

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

WAKE COUNTY

08 CVS 007955

HOPE-A WOMEN'S CANCER CENTER, P.A., )  
and RALEIGH ORTHOPAEDIC )  
CLINIC, P.A. )

Plaintiffs )

v. )

STATE OF NORTH CAROLINA; MICHAEL F. )  
EASLEY, Governor of the State of North )  
Carolina, in his official capacity; NORTH )  
CAROLINA DEPARTMENT OF HEALTH )  
AND HUMAN SERVICES; DEMPSEY E. )  
BENTON, Secretary of the North Carolina )  
Department of Health and Human Services, in )  
his official capacity; DAN A. MYERS, M.D., )  
Chairman of the North Carolina State Health )  
Coordinating Council, in his official capacity; )  
JEFF HORTON, Acting Director, Division of )  
Health Service Regulation, North Carolina )  
Department of Health and Human Services, in )  
his official capacity; and LEE B. HOFFMAN, )  
Chief of the Certificate of Need Section, Division )  
of Health Service Regulation, North Carolina )  
Department of Health and Human Services, in )  
her official capacity, )

Defendants, )

and )

ASHEVILLE RADIOLOGY ASSOCIATES, )  
P.A.; BLUE RIDGE DAY SURGERY CENTER )  
LIMITED PARTNERSHIP; THE )  
CHARLOTTE-MECKLENBURG HOSPITAL )  
AUTHORITY d/b/a CAROLINAS )  
HEALTHCARE SYSTEM; CHARLOTTE )  
SURGERY CENTER, LIMITED )  
PARTNERSHIP; CUMBERLAND COUNTY )  
HOSPITAL SYSTEM, INC. d/b/a CAPE FEAR )

**BRIEF IN SUPPORT OF  
AMENDED MOTION TO  
DISQUALIFY**

)  
 )  
 VALLEY HEALTH SYSTEM; GREENSBORO )  
 SPECIALITY SURGERY CENTER, LIMITED )  
 PARTNERSHIP; HIGH POINT REGIONAL )  
 HEALTH SYSTEM; MISSION HOSPITAL, )  
 INC.; THE MOSES H. CONE MEMORIAL )  
 HOSPITAL OPERATING CORPORATION )  
 d/b/a THE MOSES CONE HEALTH SYSTEM; )  
 NORTH CAROLINA BAPTIST HOSPITAL; )  
 NORTH CAROLINA HEALTH CARE )  
 FACILITIES ASSOCIATION, INC; THE )  
 NORTH CAROLINA HOSPITAL )  
 ASSOCIATION; PITT COUNTY MEMORIAL )  
 HOSPITAL, INC.; REX HOSPITAL, INC.; )  
 SURGERY CENTER OF SOUTHERN PINES, )  
 LLC; SURGICAL CARE AFFILIATES, LLC; )  
 WAKE FOREST UNIVERSITY HEALTH )  
 SCIENCES; and WAKEMED; THE NORTH )  
 CAROLINA HEALTHCARE FACILITIES )  
 ASSOCIATION. )  
 )  
 )  
 Defendant-Intervenors. )

**STATEMENT OF THE CASE**

Plaintiffs Hope-A Women’s Cancer Center, P.A. and Raleigh Orthopaedic Clinic, P.A. (collectively “Plaintiffs”) filed this action challenging several aspects of the process by which the State Medical Facilities Plan is prepared. Plaintiffs’ Complaint, filed on 6 May 2008, listed the law firm of Nelson Mullins Riley & Scarborough, LLP, (hereafter “Nelson Mullins”) as counsel of record on their behalf. On 14 November 2008, a notice of appearance was filed in which the North Carolina Institute for Constitutional Law (hereafter “the Institute”) purported to also make an appearance as counsel of record for Plaintiffs. The signature line on the Notice of Appearance listed the Institute’s name followed by signature blocks for Robert F. Orr (hereafter “Mr. Orr”), identified as Executive Director & Senior Counsel, and Jason Kay (hereafter “Mr. Kay”), identified as Senior Staff

Attorney.<sup>1</sup> Defendants (hereafter “the State”) subsequently filed a motion to disqualify the Institute from representing Plaintiffs on the ground that the Institute is a corporation and, therefore, not authorized to practice law in this State.

On or about 31 December, 2008, Plaintiffs filed an Amended Complaint. The signature page in the Amended Complaint identifies the Nelson Mullins law firm as representing Plaintiffs and contains the name of five Nelson Mullins attorneys. While the Institute is not mentioned, below the signature lines for the Nelson Mullins attorneys are signature lines for Mr. Orr and Mr. Kay. The addresses, phone numbers, and facsimile numbers for Mr. Orr and Mr. Kay are identical to those contained in the Institute’s 14 November 2008 notice of appearance.<sup>2</sup>

On 9 January 2009, based on the Amended Complaint, the State filed an Amended Motion to Disqualify. The State now submits the present memorandum in support of its Amended Motion to Disqualify.

