

STATE OF NORTH CAROLINA
COUNTY OF HAYWOOD

FILED
2018 JUN -7 AM 11:30
IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO: 18CVD 345
HAYWOOD COUNTY, C.S.C.

MCLEAN LAW FIRM, P.A.
Plaintiff

BY _____
C

vs.

ORDER OF DISQUALIFICATION

LISA A. KOSIR

Defendant

THIS MATTER coming on to be heard before the undersigned Judge of the 30th Judicial District, and it appearing that the matter came on upon a motion to disqualify attorney Russell McLean III from representing the Plaintiff, and it further appearing that attorney Russell McLean appeared for the Plaintiff, and that the Defendant was present and represented by attorney Bill Jones, and the Court having heard arguments of counsel makes the following FINDINGS OF FACT:

1. That the Defendant made a motion that the Russell McLean III be disqualified from representing the Plaintiff pursuant to North Carolina Bar Rule 3.7.
2. That Russell McLean III consented that he was a necessary witness in the action, and consented to the disqualification pursuant to Rule 3.7.

Based upon the foregoing FINDINGS OF FACT, the Court makes the following CONCLUSIONS OF LAW:

1. That the matter was properly before the Court and the Court has jurisdiction over the persons and subject matter of this action.
2. That Russell McLean III must be disqualified as acting as the attorney for the Plaintiff, and this disqualification is mandated by Rule 3.7 of the North Carolina Rules of Professional Conduct, as he is a necessary witness to the action.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That Russell McLean III is hereby disqualified from acting as the attorney for the Plaintiff in this matter.

FILED

STATE OF NORTH CAROLINA
HAYWOOD COUNTY

2018 MAY 29 PM 1:55

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO: 18 CVD 345

McLEAN LAW FIRM, P.A. HAYWOOD CO., C.S.C.
BY _____)

Plaintiff,)

v.)

LISA A. KOSIR,)

Defendant,)
_____)

ORDER TO SHOW CAUSE

THIS MATTER coming on before the undersigned District Court Judge and it appearing to the Court that the Motion heretofore filed is proper in all respects and after review of the contents thereof the Court enters the following Order;

- at Swain County Courthouse*
1. That the Defendant shall appear before the undersigned Court on the 29 day of May, 2018 at 9:30 a.m. / p.m. and show cause, if any there may be, as to why the Plaintiff is not entitled to the relief sought and that the Defendant should be found in contempt; and shall purge herself of contempt when she produces the password or passwords allowing the Plaintiff access to its clients trust accounts, business files, operating business files and all other files to which it is entitled.

Entered this the 24 day of May, 2018.

Please Mail
to
Haywood Co
Clerk's Office
Thanks!
TJ

Honorable District Court Judge Presiding



C20181525

STATE OF NORTH CAROLINA
HAYWOOD COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO: 18 CVD 345

McLEAN LAW FIRM, P.A.)
)
Plaintiff,)
)
v.)
)
LISA A. KOSIR,)
)
Defendant,)
_____)

ORDER TO SHOW CAUSE

THIS MATTER coming on before the undersigned District Court Judge and it appearing to the Court that the Motion heretofore filed is proper in all respects and after review of the contents thereof the Court enters the following Order;

at
Swain
County
Courthouse

1. That the Defendant shall appear before the undersigned Court on the 21 day of May, 2018 at 9:30 a.m. / p.m. and show cause, if any there may be, as to why the Plaintiff is not entitled to the relief sought and that the Defendant should be found in contempt; and shall purge herself of contempt when she produces the password or passwords allowing the Plaintiff access to its clients trust accounts, business files, operating business files and all other files to which it is entitled.

Entered this the 24 day of May, 2018.



