

NORTH CAROLINA COURT OF APPEALS  
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HARRIETT HURST TURNER and )  
JOHN HENRY HURST, )

Plaintiffs-Appellants, )

vs. )

THE HAMMOCKS BEACH )  
CORPORATION, NANCY )  
SHARPE CAIRD, SETH )  
DICKMAN SHARPE, SUSAN )  
SPEAR SHARPE, WILLIAM )  
AUGUST SHARPE, NORTH )  
CAROLINA STATE BOARD OF )  
EDUCATION, ROY A. COOPER, )  
III, in his capacity as Attorney )  
General of the State of North )  
Carolina, )

Defendants-Appellees. )

CLERK COURT OF APPEALS  
OF NORTH CAROLINA

2011 NOV 21 PM 1:45

FILED

From Wake County  
No. 06 CVS 18173

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RECORD ON APPEAL

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EXHIBIT 2-TRANSCRIPT PAGES

from

SEPTEMBER 30, 2010 TRANSCRIPT

1 Francis' language. "Since 1987, has it become impossible or  
2 impractical to use the trust property and land for the  
3 purposes specified by Dr. William Sharpe and his wife in the  
4 deed and agreement executed in 1950?"

5 THE COURT: "Since 1987, has it become" --

6 MR. EMORY: "Impossible or impractical to use the  
7 trust property and land for the purposes specified by Dr.  
8 William Sharpe and his wife in the deed and agreement  
9 executed in 1950?"

10 THE COURT: "To use the trust property or" --

11 MR. EMORY: "And land." "The trust property and  
12 land."

13 THE COURT: Okay. "And land."

14 Go ahead.

15 MR. EMORY: "For the purposes specified by Dr.  
16 William Sharpe and his wife in the deed and agreement  
17 executed" -- "by Dr. William Sharpe and his wife in the  
18 deed and agreement executed in 1950."

19 THE COURT: Mr. Francis?

20 MR. FRANCIS: Since I proposed that language, I  
21 don't think I can object to it.

22 THE COURT: I was just getting ready to say what  
23 your objection would be.

24 MR. FRANCIS: Why am I standing up?

25 The only thing I would suggest -- I've had a

1 chance to think about it a little bit more, and I think it  
2 would improve the language and go to the point of this if  
3 you would add -- after the word "impractical," add "for The  
4 Hammocks Beach Corporation." So in other words, it would  
5 say, "Since 1987, has it become impossible or impractical  
6 for The Hammocks Beach Corporation or for this trustee to  
7 use the trust property and land for the purposes specified,"  
8 so forth and so on.

9 THE COURT: What do you say about that?

10 MR. EMORY: We object to that because that lowers  
11 the standard substantially. The definition, as the Court  
12 has described later in the instructions, that impossibility  
13 refers to the ability to carry out the purposes of the  
14 trust. Period. If we were talking about changing trustees,  
15 that might be different, but the standard is whether or not  
16 the trust purposes can be accomplished at all, and so we  
17 would object to that assertion.

18 THE COURT: Well, this language appears to be  
19 your language, Mr. Francis.

20 I'll allow that with the change that "Since 1987,  
21 it has become impossible or impractical to use the trust  
22 property and land for the purposes specified by Dr. William  
23 Sharpe and his wife in the deed and agreement executed in  
24 1950".

25 MR. EMORY: Very well.

1 "by the trustee, The Hammocks Beach Corporation, with the  
2 available means and resources."

3 THE COURT: Okay. What do you say about that,  
4 Mr. Francis?

5 MR. FRANCIS: No, that -- that language is  
6 absolutely essential to this instruction because that is --  
7 you know, that is the way the cases interpret  
8 impracticability, and that is also the way the document  
9 refers to impracticability.

10 I mean, I think, you know, one of the things that  
11 is an implicit suggestion is if it is practicable by anybody  
12 then it's not impossible or impractical. And we absolutely  
13 agree that it is practicable by some trustee. It's just not  
14 this trustee. And that is what Dr. Sharpe contemplated by  
15 the structure in the deed. You remember what he did was, he  
16 said if it becomes impossible or impracticable, then we go  
17 to the successor trustee. So he contemplated the  
18 interaction between the abilities of the trustee to fulfill  
19 the trust and the notion of impossibility and  
20 impracticability.

21 So we need to retain this language in practice by  
22 this trustee in order to stay true to the law and true to  
23 the intent of the document we're interpreting.

24 THE COURT: All right. Let me consider that.

25 What would --

1 for trust purposes was not possible, could not be done.  
2 Impractical, on the other hand, does not mean that it is  
3 impossible to use the land for trust purposes but, rather,  
4 that such use is impossible in practice.

5 THE COURT: Is there a case that says in this  
6 specific instance a particular trustee is in place, Mr. --  
7 Mr. Francis?

8 MR. FRANCIS: I do not have one to offer to the  
9 Court right now. We can look over the lunch break, Your  
10 Honor.

11 THE COURT: You'll look over the lunch break.  
12 Because it seems to me that it's saying  
13 impossible in practice means in general. In general.

14 But if you can find a case that says that the  
15 language should be -- it should be specific, then I'm  
16 certainly willing to give it --

17 MR. FRANCIS: We will look for that case, Your  
18 Honor.

19 If I could just comment on this point?

20 THE COURT: Yes.

21 MR. FRANCIS: If you consider that, I would ask  
22 you to just look at the alternative disposition clause in  
23 the deed, which, as I said, has this concept that once  
24 there's impossibility and impracticability, you can go to  
25 another trustee, which clearly suggests that they're

1 referring to impossibility or impracticability under that  
2 trustee. That's the reason why we suggest it, you know,  
3 means and available resources.

4 So if the concept would be -- if you're saying  
5 Hammocks Beach Corporation doesn't have the means or  
6 available resources, then it's impractical, then you go to  
7 the state entity he was contemplating, which would have more  
8 resources. That's why we're -- that's why we're suggesting  
9 that, that language we proposed.

10 THE COURT: Well, you know, there's two ways of  
11 reading that, because when you say it and put it in the  
12 alternative like that, it would seem to suggest that if they  
13 can't do it, the state maybe can do it. In other words, it  
14 tends to indicate it's not just specific to Hammocks Beach  
15 Corporation.

16 But look at some cases and see what it says.

17 MR. FRANCIS: Yes, Your Honor.

18 THE COURT: Okay. What else?

19 MR. EMORY: And, Your Honor, just two small  
20 things, just to make sure that -- on page 10 that the  
21 description of the issue regarding the vote conforms to what  
22 we -- the changes we made just a minute ago. That is, so  
23 instead of saying "in failing to declare" for the third  
24 issue, you would say "by not declaring."

25 THE COURT: Where is that?

1 Where we really are, so we won't be implying --

2 THE COURT: But they haven't even tendered it.

3 MR. EMORY: So they -- I think the issue has to  
4 be put --

5 THE COURT: Well, see, I don't think there's -- I  
6 don't think -- I think the issues -- I mean, when you really  
7 think about it, it's not ripe, I mean, because there's -- at  
8 this point in this litigation, you can't really tender it  
9 through testimony and evidence at this point because there  
10 first has to be a finding of impossibility and  
11 impracticability with regard to the current trustee.

12 So there's no way for -- it would take a  
13 bifurcated hearing where you do this, and then they say no,  
14 and then you put on some more evidence, put on evidence of  
15 their refusal in order to -- and they don't do that. I  
16 don't think you can do it in one stage, now that I think  
17 about it, because it's literally like, you know, here's the  
18 current person. Okay. This person's been removed. Now,  
19 you know, there needs to be a hearing about whether or not  
20 the state wants to be that person, and then the state has to  
21 at that point -- because there's nothing to tender to them  
22 except an action, and that doesn't give them an opportunity  
23 to be a trustee if there's just an action.

24 MR. EMORY: I follow the Court, and I understand  
25 what you're saying, but I don't think -- that is certainly a



1 way to do it, but another way to do it would be what the  
2 plaintiff -- I mean, the way the plaintiff, I think, began  
3 with its case on the pretrial order. They could have called  
4 Mr. Ziko, had him come in here and ask him the question if  
5 this were -- as you put in your hypothetical, if in fact  
6 this jury finds that it's impossible for the -- impossible  
7 for the land and property to be used for the trust purposes,  
8 would the attorney general, on behalf of the State of North  
9 Carolina, accept this tender. And then if he had said no,  
10 then we would -- you know, then there would be evidence on  
11 the point, the question would be in the case, and you could  
12 answer the question.

13           What we have here is a failure of evidence and a  
14 failure to meet the burden of production of proof. So to  
15 take it out is to say we'll give the plaintiffs a pass on  
16 what they need to prove under the document. And we've been  
17 talking for now nine days about what these documents mean.  
18 Seems to me that they're required to demonstrate compliance  
19 with the -- with those terms.

20           So that's our position. I recognize --

21           THE COURT: Well, see, what I'm saying is that  
22 what you're really saying, without really something to offer  
23 the state, is you're getting an advisory opinion, at best,  
24 about what their position would be, or an opinion, their --  
25 an indication of what their position would be, because

1 there's nothing to offer them until such time as there is no  
2 trustee.

3           You're saying, you know, okay. Now there is no  
4 trustee because of this -- this decision. So now, you know,  
5 the Court issues as part of the judgment that the -- that  
6 the State of North Carolina appear and -- and indicate  
7 whether they wish to become trustee, become the trustee of  
8 this -- of this trust, and if -- substitute trustee for this  
9 trust, and only at that time are they empowered to really  
10 refuse or decline because at that time there's something to  
11 really tender. There's nothing to really tender, except the  
12 possibility, in a trial where the decision about  
13 impossibility or impracticability has not been decided, but  
14 in -- you know, in a hearing, once there's -- once it's a  
15 reality, then there's something to accept or decline.

16           MR. EMORY: I understand. So -- well, let me  
17 make sure if I do understand the Court then. What that  
18 would mean is if the jury finds in the plaintiffs' favor on  
19 all the issues in this case when they deliberate, they still  
20 won't be in a position to get the property.

21           THE COURT: That's right. Until there's a  
22 hearing and the state actually indicates on the record that  
23 they -- they choose to decline or refuse to accept an  
24 appointment as trustee in this case.

25           MR. EMORY: Your Honor, I understand your ruling.

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
06 Cvs 18173

HARRIET HURST TURNER and  
JOHN HENRY HURST,

Plaintiffs,

vs.

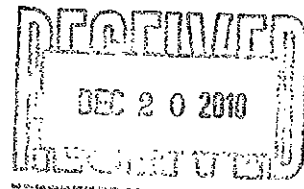
THE HAMMOCKS BEACH  
CORPORATION, NANCY SHARPE  
CAIRD, SETH DICKMAN SHARPE,  
SUSAN SPEAR SHARPE, WILLIAM  
AUGUST SHARPE, NORTH CAROLINA  
STATE BOARD OF EDUCATION, ROY  
A. COOPER, III, in his capacity as  
Attorney General of the State of North  
Carolina,

Defendants.

OBJECTION TO NOTICE  
OF DEPOSITION OF  
NONPARTY WITNESS or,  
in the alternative, MOTION  
FOR PROTECTIVE ORDER  
Rules 26 and 45  
(Senior Deputy Attorney  
General Thomas J. Ziko)

Pursuant to Rule 45 of the North Carolina Rules of Civil Procedure, the North Carolina State Board of Education ("SBE") and deponent Thomas J. Ziko, Senior Deputy Attorney General, through undersigned counsel, object to the deposition of Mr. Ziko or in the alternative, move the Court for a protective order barring Plaintiffs from taking the same pursuant to Rule 26(c). In support of this motion, the undersigned show the following:

1. On December 13, 2010, Plaintiffs' attorneys served a "Notice of Taking Deposition" for Thomas J. Ziko, Senior Deputy Attorney General. The Notice was served on Mr. Ziko, James Gulick, Senior Deputy Attorney General, and attorneys for Defendant Hammocks Beach Corporation noticing the deposition of Thomas J. Ziko for Thursday, December 23, 2010, at 2:30 p.m. at the offices of Plaintiffs' attorneys.



2. Mr. Ziko is not an employee of a party to this action. Mr. Ziko is an employee of the North Carolina Department of Justice. Although Mr. Cooper, the Attorney General, was named as a party in his official capacity, the Department of Justice was not. Furthermore, the Attorney General was dismissed as a party in this action pursuant to a Court Order dated August 21, 2007. Therefore, as a nonparty, pursuant to Rule 30(a), Mr. Ziko's attendance may only be compelled by a properly issued subpoena. *Kilgo v. Wal-Mart Stores, Inc.*, 138 N.C. App. 644, 648 531 S.E.2d 883, 887, n.5 (2000), citing N.C. Gen. Stat. 1A-1, Rules 30(a) and 45(a) (2010) and 2 North Carolina Civil Procedure §45.5, at 104 (noting that a "Rule 45(a) subpoena is required to mandate a non-party's attendance" at a Rule 30 deposition). To date, Plaintiffs have not served Mr. Ziko with a subpoena commanding him to appear and testify at the date and time of his deposition.

