

EXHIBIT 5

From: Farr, Thomas A.
Sent: Tuesday, February 09, 2016 9:32 AM
To: Speas, Edwin M.; Anita Earls
Cc: Strach, Phillip J.; McKnight, Michael D.; Lawler, Patrick
Subject: FW: draft 30b6 notice

Dear Eddie and Anita

Defendants have asserted a claim preclusion defense in this case. This defense applies if there is privity between the Covington plaintiffs and the Dickson plaintiffs. Privity can exist when there is common control in the two cases.

In depositions taken within the last week we have discovered that the Covington plaintiffs were recruited by the SCSJ or the Democratic Party or agents of the Democratic party including someone who was a plaintiff in Dickson. This is similar to the testimony given by the Harris plaintiffs. All of the plaintiffs in Covington who have responded to a written interrogatory seeking the identity of the party or parties responsible for the payment of attorneys' fees and costs or who have been asked a similar question in a deposition have all stated that they do not know who is responsible for the payment of the attorneys' fees and costs in the Covington matter.

Given the foregoing and other testimony and in light of the truncated discovery period ordered by the court, attached are two 30b6 notices for Poyner and SCSJ.

The issues listed in the notices are relevant to our defense and at the moment we are not aware of anyone else we can depose to discover this information.

We will not serve these notices at this point unless you agree to accept them and provide a witness who will answer questions on the listed topics. Alternatively, if you can name witnesses who can fully answer questions related to the issues in the notices, we would agree not to issue the 30b6 notices and depose those witnesses.

If neither option is acceptable, we will not serve the notices now but instead will file a motion with the court asking that we be allowed to serve these notices and take the depositions. We will request that the court shorten the time for you to respond to our motion to 5 working days.

Please let me know if any of these options are acceptable or if we should proceed to file our motion. Given the amount of time left in discovery, please let us know of your position on our request by the close of business today.

Thank you for your consideration.

Tom

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:15-CV-00399

SANDRA LITTLE COVINGTON, *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 THE STATE OF NORTH CAROLINA,)
 et al.,)
)
 Defendants.)

**DEFENDANTS' JOINT NOTICE OF RULE 30(b)(6) DEPOSITION OF POYNER
& SPRUILL, LLP**

TO ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Defendants in the above-captioned actions will take the deposition of one or more representative person(s) designated by the law firm of Poyner & Spruill, LLP ("Poyner & Spruill").

The deposition shall commence at _____ a.m. on _____, at the offices of Ogletree Deakins, 4208 Six Forks Road, Suite 1100, Raleigh, NC 27609, and shall continue day to day until completed unless otherwise agreed to by the parties. The deposition will be taken upon oral examination before an official authorized by law to administer oaths under the Federal Rules of Civil Procedure and will be recorded by sound and/or stenographic means and may also be recorded by additional audiovisual means.

The topics for the deposition will include the following:

1. The identities of any individual(s), group(s), and/or organization(s), including any plaintiffs, responsible for paying the legal fees and costs in *Dickson, et al. v. Rucho, et al.*, Nos. 11 CVS 16896 and 11 CVS 16940 ("*Dickson*").
2. The identities of any individual(s), group(s), and/or organization(s), including any plaintiffs, responsible for paying the legal fees and costs in the instant action ("*Covington*").
3. The identities of any individual(s), group(s), and/or organization(s), including plaintiffs, responsible for raising funds or assisting to raise funds to pay legal fees and costs in *Dickson*.
4. The identities of any individual(s), group(s), and/or organization(s), including plaintiffs, responsible for raising funds or assisting to raise funds to pay legal fees and costs in *Covington*.
5. The method(s) used to solicit individual contributions to pay for legal fees and costs in *Dickson* and the identities of any individual(s), group(s), and/or organization(s), including plaintiffs, responsible for making these solicitations.
6. The method(s) used to solicit individual contributions to pay for legal fees and costs in *Covington* and the identities of any individual(s), group(s), and/or organization(s), including plaintiffs, responsible for making these solicitations.
7. The identities of any individual(s), group(s), or organization(s) recruited and/or solicited to participate as a plaintiff in *Dickson* and if so the individual(s),

group(s), or organization(s) involved with recruiting and/or soliciting the identified parties.

8. The identities of any individual(s), group(s), or organization(s) recruited and/or solicited to participate as a plaintiff in *Covington* and if so the individual(s), group(s), or organization(s) involved with recruiting and/or soliciting the identified parties.
9. The identities of all plaintiffs in *Dickson* that initiated communications with Poyner & Spruill seeking to retain Poyner & Spruill as counsel, and identities of all *Dickson* plaintiffs with whom Poyner & Spruill and/or some other individual(s), group(s), or organization(s) initially contacted for purposes of the lawsuit.
10. The identities of all plaintiffs in *Covington* that initiated communications with Poyner & Spruill seeking to retain Poyner & Spruill as counsel, and identities of all *Covington* plaintiffs with whom Poyner & Spruill and/or some other individual(s), group(s), or organization(s) initially contacted for purposes of the lawsuit.
11. Whether the plaintiffs in *Dickson* were responsible for paying fees and costs and if not who was responsible.
12. Whether the plaintiffs in *Covington* are responsible for paying fees and costs and if not who will be responsible.