Honorable District Court Judge Presiding

RECEIVED

MAY 25 2018

BY: _____

RETURN OF SERVICE

I certify that a copy of the Order to Show Cause was received and served as follows:

Date Served: 5-25-18

Time Served: 8:37 AM _____ PM

Name of Defendant: Lisa Kosir

By delivering to the defendant named above a copy of the Order to Show Cause

_____ By leaving a copy of the Order to Show Cause at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion residing therein

_____ Other manner of service (specify)

_____ Defendant WAS NOT served for the following reason:

Service Fee Paid: \$30⁰⁰

Date received: 5-25-18

Date of return: 5-25-18

Signature of Deputy Making Return: Sgt. Wudy Messer

Name of Sheriff: Greg Christopher

County of Sheriff: Haywood

FILED
2018 MAY 29 PM 12:17
JAYME G. SO. C.S.C.

C20181528

STATE OF NORTH CAROLINA

File No. 18CVD 345

HAYWOOD County

In The General Court Of Justice
[X] District [] Superior Court Division

MCLEAN LAW FIRM, P.A.

Additional File Numbers

VERSUS

SUBPOENA

LISA A. KOSIR

G.S. 1A-1, Rule 45; 8-59, -61, -63; 15A-801, -802

Party Requesting Subpoena

[] State/Plaintiff [X] Defendant

NOTE TO PARTIES NOT REPRESENTED BY COUNSEL: Subpoenas may be produced at your request, but must be signed and issued by the office of the Clerk of Superior Court, or by a magistrate or judge.

TO Name And Address Of Person Subpoenaed

John Feichter
New Meridian Technologies, Inc.
34 South Main Street
Waynesville NC 28786

Alternate Address

Telephone No.

(828) 452-4414

Telephone No.

YOU ARE COMMANDED TO: (check all that apply)

- [X] appear and testify, in the above entitled action, before the court at the place, date and time indicated below.
[] appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.
[] produce and permit inspection and copying of the following items, at the place, date and time indicated below.
[] See attached list. (List here if space sufficient)

RECEIVED

MAY 25 2018

BY: _____

Name And Location Of Court/Place Of Deposition/Place To Produce

Swain County Courthouse
101 Mitchell Street

Date To Appear/Produce, Until Released

5/29/2018

Time To Appear/Produce, Until Released

9:30

[X] AM [] PM

Bryson City

NC 28713

Date

05/25/2018

Name And Address Of Applicant Or Applicant's Attorney

Bill J. Jones, Attorney at Law, P.A.
89 Walnut Street

Signature

[Handwritten Signature]

Waynesville

NC 28786

- [] Deputy CSC [X] Assistant CSC [] Clerk Of Superior Court
[] Magistrate [X] Attorney/DA [] District Court Judge
[] Superior Court Judge

Telephone No. Of Applicant Or Applicant's Attorney

(828) 456-2886

RETURN OF SERVICE

I certify this subpoena was received and served on the person subpoenaed as follows:

- By [X] personal delivery. [] registered or certified mail, receipt requested and attached.
[] telephone communication by Sheriff (use only for a witness subpoenaed to appear and testify).
[] telephone communication by local law enforcement agency (use only for a witness subpoenaed to appear and testify in a criminal case).

NOTE TO COURT: If the witness was served by telephone communication from a local law enforcement agency in a criminal case, the court may not issue a show cause order or order for arrest against the witness until the witness has been served personally with the written subpoena.

[] I was unable to serve this subpoena. Reason unable to serve: _____

Service Fee

[] Paid [] Due

Date Served

5-25-18

Name Of Authorized Server (type or print)

Sgt. Windy Messer

Signature Of Authorized Server

[Handwritten Signature]

Title/Agency

Deputy

NOTE TO PERSON REQUESTING SUBPOENA: A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party. This does not apply in criminal cases.

NOTE: Rule 45, North Carolina Rules of Civil Procedure, Subsections (c) and (d).

(c) Protection of Persons Subject to Subpoena

- (1) Avoid undue burden or expense. - A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.
- (2) For production of public records or hospital medical records. - Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.
- (3) Written objection to subpoenas. - Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or tangible things may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for objecting to a subpoena:
 - a. The subpoena fails to allow reasonable time for compliance.
 - b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
 - c. The subpoena subjects a person to an undue burden or expense.
 - d. The subpoena is otherwise unreasonable or oppressive.
 - e. The subpoena is procedurally defective.
- (4) Order of court required to override objection. - If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.
- (5) Motion to quash or modify subpoena. - A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

- (6) Order to compel expenses to comply with subpoena. - When a court enters an order compelling a deposition or the production of records, books, papers, documents, electronically stored information, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, electronically stored information, or tangible things specified in the subpoena.
- (7) Trade secrets; confidential information. - When a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.
- (8) Order to quash; expenses. - When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable expenses including attorney's fees.