3. In addition, the rules of discovery are designed to allow discovery *only* when the information sought is "reasonably calculated to lead to the discovery of admissible evidence" to be used in the trial of the action in which discovery is sought. *News & Observer Pub. Co. v. State*, 312 N.C. 276, 284, 322 S.E.2d 133, 138-39 (1984) (emphasis added); *see also* N.C.Gen.Stat. 1A-1, Rules 26(b)(1). A jury verdict was rendered in this matter on October 26, 2010, and a judgment has been entered. Therefore, Plaintiffs' attempt to depose Mr. Ziko comes too late.

4. Most importantly, as explained more fully in the following paragraphs, this discovery should not be permitted because it will cause unreasonable annoyance, oppression, and undue burden and expense because it attempts to compel counsel of record for the SBE to answer questions about a matter about which a jury verdict has already been rendered and a judgment has been entered.

5. This Court's October 26, 2010 Order, which was served by Plaintiff's counsel on Mr. Ziko as counsel for the SBE, set a hearing for November 22, 2010 and ordered: "The [SBE] shall appear at the above-referenced hearing on November 22, 2010 at 10 A.M. or otherwise indicate to the Court by a filing in this action, whether it wishes to accept the appointment as successor trustee or whether it refuses to accept such appointment to administer said trust for the purposes set forth in the trust created by Dr. and Mrs. William Sharpe in the Deed and Agreement dated September 22, 1950."

6. In direct response to this Order addressed to the SBE, which Mr. Ziko has represented as counsel for many years, Mr. Ziko made an appearance in this matter on behalf of the SBE by writing a letter to Judge Fox on November 12, 2010, requesting a continuance of that hearing a later date, and further indicating that the SBE had in response to the Court's Order voted to accept the appointment as successor trustee, per the SBE's resolution of November 4, 2010, subject to receiving the statutorily required approval of the council of State. (A copy of the letter is attached hereto as Exhibit 1, and the SBE's resolution as Exhibit 2). The letter further indicated that the matter had been placed on the Council of State Agenda for December 7, 2010.

7. On December 6, 2010, Plaintiffs filed a Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee ("Motion for Reconsideration"). (A copy of the Motion for Reconsideration is attached as Exhibit 3.) Mr. Ziko, as the SBE's counsel, intends to appear for the SBE to oppose the Motion for Reconsideration.

8. A protective order should be entered because there is "a natural reluctance to allow attorneys to appear in a case as both advocate and witness." *State v. Simpson*, 314 N.C. 359, 373, 334 S.E.2d 53, 62 (1985). Depositions of opposing counsel "have a tendency to lower

the standards of the profession, unduly add to the costs and time spent in litigation, personally burden the attorney in question, and create a chilling effect between the attorney and client.” *N.F.A. Corp. v. Riverview Narrow Fabrics, Inc.*, 117 F.R.D. 83, 85 (M.D.N.C. 1987).

9. Such a deposition could potentially disqualify Mr. Ziko from being counsel for the SBE in this action as Rule 3.7 of the North Carolina Rules of Professional Conduct prohibits attorneys from acting as advocates in actions that they will also likely be necessary witnesses, accept in narrow circumstances. Since “deposition of a party’s attorney is usually both burdensome and disruptive, the mere request to depose a party’s attorney constitutes good cause for obtaining a . . . protective order unless the party seeking the deposition can show both the propriety and the need for the deposition.” *Id.* The need for such a deposition must be “compelling.” *See Simpson*, 314 N.C. at 373, 334 S.E.2d at 62 (noting that the “circumstances under which a court will permit a lawyer for a party . . . to take the witness stand must be such that a compelling reason for such action exist,” while holding that the trial court properly refused to permit a defendant to call a prosecuting attorney as a witness) The Defendants have no need, much less a compelling need, as a jury verdict was rendered in this matter and a judgment has been entered consistent with the jury’s verdict. Therefore, the Defendants should not be allowed to depose Mr. Ziko.

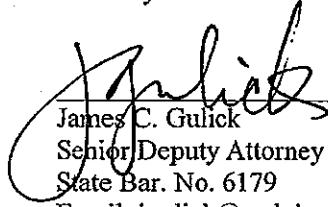
Accordingly, the Movants OBJECT to the deposition of Thomas J. Ziko pursuant to Rule 45, in the alternative MOVE the Court pursuant to Rule 26(c) for a protective order quashing the Notice of Deposition.


WHEREFORE, the Movants request that this Court:

1. Order that the Plaintiffs are barred from seeking to depose Thomas J. Ziko;
2. Grant such other relief as the Court deems just and proper.

Respectfully submitted this the 17<sup>th</sup> day of December, 2010.

ROY COOPER  
Attorney General

  
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ROY COOPER  
ATTORNEY GENERAL

November 12, 2010

The Honorable Carl R. Fox  
104 E. King Street  
Hillsborough, North Carolina 27278

Re: *Turner and Hurst v. Hammocks Beach Corp., et al.*, 06 CV 018173 (Wake Co. Sup. Ct.)

Dear Judge Fox:

The State Board of Education received your judgment and notice of hearing in the above referenced case on October 28, 2010. The State Board of Education reviewed the judgment during its meeting on November 3, 2010. Following that review on November 4, 2010, the State Board of Education adopted the attached Resolution indicating its decision to accept appointment as substitute trustee to administer the trust. However, North Carolina law currently provides that the Council of State must first accept the devise or donation of any interest in land before the devise or donation can effectively vest title in any State agency. N.C. Gen. Stat. §146-26.

The next meeting of the Council of State is scheduled for Tuesday, December 7, 2010. Consideration of the State Board of Education's proposal to accept appointment as substitute trustee has been put on the Council of State's agenda for that meeting. The State Board of Education's decision to accept title to the trust property cannot take effect until the Council of State decides whether to accept the devise of the title to the State Board of Education

Therefore, in the interest of judicial economy, the State Board of Education respectfully requests that the hearing currently scheduled in this matter for Monday, November 22, 2010, be postponed to some date after the December 7, 2010, meeting of the Council of State. After December 7, 2010, the State Board of Education will know whether the Council of State has approved its decision to accept appointment as substitute trustee and accept title as trustee.



The Honorable Carl R. Fox  
November 12, 2010  
Page 2

I have spoken to Mr. Emory, counsel for Defendant, he has authorized me to inform the Court that Defendant does not object to continuing this matter. I have also contacted Mr. Francis, counsel for Plaintiffs, and he has authorized me to inform the Court that he objects to continuing this matter.

Thank you for your attention. Please inform me of your decision at your earliest convenience.

ROY COOPER  
Attorney General



THOMAS J. ZIKO  
Senior Deputy Attorney General

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STATE BOARD OF EDUCATION RESOLUTION ON  
HURST v. HAMMOCKS BEACH CORP., et al.  
06 CV 018173 (Wake Co. Sup. Ct., Judgment Entered Oct. 26, 2010)

WHEREAS, In 1950 Dr. Sharpe deeded approximately 810 acres of coastal property in Onslow County known as "The Hammocks" to the nonprofit Hammocks Beach Corporation "in trust for recreational and educational purposes for the use and benefit of the members of The North Carolina Teachers Association, Inc. and such others as are provided for in the Charter of the Hammocks Beach Corporation, Inc. (the "Trust"); and

WHEREAS, The Trust provides that in the event it becomes impossible or impracticable to use said property and land for the use as herein, the property may be transferred to The North Carolina State Board of Education, to be held in trust for the purpose herein set forth, and if The North Carolina State Board of Education shall refuse to accept such property for the purpose of continuing the trust herein declared all of the property herein conveyed shall be deeded by said Hammocks Beach Corporation, Inc., to Dr. William Sharpe, his heirs, and descendants and to John Hurst and Gertrude Hurst, their heirs and descendants; and

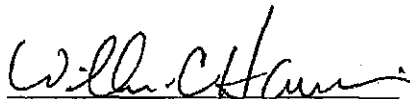
WHEREAS, A jury has returned a verdict in *Hurst v. Hammocks Beach Corp., et al.* 06 CV 018173 (Wake Co. Sup. Ct.) finding that it has become impossible or impracticable to use the trust property and land for the purposes specified in the trust; and

WHEREAS, The Wake County Superior Court has entered a judgment on the jury's verdict removing the Hammocks Beach Corporation as trustee upon appointment of the North Carolina State Board of Education as substitute trustee; and

WHEREAS, The Wake County Superior Court has entered an order setting a hearing for November 22, 2010, to formally tender to the North Carolina State Board of Education appointment as successor trustee of the Trust; and

WHEREAS, The State Board of Education desires to preserve the property which the Trust currently controls for educational and recreational purposes, provided that can be done consistent with the State Board of Education's constitutional and statutory obligations; now therefore be it

RESOLVED, That, the North Carolina State Board of Education accepts appointment as trustee of the Trust, PROVIDED the Council of State approves the transfer of the title to the North Carolina State Board of Education under G.S. § 146-26.

  
Chairman  
NC State Board of Education

11/4/10  
Date


  
State Superintendent  
NC Department of Public Instruction

EXHIBIT 3  
[Plaintiffs'] Motion for  
Reconsideration of Order and  
Objection to Appointment of North  
Carolina State Board of Education  
as Successor Trustee  
[filed 6 December 2010]  
*See R pp 124–127*

STATE OF NORTH CAROLINA  
 COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
 SUPERIOR COURT DIVISION  
 06 Cvs 18173

HARRIET HURST TURNER and )  
 JOHN HENRY HURST, )  
 )  
 Plaintiffs, )

vs. )

THE HAMMOCKS BEACH )  
 CORPORATION, NANCY SHARPE )  
 CAIRD, SETH DICKMAN SHARPE, )  
 SUSAN SPEAR SHARPE, WILLIAM )  
 AUGUST SHARPE, NORTH CAROLINA )  
 STATE BOARD OF EDUCATION, ROY )  
 A. COOPER, III, in his capacity as )  
 Attorney General of the State of North )  
 Carolina, )  
 Defendants. )

OBJECTION TO NOTICE  
 OF DEPOSITION OF  
 NONPARTY WITNESS or,  
 in the alternative, MOTION  
 FOR PROTECTIVE ORDER,  
 Rules 26 and 45  
 (State Parks Director  
 Lewis Ledford)

Pursuant to Rule 45 of the North Carolina Rules of Civil Procedure, the North Carolina Department of Environment and Natural Resources ("DENR") and deponent Lewis Ledford, the Director of DENR's Division of Parks and Recreation, through undersigned counsel, object to the deposition of Mr. Ledford, or in the alternative, move the Court for a protective order barring Plaintiffs from taking the same pursuant to Rule 26(c). In support of this motion, the undersigned shows the following:

1. On December 13, 2010, Plaintiff's attorneys served a "Notice of Taking Video Deposition" for Lewis Ledford on Thomas J. Ziko, Special Deputy Attorney General, James Gulick, Special Deputy Attorney General, and attorneys for Defendant Hammocks Beach

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corporation noticing the deposition of Lewis Ledford for Thursday, December 23, 2010, at 9:30 a.m. at the offices of Plaintiffs' attorneys.

2. Neither Mr. Ledford nor DENR are parties to this action. As a nonparty, pursuant to Rule 30(a), Mr. Ledford's attendance may only be compelled by a properly issued subpoena. *Kilgo v. Wal-Mart Stores, Inc.*, 138 N.C. App. 644, 648 531 S.E.2d 883, 887, n.5 (2000), citing N.C. Gen. Stat. 1A-1, Rules 30(a) and 45(a) (2010) and 2 North Carolina Civil Procedure §45.5, at 104 (noting that a "Rule 45(a) subpoena is required to mandate a non-party's attendance" at a Rule 30 deposition). To date, Plaintiffs have not served Mr. Ledford with a subpoena commanding him to appear and testify at the date and time of his deposition.

3. In addition, the rules of discovery are designed to allow discovery *only* when the information sought is "reasonably calculated to lead to the discovery of admissible evidence" to be used in the trial of the action in which discovery is sought. *News & Observer Pub. Co. v. State*, 312 N.C. 276, 284, 322 S.E.2d 133, 138-39 (1984) (emphasis added); *see also* N.C.G.S. 1A-1, Rules 26(b)(1). A jury verdict was rendered in this matter on October 26, 2010, and judgment has been entered. Therefore, even if a subpoena had been served on Mr. Ledford, Plaintiffs' attempt to depose him comes too late.

4. This discovery should not be permitted because it will cause unreasonable annoyance, oppression, and undue burden and expense because it attempts to compel a nonparty witness to answer questions about a matter about which a jury verdict has already been rendered, and judgment has been entered.