### **ARGUMENT**

Because the signature page in the Amended Complaint is somewhat ambiguous, it is unclear whether the Institute itself has abandoned its efforts to purport to represent Plaintiffs in this action. In any event, for the reasons set out below, North Carolina law prohibits not only the Institute but also Mr. Orr and Mr. Kay from representing Plaintiffs in this case.

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<sup>1</sup> A copy of the Notice of Appearance is attached hereto as Exhibit A.

<sup>2</sup> A copy of the signature line page for the Amended Complaint is attached hereto as Exhibit B.

## I. REPRESENTATION BY THE INSTITUTE.

North Carolina's General Statutes are straightforward regarding the inability of corporations to practice law in this state. North Carolina General Statute § 84-5 states, in pertinent part, that "[i]t shall be unlawful for any corporation to practice law or appear as an attorney for any person in any court in this State." N.C. GEN. STAT. § 84-5(a) (emphasis added).<sup>3</sup> The only exception to N.C. GEN. STAT. § 84-5 is contained in N.C. GEN. STAT. § 84-5.1 which permits nonprofit corporations organized pursuant to Chapter 55A, for the exclusive purpose of providing indigent legal services, to render such services. N.C. GEN. STAT. § 84-5.1.<sup>4</sup>

Our Supreme Court has made clear that "when a statute is clear and unambiguous, we will give effect to its plain meaning and will not entertain a contextual determination of legislative intent." *In re A.R.G.*, 361 N.C. 392, 396, 646 S.E.2d 349, 351 (2007). North Carolina General Statutes § 84-5 and § 84-5.1 fall into this category and can easily be applied to the present case.

The Institute is registered under North Carolina law as a non-profit corporation. (*See Ex. E*) Therefore, unless it falls within the exclusive exception set out in N.C. GEN. STAT. § 84-5.1, it is barred from representing third-party litigants by the general prohibition contained in N.C. GEN. STAT. § 84-5. It is clear that - for two reasons - the Institute does not qualify under that statutory exception. First, the Institute is not organized for the sole purpose of rendering indigent legal services. Second, Plaintiffs in this action are both for-profit entities who have previously retained private counsel (Nelson Mullins) in this action and are, in fact, still represented by said counsel.

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<sup>3</sup> A copy of N.C. GEN. STAT. § 84-5 is attached hereto as Ex. C.

<sup>4</sup> A copy of N.C. GEN. STAT. § 84-5.1 is attached hereto as Ex. D.

Thus, the general rule set out in N.C. GEN. STAT. § 84-5 precludes the Institute's representation of Plaintiffs in this case.

The North Carolina General Assembly has not seen fit to create an additional exception that would render lawful the Institute's attempt to practice law. As such, the Institute should be disqualified from purporting to represent Plaintiffs in this action.

## **II. REPRESENTATION BY ORR AND KAY.**

By removing its name from the signature page in the Amended Complaint, the Institute appears to have implicitly conceded that it is not permitted to represent Plaintiffs in this action. However, not only is the Institute itself precluded from representing Plaintiffs but also its employees, Mr. Orr and Mr. Kay, are likewise prohibited from providing such representation. This is so because employees of a corporation acting within the course and scope of their employment are barred from representing third-party litigants to the same extent as the corporation itself.

The seminal case from the North Carolina Supreme Court on this issue is *Gardner v. North Carolina State Bar*, 316 N.C. 285, 341 S.E.2d 517 (1986). The case arose from a request by a corporation, Nationwide Mutual Insurance Company (hereafter "Nationwide"), to the North Carolina State Bar seeking a reconsideration of two prior ethics opinions. Those opinions had concluded that the rules of ethics prevented an insurance company's in-house counsel from defending the company's insureds in claims stemming from motor vehicle accidents or from prosecuting subrogation claims in the insureds' names. The State Bar reaffirmed its prior opinions but the trial court found that the Bar's decision was arbitrary. *Id.* at 286, 341 S.E.2d at 518.

On appeal, the Supreme Court reversed the trial court, agreeing with the Bar that the proposed representation by Nationwide's attorneys would constitute the unauthorized practice of law

in violation of N.C. GEN. STAT. § 84-5. *Id.* at 294, 341 S.E.2d at 523. After initially noting that courts share with the State Bar concurrent power to regulate the conduct of lawyers in North Carolina, the Court addressed the issue of whether an appearance by Nationwide's attorneys on behalf of its insureds would constitute an appearance *by Nationwide* for purposes of N.C. GEN. STAT. § 84-5. The Court answered this question in the affirmative, stating as follows:

When a corporation's employees perform legal services for the corporation in the course of their employment, their acts have been held to be the acts of the corporation so that in law, the corporation itself is performing the acts. . . . Here, petitioner Nationwide is proposing to send its employees into court. . . . *Such employees, acting in the course of their employment by the corporation, would be charged with representing its insureds as part of their job for Nationwide. Their acts would thereby be the acts of Nationwide itself.*

*Id.* at 289-90, 341 S.E.2d at 520 (emphasis added and internal citations omitted).