(d) Duties in Responding to Subpoena

- (1) Form of response. - A person responding to a subpoena to produce records, books, documents, electronically stored information, or tangible things shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.
- (2) Form of producing electronically stored information not specified. - If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it ordinarily is maintained or in a reasonably useable form or forms.
- (3) Electronically stored information in only one form. - The person responding need not produce the same electronically stored information in more than one form.
- (4) Inaccessible electronically stored information. - The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, after considering the limitations of Rule 26(b)(1a). The court may specify conditions for discovery, including requiring the party that seeks discovery from a nonparty to bear the costs of locating, preserving, collecting, and producing the electronically stored information involved.
- (5) Specificity of objection. - When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, electronically stored information, or other tangible things not produced, sufficient for the requesting party to contest the objection.

INFORMATION FOR WITNESS

NOTE: If you have any questions about being subpoenaed as a witness, you should contact the person named on Page One of this Subpoena in the box labeled "Name And Address Of Applicant Or Applicant's Attorney."

DUTIES OF A WITNESS

- Unless otherwise directed by the presiding judge, you must answer all questions asked when you are on the stand giving testimony.
- In answering questions, speak clearly and loudly enough to be heard.
- Your answers to questions must be truthful.
- If you are commanded to produce any items, you must bring them with you to court or to the deposition.
- You must continue to attend court until released by the court. You must continue to attend a deposition until the deposition is completed.

BRIBING OR THREATENING A WITNESS

It is a violation of State law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone attempts to do any of these things concerning your involvement as a witness in a case, you should promptly report that to the district attorney or the presiding judge.

WITNESS FEE

A witness under subpoena and that appears in court to testify, is entitled to a small daily fee, and to travel expense reimbursement, if it is necessary to travel outside the county in order to testify. (The fee for an "expert witness" will be set by the presiding judge.) After you have been discharged as a witness, if you desire to collect the statutory fee, you should immediately contact the Clerk's office and certify your attendance as a witness so that you will be paid any amount due you.

5/29/18
10:30 AM
Filed by the
Court.
TSJ

STATE OF NORTH CAROLINA
COUNTY OF SWAIN

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO: 18cvd 345

MCLEAN LAW FIRM, P.A.
Plaintiff

vs.

MOTION TO DISMISS

LISA A. KOSIR
Defendant

FILED
2018 MAY 29 PM 2:33
HARRIS & HILTON CO., C.S.C.

NOW COMES the Defendant, moving that the Court disqualify attorney Russell McLean III, from representing the Plaintiff, his law firm, and to strike a order to show cause based upon his testimony, in this matter, pursuant to Rule 3.7 of the North Carolina Rules of Professional Conduct, and Harris & Hilton, P.A. v. Rossette, 798 S.E. 2d. 154 (2017), and in support of this motion the Defendant says as follows:


1. That the Plaintiff is the McLean Law Firm, P.A., formed and registered with the North Carolina Secretary of State since 2000.
2. That this action was originally brought by the Plaintiff/Russell McLean III claiming the need to recover property allegedly owned by, and taken from, the law firm.
3. That on the 21st day of May, 2018, Russell McLean III, acting as the attorney for McLean Law Firm, P.A., filed a verified petition seeking an order to show cause, and, thus by the very motion, making himself a necessary witness.
4. That an “order to appear and show cause” was entered by the Honorable Judge Tessa Sellers on the 24th day of May, 2018, based upon testimony, in the form of a verified affidavit by Russell McLean III.
5. That Russell McLean III is in violation of North Carolina Rule 3.7 in that, as an attorney for a corporation, as Rule 3.7 states that a lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness unless:
 - 1) the testimony relates to an uncontested issue;
 - 2) the testimony relates to the nature and value of legal services rendered in the case; or
 - 3) disqualification of the lawyer would work a substantial hardship upon the client.