5. During the trial of this matter, Carol Tingley, the Deputy Director of DENR's Division of Parks and Recreation, was called as a witness by the Defendant. Plaintiffs' counsel

cross-examined Ms. Tingley under oath. Therefore, even if the Deposition of Mr. Ledford were otherwise allowable under the Rules of Civil Procedure, having already been afforded full and fair opportunity to cross-examine the second-ranking administrative official of the Division of Parks and Recreation, it will cause unreasonable annoyance, oppression, and undue burden and expense to depose the Director, Mr. Ledford, at this late date.

6. Plaintiff's attempt to depose Mr. Ledford is also unreasonable, oppressive, and unduly burdensome because it would disrupt Mr. Ledford's long-standing plans for a personal family vacation and thereby cause him to incur expenses to later join his family at Roan Mountain, Mitchell County in the extreme western part of the state. Please see Affidavit of Lewis Ledford, attached as Exhibit 1.

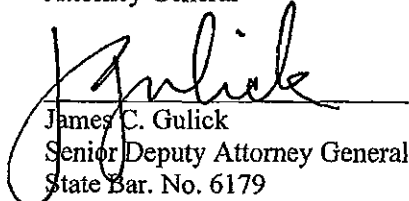
Accordingly, the Movants OBJECT to the deposition of Lewis Ledford, the Director of Division of Parks and Recreation pursuant to Rule 45, or in the alternative MOVE the Court pursuant to Rule 26(c) for a protective order quashing the Notice of Deposition.

WHEREFORE, the Movants request that this Court:

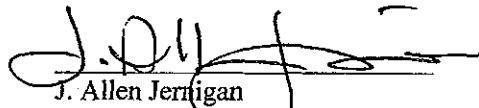
1. Order that the Plaintiffs are barred from seeking to depose Lewis Ledford;
2. Such other relief as the Court deems just and proper.

Respectfully submitted this the 17<sup>th</sup> day of December, 2010.

ROY COOPER  
Attorney General



James C. Gulick  
Senior Deputy Attorney General  
State Bar. No. 6179  
Email: [jgulick@ncdoj.gov](mailto:jgulick@ncdoj.gov)



J. Allen Jernigan  
Special Deputy Attorney General  
State Bar No. 10950  
E-mail: [ajern@ncdoj.gov](mailto:ajern@ncdoj.gov)

N.C. Department of Justice  
Post Office Box 629  
Raleigh, NC 27602-0629  
(919) 716-6900  
(919) 716-6600  
(919) 716-6767 FAX

ATTORNEYS FOR  
Lewis Ledford, the Director of Division of Parks  
and Recreation, North Carolina Department of  
Environment and Natural Resources



NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
06 CVS 18173

HARRIETT HURST TURNER and  
JOHN HENRY HURST,

Plaintiffs,

vs.

THE HAMMOCKS BEACH  
CORPORATION, NANCY SHARPE  
CAIRD, SETH DICKMAN SHARPE  
SUSAN SPEAR SHARPE, WILLIAM  
AUGUST SHARPE, NORTH CAROLINA  
STATE BOARD OF EDUCATION, ROY  
A. COOPER, III, in his capacity as  
Attorney General of the State of North  
Carolina,

Defendants.

AFFIDAVIT OF  
LEWIS R. LEDFORD

I, LEWIS R. LEDFORD, being first duly sworn, depose and say:

1. I am employed as the Director of the Division of Parks and Recreation by the North Carolina Department of Environment and Natural Resources (DENR).
2. I became aware on December 14, 2010 that counsel for DENR received a notice of deposition from the Plaintiff noticing my Deposition for Thursday, December 23, 2010, at the offices of the Francis Law Firm, in Raleigh, North Carolina.
3. I have received no prior notice of this deposition.
4. I have not received a subpoena to attend this deposition.
5. December 24, 27 and 31 are official State Holidays.
6. I have previously scheduled personal vacation leave for the period from December 21, 2010 through January 2, 2011. My family has planned a holiday vacation at Roan Mountain in northeastern Mitchell County during that time. Attending a



deposition on December 23, 2010 would cause me to incur substantial inconvenience and travel expenses to join my family in the extreme far western part of the state, and would seriously disrupt my holiday vacation time with them.

Further this affiant saith not.

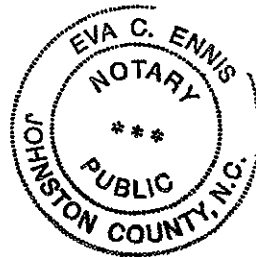
This is the 15<sup>th</sup> day of December, 2010.

  
LEWIS R. LEDFORD

STATE OF NORTH CAROLINA  
Wake COUNTY

Sworn and subscribed before me,  
this the 15<sup>th</sup> day of December, 2010.

Eva C. Ennis Eva C. Ennis  
Notary Public



My Commission expires: 06/24/2013

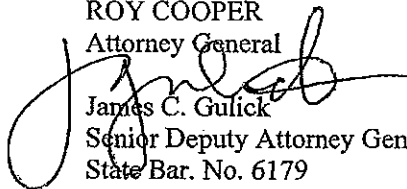


2. On December 22, 2010 at about 3:10 p.m., Mr. Ziko received a Subpoena noticing his deposition for Thursday, December 23, 2010, at 2:30 a.m. at the offices of Plaintiffs' attorneys.
3. Neither Mr. Ledford nor Mr. Ziko are parties to this action. As nonparties, pursuant to Rules 30(a) and 45(a), their attendance may only be compelled by a properly issued subpoena served 10 days prior to the deposition.
4. In addition to the reasons set forth in the Objections to these depositions filed and served on December 17, 2010, Mr. Ledford and Mr. Ziko OBJECT to these subpoenas, because the subpoenas fail to allow reasonable time for compliance, are unduly burdensome and oppressive, are otherwise unreasonable, and the subpoenas are procedurally defective.

WHEREFORE, Mr. Ledford and Mr. Ziko OBJECT to their depositions pursuant to Rules 45(c)(3) and 30(b)(1), and will not be attending said depositions.

Respectfully submitted this the 22<sup>nd</sup> day of December, 2010.

ROY COOPER  
Attorney General



James C. Gulick  
Senior Deputy Attorney General  
State Bar. No. 6179  
Email: [jgulick@ncdoj.gov](mailto:jgulick@ncdoj.gov)



J. Allen Jernigan  
Special Deputy Attorney General  
State Bar No. 10950  
E-mail: [ajern@ncdoj.gov](mailto:ajern@ncdoj.gov)

N.C. Department of Justice  
Post Office Box 629  
Raleigh, NC 27602-0629  
(919) 716-6900  
(919) 716-6600  
(919) 716-6767 FAX

ATTORNEYS FOR  
Lewis Ledford, the Director of Division of Parks  
and Recreation, North Carolina Department of  
Environment and Natural Resources and  
Senior Deputy Attorney General Thomas J. Ziko

12/30

<b>STATE OF NORTH CAROLINA</b>	File No. <b>06CVS18173</b>
WAKE County	In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division

HARRIETT HURST TURNER and JOHN HENRY HURST	Additional File Numbers
<b>VERSUS</b>	<b>SUBPOENA</b>  G.S. 1A-1, Rule 45
THE HAMMOCKS BEACH CORPORATION, et al.	

Party Requesting Subpoena <input checked="" type="checkbox"/> State/Plaintiff <input type="checkbox"/> 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 Thomas J. Ziko, Esq., Off. of Attorney General, 114 West Edenton St., 9001 Mail Service Ctr Raleigh, NC 27699-9001	Alternate Address 4404 Pitt Street Raleigh, North Carolina 27609	Telephone No.  (919) 781-9741
	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 Wake County Courthouse 10th Floor Raleigh, NC 27601	Date To Appear/Produce January 3, 2011
Name And Address Of Applicant Or Applicant's Attorney Charles T. Francis, Esq. The Francis Law Firm, PLLC, PO Box 164 Raleigh, NC 27602	Time To Appear/Produce 10:00 <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM
Telephone No. 919-528-0801	Date 12/30/2010
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Superior Court Judge <input type="checkbox"/> Magistrate <input checked="" type="checkbox"/> Attorney/DA <input type="checkbox"/> District 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 (For use only by the sheriff's office for witness subpoenaed to appear and testify.)  
 I was unable to serve this subpoena.

Service Fee \$	<input type="checkbox"/> Paid <input type="checkbox"/> Due	Date Served	Signature of Authorized Server	Title
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**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.

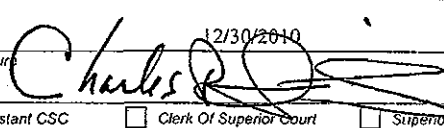
**BRIBING OR THREATENING A WITNESS**

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.

12/30

<b>STATE OF NORTH CAROLINA</b>		File No. <b>06CVS18173</b>
WAKE County		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division
HARRIETT HURST TURNER and JOHN HENRY HURST		Additional File Numbers
VERSUS		<b>SUBPOENA</b>  G.S. 1A-1, Rule 45
THE HAMMOCKS BEACH CORPORATION, et al.		
Party Requesting Subpoena <input checked="" type="checkbox"/> State/Plaintiff <input type="checkbox"/> Defendant		<b>NOTE TO PARTIES NOT REPRESENTED BY COUNSEL:</b> 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 Lewis Ledford, NC State Parks & Recreation 512 N. Salisbury St., Archdale Bldg., 7th Floor Raleigh, North Carolina 27601	Alternate Address 5200 Lenoraway Drive Raleigh, North Carolina 27613
	Telephone No.	Telephone No.
<p><b>YOU ARE COMMANDED TO:</b> (check all that apply):</p> <p><input checked="" type="checkbox"/> appear and testify, in the above entitled action, before the court at the place, date and time indicated below.</p> <p><input type="checkbox"/> appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.</p> <p><input checked="" type="checkbox"/> produce and permit inspection and copying of the following items, at the place, date and time indicated below.</p> <p><input checked="" type="checkbox"/> See attached list. (List here if space sufficient)</p>		
Name And Location Of Court/Place Of Deposition/Place To Produce Wake County Courthouse 10th Floor Raleigh, North Carolina 27601		Date To Appear/Produce January 3, 2011
		Time To Appear/Produce 10:30 <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM
Name And Address Of Applicant Or Applicant's Attorney Charles T. Francis, Esq. The Francis Law Firm, PLLC, PO Box 164 Raleigh, NC 27602		Date 12/30/2010
Telephone No. 919-828-0801		Signature 
<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court <input type="checkbox"/> Superior Court Judge <input type="checkbox"/> Magistrate <input checked="" type="checkbox"/> Attorney/DA <input type="checkbox"/> District 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 (For use only by the sheriff's office for witness subpoenaed to appear and testify.)  
 I was unable to serve this subpoena.

Service Fee \$	<input type="checkbox"/> Paid <input type="checkbox"/> Due	Date Served	Signature of Authorized Server	Title
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**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.

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(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.

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- a. The subpoena fails to allow reasonable time for compliance.
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(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.

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**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.

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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.



Attached List and Exhibits to  
Subpoena to Lewis Ledford  
*See R pp 132–138*

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

FILE NO.: 06 CVS 18173

HARRIETT HURST TURNER and )  
JOHN HENRY HURST, )  
 )  
 Plaintiffs, )

vs. )

THE HAMMOCKS BEACH )  
CORPORATION, NANCY SHARPE )  
CAIRD, SETH DICKMAN SHARPE, )  
SUSAN SPEAR SHARPE, WILLIAM )  
AUGUST SHARPE, NORTH CAROLINA )  
STATE BOARD OF EDUCATION, ROY )  
A. COOPER, III, in his capacity as )  
Attorney General of the State of North )  
Carolina, )  
 )  
 Defendants. )

**AFFIDAVIT IN SUPPORT OF PLAINTIFFS'  
MOTION FOR RECONSIDERATION OF  
ORDER AND OBJECTION TO  
APPOINTMENT OF NORTH CAROLINA  
STATE BOARD OF EDUCATION AS  
SUCCESSOR TRUSTEE**

BY \_\_\_\_\_  
WAKE COUNTY, N.C.S.C.  
2011 JAN -3 AM 10:16  
FILED

Charles T. Francis, being duly sworn, deposes and states:

1. My name is Charles T. Francis. I am over 18 years of age. I am an attorney duly licensed to practice law in the State of North Carolina.

2. I am fully competent to make this Affidavit and I have personal knowledge of the facts stated in this Affidavit. To my knowledge, all of the facts stated in this Affidavit are true and correct.

3. I am the Managing Member of The Francis Law Firm, PLLC, the attorneys of record in this matter for Plaintiffs, Harriett Hurst Turner and John Henry Hurst.