The Court then considered the issue of whether such an appearance by the corporation would be prohibited under N.C. GEN. STAT. § 84-5. Nationwide argued that because its insurance policies covered damages awarded against its insureds, it had a direct interest in defending claims against those insureds such that the corporation would essentially be representing itself. However, the Supreme Court declined to accept this argument, ruling that despite any such common interest, the existence of inherent differences between Nationwide and its insureds resulted in the applicability of N.C. GEN. STAT. § 84-5 - which served to preclude this type of representation. *Id.* at 290-91, 341 S.E.2d at 520-21.

The Court also rejected the argument that the representation was permissible because Nationwide's in-house attorneys were licensed with the State Bar. "The fact, much urged by petitioners . . . that the employees Nationwide proposes to use for this purpose are all licensed attorneys[] does not change the situation. *Since a corporation cannot practice law directly, it cannot*

do so indirectly by employing lawyers to practice for it.” *Id.* at 291, 341 S.E.2d at 521 (emphasis added and citation omitted).

The Court further acknowledged its obligation to interpret North Carolina law on this issue in light of the policies articulated by the General Assembly. *See id.* at 293, 341 S.E.2d at 522 (“In the first instance, and absent constitutional restraint, questions as to public policy are for legislative determination.”).

Here, a finding that the Institute and its two in-house attorneys cannot lawfully represent Plaintiffs in this matter is even more straightforward. Unlike in *Gardner*, there can obviously be no contention that the Institute would merely be representing “itself” if it were permitted to appear on behalf of Plaintiffs in the present case. Rather, the two for-profit medical practices who are Plaintiffs in this case are wholly separate and distinct from the Institute.

The Supreme Court’s decision in *Gardner* was consistent with its earlier ruling in *State ex rel. Seawell v. Carolina Motor Club, Inc.*, 209 N.C. 624, 184 S.E. 540 (1936). In *Seawell*, a motor club and an automobile association, both corporations, advertised that they would provide various type of legal services to their members, including representation in criminal cases and assistance with collections. Applying a predecessor statute to N.C. GEN. STAT. § 84-5, the Supreme Court upheld the trial court’s determination that these activities constituted the unlawful practice of law. The Court further ruled that since a corporation was barred from practicing law directly, it was likewise precluded from doing so indirectly by using lawyers to practice in its stead. *Id.* at 631, 184 S.E. at 544.

The holdings in *Gardner* and *Seawell* are clear. Corporations cannot represent third-party litigants in North Carolina - even where the corporation’s interests are similar to that of the litigant.

Moreover, corporations cannot get around N.C. GEN. STAT. § 84-5 simply by having their in-house attorneys - even if they are duly licensed - provide the representation for them since, by doing so, they would be conducting an end run around the statute.

Here, in the face of the State's original Motion to Disqualify, the Institute simply removed its own name from the signature page of Plaintiffs' Amended Complaint but kept the names of its in-house attorneys (Mr. Orr and Mr. Kay) as counsel for Plaintiffs - continuing to list therein the Institute's phone number, address, and facsimile number. In so doing, the Institute has engaged in the type of transparent subterfuge expressly prohibited by *Gardner and Seawell*.

For the same reasons that the Institute itself cannot represent Plaintiffs, it is likewise precluded from authorizing its Executive Director/Senior Counsel and its Senior Staff Attorney to do so in their own names. Otherwise, corporations could freely circumvent N.C. GEN. STAT. § 84-5 by merely omitting the corporate name from legal pleadings while continuing to impermissibly represent third-party litigants through their in-house attorneys. As a result, the General Assembly's intent in passing N.C. GEN. STAT. § 84-5 would be eviscerated. As noted above, North Carolina's appellate courts have refused to allow such a result in cases containing unauthorized practice of law issues. *See also Smith v. Beaufort County Hosp. Ass'n, Inc.*, 141 N.C. 203, 215, 540 S.E.2d 775, 782-83 (2000) (imputing actions of law firm to its members for purposes of *pro hac vice* admission; holding that "[o]therwise, a law firm could continually circumvent North Carolina's prohibition against the unauthorized practice of law by sending different attorneys into our state for different cases."). *Gardner and Seawell* make clear that this attempt to elevate form over substance is insufficient to avoid application of the bar posed by N.C. GEN. STAT. § 84-5.

The Institute's website (pertinent excerpts from which are attached hereto as Exhibit F) describe Mr. Orr and Mr. Kay's affiliation with the Institute. Moreover, a press release issued on behalf of the Institute by Mr. Kay (a copy of which is attached hereto as Exhibit G) aptly demonstrates the identity of interest between the Institute and its in-house attorneys regarding the present lawsuit.

For all of these reasons, Mr. Orr and Mr. Kay should likewise be disqualified from representing Plaintiffs in this action.

### CONCLUSION

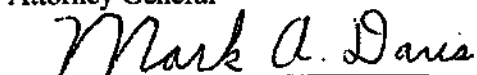
The application of N.C. GEN. STAT. § 84-5 to the present case is clear. The Institute is a corporation that fails to come within the one exception recognized by the General Assembly to the rule that corporations are not permitted to practice law. Accordingly, the Institute is not authorized to represent Plaintiffs in this action. Nor are Mr. Orr and Mr. Kay permitted to do so in the course and scope of their employment with the Institute.