6. Rule 3.7 prohibits a lawyer from simultaneously serving in these dual roles because combining the role of advocate and witness can prejudice the tribunal and the opposing party and can involve a conflict of interest between lawyer and client. Harris & Hilton, P.A. v. Rasette, 798 S.E. 2d 154 (2017), citing N.C. Rev. R. Prof. Conduct 3.7, cmt 1.
7. That none of the exceptions cited in Rule 3.7 are applicable to the case at hand and as such the matter can't proceed, and must be dismissed.

WHEREFORE, the Defendant respectfully moves for the following relief:

1. That the Court dismiss the show cause order filed by the Plaintiff.
2. That the court dismiss the Plaintiff's motion in the cause in the above captioned matter.
3. That the cost of this action, including Defendant's attorney fees, be taxed against the Plaintiff.

This is the 2nd day of May, 2018.



Bill Jones, Attorney for the Defendant
89 Walnut St.
Waynesville, NC 28786
(828)456-2886
Bar No.:25594

FILED

STATE OF NORTH CAROLINA
COUNTY OF HAYWOOD

2018 MAY 29 PM 3:25
IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO: 18CVD 345

HAYWOOD CO., C.S.C.

MCLEAN LAW FIRM, P.A.

Plaintiff

vs.

MOTION TO DISMISS/ANSWER

LISA A. KOSIR

Defendant

MOTION TO DISMISS:

NOW COMES the Defendant pursuant to N.C.G.S. 1A-1, Rule 12b(6), N.C.G.S. § 5A, et. al, and says that the Plaintiff has failed to state a claim for relief pursuant to the above cited statutes and that the Plaintiff's pleading is so deficient as to either the elements of civil or criminal contempt that a dismissal of the same is required.

ANSWER:

1. Denied.
2. Denied.
3. Denied.
4. This allegation does not require a responsive pleading as the content and directives of the order speak for themselves.
5. Admitted, upon information and belief, that Meridian was able to transfer numerous files.
6. That the Defendant is without sufficient information to admit or deny as to what actions were taken by New Meridian Technologies.
7. Admitted in part and denied in part. It is admitted a request was made for a password Friday morning; however, it is denied that an answer was not provided until Friday afternoon.
8. The Defendant is without sufficient information to admit or deny what actions were taken by Russell McLean III.
9. That the Defendant is without sufficient information to admit or deny the allegations contained in paragraph 9 of the pleading.
10. It is admitted that Russell McLean III contacted Defendant's attorney over the weekend, and that an additional password possibility was provided; however, the Defendant is without sufficient information to admit or deny the remaining allegations.
11. Denied. The Defendant provided to the Plaintiff trust account ledgers prior to any separation of the parties.
12. Denied.

WHEREFORE, the Defendant respectfully requests the following relief:

1. That the Plaintiff have and take nothing from the pleading of May 21, 2018.
2. That the motion requesting and order to show cause, and the order of show cause be dismissed.
3. That the Defendant hereby denies that she is in contempt of the prior Court orders.
4. That the cost of this action, including Defendant's attorney fees, be taxed against the Plaintiff.

This is the 28th day of May, 2018.



Bill Jones, Attorney for the Defendant
89 Walnut St.
Waynesville, NC 28786
(828)456-2886
Bar No: 25594

STATE OF NORTH CAROLINA

File No.

18CVD 345

HAYWOOD

County

In The General Court Of Justice

District Superior Court Division

MCLEAN LAW FIRM, P.A.

Additional File Numbers

VERSUS

LISA A. KOSIR

SUBPOENA

G.S. 1A-1, Rule 45; 8-59, -61, -63; 15A-801, -802

Party Requesting Subpoena

State/Plaintiff Defendant

NOTE TO PARTIES NOT REPRESENTED BY COUNSEL: Subpoenas may be produced at your request, but must be signed and issued by the office of the Clerk of Superior Court, or by a magistrate or judge.