4. I have been licensed to practice and engaged full-time in the practice of law in North Carolina since 1989. Before entering private practice, I served as a judicial clerk to the Honorable Richard C. Erwin, Chief Judge, United States District Court for the Middle District of North Carolina and as an Assistant United States Attorney in the Middle District of North Carolina. From November, 1990 to December 31, 1993, I was an associate with the law firm of LeBoeuf, Lamb, Leiby & MacRae in Raleigh. From January 1, 1994 to 2000, I was a partner in the firm of Wood & Francis, PLLC. In September, 2000, I formed the firm of Francis & Austin, PLLC. The name of that firm changed to The Francis Law Firm, PLLC in October 2006. A true and accurate copy of my Curriculum Vitae is attached as Exhibit A. Exhibit A is true and up to date with the exception that it does not include my service as a member of the Grievance Committee of the State Bar during the calendar year 2010.

5. I have served as lead counsel of record for Plaintiffs in the above-referenced case from its inception, prior to filing, up to the present time.

6. I made the decision to join as Defendants the North Carolina State Board of Education and Roy A. Cooper, III, in his capacity as Attorney General of the State of North Carolina. These Defendants were properly joined, served with Summons and Complaint, and filed an Answer and Motion to Dismiss in response to the Complaint.

7. Once the State Defendants were joined, Thomas Ziko, a Special Deputy Attorney General with the Office of the North Carolina Attorney General, appeared on behalf of the State Board of Education and the Attorney General, Roy Cooper. No other attorney has entered an appearance on behalf of the State Defendants in any filing or proceeding of record in this case. Prior to entry of the Judgment on October 26, 2010, no other attorney communicated with me or purported to communicate with me on behalf of the State Defendants other than Thomas Ziko.

8. Between the time that the Complaint in this action was filed and served upon the State Defendants and the entry of the Order dismissing the State Board of Education and Attorney General on August 21, 2007, I interacted with Thomas Ziko over the phone and in person concerning this case. In my dealings with him leading up to the entry of the Order dismissing the State, Mr. Ziko's representations to me regarding the position of the State were consistent with those taken in the Answer and Motion to Dismiss – that the State Board of Education could not serve as trustee, that the State disclaimed any interest in serving as trustee, that the State had no interest in the underlying property, that the 1987 Consent Judgment expunged any interest that the State Board of Education may have had in the trust.

9. Had it not been clear from the State's judicial admissions and from Mr. Ziko's representations to me regarding the State's position that the State was once again declining and refusing any interest in serving as successor trustee, I would have opposed the State's dismissal from the case and sought the findings of fact in the Order dismissing the State.

10. Had the State remained a party in this case beyond August 2007, asserting the position it now seeks to take regarding appointment as successor trustee, I would have conducted discovery on issues relevant to the State's eligibility to serve as successor trustee. I would have moved for summary judgment on the issue and had summary judgment not been granted, I would have offered evidence and proposed issues for the jury to resolve as to the State's eligibility to serve as successor trustee.

11. Because of the unambiguous position taken by the Attorney General and the State Board of Education in its Answer and Motion to Dismiss – that it cannot and would not serve as trustee, that it disclaimed any interest in serving as contingent trustee, that the Consent Judgment expunged any interest the State Board of Education may have had in the trust -- I elected to

introduce no evidence at trial because of these clear judicial admissions in the record by the State Defendants.

12. Upon information and belief, after the close of evidence and prior to any jury deliberations, the Court determined that it would tender appointment of the successor trustee pursuant to the 1950 Trust Deed in order to record the declination of the State in the record of these proceedings post Judgment in the event of a verdict for the Plaintiffs.

13. When I called to communicate this formal tender procedure to the attorney for the State Defendants, Thomas Ziko, he reiterated to me that the State could not serve as successor trustee, no matter how much officials at the North Carolina Department of Environment and Natural Resources wanted control of the property. I relied upon the clear judicial admissions in the State's Answer and Motion to Dismiss and Mr. Ziko's reiteration of that position on or about September 30, 2010, relayed that reiteration to the Court in subsequent discussion of the Court's contemplated formal tendering appointment as successor trustee and took actions and made statements in reliance upon Mr. Ziko's representations to me.

14. Upon information and belief, once the jury returned a verdict favorable to the Plaintiffs and the Court determined to enter an Order formally tendering appointment as successor trustee to the State, the State Defendants attempted to reverse the position taken consistently throughout this litigation by having the North Carolina State Board of Education adopt a Resolution purporting to accept appointment as trustee "provided that it can be done consistent with the State Board of Education's constitutional and statutory obligations . . ." and contingent upon approval by the Council of State.

15. The aforementioned Resolution was submitted to and considered by the State Board of Education without opportunity to be heard by Plaintiffs or their attorney. Had I been

provided with notice that this Resolution would be submitted to the State Board of Education, I would have attended the Board of Education meeting when the Resolution was considered and sought an opportunity to speak in opposition to the Resolution.

16. Upon information and belief, the views contrary to those of the State Defendants were not articulated to the State Board of Education and the Resolution was adopted with little or no discussion or debate. Based upon statements by Thomas Ziko to me and based upon the public statements of representatives of the North Carolina Division of Environment and Natural Resources, it is clear that the intention of the State is to seize control of the Hammocks Beach property to the North Carolina Division of Parks and to incorporate the property into the adjacent Hammocks Beach State Park. That intent is clearly expressed in the Memo of Lewis Ledford, Director of North Carolina Division of Parks, cited in the *Tideland News*, December 9, 2010, a copy of which is attached to this Affidavit as Exhibit B. That intent is also corroborated by a letter from Mr. Ledford to The Hammocks Beach Corporation during the pendency of the above-captioned case, a copy of which is attached to this Affidavit as Exhibit C.

17. Because the intent of the State Defendants to reverse their position on appointment as successor trustee at this late date in order to merge the property into the adjacent Hammocks Beach State Park is relevant to the eligibility and ability of the State Board of Education to serve as successor trustee, I served a Notice of Taking Video Deposition of Lewis Ledford on December 13, 2010 and subsequently served Mr. Ledford with a Subpoena compelling his appearance and the production of documents at said deposition. The State responded by filing an Objection to Notice of Taking Deposition of Non-Party Witness or, in the alternative, Motion for Protective Order seeking to prevent the deposition of Lewis Ledford. Although it is clear that the North Carolina Division of Parks is the agency of state government

that the State Defendants wish to cede the management and control of this property to, the State has made it clear that it will oppose efforts to obtain sworn testimony of Mr. Ledford.

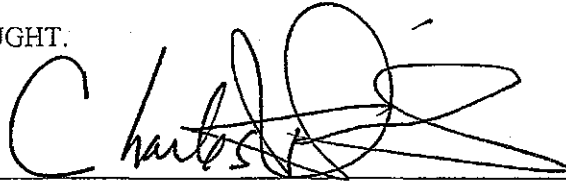
18. The positions taken by the Plaintiffs throughout this case have been influenced by the State Board of Education's clear and repeated refusals to serve as successor trustee and its judicial admissions, in this case, that the 1987 Consent Judgment expunged any interest that the State Board of Education may have had in the trust.

19. The Board's attorney, Thomas Ziko, made representations to me that the State could not serve as successor trustee as late as September 30, 2010. When I spoke with Mr. Ziko to communicate the formal tender procedure that the Court indicated that it would follow in the event of a verdict for the Plaintiffs, Mr. Ziko re-affirmed the position that the State could not serve as successor trustee and I relied upon not only the judicial admissions in the Answer and Motion to Dismiss but also upon these more recent representations by the Special Deputy Attorney General Thomas Ziko as the lawyer for the State.

20. Since the State Board of Education adopted its Resolution in early November attempting to reverse its long held and often repeated declination to serve as successor trustee, I have communicated in writing and in person with senior lawyers in the Attorney General's Office and the Office of the Governor of North Carolina, including but not limited to Thomas J. Ziko, James Gulick, Esq., Christopher Browning, Esq. and Edwin M. Speas, Jr., Esq., General Counsel to the Governor of North Carolina. In those writings and meetings, I made it clear that the State's attempt to reverse its position on appointment as successor trustee at this juncture is contrary to established law and inconsistent with plain notions of simple justice. As a result of the State Defendants attempting to reverse their position and seek appointment as successor trustee, The Francis Law Firm, PLLC has been required to expend numerous hours in additional

time on this file which otherwise would have been unnecessary but for the State's reversal of its position. In addition, the Plaintiffs have incurred additional costs in conjunction with opposing the State's attempt to reverse its position on appointment as successor trustee. Further, the Plaintiffs have been required to retain additional counsel to oppose the State in this matter.

FURTHER AFFIANT SAYETH NAUGHT.



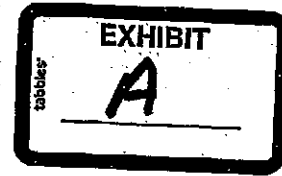
Charles T. Francis

Sworn to and Subscribed to before  
me this 29<sup>th</sup> day of December, 2010.

Virginia A. Mansfield  
My Commission Expires \_\_\_\_\_







**CHARLES T. FRANCIS**

Birthplace - Raleigh, North Carolina

Married to Marvea Jackson Francis; 3 children

**EDUCATION**

Duke University School of Law, Durham, North Carolina, J.D.

Princeton University, Princeton, New Jersey, A.B., History

Study at St. Benet's Hall, Oxford University, Oxford, England

**PROFESSIONAL BACKGROUND**

Partner/Attorney at Law, 2006 - Present, The Francis Law Firm, PLLC  
Raleigh, North Carolina

Partner/Attorney at Law, 2000 - 2006, Francis & Austin, PLLC  
Raleigh, North Carolina

Partner/Attorney at Law, 1994 - 2000, Wood & Francis, PLLC  
Raleigh, North Carolina

Associate/Attorney at Law, 1990 - 1993, LeBoeuf, Lamb, Leiby & MacRae  
Raleigh, North Carolina

Assistant United States Attorney, 1989 - 1990, United States Attorney's Office  
Middle District of North Carolina  
Greensboro, North Carolina

Judicial Law Clerk, 1988 - 1989, The Honorable Richard C. Erwin, Chief Judge  
United States District Court, Middle District of North Carolina  
Winston-Salem, North Carolina

Summer Associate, Summer 1988 - Poyner & Spruill  
Raleigh, North Carolina

Student Prosecutor, Spring 1988 - Office of District Attorney Carl Fox  
North Carolina Judicial District 15-B.  
Orange-Chatham Counties

Summer Associate, Summer 1987 - Womble, Carlyle, Sandridge & Rice  
Winston-Salem, North Carolina

Summer Associate, Summer 1986 and 1987 - Robinson, Bradshaw & Hinson, P.A.,  
Charlotte, North Carolina

Analyst, Summer 1985 - Morgan Stanley & Co., Inc.  
New York, New York

Research Intern, Summer 1983 - North Carolina Historical Publications Section  
Division of Archives and History  
Raleigh, North Carolina

LBJ Intern, 1982 - Office of United States Representative Ike Andrews (D-N.C.)  
Washington, D.C.

Youth Instructor, Lifeguard, 1979 - 1981, YMCA of Raleigh, Inc.  
Raleigh, North Carolina

Printing Trainee - Irving-Swain Press, Inc.  
Raleigh, North Carolina

#### **BAR MEMBERSHIPS**

State of North Carolina

Eastern District of North Carolina

Middle District of North Carolina

Western District of North Carolina

United States Court Of Appeals For  
The Fourth Circuit

#### **ASSOCIATIONS/ACTIVITIES**

Founding Director and Vice Chairman, North State Bank (2000 – present)

Director, Centennial Authority of the Entertainment & Sports Arena (2000 – 2003)

Trustee, John Rex Endowment (2001 – 2007)

Director, YMCA of the Triangle

Director, Rex Healthcare and Rex Hospital (1997 – 2001)

Member, Wachovia Bank, North Carolina Central Region Board (1999)

Director, Wake County Bar Association (1995 - 1996) (2006 – 2007)

Director, Planned Parenthood of the Capital and Coast (1995)

Rex Healthcare Foundation (1995-1997)

Member, Raleigh City Council (1993)

Co-Chair, Wake County Clinton-Gore Steering Committee (1992)

Chair, Anne Franklin Campaign (1991)

Mechanics & Farmers Bank - Raleigh Advisory Board (1991 - 1993)

Capital Economic Development Corporation Board of Directors (1991 - 1993)

North Carolina Association of Black Lawyers

North Carolina Bar Association

Wake County Bar Association

National Association for the Advancement of Colored People

Planned Parenthood of the Triad Board of Directors (1989 - 1990)

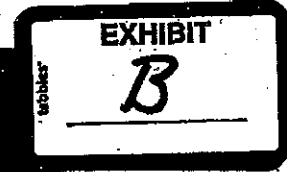
Vice Chair, Democratic Party of Wake County (1992 - 1993)

Vice Chair, Raleigh-Wake Citizens Association (1992 - 1993)

Alpha Phi Alpha Fraternity, Inc.

