

JUN 26 2017

STATE OF NORTH CAROLINA

File No. 16 CVS 997

HAYWOOD County

In The General Court of Justice
District Superior Court Division

HAYWOOD COMMUNITY COLLEGE, by and through the Trustees of Haywood Community College

Additional File Numbers

VERSUS

MILES McCLELLAN CONSTRUCTION COMPANY, INC., a Ohio Corporation, et al.

SUBPOENA

G.S. 1A-1, Rule 45

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.

Name And Address of Person Subpoenaed
Monroe A. Miller, Jr.
19 Big Spruce Lane
Waynesville, N.C. 28786

Alternate Address

Telephone No.
828-456-3718

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.)

See Exhibit "A" attached.

The records requested on the attached list can be submitted via facsimile (704-247-8582) and/or electronic mail (jgriffin@martineauking.com) on or before the date indicated below.

Name And Location of Court/Place Of Deposition/Place To Produce
Martineau King, PLLC
PO Box 31188
Charlotte, N.C. 28231

Date To Appear/Produce

July 21, 2017

Time To Appear/Produce

2:00

AM PM

Name And Address of Applicant or Applicant's Attorney
James E. Griffin, III ("Tripp"), Martineau King, PLLC
P. O. Box 31188
Charlotte, NC 28231

Date

June 22, 2017

Signature

Telephone No.
(704)247-8520

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

RETURN OF SERVICE

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

- personal delivery.
registered or certified mail, receipt requested and attached.
telephone communication (For use only by the sheriff's office for witness subpoenaed to appear and testify.)
I was unable to serve this subpoena.

Service Fee
\$

Paid Due

Date Served

Signature of Authorized Server

Title

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, Parts (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 subpoena. - 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 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.
- 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, 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, 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, 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 documents shall produce them as they are kept in the usual course of business or shall organize and label the documents to correspond with the categories in the request.

(2) 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, 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 the other side 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 to your attendance as a witness so that you will be paid any amount due you.

Exhibit "A"

DEFINITIONS

- A. The pronoun "you" refers to Monroe A. Miller, Jr..
- B. The words "**document**" and "**documentation**" mean any original, reproduction, copy and non-identical copies (whether by reason of alterations or marginal notes) of any typed, printed, graphic, drawn, recorded or written paper or matter, correspondence, memoranda, reports, notes, or magazines, newspapers, booklets, circulars, bulletins, notices, instructions, minutes, other communications, questionnaires, surveys, charts, graphs, drafts, or any of the foregoing, and tape or other electronic data compilations from which information can be obtained.
- C. The word "**communication(s)**" means every disclosure, transfer, exchange, or transmission of information, whether oral, written, or electronic, and whether face to face, by telecommunications, computer, U.S. Mail, corporate internal mail, telecopier, telephone, text, email, facsimile machine, or otherwise.
- D. The word "**CAB**" refers to the Creative Arts Building located at 185 Freedlander Drive, Clyde, N.C. 49503, as well as any and all curtilages and appurtenances related thereto. The word "**CAB**" includes, but is not limited to, the sustainable energy solar system located comprised of the Solar Thermal Facility, the Photovoltaics System, the Emergency Generator, and/or the Absorption Chiller and any and all associated components, wiring, and other equipment related thereto (including, but not limited to, associated controls, tanks, pumps, solar panels, heat exchanges, piping, storage tanks, and sleeves, bracers, and connectors).
- E. The words "**HCC Bd.**" refer to anyone directly employed by and/or working on behalf of the Haywood Community College Board of Trustees, including, but not limited to, past and current Trustees, Mark Bumgarner, Donna Forga, Lynne Barrett, Charles Boyd, Neal Ensley, Richard Lanning, Dean McMahan, Michael McConnell, Peggy Melville, Robert "Bob" Morris, Steve Sorrells, Nicole Owen, and/or Randy Herron.
- F. The word "**FLS**" relates to FLS Solar 20, LLC, FLS Energy, Inc., FLS Owner II, LLC, Cypress Creek Renewables, and/or anyone directly employed by and/or working on its behalf, including, but not limited to, Frank Marshall, Michael Shore, and/or Steve Levitis.
- G. The word "**HCC**" refers to anyone directly employed by and/or working on behalf of Haywood Community College including, but not limited to, Dr. Rose Johnson, Julie Davis, Debbie Trull, and/or Teresa Starrs.
- H. The words "**Haywood Bd. Comm.**" refer to anyone directly employed by and/or working on behalf of the Haywood County Board of Commissioners including, but not limited to, past and current Commissioners, Kirk Kirkpatrick, Bill Upton, Charles "Skeeter" Curtis, Mark Swanger, Denny King, Chip Killian, David Cotton, and/or Marty Stamey.