This the ____th day of February, 2016.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Thomas A. Farr

Thomas A. Farr

N.C. State Bar No. 10871

Phillip J. Strach

N.C. State Bar No. 29456

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Telephone: (919) 787-9700

Facsimile: (919) 783-9412

Co-counsel for Defendants

CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing **DEFENDANTS' JOINT NOTICE OF RULE 30(b)(6) DEPOSITION OF POYNER & SPRUILL, LLP** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

Edwin M. Speas, Jr.
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Attorney for Plaintiffs

This the _____th day of February, 2016.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:15-CV-00399

SANDRA LITTLE COVINGTON, *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 THE STATE OF NORTH CAROLINA,)
 et al.,)
)
 Defendants.)

DEFENDANTS' JOINT NOTICE OF RULE 30(b)(6) DEPOSITION OF THE
SOUTHERN COALITION FOR SOCIAL JUSTICE

TO ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Defendants in the above-captioned actions will take the deposition of one or more representative person(s) designated by the Southern Coalition for Social Justice ("SCSJ").

The deposition shall commence at _____ a.m. on _____, at the offices of Ogletree Deakins, 4208 Six Forks Road, Suite 1100, Raleigh, NC 27609, and shall continue day to day until completed unless otherwise agreed to by the parties. The deposition will be taken upon oral examination before an official authorized by law to administer oaths under the Federal Rules of Civil Procedure and will be recorded by sound and/or stenographic means and may also be recorded by additional audiovisual means.

The topics for the deposition will include the following:

1. The identities of any individual(s), group(s), and/or organization(s), including any plaintiffs, responsible for paying the legal fees and costs in *North Carolina State Conference of Branches of the NAACP v. North Carolina.*, Nos. 11 CVS 16896 and 11 CVS 16940 ("*NC NAACP*").
2. The identities of any individual(s), group(s), and/or organization(s), including any plaintiffs, responsible for paying the legal fees and costs in the instant action ("*Covington*").
3. The identities of any individual(s), group(s), and/or organization(s), including plaintiffs, responsible for raising funds or assisting to raise funds to pay legal fees and costs in *NC NAACP*.
4. The identities of any individual(s), group(s), and/or organization(s), including plaintiffs, responsible for raising funds or assisting to raise funds to pay legal fees and costs in *Covington*.
5. The method(s) used to solicit individual contributions to pay for legal fees and costs in *NC NAACP* and the identities of any individual(s), group(s), and/or organization(s), including plaintiffs, responsible for making these solicitations.
6. The method(s) used to solicit individual contributions to pay for legal fees and costs in *Covington* and the identities of any individual(s), group(s), and/or organization(s), including plaintiffs, responsible for making these solicitations.
7. The identities of any individual(s), group(s), or organization(s) recruited and/or solicited to participate as a plaintiff in *NC NAACP* and if so the individual(s),

group(s), or organization(s) involved with recruiting and/or soliciting the identified parties.

8. The identities of any individual(s), group(s), or organization(s) recruited and/or solicited to participate as a plaintiff in *Covington* and if so the individual(s), group(s), or organization(s) involved with recruiting and/or soliciting the identified parties.
9. The identities of all plaintiffs in *NC NAACP* that initiated communications with SCSJ seeking to retain SCSJ as counsel, and identities of all *NC NAACP* plaintiffs with whom SCSJ and/or some other individual(s), group(s), or organization(s) initially contacted for purposes of the lawsuit.
10. The identities of all plaintiffs in *Covington* that initiated communications with SCSJ seeking to retain SCSJ as counsel, and identities of all *Covington* plaintiffs with whom SCSJ and/or some other individual(s), group(s), or organization(s) initially contacted for purposes of the lawsuit.
11. Whether the plaintiffs in *NC NAACP* were responsible for paying fees and costs and if not who was responsible.
12. Whether the plaintiffs in *Covington* are responsible for paying fees and costs and if not who will be responsible.

This the ____th day of February, 2016.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Thomas A. Farr

Thomas A. Farr

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Facsimile: (919) 783-9412

Co-counsel for Defendants

CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing **DEFENDANTS' JOINT NOTICE OF RULE 30(b)(6) DEPOSITION OF THE SOUTHERN COALITION OF SOCIAL JUSTICE** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

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Attorney for Plaintiffs

This the ___th day of February, 2016.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

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