Cardinal Club, Raleigh, North Carolina

The Ivy Club, Princeton, New Jersey



TIDELAND NEWS > NEWS

Challenge delays ruling on The Hammocks  
*Tideland News*

By BRAD RICH

Published: Wednesday, December 8, 2010 11:46 AM EST

Tideland News Writer

Local government support is strong for action that could put stewardship of The Hammocks property in the hands of the state, essentially expanding Hammocks Beach State Park in Swansboro by 289 key mainland acres.

But a decision by the N.C. Council of State – the governor’s cabinet – on that proposal has been delayed from Tuesday until Jan. 3, according to David Pearson of Swansboro, president of the Friends of the Hammocks and Bear Island and Friends of State Parks.

The Swansboro Board of Commissioners and Swansboro Area Chamber of Commerce adopted resolutions last week urging the state board of education to accept appointment as the successor trustee of the property along Queen’s Creek and adjacent to the park. Onslow County commissioners planned similar action this week.

The council of state, according to Pearson, put off the vote at the urging of the attorney for the property owner, the Hurst family.

As the result of a lawsuit, the Wake County Superior Court in September entered a judgment removing The Hammocks Beach Corporation as trustee of the land.

The state Board of Education adopted a resolution Nov. 4 that signaled its willingness to be trustee, and if the council of state approves, it is likely the state Division of Parks and Recreation would manage the property for recreation and education purposes, as set out by the original trust.

But although the change in the status of the land appeared to be almost a done deal last week, Pearson said Monday it’s up in the air again as a result of the delay in the council of state’s consideration.

He urged those who want to see the property become a part of, or at least affiliated with the park, to contact Gov. Beverly Perdue and council of state members as soon as possible.

“It is all in doubt until the council of state accepts the resolution by the board of education,” he said. “There’s nothing guaranteed. It could still go back to the family. People who want to see this property become public should not take anything for granted.”

Pearson said the addition of the land to Hammocks Beach would be a great benefit to the public. Included in the tract is the Simmons 4H Camp.

“There is no question the possibilities for education and recreation, regional boat ramps, campsites and an education center are endless,” he said. “There are possibilities for hatcheries, for oysters, for red drum. The

Print Page



Included in the tract at the Hammocks is the former Simmons 4H Camp, a facility situated on the waterfront at Queens Creek. (Cody Foreman photo)

potential economic impacts through increased visitation to the area are tremendous."

The addition of the large tract, Pearson said, would make the park unique, in that it would encompass the entire coastal habitat, from the mainland, with bluff forest 35 feet above sea level, through the estuary to the barrier islands.

It also would ensure better protection of the pristine waters, which are classified as Outstanding Resource Waters, the state's highest classification.

"We'd have room for hiking trails, which we don't have now. And there'd be room for scout jamborees," Pearson added. "We need the public to contact the governor and the council of state to express support."

"Needless to say, I'm in favor of the park acquiring additional property on the mainland," Pearson said. "I hope the state board of education can accept this trusteeship. And I certainly appreciate the efforts by the town of Swansboro and other local governments to help make this a reality."

According to a memo to the Swansboro board from Town Manager Pat Thomas, the September ruling on the lawsuit filed by the Hurst family determined that the Hammocks Beach Corp. should be removed as trustee of the remaining 289 acres of "The Hammocks," which was placed in trust by Dr. William Sharpe in 1950 for various educational and recreational opportunities.

"As the board knows, this very unique, unspoiled and irreplaceable tract ... along Queens Creek has enormous potential for education, recreation and conservation," Thomas wrote to the board.

"The court subsequently determined ... that a hearing should be held to tender to the state Board of Education the opportunity to be appointed as successor trustee to administer the trust.

"Based on communications from its legal counsel, the Hurst family ... is expected to oppose the appointment of the state Board of Education as trustee.

"Although the state had previously signaled a lack of interest in administering the property," the Thomas memo continued, "the state Board of Education recently adopted a resolution indicating its interest ... subject to approval by the Council of State (the governor's cabinet).

"It is generally anticipated that if the Board of Education were named as trustee, management of the property ... would be carried out under an agreement with the N.C. Division of Parks and Recreation and that the property would be administered as an adjunct to Hammocks Beach State Park."

The Swansboro board's resolution urged the governor and council of state to "approve, ratify and support the state Board of Education's resolution to accept appointment as successor trustee, and to accept stewardship of the property on behalf of the state of North Carolina.

"The governor and council of state are urged to direct that the property ... be placed under the management of the Division of Parks and Recreation to ensure fulfillment of the trust requirements and for administration of the property as an adjunct to the operations of Hammocks Beach State Park."

Mayor Scott Chadwick said Thursday that the addition of the property to the park, as an adjunct, would be a great thing for Swansboro.

"It's an incredible opportunity for us," he said. "The park means so much to us, and this will make it even more of a destination for tourists, which will help our businesses."

He also touted the fact that the addition of the property would preserve it in its natural state.

Hammocks Beach State Park was established in 1961 with the donation of Bear Island to the state from the Hammocks Beach Corp. From 1962 to 1966, the state park service established ferry service to the island and constructed an island bath house and refreshment stand, restrooms, water system, maintenance shop and personnel barracks.

In 2001, a new visitors' center was established on the mainland. The park already is one of the state system's top five in terms of educational programming.

In recent years, the park has protected two additional islands, Huggins and Jones, which are accessible only

by boat and include high quality natural communities and remnants of Civil War history.

According to a memo from Lewis Ledford, state parks and recreation division director, to the state attorney general's office, "Careful planning and design would be needed before making final decisions on future uses of the HBC property.

"With some renovations, existing facilities at the Mitchell Camp could continue to be used to host groups and activities such as boy and girl scouts, family reunions, environmental education and ... Swansboro's pirate festival.

"The state parks system operates similar facilities at several other parks and the division would be interested in partnering with the town in mutually beneficial ways.

"In addition, UNC-Chapel Hill, the N.C. Museum of Natural Science, the Audubon Society and other potential partners have expressed some interest in working with the ... division ... to develop a coastal education facility to host university field classes and research activities."

Ledford concluded by noting that, "At 289 acres, the HBC property is thought to be one of the largest privately owned tracts of natural forest on the East Coast.

"The N.C. Division of Parks and Recreation, through Hammocks Beach State Park, is certainly capable of fulfilling the recreational and educational purposes of the Hammocks Beach Corporation Trust."

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North Carolina Department of Environment and Natural Resources  
State Parks and Recreation

Michael F. Easley, Governor

William G. Ross Jr., Secretary

Lewis R. Ledford, Director

April 23, 2007

Mrs. Cynthia McKoy  
President, Hammocks Beach Corporation  
P.O. Box 46228  
Raleigh, NC 27620

Dear Mrs. McKoy:

We have received several phone calls recently concerning a rumor that the Hammocks Beach Corporation may be considering selling to private developers all or part of the property it owns adjacent to Hammocks Beach State Park. While we respect individual property rights and have always enjoyed our relationship as neighboring property owners, I feel the park service would be remiss if we did not make an effort to confirm the validity of these rumors. I feel that we share a common vision for the Hammocks and would like to discuss with you any possibilities of Hammocks Beach State Park participating in your dreams and visions.

The North Carolina public is indebted to the Hammocks Beach Corporation for the very creation of Hammocks Beach State Park, one of the crown jewels of the State Parks System. For half a century, the state park and Hammocks Beach Corporation have been neighbors. We have worked together with a shared commitment for the protection of the land and service to the public. We also share an important chapter in the history of North Carolina. If this information is accurate that you are considering the sale of the mainland property, there may now be a historic opportunity to develop a plan that will benefit The Hammocks Beach Corporation, Hammocks Beach State Park, and North Carolina.

In the 1950s, The Hammocks Beach Corporation decided the state was in a better position to shoulder the costs of managing and providing public access to Bear Island. Perhaps the state would also be an appropriate steward of the mainland portion of the Hammocks. In the late 1980s, The Hammocks Beach Corporation sold 30 acres to the park, and we used that property to construct the park's beautiful visitor center. We would very much like to provide additional visitor services that are more easily accessible to the public than the island, but we are seriously constrained in our plans by the lack of property on the mainland. The inclusion of the Hammocks Beach Corporation lands in the park would allow for suitable recreational opportunities and much-needed coastal natural resource protection in an



Mrs. Cynthia McKoy

Page 2

April 23, 2007

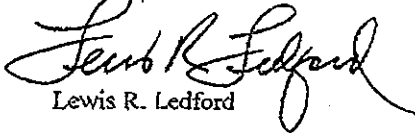
environmentally sensitive area. Allowing the state to bear the costs of developing and operating the mainland property for public recreational and educational purposes would relieve The Hammocks Beach Corporation of those costs, but would still accomplish that portion of The Hammocks Beach Corporation's mission.

The Hammocks Beach Corporation donated Bear Island to the state, but we are not suggesting a donation of the valuable mainland property. We understand that this property is a major asset to The Hammocks Beach Corporation and is the cornerstone of The Hammocks Beach Corporation's ability to accomplish their mission. Use of the property for state park purposes could fulfill part, but not all, of The Hammocks Beach Corporation's mission.

We would propose a purchase at fair market value based on objective third-party appraisals. The value of the property has increased so much that the state purchase would provide The Hammocks Beach Corporation with a substantial endowment. Proceeds from the state's purchase of the property would offer The Hammocks Beach Corporation an array of opportunities for the furtherance of the other portions of The Hammocks Beach Corporation's mission.

If these rumors are true, we would welcome the opportunity to discuss these ideas, or any ideas you may have, with you and your board of directors. As always, we enjoy our current relationship as neighbors and stewards of the Hammocks and if the information that you are planning to sell is unfounded we thank you for your time and consideration.

Sincerely,



Lewis R. Ledford

cc: Dr. Elliott B. Palmer, Executive Director of HBC  
William G. Ross, Jr., Secretary, DENR



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STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
06 CVS 18173

HARRIETT HURST TURNER and )  
JOHN HENRY HURST, )  
 )  
Plaintiffs, )

VS. )

THE HAMMOCKS BEACH )  
CORPORATION, NANCY SHARPE )  
CAIRD, SETH DICKMAN SHARPE, )  
SUSAN SPEAR SHARPE, WILLIAM )  
AUGUST SHARPE, NORTH CAROLINA )  
STATE BOARD OF EDUCATION, ROY )  
A. COOPER, III, in his capacity as )  
Attorney General of the State of North )  
Carolina, )  
 )  
Defendants. )

NOTICE OF APPEARANCE

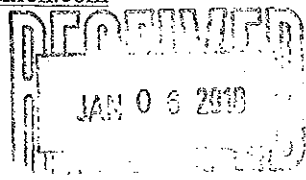
BY \_\_\_\_\_ )  
WAKE COUNTY N.C.S.C. )  
2011 JAN - 6 AM 11:35 )

Notice is hereby given to the parties that Michael L. Weisel and Adam N. Olls, Bailey & Dixon, LLP, 2500 Two Hannover Square, Raleigh, North Carolina 27601, now give formal notice of appearance as the attorneys for the Plaintiffs, Harriett Hurst Turner and John Henry Turner in this matter.

This the 6<sup>th</sup> day of January, 2011.

BAILEY & DIXON, LLP

By: Michael L. Weisel  
Michael L. Weisel, NC Bar No. 9516  
Adam N. Olls, NC Bar No. 38405  
Attorneys for Plaintiffs  
2500 Two Hannover Square  
Raleigh, North Carolina 27601  
Telephone: (919) 828-0731  
Facsimile: (919) 828-6592  
E-Mail: [mlweisel@bdixon.com](mailto:mlweisel@bdixon.com)



NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 06 CVS 18173

HARRIETT HURST TURNER and  
JOHN HENRY HURST,

Plaintiffs,

vs.

THE HAMMOCKS BEACH  
CORPORATION, NANCY SHARPE  
CAIRD, SETH DICKMAN SHARPE,  
SUSAN SPEAR SHARPE, WILLIAM  
AUGUST SHARPE, NORTH CAROLINA  
STATE BOARD OF EDUCATION, ROY  
A. COOPER, III, in his capacity as  
Attorney General of the State of North  
Carolina,

Defendants.

**VERIFIED OBJECTION TO  
CHARACTERIZATION OF PLAINTIFFS'  
MOTION FOR RECONSIDERATION OF  
ORDER AND OBJECTION TO  
APPOINTMENT OF NORTH CAROLINA,  
STATE BOARD OF EDUCATION AS  
SUCCESSOR TRUSTEE**

FILED  
JUL 11 2006  
9 41:11 AM  
WAKE COUNTY, N.C. S.C.