Exhibit "A"

I. The words "**Innovative Design**" refer to anyone directly employed by and/or working on behalf of Innovative Design, Inc., including, but not limited to, Mike Nicklas and/or Bae-Won Koh. The words "**Innovative Design**" do *not* include the following entities (or anyone directly employed by them): Miles McClellan Construction Company, Inc., Carolina Floor System, Inc., Maxxon Corporation, and/or Maxxon Southeast, Inc.

DOCUMENTS REQUESTED

1. Copies of any and all communications (including documents attached thereto) from 18 March 2009 to the present, which discuss, relate or refer in any way to the planning, financing, design, construction, and/or completion of the CAB, sent by you or received from the following:
 - a. HCC Bd.;
 - b. FLS;
 - c. HCC;
 - d. Haywood Bd. Comm., and specifically included in this request are the communications referenced in the Affidavit filed in Haywood County District Court File No. 16-CR-053432;
 - e. Pat Smathers ("Smathers");
 - f. William Guiney ("Guiney"); or,
 - g. Innovative Design.

2. Copies of any and all documents reflecting communications, representations, or statements made by any of the following which discuss, relate or refer in any way to the planning, financing, design, construction, and/or completion of the CAB from 18 March 2009 to the present:
 - a. HCC Bd.;
 - b. FLS;
 - c. HCC;
 - d. Haywood Bd. Comm.;
 - e. Smathers;
 - f. Guiney; or,
 - g. Innovative Design.

3. Copies of any and all documents you relied on when you spoke at meeting(s) to the HCC Bd. and/or Haywood Bd. Comm. about the planning, financing, design, construction, and/or completion of the CAB, including, but not limited to, on:
 - a. 16 August 2010;
 - b. 7 September 2010;
 - c. 20 September 2010;

Exhibit "A"

- d. 7 October 2010;
 - e. 1 October 2012; and,
 - f. 7 October 2013.
4. Copies of any recording(s) (including, but not limited to, audio, video, or photograph) you have of any meetings, public hearings, work sessions, or inspection(s) attended by HCC Bd., FLS, HCC, Haywood Bd. Comm., Smathers, FLS, and/or Innovative Design during which the CAB was discussed, including, but not limited to, recordings taken 12 May 2010, 16 August 2010, and/or 7 September 2010 (Haywood County "Toeprints" Vol. No. 1, Issue No. 14).
5. Copies of any and all requests for documents (including, but not limited to, informal requests and formal Public Record Requests, Freedom of Information Act Request(s), and the like) you submitted to the HCC Bd., HCC, Haywood Bd. Comm., FLS, and/or Smathers relating to the planning, financing, design, construction, and/or completion of the CAB, from 18 March 2009 to the present, as well as any communications and/or documents received in response thereto. Specifically included in this request are those referenced in Haywood County "Toeprints":
- a. Vol. No. 1, Issue No. 12;
 - b. Vol. No. 1, Issue No. 19;
 - c. Vol. No. 1, Issue No. 22;
 - d. Vol. No. 1, Issue No. 23;
 - e. Vol. No. 1, Issue No. 26;
 - f. Vol No. 2, Issue No. 3;
 - g. Vol No. 2, Issue No. 9;
 - h. Vol No. 2, Issue No. 10;
 - i. Vol. No. 2, Issue No. 12;
 - j. Vol. No. 2, Issue No. 19;
 - k. Vol. No. 4, Issue No. 15; and,
 - l. Vol. No. 5, Issue No. 4.
6. Copies of any recording(s) (including, but not limited to, audio, video, or written) you have of anyone discussing the planning, financing, design, construction, and/or completion of the CAB, including, but not limited to:
- a. HCC;
 - b. HCC Bd.;
 - c. Haywood Bd. Comm.;
 - d. Smathers;
 - e. FLS; or,
 - f. Innovative Design.

Exhibit "A"

7. Copies of any and all photograph(s), videotapes, and/or diagrams you have of the CAB from 18 March 2009 to the present, including those taken 20 May 2012 and 5 September 2012.

8. Copies of any recording(s) (including, but not limited to, photographs, videotapes, diagrams, and/or audio recordings) you have of FLS, its facilities, and/or services it provided relating to the CAB. Specifically included in this request are those referenced in Haywood County "Toeprints":
 - a. Vol. No. 2, Issue No. 31; and,
 - b. Vol. No. 3, Issue No. 4.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing SUBPOENA was served upon all parties' attorneys by depositing a copy thereof in the United States mail, postage prepaid and addressed to the attorney as follows:

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This 22nd day of June, 2017.



James E. Griffin, III