TO Name And Address Of Person Subpoenaed

John Feichter
New Meridian Technologies, Inc.
34 South Main Street
Waynesville NC 28786

Alternate Address

Telephone No.

(828) 452-4414

Telephone No.

YOU ARE COMMANDED TO: (check all that apply)

- appear and testify, in the above entitled action, before the court at the place, date and time indicated below.
- appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.
- produce and permit inspection and copying of the following items, at the place, date and time indicated below.
 - See attached list. (List here if space sufficient)

Name And Location Of Court/Place Of Deposition/Place To Produce

Swain County Courthouse
101 Mitchell Street

Date To Appear/Produce, Until Released

5/29/2018

Bryson City NC 28713

Time To Appear/Produce, Until Released

9:30

AM PM

Name And Address Of Applicant Or Applicant's Attorney

Bill J. Jones, Attorney at Law, P.A.
89 Walnut Street

Date

05/25/2018

Waynesville NC 28786

Signature

Telephone No. Of Applicant Or Applicant's Attorney

(828) 456-2886

- Deputy CSC
- Assistant CSC
- Clerk Of Superior Court
- Magistrate
- Attorney/DA
- District Court Judge
- Superior Court Judge

RETURN OF SERVICE

I certify this subpoena was received and served on the person subpoenaed as follows:

- By personal delivery. registered or certified mail, receipt requested and attached.
- telephone communication by Sheriff (use only for a witness subpoenaed to appear and testify).
- telephone communication by local law enforcement agency (use only for a witness subpoenaed to appear and testify in a criminal case).

NOTE TO COURT: If the witness was served by telephone communication from a local law enforcement agency in a criminal case, the court may not issue a show cause order or order for arrest against the witness until the witness has been served personally with the written subpoena.

I was unable to serve this subpoena. Reason unable to serve:

Service Fee	<input type="checkbox"/> Paid	Date Served	Name Of Authorized Server (type or print)	Signature Of Authorized Server	Title/Agency
\$	<input type="checkbox"/> Due				

NOTE TO PERSON REQUESTING SUBPOENA: A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party. This does not apply in criminal cases.

AOC-G-100, Rev. 2/18

(Please see reverse side)

© 2018 Administrative Office of the Courts

NOTE: Rule 45, North Carolina Rules of Civil Procedure, Subsections (c) and (d).

(c) Protection of Persons Subject to Subpoena

- (1) Avoid undue burden or expense. - A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.
- (2) For production of public records or hospital medical records. - Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.
- (3) Written objection to subpoenas. - Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or tangible things may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for objecting to a subpoena:
 - a. The subpoena fails to allow reasonable time for compliance.
 - b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
 - c. The subpoena subjects a person to an undue burden or expense.
 - d. The subpoena is otherwise unreasonable or oppressive.
 - e. The subpoena is procedurally defective.
- (4) Order of court required to override objection. - If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.
- (5) Motion to quash or modify subpoena. - A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

- (6) Order to compel: expenses to comply with subpoena. - When a court enters an order compelling a deposition or the production of records, books, papers, documents, electronically stored information, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, electronically stored information, or tangible things specified in the subpoena.
- (7) Trade secrets: confidential information. - When a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.
- (8) Order to quash: expenses. - When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable expenses including attorney's fees.

(d) Duties in Responding to Subpoena

- (1) Form of response. - A person responding to a subpoena to produce records, books, documents, electronically stored information, or tangible things shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.
- (2) Form of producing electronically stored information not specified. - If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it ordinarily is maintained or in a reasonably useable form or forms.
- (3) Electronically stored information in only one form. - The person responding need not produce the same electronically stored information in more than one form.
- (4) Inaccessible electronically stored information. - The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, after considering the limitations of Rule 26(b)(1a). The court may specify conditions for discovery, including requiring the party that seeks discovery from a nonparty to bear the costs of locating, preserving, collecting, and producing the electronically stored information involved.
- (5) Specificity of objection. - When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, electronically stored information, or other tangible things not produced, sufficient for the requesting party to contest the objection.