NOW COME the Plaintiffs, Harriett Hurst Turner and John Henry Hurst, by and through counsel, pursuant to Rule 60 of the North Carolina Rules of Civil Procedure and all other applicable rules and as supplemental briefing prior to entry of an Order, and file this Verified Objection to Characterization of Plaintiffs' previously filed Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee as a motion pursuant to Rule 59 of the North Carolina Rules of Civil Procedure. In support of this Objection to Characterization of Plaintiffs' Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee, Plaintiffs show the Court the following:

1. This matter was heard before the Honorable Carl R. Fox, and a jury duly empanelled during the September 20, 2010, Term of Superior Court. After a trial, the jury returned a verdict in favor of the Plaintiffs on all issues and Judgment was entered for Plaintiffs against Defendant The Hammocks Beach Corporation.

2. In addition to the Judgment, on October 26, 2010, the Court also entered an Order providing that, although the record in this case and in the 1987 Consent Judgment indicate that the State had previously declined to serve as successor trustee of this trust, pursuant to the Deed creating the trust it appeared to the Court that following entry of Judgment upon the jury verdict, the North Carolina State Board of Education may now be entitled to tender of appointment as successor trustee to administer said trust for the purposes set forth in the trust created by Dr. and Mrs. William Sharpe in the Deed and Agreement dated September 22, 1950.

3. In the same Order entered on October 26, 2010, the Court then mandated, overruling Plaintiffs' objections prior to entry of the Judgment, that a subsequent hearing would be held on November 22, 2010 to formally tender to the North Carolina State Board of Education appointment as successor trustee of the trust created by Dr. and Mrs. William Sharpe in the Deed and Agreement dated September 22, 1950.

4. At the State's request and over Plaintiffs' objections, the November 22, 2010 hearing on the Court's Order mandating formal tender of appointment was re-scheduled to January 3, 2011.

5. Prior to submission of the case to the jury and entry of the Judgment, Plaintiffs argued to the Court that the State Board of Education was precluded from accepting appointment as successor trustee both by the 1987 Consent Judgment which was in evidence, and by the judicial admissions in the Answer and Motion to Dismiss filed by the North Carolina State Board

of Education and the North Carolina Attorney General, which are a part of the record and law of this case.

6. In the State Board of Education's Answer and Motion to Dismiss, the State admits that "The Consent Judgment expunged any interest that the State Board of Education may have had in the Trust." Based upon the foregoing admission as well as others in the State's Answer and Motion to Dismiss, Plaintiffs naturally understood and relied upon the fact that the State relinquished all rights to serve as successor trustee and would not and could not accept tender by the Court. Moreover, during the trial of the above-captioned matter, the undersigned counsel spoke with Thomas Ziko, Special Deputy Attorney General, representing the State Board of Education. Mr. Ziko reiterated to the undersigned that the State could not serve as successor trustee, no matter how much officials at the North Carolina Department of Environment and Natural Resources wanted control of the property. The undersigned relied upon the manifest judicial admissions in the State's Answer and Motion to Dismiss and Mr. Ziko's reiteration of that position during the week of September 20, 2010, and again on the evening of September 30, 2010, and, as a result, relayed to the Court that the State would not and could not serve as successor trustee.

7. At the time that the Court's October 26, 2010 Judgment and Order were entered, based upon the abovementioned judicial admissions and representations from the Attorney General, Plaintiffs and the undersigned justifiably understood, fully expected and relied upon the fact that the State would not and could not accept appointment as successor trustee.

8. Upon information and belief, the State Board of Education adopted the November 4, 2010 Resolution at a public meeting with little or no comment or discussion. Plaintiffs received no notice of that meeting or adoption of the Resolution.

9. Therefore, when the State communicated, subsequent to November 4, 2010, that the State Board of Education had adopted a Resolution purporting to accept appointment as the successor trustee, the adoption of this Resolution and the reversal of the State's position contrary to its prior admissions and representations came as a complete surprise to Plaintiffs and their counsel.

10. Furthermore, it was the understanding of Plaintiffs and the undersigned that the Court was also of the view that given the judicial admissions in the State's Answer and Motion to Dismiss, the State was precluded from reversing its position in the record and asserting any right or interest in serving as substitute trustee. For instance, during the charge conference, the Court stated:

Well, I think the attorney general has – I mean – I mean, I think they've spoken their peace. I think that they – they have basically said we're not interested in this, and I don't think that they can assert any right as a substitute trustee in this litigation, based on what I heard. So that's not something that I wanted to consider giving serious consideration.

(September 30, 2010, T pp. 73.)

11. Based upon the foregoing and other statements by the Court, Plaintiffs justifiably believed, understood and relied upon the fact that the Court viewed the formal tender process established by the October 26, 2010 Order to be a formality necessitated by the syntax of the Deed. Plaintiffs further understood and believed that the Court did not believe that the State "can assert any right as a substitute trustee in this litigation . . ." (*Id.*)

12. On December 6, 2010, Plaintiffs filed a Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee.

13. That Motion for Reconsideration of Order and Objection to Appointment was not filed pursuant to Rule 59 of the North Carolina Rules of Civil Procedure, and Plaintiffs expressly

object to the mischaracterization of their Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee as a motion pursuant to Rule 59. Had Plaintiffs' Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee been a motion pursuant to Rule 59, Plaintiffs would have so stated in the document.

14. In filing their Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee, Plaintiffs are not seeking relief from either the Judgment or Order entered by the Court on October 26, 2010. Indeed, the October 26, 2010 Order expressly finds that the Judgment entered by the Court based upon the jury verdict is a Judgment in favor of the Plaintiffs. As such, there would be no reason for Plaintiffs to file a motion to alter or amend that Judgment pursuant to Rule 59(e), and at no point in its filing, did Plaintiffs ask the Court to alter or amend the Judgment.

15. As the Court's Order only mentioned that the State "may" be entitled to appointment, and the Court had not yet officially tendered appointment to the State (having stated its intent to do so at the hearing) and had not indicated that it would definitely enter an Order appointing the State Board as successor trustee, Plaintiffs had no reason to file a Rule 59(e) motion to alter or amend the Order. As further stated above, based upon the judicial admissions by the State in its Answer and Motion to Dismiss, the representations of Thomas Ziko to the undersigned and the statements of the Court on the record, it was the expectation and understanding of Plaintiffs and the undersigned that the post-Judgment tender to the State was a mere formality mandated by the Court and that the State would, of course, reiterate its frequently stated declinations to serve as successor trustee. Therefore, the Order and action that the Plaintiffs objected to was not the formal tender of appointment which Plaintiffs properly

expected and justifiably relied upon, would be declined by the State and/or rejected by the Court. Rather, the action which Plaintiffs objected to and are now damaged and harmed by is the formal appointment of the State Board of Education as successor trustee, which was not announced until the hearing on January 3, 2011.

16. Contrary to the characterizations of the State in its Response to Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee and contrary to the language in the State's first draft Order forwarded to the undersigned on January 5, 2011, (Exhibit A attached), Plaintiffs were not seeking to alter or amend the October 26, 2010 Judgment. Rather, Plaintiffs objected to entry of an Order actually appointing the North Carolina State Board of Education as successor trustee. At its heart, Plaintiffs' filing challenged the State Board's theory that the tender of appointment could legally be accepted by the State and objected to the Court actually entering an Order appointing the State Board as successor trustee. This Objection is exemplified in the first paragraph of the argument section in Plaintiffs' Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee:

**I. THE STATE MAY NOT ACCEPT APPOINTMENT AS SUCCESSOR TRUSTEE.**

The offer to the State Board of Education to serve as successor trustee under the trust established by the 1950 deed is simply a formality mandated by this Court to comply with the syntax in the Deed from Dr. Sharpe. In light of the findings of fact, conclusions of law and adjudications in the 1987 Consent Judgment, the admissions of the State Board of Education and Attorney General in their Answer and Motion to Dismiss this action, the Order dismissing the State Board of Education and the Attorney General as defendants, and the jury verdict and Judgment in this case, the State is precluded from accepting appointment as successor trustee to administer the Trust. *For numerous reasons explained below, the State Board of Education cannot, and should not now be allowed to, accept appointment as successor trustee under the trust established by the settlor, Dr. Sharpe.*

[Emphasis added.]

17. To the extent that Plaintiffs' Motion and Objection invited the Court to reconsider the tender process envisioned in its Order, this was not a Rule 59 motion, but rather a request that the trial court consider its upcoming actions and decisions regarding this process. As explained throughout this Objection to Characterization, the Court's October 26 Order contemplated further action by the Court, including a further hearing and an order regarding appointment of a successor trustee or distribution of the trust property, when a successor trustee was not appointed. As such, the October 26 Order was a non-dispositive and interlocutory order outlining the further actions which the Court intended to take. Obviously, a trial court can, and does on a daily basis in the course of considering motions and the trial of cases, reconsider its decisions and actions, as well as its intended, future decisions and actions, prior to a final Order being entered on an issue. Such reconsideration is not an alteration or amendment of an order under Rule 59. Plaintiffs' invitation for the Court to reconsider the tender process was coupled with Plaintiffs' primary objection to the Court entering an Order appointing the State Board as successor trustee, and at most, invited the Court to consider how the tender process would actually unfold and whether the State should be allowed to reverse its consistent position and judicial admissions in this case and purport to accept the tender. The Plaintiffs' Motion and Objection did not ask the Court to alter or amend its Judgment or October 26 Order. In fact, as previously explained, Plaintiffs were the prevailing party at trial, as evidenced by the Judgment, and believed that the State Board would not and could not accept the tender and that the Court, in any event, would not and could not legally appoint the State Board. As such, Plaintiffs had no reason to file a Rule 59 Motion to alter or amend the Judgment or Order. Further, the final Order on the issue of whether the State would be appointed successor trustee has yet to be entered and the Court's decision was not announced to the parties until the hearing on January 3. Plaintiffs



were not actually aggrieved until this January 3 hearing and the upcoming entry of the Order actually appointing the State Board as successor trustee.

18. It was not until the conclusion of the hearing on January 3, 2011, that the Court announced that it would actually appoint the North Carolina State Board of Education as successor trustee, though a formal order to that effect has not yet been filed by the Court. Plaintiffs' Objection to Appointment of North Carolina State Board of Education as Successor Trustee was an objection to the actual appointment of the State as successor trustee which the Court announced it intended to do by an upcoming order at the conclusion of the January 3, 2011 hearing. Thus, Plaintiffs' Objection to Appointment of North Carolina State Board of Education as Successor Trustee is and should be deemed an objection to the actual appointment of the North Carolina State Board of Education to serve as successor trustee rather than a Rule 59 motion to alter or amend the October 26, 2010 Judgment. Said objection, and request that the Court reject the State Board of Education's purported acceptance of tender and refuse to appoint the State Board as successor trustee, was supported by ample legal authority and was appropriately made prior to entry of the Court's order appointing the State Board. It required no reference to a specific Rule of Civil Procedure, and certainly not to Rule 59.

19. However, to the extent that Plaintiffs' Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee is deemed to seek relief from either the Judgment or Order entered on October 26, 2010, Plaintiffs' Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee should be deemed a motion pursuant to Rule 60(b)(1), (3) and (6) of the North Carolina Rules of Civil Procedure.

20. Rule 60(b) provides that:

...

b. *Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.* – On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons:

(1) Mistake, inadvertence, surprise, or excusable neglect;

...

(3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

...

(6) Any other reason justifying relief from the operation of the judgment.

21. The actions taken by the State, on or before November 4, 2010, without notice to Plaintiffs purporting to accept appointment as successor trustee constituted surprise and misrepresentation within the meaning of Rule 60(b)(1), (3) and (6) for the following reasons:

A. Given that the State Board of Education admitted in its Answer and Motion to Dismiss that “The Consent Judgment expunged any interest that the State Board of Education may have had in the Trust,” Plaintiffs naturally understood and justifiably relied upon the facts that the State claimed no further interest in the trust, that it reiterated that it had no right to serve as successor trustee and that it could not and would not accept the tender pursuant to the October 26, 2010 Order.

B. Given that the State declined appointment as successor trustee in the 1987 Consent Judgment and reiterated that declination in its Answer and Motion to Dismiss, Plaintiffs naturally understood that they did not intend to accept appointment as successor trustee and would reject the tender represented by the October 26, 2010 Order.

C. Given the representations by Thomas Ziko at the August 21, 2007 hearing, an Order was entered dismissing the State, with prejudice, as a Defendant in this case.

D. Given the representations of Thomas Ziko to the undersigned on or about September 21, 2010 and on September 30, 2010 that the State would not and could not serve as successor trustee, Plaintiffs had the clear understanding and justifiably relied upon the facts that the State believed itself incapable of serving as successor trustee of the trust and, consistent with its Answer and Motion to Dismiss and its prior representations, would appropriately decline appointment as successor trustee.