While not legally relevant to the issue of law currently before this Court regarding the applicability of N.C. GEN. STAT. § 84-5, it is worth noting that the enforcement of the prohibition contained therein will not prejudice Plaintiffs. Plaintiffs hired Nelson Mullins as their chosen counsel, and they are continuing to receive highly competent legal representation from that law firm. Indeed, the signature line on the Amended Complaint lists *five* Nelson Mullins attorneys who are representing Plaintiffs in this case. As such, the granting of Defendants' Amended Motion to Disqualify in this case will not in any way diminish the continued provision of such services to Plaintiffs by the Nelson Mullins firm.

For the reasons set out above, Defendants respectfully submit that their Amended Motion to Disqualify should be granted.

Respectfully submitted, this the 16<sup>th</sup> day of January, 2009.

ROY COOPER  
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**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day served the foregoing **BRIEF IN SUPPORT OF AMENDED MOTION TO DISQUALIFY** in the above titled action upon all other parties to this cause by:

- Hand-delivering a copy hereof to each said party or to the attorney thereof;
- Transmitting a copy hereof to each said party via email; or
- Depositing a copy hereof, first-class postage pre-paid, in the United States mail, properly addressed to:

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Wallace C. Hollowell, III  
Denise M. Gunter  
Elizabeth B. Frock  
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EYE SURGERY CENTER, CHARLOTTE  
SURGERY, AND ASHEVILLE RADIOLOGY***

***THE NORTH CAROLINA HEALTHCARE  
FACILITIES ASSOCIATION***

This the 16<sup>th</sup> day of January, 2009.



Mark A. Davis  
Special Deputy Attorney General

**EXHIBIT A**

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
08 CVS 007955

HOPE-A WOMEN'S CANCER CENTER, )  
P.A., and RALEIGH ORTHOPAEDIC )  
CLINIC, P.A., )

Plaintiffs, )

vs. )

STATE OF NORTH CAROLINA; )  
MICHAEL F. EASLEY, Governor of the )  
State of North Carolina, in his official )  
capacity; NORTH CAROLINA )  
DEPARTMENT OF HEALTH AND )  
HUMAN SERVICES; DEMPSEY E. )  
BENTON, Secretary of the North )  
Carolina Department of Health and )  
Human Services, in his official capacity; )  
DAN A. MYERS, M.D., Chairman )  
of the North Carolina State Health )  
Coordinating Council, in his official )  
capacity; JEFF HORTON, Acting )  
Director, Division of Health Service )  
Regulation, North Carolina Department )  
of Health and Human Services, in his )  
official capacity; and LEE B. HOFFMAN, )  
Chief of the Certificate of Need )  
Section, Division of Health Service )  
Regulation, North Carolina Department )  
of Health and Human Services, in her )  
official capacity, )

Defendants. )

BY \_\_\_\_\_

NOTICE OF APPEARANCE

WAKE COUNTY, C.S.C.

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FILED

**NOTICE OF APPEARANCE**

COMES NOW the North Carolina Institute for Constitutional Law and gives notice of its appearance in the above-captioned case as counsel to plaintiffs Hope – A Women's Cancer Center, P.A. and Raleigh Orthopaedic Clinic, P.A. Counsel requests that the Court records reflect such representation of the plaintiffs and that copies of all further correspondence be forwarded to the undersigned counsel.

This the 14<sup>th</sup> day of November, 2008.

NORTH CAROLINA INSTITUTE FOR  
CONSTITUTIONAL LAW

By: Robert F. Orr

Robert F. Orr (State Bar No. 6798)  
Executive Director & Senior Counsel  
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By: Jason B. Kay

Jason B. Kay (State Bar No. 31628)  
Senior Staff Attorney  
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333 Six Forks Road, Suite 180  
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Phone: (919) 838-5313  
Facsimile: (919) 838-5316

*Attorneys for the Plaintiffs*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing NOTICE OF APPEARANCE has been served upon the person(s) listed below by hand delivery and/or depositing a copy of it in the United States Mail addressed to the following:

Angel E. Gray  
Assistant Attorney General  
N.C. Department of Justice  
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Raleigh, NC 27602-0629

Mark A. Davis  
Assistant Attorney General  
N.C. Department of Justice  
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Raleigh, NC 27602-0629

NELSON MULLINS RILEY &  
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GlenLake One, Suite 200  
4140 Parklake Avenue  
Raleigh, NC 27612

Attention:  
Noah H. Huffstetler, III  
Denise M. Gunter  
Wallace C. Hollowell, III  
Elizabeth B. Frock

This the 14<sup>th</sup> day of November, 2008.