INFORMATION FOR WITNESS

NOTE: *If you have any questions about being subpoenaed as a witness, you should contact the person named on Page One of this Subpoena in the box labeled "Name And Address Of Applicant Or Applicant's Attorney."*

DUTIES OF A WITNESS

- Unless otherwise directed by the presiding judge, you must answer all questions asked when you are on the stand giving testimony.
- In answering questions, speak clearly and loudly enough to be heard.
- Your answers to questions must be truthful.
- If you are commanded to produce any items, you must bring them with you to court or to the deposition.
- You must continue to attend court until released by the court. You must continue to attend a deposition until the deposition is completed.

BRIBING OR THREATENING A WITNESS

It is a violation of State law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone attempts to do any of these things concerning your involvement as a witness in a case, you should promptly report that to the district attorney or the presiding judge.

WITNESS FEE

A witness under subpoena and that appears in court to testify, is entitled to a small daily fee, and to travel expense reimbursement, if it is necessary to travel outside the county in order to testify. (The fee for an "expert witness" will be set by the presiding judge.) After you have been discharged as a witness, if you desire to collect the statutory fee, you should immediately contact the Clerk's office and certify your attendance as a witness so that you will be paid any amount due you.

FILED

MAY 17 11:29

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

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO: 18 CVD 345

McLEAN LAW FIRM, P.A.)
)
Plaintiff,)
)
v.)
)
LISA A. KOSIR,)
)
Defendant,)
)
_____)

**REPLY TO COUNTERCLAIM AND
AFFIRMATIVE DEFENSE**

NOW COMES, the plaintiff and moves the court to dismiss the counterclaim in this action for failure to state a claim upon which relief can be granted through N.C.R.P. 12b(6)

1. Admitted
2. Admitted
3. Admitted that at one point in time the Defendant operated a PLLC at Camp Branch Road Waynesville. However she ceased operating as an attorney at Camp Branch when she was sworn in as a Haywood County Magistrate in March of 2016, as a full time state employee.
4. Admitted
5. Admitted
6. Admitted

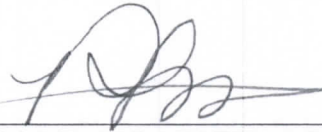
AFFIRMATIVE DEFENSE

That the Plaintiff was a tenant in possession of the premises of April 4, 2018 and that the Plaintiff had changed the locks on the buildings doors and that only two keys existed one in the possession of the Plaintiff's sole stock holder and one in possession of Brad Ferguson's legal assistant. That the property was posted and that the Defendant had no right to enter the premises.

WHEREFORE, the having fully prayed the Plaintiff seeks of the Defendant the following:

1. That the Defendant have and recover nothing by way of her Counterclaim.
2. That the Plaintiff have the relief sought in its Complaint.
3. That all costs of this action be taxed to the Defendant.
4. For such other and further relief the Court deems just and proper.

This the 7th day of May, 2018.



McLEAN LAW FIRM, P.A.
P.O. Box 4
Waynesville, NC 28786
Phone: (828) 452-2896
Fax: (828) 356-6517

CERTIFICATE OF SERVICE

That the foregoing was delivered by U.S. Mail through the U.S. Postal Service and in the Courthouse box of the following:

Bill Jones
89 Walnut Street
Waynesville, NC 28786

This the 18th day of May, 2018.



Russell L. McLean III

STATE OF NORTH CAROLINA
HAYWOOD COUNTY

FILED
MAY 21 PM 3:37
HAYWOOD COUNTY, C.S.C.