E. Given the statements by the Court during the charge conference and following the jury verdict, which were reflected in the transcript, Plaintiffs had the understanding and justifiably relied upon the facts that the Court did not believe that the State could now reverse its position and accept appointment as successor trustee. The Plaintiffs therefore believed that the tender to the State was a mere formality so that the Court could have in the record following the jury verdict and Judgment a further declination of the State to satisfy what the Court believed were the requirements of the syntax of the Deed.

F. The presentation of a Resolution to the State Board of Education and adoption of the Resolution by the State Board of Education purporting to accept tender as successor trustee was done without notice to Plaintiffs or an opportunity to be heard. Plaintiffs were therefore justifiably surprised and shocked that the State Board of Education would, without notice to Plaintiffs, adopt a Resolution purporting to accept tender in contradiction to its declination in the 1987 Consent Judgment, in contradiction to the judicial admissions in the record in this case and contrary to the representations and statements of Thomas Ziko to the Court and to the undersigned on multiple occasions.

22. For these and other reasons, including those set forth in detail at the hearing in this matter on January 3, 2011, Plaintiffs were shocked that the State had reversed its previously stated position in the Answer and Motion to Dismiss that it declined service as successor trustee and that any interest that the State had in serving as successor trustee had been expunged.

23. Given the clear case authority that facts alleged in a complaint and admitted in an answer are conclusively established by the admission, Plaintiffs were further surprised that the Court would entertain appointment of the State as successor trustee pursuant to the October 26, 2010 Order.

24. To the extent that Plaintiffs' Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee is deemed to be a motion for relief from either the October 26, 2010 Judgment or Order, the foregoing reasons, as well as evidence in the record and arguments made in detail at the January 3, 2011 hearing, constitute a basis for relief from judgment or order pursuant to North Carolina Rule of Civil Procedure 60(b)(1) – to-wit, surprise and/or 60(b)(3), misrepresentation by the State.

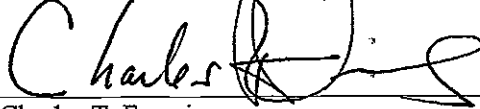
25. In addition, to the extent that it was the intention of the State at the time it made the judicial admissions represented in the Answer and Motion to Dismiss and obtained dismissal from the case with prejudice to subsequently re-emerge and reverse its position on appointment as successor trustee in the event of a verdict for the Plaintiffs, the State's intent constitutes fraud (whether heretofore dominated intrinsic or extrinsic), misrepresentation, or other misconduct on the part of the State giving rise to relief from judgment or order pursuant to Rule 60(b)(3) of the North Carolina Rules of Civil Procedure.

26. Such change in position is also inequitable and contrary to the interests of justice, which would also justify relief from operation of the Order and/or Judgment pursuant to Rule 60(b)(6).

BASED UPON THE FOREGOING, Plaintiffs' object to any characterization in the State's proposed Order and to characterization in the Court's Order of their previous Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee as a motion pursuant to Rule 59 of the North Carolina Rules of Civil Procedure. Plaintiffs' Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee is an objection to appointment of the North Carolina State Board of Education, which was ultimately rejected by the Court when it announced in open Court on January 3, 2011 that it would enter an Order appointing the State Board of Education. To the extent that Plaintiffs' Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee is deemed to be a motion for relief from the October 26, 2010 Judgment or Order, then said Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee should be deemed a motion pursuant to Rule 60(b) of the North Carolina Rules of Civil Procedure for relief from judgment or order.

This the 6th day of January, 2011.

THE FRANCIS LAW FIRM, PLLC



Charles T. Francis  
Attorneys for Plaintiffs  
Post Office Box 164  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0801

**VERIFICATION**

Charles T. Francis, being first duly sworn, deposes and says:

1. That I am Charles T. Francis, that I am over the age of 18 and that I am competent to give this Verification.

2. That I am counsel of record for the Plaintiffs in the above-captioned matter and I prepared the contemporaneously filed Objection to Characterization of Plaintiffs' Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee.

3. That the contents of Objection to Characterization of Plaintiffs' Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee are true and correct to the best of my knowledge and belief.

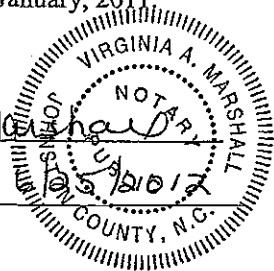
This the 6th day of January, 2011.



Charles T. Francis

SWORN TO and subscribed to  
before me this 6th day of January, 2011

*Virginia A. Marshall*  
Notary Public  
My Commission Expires: 10/5/2017



**Ginny Marshall**

---

**From:** Gulick, James [JGULICK@ncdoj.gov]  
**Sent:** Wednesday, January 05, 2011 2:15 PM  
**To:** Emory, Frank; Ginny Marshall  
**Cc:** Weisel, Michael; Ziko, Thomas  
**Subject:** RE: Turner and Hurst v. Hammocks Beach - Draft Order  
**Attachments:** Draft Hammocks Beach Order 01-05-11.docx

Gentlemen –

Attached please find a draft Order for your review and comment. We plan to present a final draft (including any changes in response to your comments) to Judge Fox tomorrow before noon.

Sincerely,

*Jim Gulick*  
James C. Gulick  
Senior Deputy Attorney General  
North Carolina Department of Justice  
P.O. Box 629  
(114 W. Edenton Street, Rm 306A)  
Raleigh, N.C. 27602-0629

Tel: 919.716.6940 Direct  
Tel: 919.716-6600 Switchboard  
Fax: 919.716-6767

1/6/2011



STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

COUNTY OF WAKE

06 CVS 18173

HARRIETT HURST TURNER and  
JOHN HENRY HURST,

Plaintiffs,

v.

THE HAMMOCKS BEACH  
CORPORATION, NANCY SHARPE  
CAIRD, SETH DICKMAN SHARPE,  
SUSAN SPEAR SHARPE, WILLIAM  
AUGUST SHARPE, NORTH CAROLINA  
STATE BOARD OF EDUCATION,  
ROY A. COOPER, III, in his capacity as  
Attorney General of the State of  
North Carolina,

Defendants,

ORDER

PURSUANT to the Court's Order and Notice of Hearing dated October 26, 2010, and a subsequent continuance, this matter came on for hearing in Wake County Superior Court before the undersigned Judge on January 3, 2011, for the purpose of fulfilling the Judgment entered in this matter on October 26, 2010, by formally tendering to the State Board of Education the appointment as successor trustee of the trust created by Dr. and Mrs. William Sharpe in the Deed and Agreement dated September 22, 1950. Plaintiffs Turner and Hurst were represented by Mr. Charles Francis, Esq. Hammocks Beach Corporation, Inc. was represented by Mr. Frank Emory, Esq. The North Carolina State Board of Education was represented by Senior Deputies Attorney General Thomas Ziko and James Gulick. There was no objection as to the time or place for the hearing. Prior to the scheduled hearing, Plaintiffs served a Motion for Reconsideration of Order



and Objection to Appointment of North Carolina State Board of Education as Successor Trustee. (Motion for Reconsideration and Objection to Appointment) Subsequent to the service of the Motion for Reconsideration and Objection to Appointment, counsel for the North Carolina State Board of Education filed objections and supplemental objections to subpoenas that counsel for Plaintiffs had served to take the testimony of witnesses. After reviewing the record and considering arguments from counsel, the Court makes the following findings and conclusions.

1. The Plaintiffs' Motion for Reconsideration does not specify the Rule of Civil Procedure under which Plaintiffs are applying for relief. The Motion for Reconsideration seeks to alter or amend the Judgment and companion Order entered in this case to remedy alleged errors of law. Therefore, the Court deems it to be a motion under Rule 59 of the Rules of Civil Procedure.

2. Rule 59(e) requires that a motion to alter or amend a judgment "shall be served not later than 10 days after entry of the judgment." N.C. Gen. Stat. § 1A-1, Rule 59(e). The Plaintiffs served their Motion for Reconsideration on or about December 6, 2010, more than 10 days after the entry of judgment on October 26, 2010.

3. Even if the Motion for Reconsideration had been timely filed, motions to alter or amend judgments are limited to the grounds listed in Rule 59(a). Plaintiffs' Motion for Reconsideration fails to specify a ground for relief recognized under Rule 59(a).

4. Furthermore, the arguments Plaintiffs make in the Motion for Reconsideration either were or could have been made prior to the entry of the Judgment. A party cannot use a Rule 59 motion to reargue matters already argued or to put forth arguments which were not made but could have been made during the trial.

5. Plaintiffs' argument that the State Board of Education is precluded from accepting appointment as Trustee was made and rejected by the Court prior to the submission of the case to the jury. The Plaintiffs themselves told the jury during summation that if it ruled for them on all three issues and removed the Hammocks Beach Corporation as trustee, the trusteeship would be tendered to the State Board of Education. This Court entered its Judgment and Order of October 26, 2010 consistent with its decision, the Plaintiffs' argument and the jury's verdict.

Reconsideration of the Judgment and Order on these grounds is inappropriate.

6. Plaintiffs' contention in their Motion for Reconsideration, that the jury verdict established that the Trust settlors' purposes are impossible or impractical for any trustee, including the State Board of Education, to carry out, contradicts representations made at trial by Plaintiffs to this Court and, more importantly, to the jury. In closing arguments, Plaintiffs' counsel argued to the jury repeatedly that impossibility and impracticability related to "this trustee," i.e., the Hammocks Beach Corporation. There is no reason to believe that the jury, in voting in favor of the Plaintiffs, did not act with the belief that the impossibility and impracticability related to "this trustee," the Hammocks Beach Corporation, consistent with the 1950 Deed (under which a determination of impossibility and impracticability is the clear predicate for tendering successor trusteeship to the State Board of Education), the Court's instructions and Plaintiffs' arguments.

7. Likewise, this Court rejects Plaintiffs' contention that the tender to the Board is a "mere formality" which the State Board of Education must refuse as being expressly contrary to the Judgment.

8. Prior to entry of the Judgment, the Court rejected Plaintiffs' argument that the State Board of Education's prior actions with respect to the Trust now preclude the Board from acting as trustee. In fact, the Judgment specifically states:

*that The Hammocks Beach Corporation shall be removed as Trustee of the Trust created by Dr. and Mrs. William Sharpe . . . upon the formal appointment of the North Carolina State Board of Education as successor trustee to administer the trust for the purposes set forth in the 1950 Deed and Agreement or, in the event that the North Carolina State Board of Education refuses to accept appointment to administer the trust . . . upon entry of an order distributing the trust property pursuant to the terms of the 1950 Deed.*

In other words, this Court has already determined that the State Board of Education has the choice of accepting tender of the trusteeship or not. During closing arguments and following the verdict, Plaintiffs themselves advanced the same position the Court adopted in its final Judgment, that is, that as a result of the jury's verdict, the Board would be tendered the trusteeship and would have a choice to make as to whether to accept it. Plaintiff's arguments that the State Board of Education cannot accept tender of the trusteeship were or could have been made prior to the entry of the Judgment. There is no legal or equitable reason why the State Board of Education may not now accept tender of the successor trusteeship.

9. The end result of the State Board of Education's succeeding as trustee will be that the charitable intent of the trust grantors, Dr. and Mrs. Sharpe, will be accomplished and maintained. It is the public policy of North Carolina to preserve, to the fullest extent possible, the manifest intent of the grantor to bestow a gift for charitable purposes. There is no question that Dr. and Mrs. Sharpe intended to create a charitable trust. The Sharpes provided in the original trust instruments that if it were determined to be impossible or impracticable for the

trust property to be used for the stated purposes, the property may then be transferred to the State Board of Education to be held "in trust" to carry out the trust purposes. It is the Sharpes themselves who selected the State Board of Education as successor trustee. It is completely in keeping with the original Agreement and Deed that the State Board of Education succeed as trustee if it accepts tender of that successor trusteeship, as it has indicated it intends to do, subject to approval by the Council of State.

10. The terms of the original trust instrument relating to impracticability and impossibility make clear that the State Board of Education's refusal to accept the successor trusteeship following tender is a condition precedent to the property being divided among the contingent heirs, including plaintiffs. This is evident from the language of the 1950 Deed.

11. Plaintiffs concede that the bases for their objections to the State Board of Education's appointment are the same as the bases for their Motion for Reconsideration. Provided the Council of State approves the vesting of the title to the Trust property under N.C. Gen. Stat. §146-26, there is no legal obstacle to the State Board of Education fulfilling the duties of trustee as specified in the 1950 Deed and Agreement.

12. Plaintiffs failed to identify the authority for their effort to depose Thomas Ziko and Lewis Ledford post- Judgment. The Motion for Reconsideration is expressly based on the pleadings and proceedings of record in this case. Plaintiff has failed to convince the Court that the post-Judgment discovery would be relevant and material to the issues before the Court. Therefore, in its discretion the Court sustains the objections to the depositions.