  
Jason Kay  
Senior Staff Attorney  
North Carolina Institute for Constitutional Law

**EXHIBIT B**

STATE OF NORTH CAROLINA

COUNTY OF WAKE

HOPE-A WOMEN'S CANCER CENTER, )  
P.A., and RALEIGH ORTHOPAEDIC )  
CLINIC, P.A., )

Plaintiffs, )

vs. )

STATE OF NORTH CAROLINA; )  
MICHAEL F. EASLEY, Governor of the )  
State of North Carolina, in his official )  
capacity; NORTH CAROLINA )  
DEPARTMENT OF HEALTH AND )  
HUMAN SERVICES; DEMPSEY E. )  
BENTON, Secretary of the North )  
Carolina Department of Health and )  
Human Services, in his official capacity; )  
DAN A. MYERS, M.D., Chairman )  
of the North Carolina State Health )  
Coordinating Council, in his official )  
capacity; JEFF HORTON, Acting )  
Director, Division of Health Service )  
Regulation, North Carolina Department )  
of Health and Human Services, in his )  
official capacity; and LEE B. HOFFMAN, )  
Chief of the Certificate of Need )  
Section, Division of Health Service )  
Regulation, North Carolina Department )  
of Health and Human Services, in her )  
official capacity, )

Defendants. )

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

2008 DEC 31 PM 2:29 7955

WAKE COUNTY, C.S.C.

BY \_\_\_\_\_

FIRST AMENDED COMPLAINT  
(COMP & INJU)

Pursuant to N.C. Gen. Stat. § 1-253, *et seq.*, and Rules 15(a) and 57 of the North Carolina Rules of Civil Procedure, Plaintiffs Hope-A Women's Cancer Center, P.A. and Raleigh Orthopaedic Clinic, P.A. hereby file this First Amended Complaint for a declaratory

This the 31st day of December, 2008.

NELSON MULLINS RILEY &  
SCARBOROUGH, LLP

Noah H. Huffstetler, III  
N.C. State Bar No. 7170  
Denise M. Gunter  
N.C. State Bar No. 16695  
Wallace C. Hollowell, III  
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By: Noah H. Huffstetler, III  
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ATTORNEYS FOR HOPE- A WOMEN'S  
CANCER CENTER, P.A. AND RALEIGH  
ORTHOPAEDIC CLINIC, P.A.

# **EXHIBIT C**

LEXSTAT NC GEN STAT 84-5

GENERAL STATUTES OF NORTH CAROLINA  
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\*\*\* This document is current through the 2008 Regular Session \*\*\*  
\*\*\* Annotations are current through September 19, 2008 \*\*\*

CHAPTER 84. ATTORNEYS-AT-LAW  
ARTICLE 1. QUALIFICATIONS OF ATTORNEY; UNAUTHORIZED PRACTICE OF LAW

Go to the North Carolina Code Archive Directory

*N.C. Gen. Stat. § 84-5 (2008)*

§ 84-5. Prohibition as to practice of law by corporation

(a) It shall be unlawful for any corporation to practice law or appear as an attorney for any person in any court in this State, or before any judicial body or the North Carolina Industrial Commission, Utilities Commission, or the Employment Security Commission, or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall organize corporations, or draw agreements, or other legal documents, or draw wills, or practice law, or give legal advice, or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular. The provisions of this section shall be in addition to and not in lieu of any other provisions of Chapter 84. Provided, that nothing in this section shall be construed to prohibit a banking corporation authorized and licensed to act in a fiduciary capacity from performing any clerical, accounting, financial or business acts required of it in the performance of its duties as a fiduciary or from performing ministerial and clerical acts in the preparation and filing of such tax returns as are so required, or from discussing the business and financial aspects of fiduciary relationships. Provided, however, this section shall not apply to corporations authorized to practice law under the provisions of Chapter 55B of the General Statutes of North Carolina.

To further clarify the foregoing provisions of this section as they apply to corporations which are authorized and licensed to act in a fiduciary capacity:

(1) A corporation authorized and licensed to act in a fiduciary capacity shall not:

a. Draw wills or trust instruments; provided that this shall not be construed to prohibit an employee of such corporation from conferring and cooperating with an attorney who is not a salaried employee of the corporation, at the request of such attorney, in connection with the attorney's performance of services for a client who desires to appoint the corporation executor or trustee or otherwise to utilize the fiduciary services of the corporation.

b. Give legal advice or legal counsel, orally or written, to any customer or prospective customer or to any person who is considering renunciation of the right to qualify as executor or administrator or who proposes to resign as guardian or trustee, or to any other person, firm or corporation.

c. Advertise to perform any of the acts prohibited herein; solicit to perform any of the acts prohibited herein; or offer to perform any of the acts prohibited herein.