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO: 18 CVD 345

McLEAN LAW FIRM, P.A.)
)
Plaintiff,)
)
v.)
)
LISA A. KOSIR,)
)
Defendant,)
_____)

**MOTION REQUESTING AN
ORDER TO SHOW CAUSE**

NOW COMES the Plaintiff and shows unto the Court the following:

1. That on or about April 4, 2018 the Defendant broke into the tenement of the Plaintiff without permission or consent.
2. Thereafter the software belonging to McLean Law Firm, P.A., was seized by the Haywood County Sheriff.
3. Pursuant to an Order of the District Court, the computer and software was located in the motel room of the Defendant.
4. Thereafter a consent order was entered directing that among other things the Plaintiff's client's trust accounts were to be delivered to the Plaintiff as well as operating accounts and files.
5. That as of Thursday afternoon, May 17, 2018, New Meridian Technologies was able to download and transfer four of the many files which are to be delivered to the Plaintiff.
6. The files transferred included the Plaintiff's client's trust account and operating account; however, New Meridian discovered that the accounts were administratively password protected and could not open the trust account or operating account files.
7. Friday morning, May 18, 2018, the Plaintiff contacted the Defendant's attorney who in the afternoon provided a password to the Plaintiff.
8. The Plaintiff attempted to open the trust account and operating accounts with variations of the use of the password but failed to gain access to the files.
9. New Meridian suggested leaning on Defendant's attorney to secure the correct password because of the prohibitive efforts needed to breach the password and open the files.

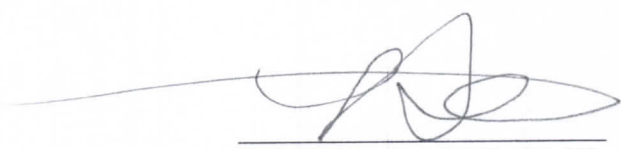
10. Thereafter, the Plaintiff's counsel contacted the Defendant's attorney over the weekend who on late Sunday afternoon provided a second password which was then used but failed to open the accounts and programs.
11. It has now been 52 days since the Plaintiff has had access to its clients trust account files and is in desperate need of accessing those files for legal purposes to utilize the client's funds.
12. The Plaintiff has no other remedy than to seek the aid of the Court in obtaining an Order to Show Cause directing and compelling the Defendant to turn over the correct administrative password.

WHEREFORE, the Plaintiff prays of the Court the following:

1. That an order be entered directing the Defendant to appear in Court on a date certain and show cause why she should not be held in contempt for failing to disclose the password necessary to access the Plaintiff's trust account and operating account files.
2. That the Plaintiff have and receive reasonable attorney's fees for the prosecution of this motion.
3. That the cost of this action be taxed to the Defendant.
4. For such other and further relief as the Court may deem just and proper.

This the 21st day of May, 2018.

McLEAN LAW FIRM, P.A.



RUSSELL L. McLEAN III
P.O. Box 4
Waynesville, NC 28786
Phone: (828) 452-2896
Fax: (828) 356-6517

VERIFICATION

STATE OF NORTH CAROLINA
HAYWOOD COUNTY

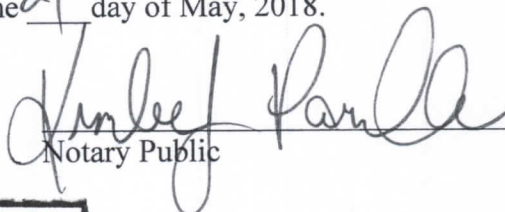
Comes now RUSSELL L. MCLEAN, the sole shareholder of Mclean Law firm PA., the Plaintiff in the forgoing action, being first duly sworn, deposes and verifies the contents of the foregoing Motion to his own knowledge of those facts known to him and believes truthfully upon information and belief the contents of those matters.

This the 21st day of May, 2018.



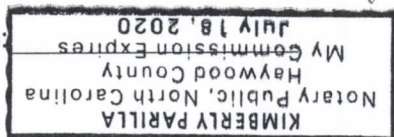
RUSSELL L. MCLEAN III

Sworn to and subscribed before me this the 21 day of May, 2018.



Notary Public

My Commission Expires:



CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Motion Requesting an Order to Show Cause and Proposed Order by U.S. Mail upon the following:

Bill Jones, Esq.
89 Walnut Street
Waynesville, NC 28786

This the 21st day of May, 2018.



Russell L. McLean, III
P.O. Box 4
Waynesville, NC 28786
N.C. Bar no: 7220
Phone: (828) 452-2896
Fax: (828) 356-6517