviction based on grounds of ineffective assistance of counsel stemming from a conflict of interest of the Firm and its attorneys related to the Firm's joint representation of myself and the other co-defendants in this matter."

15. The ethical implications raised in RPC 129 are inapplicable. To the extent it is implicated, Defendants and the Firm have precisely complied with Rule 1.8(h) of the current Rules of Professional Conduct which reads in pertinent part:


A lawyer shall not: (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement....


Firstly, the waivers are not an "agreement" with the Firm. Secondly, they are clearly made pursuant to independent representation.

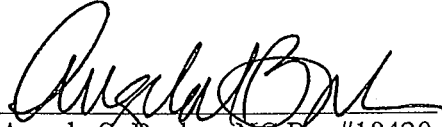
16. Thus, the Defendants' waivers are valid and consistent with the North Carolina Rules of Professional Conduct as well state law – specifically the precedent set in *State v. Yelton*, 87 N.C. App. 554, 361 S.E.2d 753 (1987).

WHEREFORE, Defendants pray that the Court deny the State's Motion to Dismiss Defendants' Motion to Reconsider Order Disqualifying Counsel, and that the Court deny the State's Motion to Strike the Documents Captioned "Notice of Appeal" and "Motion to Stay Proceedings."

This is the ____ day of August, 2015.


Joshua B. Farmer, NC Bar #32669
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Facsimile: (828) 286-4820

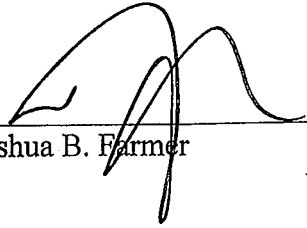

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F.B. JACKSON AND ASSOCIATES LAW FIRM, PLLC
Attorney for Defendants/Movants
Post Office Box 1666
Hendersonville, North Carolina 28793
Telephone: (828) 697-5410

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this document in the above entitled action upon all other parties to this cause by hand delivery to an associate or employee with the Rutherford County District Attorney's Office.

This the 26th day of August, 2015.



Joshua B. Farmer

FILED

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

2015 AUG 27 11:38 AM
IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE #: 15 CRS 154-155, 164
RUTHERFORD COUNTY, C.S.C.

STATE OF NORTH CAROLINA,

VS.

BROOKE McFADDEN COVINGTON,
SARAH COVINGTON ANDERSON,
JUSTIN BROCK COVINGTON,
Defendants.

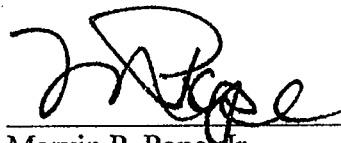
ORDER

.....

THIS CAUSE coming on to be heard and being heard before the undersigned Judge Presiding over the Civil/Criminal Session of Rutherford County, State of North Carolina during the August 27, 2015 Session Criminal Term of Court upon Motion of the Defendants to Reconsider the Order Disqualifying the Attorneys for the Defendants, to wit: Mark Morris, Joshua Farmer, Andrea Farmer and the law firm of Tomblin, Farmer & Morris, P.L.L.C., said Motion to Reconsider filed August 20, 2015. After a review of the Court file, review of the State's and the Defendant's Memorandum, case law, consideration of legal arguments by counsel for the State and the Defendants, it is **HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

The Defendants' Motion to Reconsider the Order of August 6, 2015 filed by the Defendants on August 20, 2015 be and is hereby **DENIED**.

This the 27th day of August, 2015.



Marvin P. Pope, Jr.
Superior Court Judge

CC:
Mr. Garland Byers, ADA Rutherford County
Ms. Angela S. Beeker, Attorney for the Defendants

FILED

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE #: 15 CRS 154-155, 164
RUTHERFORD COUNTY, C.S.C.

BY _____

STATE OF NORTH CAROLINA,

VS.

BROOKE McFADDEN COVINGTON,
SARAH COVINGTON ANDERSON,
JUSTIN BROCK COVINGTON,
Defendants.

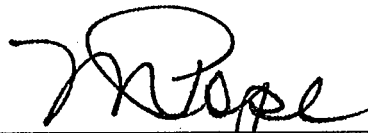
ORDER

.....

THIS CAUSE coming on to be heard and being heard before the undersigned Judge Presiding over the Civil/Criminal Session of Rutherford County, State of North Carolina during the August 27, 2015 Session Criminal Term of Court upon Motion of the State of North Carolina to Dismiss the Appeal of the Defendants to the North Carolina Court of Appeals, said Notice of Appeal being filed August 20, 2015. After a review of the Court file, review of the State's and the Defendant's Memorandum, case law, consideration of legal arguments by counsel for the State and the Defendants, it is **HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

The State of North Carolina's Motion to Dismiss the Notice of Appeal filed by the Defendants on August 20, 2015 be and is hereby **ALLOWED**.

This the 27th day of August, 2015.



Marvin P. Pope, Jr.
Superior Court Judge

CC:

Mr. Garland Byers, ADA Rutherford County
Ms. Angela S. Beeker, Attorney for the Defendants

FILED

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
2015 AUG 27 AM 11:28
FILE #: 15 CRS 154-155, 164
RUTHERFORD COUNTY, O.S.C.

STATE OF NORTH CAROLINA,

VS.

BROOKE McFADDEN COVINGTON,
SARAH COVINGTON ANDERSON,
JUSTIN BROCK COVINGTON,
Defendants.

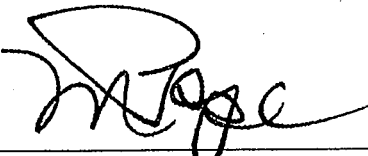
ORDER

.....

THIS CAUSE coming on to be heard and being heard before the undersigned Judge Presiding over the Civil/Criminal Session of Rutherford County, State of North Carolina during the August 27, 2015 Session Criminal Term of Court upon Motion of the Defendants to Stay Proceedings, said Motion to Stay Proceedings being filed August 20, 2015. After a review of the Court file, review of the State's and the Defendant's Memorandum, case law, consideration of legal arguments by counsel for the State and the Defendants, it is **HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

The Defendants' Motion to Stay Proceedings filed by the Defendants on August 20, 2015 be and is hereby **DENIED**.

This the 27th day of August, 2015.



Marvin P. Pope, Jr.
Superior Court Judge

CC:
Mr. Garland Byers, ADA Rutherford County
Ms. Angela S. Beeker, Attorney for the Defendants