(2) Except as provided in subsection (b) of this section, when any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, said acts shall be performed for the corporation by a duly licensed attorney, not a salaried employee of the corporation, retained to perform legal services required in connection with the particular estate, trust or other fiduciary matter:

- a. Offering wills for probate.
- b. Preparing and publishing notice of administration to creditors.
- c. Handling formal court proceedings.
- d. Drafting legal papers or giving legal advice to spouses concerning rights to an elective share under Article 1A of Chapter 30 of the General Statutes.
- e. Resolving questions of domicile and residence of a decedent.
- f. Handling proceedings involving year's allowances of widows and children.
- g. Drafting deeds, notes, deeds of trust, leases, options and other contracts.
- h. Drafting instruments releasing deeds of trust.
- i. Drafting assignments of rent.
- j. Drafting any formal legal document to be used in the discharge of the corporate fiduciary's duty.
- k. In matters involving estate and inheritance taxes, gift taxes, and federal and State income taxes:
  1. Preparing and filing protests or claims for refund, except requests for a refund based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
  2. Conferring with tax authorities regarding protests or claims for refund, except those based on mathematical or clerical errors in tax returns filed by it as a fiduciary.
  3. Handling petitions to the tax court.
  - l. Performing legal services in insolvency proceedings or before a referee in bankruptcy or in court.
- m. In connection with the administration of an estate or trust:
  1. Making application for letters testamentary or letters of administration.
  2. Abstracting or passing upon title to property.
  3. Handling litigation relating to claims by or against the estate or trust.
  4. Handling foreclosure proceedings of deeds of trust or other security instruments which are in default.

(3) When any of the following acts are to be performed in connection with the fiduciary activities of such a corporation, the corporation shall comply with the following:

- a. The initial opening and inventorying of safe deposit boxes in connection with the administration of an estate for which the corporation is executor or administrator shall be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with

that particular estate.

b. The furnishing of a beneficiary with applicable portions of a testator's will relating to such beneficiary shall, if accompanied by any legal advice or opinion, be handled by, or with the advice of, an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with that particular estate or matter.

c. In matters involving estate and inheritance taxes and federal and State income taxes, the corporation shall not execute waivers of statutes of limitations without the advice of an attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services in connection with that particular estate or matter.

d. An attorney, not a salaried employee of the corporation, retained by the corporation to perform legal services required in connection with an estate or trust shall be furnished copies of inventories and accounts proposed for filing with any court and proposed federal estate and North Carolina inheritance tax returns and, on request, copies of proposed income and intangibles tax returns, and shall be afforded an opportunity to advise and counsel the corporate fiduciary concerning them prior to filing.

(b) Nothing in this section shall prohibit an attorney retained by a corporation, whether or not the attorney is also a salaried employee of the corporation, from representing the corporation or an affiliate, or from representing an officer, director, or employee of the corporation or an affiliate in any matter arising in connection with the course and scope of the employment of the officer, director, or employee. Notwithstanding the provisions of this subsection, the attorney providing such representation shall be governed by and subject to all of the Rules of Professional Conduct of the North Carolina State Bar to the same extent as all other attorneys licensed by this State.

**HISTORY:** 1931, c. 157, s. 2; 1937, c. 155, s. 2; 1955, c. 526, s. 2; 1969, c. 718, s. 20; 1971, c. 747; 1997-203, s. 1; 2000-178, s. 8.

**NOTES:**

**CROSS REFERENCES.** --As to right of elective share, see *G.S. 30-3.1* et seq.

**LEGAL PERIODICALS.** --For comment on the 1955 amendment, see *33 N.C.L. Rev. 528 (1952)*.

For comment on tax and corporate aspects of professional incorporation in North Carolina, see *48 N.C.L. Rev. 573 (1970)*.

For note on the unauthorized practice of law by corporations, see *65 N.C.L. Rev. 1422 (1987)*.

For 1997 legislative survey, see *20 Campbell L. Rev. 389*.

For a comment on ethical and legislative considerations of multidisciplinary practices, see *36 Wake Forest L. Rev. 193 (2001)*.

**LexisNexis 50 State Surveys, Legislation & Regulations**

Attorneys Admitted Elsewhere

**CASE NOTES**

**PURPOSE.** --The main purpose of this section is to prohibit corporations from performing legal services for others. *Duke Power Co. v. Daniels*, *86 N.C. App. 469, 358 S.E.2d 87 (1987)*.

**A LICENSED ATTORNEY WHO IS A FULL-TIME EMPLOYEE OF AN INSURANCE COMPANY** may not ethically represent one of the company's insureds as counsel of record in an action brought by a third party for a claim

**EXHIBIT D**

LEXSTAT NC GEN STAT 84-5.1

GENERAL STATUTES OF NORTH CAROLINA  
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\*\*\* This document is current through the 2008 Regular Session \*\*\*  
\*\*\* Annotations are current through September 19, 2008 \*\*\*

CHAPTER 84. ATTORNEYS-AT-LAW  
ARTICLE 1. QUALIFICATIONS OF ATTORNEY; UNAUTHORIZED PRACTICE OF LAW

**Go to the North Carolina Code Archive Directory**

*N.C. Gen. Stat. § 84-5.1 (2008)*

§ 84-5.1. Rendering of indigent legal services by nonprofit corporations

Subject to the rules and regulations of the North Carolina State Bar, as approved by the Supreme Court of North Carolina, a nonprofit corporation, organized under Chapter 55A of the General Statutes of North Carolina for the sole purpose of rendering indigent legal services, may render such services through attorneys duly licensed to practice law in North Carolina.

**HISTORY:** 1977, c. 841, s. 1.

**NOTES:**

**LexisNexis 50 State Surveys, Legislation & Regulations**

**Attorneys Admitted Elsewhere**

# **EXHIBIT E**



**Elaine F. Marshall**  
Secretary

North Carolina

**DEPARTMENT OF THE SECRETARY OF STATE**

PO Box 29622 Raleigh, NC 27626-0622 (919)807-2000

**CORPORATIONS**

- Corporations Home
- Search By Corporate Name
- Search For New Corporation
- Search By Registered Agent
- Important Notice
- Corporations FAQ
- Homeowners' Association FAQ
- Tobacco Manufacturers
- Unincorporated Non-Profits
- Dissolution Reports
- Non-Profit Reports
- Verify Certification
- Online Annual Reports

**LINKS & LEGISLATION**

- KBBE B2B Annual Reports
- SOSID Number Correction
- 2001 Bill Summaries
- 1999 Senate Bills
- Annual Reports 1997
- Corporations 1997
- Register for E-Procurement
- Dept. of Revenue

**ONLINE ORDERS**

- Start An Order
- New Payment Procedures

**CONTACT US**

- Corporations Division

**TOOLS**

- Secretary of State Home
- Secretary of State Site Map

SearchType: Exact Match

Search Criteria: North Carolina Institute for Constitutional Law

Search Date: 12/12/2008 11:26:48 AM

**Clickon the entity name below to view the business profile**

	Entity Name	Type	Status	Formed	Online Annual Reports
NC	North Carolina Institute for Constitutional Law	NP	Current-Active	12/9/2003	N/A

1 Records Returned. Search Again



*Elaine F. Marshall*  
*Secretary*

North Carolina

# DEPARTMENT OF THE SECRETARY OF STATE

PO Box 29622 Raleigh, NC 27626-0622 (919)907-2000

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Date: 12/12/2008

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- Corporations FAQ
- Homeowners' Association FAQ
- Tobacco Manufacturers
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- Dissolution Reports
- Non-Profit Reports
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### Corporation Names

Name	Name Type
<b>NC</b> North Carolina Institute for Constitutional Law	Legal

### Non-Profit Corporation Information

<b>SOSID:</b>	0701894
<b>Status:</b>	Current-Active
<b>Date Formed:</b>	12/9/2003
<b>Citizenship:</b>	Domestic
<b>State of Inc.:</b>	NC
<b>Duration:</b>	Perpetual

### Registered Agent

<b>Agent Name:</b>	Pope, Art
<b>Registered Office Address:</b>	180 Six Forks Place I, 3 Raleigh NC 27609
<b>Registered Mailing Address:</b>	180 Six Forks Place I, 3 Raleigh NC 27609
<b>Principal Office Address:</b>	225 Hillsborough Street Suite 245 Raleigh NC 27603
<b>Principal Mailing Address:</b>	225 Hillsborough Street Suite 245 Raleigh NC 27603

## LINKS & LEGISLATION

- KBBE B2B Annual Reports
- SOSID Number Correction
- 2001 Bill Summaries
- 1999 Senate Bills
- Annual Reports 1997
- Corporations 1997
- Register for E-Procurement
- Dept. of Revenue

## ONLINE ORDERS

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- New Payment Procedures

## CONTACT US

- Corporations Division

## TOOLS

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**EXHIBIT F**



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333 E. Six Forks Road, Raleigh, NC 27609  
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## Mission Statement

Believing that "[a]ll political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole[.]" it shall be the mission of the North Carolina Institute for Constitutional Law to conduct research, educate and advise the general public, policy makers and the Bar on the rights of citizens under the constitutions of the United States of America and the State of North Carolina. As appropriate, it shall engage in litigation to protect these rights.

Further believing that "[a] frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty[.]" it shall further be the mission of the North Carolina Institute for Constitutional Law to advocate the principles of limited government and thereby ensure compliance with the constitutional restraints on government.

North Carolina Constitution, Article I, Declaration of Rights, Section 2 Sovereignty of the People.

North Carolina Constitution, Article I, Declaration of Rights, Section 35 Recurrence to Fundamental Principles.

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## Staff

### EXECUTIVE DIRECTOR & SENIOR COUNSEL

**Robert Orr:** On July 31st of 2004, Justice Orr retired from the N.C. judiciary after 18 years of service to the citizens of North Carolina. He spent almost 10 years as a member of the Supreme Court and 8 years on the Court of Appeals. Justice Orr was initially appointed to the bench by Governor Jim Martin in 1986 and prior to that time practiced law in Asheville. He was elected four times statewide by the voters of North Carolina, twice to the Court of Appeals and twice to the Supreme Court.

Justice Orr has served over the years on numerous professional boards and commissions including member and chairman of the Secretary of the Interior's National Park System Advisory Board, Vice President of the N.C. Bar Association, Chair of the Southeastern Conference on Genetics in the Courtroom and as a member of the Governor's Crime Commission and the Chief Justice's Innocence Commission. He has also been involved in many civic activities including the Board of Directors for the Wake County 1<sup>st</sup> Tee program, the Central YMCA Board of Directors, as a Vestry member at his church, and as a mentor through the public school system.

Over the years, Justice Orr has also taught appellate advocacy and state constitutional law at area law schools. He currently serves on the Board of Visitors at N.C. Central School of Law.

After retiring from the Supreme Court in July, 2004, Justice Orr became the first Executive Director and Senior Counsel for the N.C. Institute for Constitutional Law. He stepped down from that position in May, 2007, to run for Governor. He returned to NCICL in August, 2008.

Justice Orr grew up in Hendersonville and is a graduate of both UNC-Chapel Hill undergraduate and law school. He also served three years in the U.S. Army and is married with four children and three grandchildren.

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#### **SENIOR STAFF ATTORNEYS**

**Jeanette Doran** graduated from Auburn University with a B.A. in political science. She earned her law degree with honors from Campbell University School of Law, where she served as research editor of the Campbell Law Review. After graduating from law school, Jeanette served as a law clerk in the United States District Court for the Middle District of North Carolina. Before joining NCICL in August 2005, Jeanette worked in the Office of the Federal Public Defender in Raleigh and at the Institute of Government at UNC-Chapel Hill. Currently Jeanette serves on the Appellate Rules Committee of the NCBA and is admitted to practice before various federal district courts, the United States Court of Appeals for the Fourth Circuit, and the United States Supreme Court. Her responsibilities at NCICL include work on all phases of trial and appellate litigation.

**Jason Kay** earned a Juris Doctor with honors and a Master of Public Administration degree from the University of North Carolina at Chapel Hill and a Master of Science and Bachelor of Science degree from Indiana University at Bloomington. Jason has practiced as Corporate Counsel at Laboratory Corporation of America Holdings, a litigation partner at Sawyer & Kay, PLLC, and Law Clerk for Justice Mark Martin at the North Carolina Supreme Court. While in law school, Jason was Editor in Chief of the First Amendment Law Review and an Honors Writing Scholar. Prior to beginning his legal career, Jason consulted on leadership and management issues faced by nonprofit organizations, universities, and local governments and taught organizational leadership and environmental science at universities and educational nonprofit centers.

#### **DIRECTOR OF COMMUNICATION & DEVELOPMENT**

**Chester "Chet" Johns** joined NCICL as Education Officer in May of 2008. He became Director of Communication and Development in September of 2008. He recently completed his Masters Degree in Education from Western Carolina University. He is a newcomer to the Raleigh area – arriving in August of 2007 from Asheville, NC. He lives on campus at St. Mary's School, where his wife, Emily, is the Director of Residential Life and teaches English. Chet and Emily have a 4 yr. old daughter, Madeline and a 3yr old golden retriever, Higgins. Chet is an addicted fly fisherman and cook.

#### **DIRECTOR OF PARALEGAL SERVICES**

**Cynthia Crowds** earned both her B.A. and M.A. in English from UNC Charlotte and NC State, respectively. She taught English Composition at NC State and English as a Second Language at Wake Technical Community College and later moved to Seoul, Korea to teach English at a private writing academy and at Gangnam University of California-Riverside. Cynthia returned to Raleigh several years thereafter, obtaining a broker's license in real estate and a paralegal certificate from Meredith College before joining NCICL.

#### **OFFICE MANAGER**

**Irene Smith** previously worked as a legal secretary and office manager for law firms in Charlotte and Winston-Salem before moving to Raleigh in 1992 and joining the North Carolina Banking Commission as Administrative Assistant to the Commissioner of Banks. She retired from the Banking Commission in 2006.

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# **EXHIBIT G**

**NCICL Joins Lawsuit to Protect the Constitutional Rights of Physicians**

**November 19, 2008**

**Contact: Jason Kay (919) 838-5313**

**Raleigh, N.C.** At the request of two plaintiffs and their legal counsel, the North Carolina Institute for Constitutional Law (NCICL) has officially entered a lawsuit challenging the constitutionality of North Carolina's health care Certificate of Need laws. NCICL joins Nelson, Mullins, Riley and Scarborough, LLP as co-counsel in the suit. The suit attacks North Carolina's requirement for medical providers to obtain state permission before being allowed to compete in certain health care markets.

North Carolina law prohibits health care providers from adding or expanding certain services unless the State makes a determination that the new service is needed. That decision is based on the findings of a board that annually reviews the need for future health care services. That board, however, is made up of some health care professionals who are employed as officers or directors at hospitals or other health care providers that are or could be offering competing services.

Jason Kay, Senior Staff Attorney at NCICL, commented: "We are glad to be involved in resolving such an important constitutional issue. This issue not only affects the ability of health care providers to offer new services, but it affects the health care choices of North Carolinians."

The plaintiffs in the suit, Hope -- A Women's Cancer Center, P.A. and Raleigh Orthopaedic Clinic, P.A., contend that the Certificate of Need laws unconstitutionally delegate legislative authority to make laws and deny due process of law to those seeking to engage in otherwise lawful business. Hope is located in Asheville and Raleigh Orthopaedic is located in Raleigh.