Wherefore, it is Ordered that:

1. The Plaintiffs' Motion for Reconsideration is denied.

2. Plaintiffs' Objection to the appointment of the State Board of Education as successor

trustee is overruled.

3. The State Board of Education's and putative deponents' Objections to Plaintiffs' deposition notices and subpoenas are sustained and upheld.

4. The North Carolina State Board of Education is hereby formally appointed as successor trustee to administer the trust for the purposes set forth in the 1950 Deed and Agreement, subject only to the approval of the Council of State.

5. Once the Council of State has acted, counsel for the State Board of Education shall notify the Court and other parties of the Council's action.

6. In the event that the Council of State approves the North Carolina State Board of Education's acceptance and the transfer of the trust property, Hammocks Beach Corporation, Inc. shall execute a deed in form satisfactory to the State transferring the trust property to the State to be held in trust by the State Board of Education for the purposes set forth in the 1950 Deed and Agreement.

7. In the event that the Council of State disapproves of the State Board of Education's acceptance of the appointment as successor trustee to administer the trust and transfer of the trust property, Plaintiffs shall schedule a further hearing for consideration and entry of an order distributing the trust property pursuant to the terms of the 1950 Deed.

This \_\_\_ day of January, 2011.

---

Carl R. Fox

**DRAFT 01-05-2011 11:30 AM**

Superior Court Judge Presiding

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
06 CVS 18173

HARRIETT HURST TURNER and  
JOHN HENRY HURST,

Plaintiffs,

v.

THE HAMMOCKS BEACH  
CORPORATION, NANCY SHARPE  
CAIRD, SETH DICKMAN SHARPE,  
SUSAN SPEAR SHARPE, WILLIAM  
AUGUST SHARPE, NORTH CAROLINA  
STATE BOARD OF EDUCATION,  
ROY A. COOPER, III, in his capacity as  
Attorney General of the State of  
North Carolina,

Defendants,

NOTICE OF FILING  
OF PROPOSED ORDER

BY  
2011 JAN -7 9:12:36  
C.S.C.

Plaintiffs, by and through counsel, hereby provides notice of filing a proposed Order and transmittal letter (attached as Exhibit A) to accompany the Verified Objection to Characterization of Plaintiffs' Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee filed on January 6, 2011.

This the 7<sup>th</sup> day of January, 2011.

BAILEY & DIXON, LLP

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Adam N. Oils  
North Carolina State Bar No.: 38405  
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THE FRANCIS LAW FIRM, PLLC

*Charles T. Francis*

Charles T. Francis

North Carolina State Bar No.: 16348

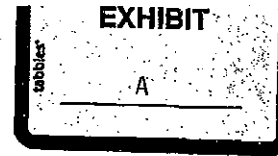
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The Francis Law Firm, PLLC  
ATTORNEYS & COUNSELORS AT LAW

CHARLES T. FRANCIS  
MATTHEW L. BOYATT

January 7, 2011

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VIA ELECTRONIC MAIL AND HAND DELIVERY

The Honorable Carl R. Fox  
Superior Court Judge  
Wake County Courthouse, 10th Floor  
Raleigh, North Carolina 27601

Re: **Harriett Hurst Turner and John Henry Hurst v. The Hammocks Beach Corporation**  
Wake County File No.: 06 CVS 18173

Your Honor:


Enclosed is Plaintiffs' proposed Order in the above-referenced case concerning the matters decided by you in open court on Monday, January 3, 2011.

Although we tried to reach an agreement with the North Carolina State Board of Education ("Board") on the form of and submitted our suggested revisions to its draft Order, as best we can tell, the Board ignored every single change we proposed and unilaterally submitted the Order to you without informing us.

Therefore, we are submitting herewith our proposed Order for your consideration. We reviewed excerpts of the draft transcript setting forth your ruling at Monday's hearing, and believe our proposed Order accurately reflects your announced ruling. We appreciate your time and consideration on this matter.

Respectfully submitted, I am

Sincerely,

  
Charles T. Francis

CTF:gam  
Enclosure

cc: Thomas J. Ziko, Esq. (w/enc.) (via electronic mail)  
James C. Gulick, Esq. (w/enc.) (via electronic mail)  
Frank E. Emory, Jr., Esq. (w/enc.) (via electronic mail)  
Michael L. Weisel, Esq. (w/enc.) (via electronic mail)

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
06 CVS 18173

HARRIETT HURST TURNER and )  
JOHN HENRY HURST, )  
 )  
Plaintiffs, )

vs. )

THE HAMMOCKS BEACH )  
CORPORATION, NANCY SHARPE )  
CAIRD, SETH DICKMAN SHARPE, )  
SUSAN SPEAR SHARPE, WILLIAM )  
AUGUST SHARPE, NORTH CAROLINA )  
STATE BOARD OF EDUCATION, ROY )  
A. COOPER, III, in his capacity as )  
Attorney General of the State of North )  
Carolina, )  
 )  
Defendants. )

**ORDER**

PURSUANT to the Court's Order and Notice of Hearing dated October 26, 2010, and subsequent continuance, this matter came on for hearing in Wake County Superior Court before the undersigned Judge on January 3, 2011. Plaintiffs Turner and Hurst were represented by Charles T. Francis. Hammocks Beach Corporation was represented by Frank E. Emory, Jr. The North Carolina State Board of Education was represented by Senior Deputies Attorney General Thomas Ziko and James Gulick. There was no objection as to the time or place for the hearing. On December 6, 2010, Plaintiffs filed and served a Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee. (Motion for Reconsideration and Objection to Appointment) Subsequent to the service of the

Motion for Reconsideration and Objection to Appointment, counsel for the North Carolina State Board of Education filed objections and supplemental objections to subpoenas counsel for Plaintiffs served to take the testimony of witnesses. After reviewing the record and considering arguments from counsel, the Court makes the following findings and conclusions:

1. Plaintiffs' argument that the State Board of Education is precluded from accepting appointment as Trustee was made and rejected by the Court prior to the submission of the case to the jury. This Court noted Plaintiffs' objections for the record.

2. Likewise, this Court rejects Plaintiffs' contention that the tender to the Board is a mere formality.

3. Prior to entry of the Judgment, the Court rejected Plaintiffs' argument that the State Board of Education's prior judicial admissions and conduct in this case now preclude the Board from acting as trustee. This Court noted Plaintiffs' objections for the record.

4. This Court finds that the State Board of Education's refusal to accept the successor trusteeship following tender is a condition precedent to the property being distributed to the contingent remainder beneficiaries of the trust.

5. Plaintiff has failed to convince the Court that the post-Judgment discovery would be relevant and material to the issues before the Court. Therefore, in its discretion the Court sustains the objections to the depositions and to production of documents pursuant to Subpoena to Lewis Ledford and Thomas Ziko.

Wherefore, it is Ordered that:

1. The Plaintiffs' Motion for Reconsideration is denied.
2. Plaintiffs' Objection to Appointment of the North Carolina State Board of Education as successor trustee is denied.
3. The State Board of Education's and putative deponents' Objections to Plaintiffs' deposition notices and subpoenas are sustained and upheld.
4. There is no evidence before this Court as to why, legally, other than the Answer and dismissal of the Attorney General and the North Carolina State Board of Education in this action, the admissions of the State Board of Education and Attorney General in this action and the findings of fact and conclusions of law in the 1987 Consent Judgment, as to why the North Carolina State Board of Education is not entitled to accept appointment as successor trustee. Therefore, the North Carolina State Board of Education is hereby formally appointed as successor trustee to administer the trust for the purposes set forth in the 1950 Deed and Agreement, subject to the approval of the Council of State.
5. Once the Council of State has acted, counsel for the State Board of Education shall notify the Court and other parties of the Council's action.
6. In the event that the Council of State approves the North Carolina State Board of Education's appointment as successor trustee, the trust property shall be held in trust by the North Carolina State Board of Education for the purposes set forth in the 1950 Deed and Agreement.

7. In the event that the Council of State disapproves of the State Board of Education's acceptance of the appointment as successor trustee to administer the trust, Plaintiffs shall schedule a further hearing for entry of an order distributing the trust property pursuant to the trust terms.

This the \_\_\_\_\_ day of January, 2011.

---

The Honorable Carl R. Fox  
Superior Court Judge Presiding

FILED

STATE OF NORTH CAROLINA      2011 JAN 12 AM 11:11      IN THE GENERAL COURT OF JUSTICE  
COUNTY OF WAKE      BY      SUPERIOR COURT DIVISION  
06 CVS 18173

HARRIETT HURST TURNER and  
JOHN HENRY HURST,

Plaintiffs,

v.

THE HAMMOCKS BEACH  
CORPORATION, NANCY SHARPE  
CAIRD, SETH DICKMAN SHARPE,  
SUSAN SPEAR SHARPE, WILLIAM  
AUGUST SHARPE, NORTH CAROLINA  
STATE BOARD OF EDUCATION,  
ROY A. COOPER, III, in his capacity as  
Attorney General of the State of  
North Carolina,

Defendants,

ORDER

PURSUANT to the Court's Order and Notice of Hearing dated October 26, 2010, and a subsequent continuance, this matter came on for hearing in Wake County Superior Court before the undersigned Judge on January 3, 2011, for the purpose of formally tendering to the State Board of Education the appointment as successor trustee of the trust created by Dr. and Mrs. William Sharpe in the Deed and Agreement dated September 22, 1950 (the "Trust"). Plaintiffs Turner and Hurst were represented by Mr. Charles Francis, Esq. Hammocks Beach Corporation, Inc. was represented by Mr. Frank E. Emory, Jr., Esq. The North Carolina State Board of Education was represented by Senior Deputies Attorney General Thomas Ziko and James Gulick. There was no objection as to the time or place for the hearing. Prior to the scheduled hearing, Plaintiffs served a Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board

of Education as Successor Trustee. (Plaintiffs' Motion) Subsequent to the service of the Plaintiffs' Motion, counsel for the North Carolina State Board of Education filed objections and supplemental objections to subpoenas that counsel for Plaintiffs had served to take the testimony of witnesses and produce documents. After reviewing the record and considering arguments from counsel, the Court makes the following findings and conclusions.

1. The Plaintiffs' Motion does not specify the Rule of Civil Procedure under which Plaintiffs are applying for relief. The Motion seeks to alter or amend the Judgment and companion Order entered in this case to remedy alleged errors of law. Therefore, the Court deems it to be a motion under Rule 59 of the Rules of Civil Procedure.

2. Rule 59(e) requires that a motion to alter or amend a judgment "shall be served not later than 10 days after entry of the judgment." N.C. Gen. Stat. § 1A-1, Rule 59(e). The Plaintiffs served their Motion for Reconsideration on or about December 6, 2010, more than 10 days after the entry of judgment on October 26, 2010.

3. Even if Plaintiffs' Motion had been timely filed, motions to alter or amend judgments are limited to the grounds listed in Rule 59(a). Plaintiffs' Motion fails to specify a ground for relief recognized under Rule 59(a).

4. Furthermore, the arguments Plaintiffs make in their Motion either were or could have been made prior to the entry of the Judgment. A party cannot use a Rule 59 motion to reargue matters already argued or to put forth arguments which were not made but could have been made during the trial. Regardless of what rule Plaintiffs are proceeding under, Plaintiffs' Motion is without merit.

5. Plaintiffs' argument that the State Board of Education is precluded from accepting appointment as Trustee was made and rejected by the Court prior to the submission of the case to the jury. This Court noted Plaintiffs' objections for the record. The Plaintiffs themselves told the jury during summation that if it ruled for them on all three issues and removed the Hammocks Beach Corporation as Trustee, the trusteeship would be tendered to the State Board of Education. This Court entered its Judgment and Order of October 26, 2010 consistent with its decision, the Plaintiffs' argument and the jury's verdict. Reconsideration of the Judgment and Order on these grounds is inappropriate.

6. Plaintiffs' contention in their Plaintiffs' Motion, that the jury verdict established that the Trust settlors' purposes are impossible or impractical for any trustee, including the State Board of Education, to carry out, contradicts representations made at trial by Plaintiffs to this Court and, more importantly, to the jury. In closing arguments, Plaintiffs' counsel argued to the jury repeatedly that impossibility and impracticability related to "this trustee," i.e., the Hammocks Beach Corporation. There is no reason to believe that the jury, in voting in favor of the Plaintiffs, did not act with the belief that the impossibility and impracticability related to "this trustee," the Hammocks Beach Corporation, consistent with the 1950 Deed (under which a determination of impossibility and impracticability is the clear predicate for tendering successor trusteeship to the State Board of Education), the Court's instructions and Plaintiffs' arguments.

7. Likewise, this Court rejects Plaintiffs' contention that the tender to the Board is a "mere formality" which the State Board of Education must refuse.



8. Prior to entry of the Judgment, the Court rejected Plaintiffs' argument that the State Board of Education's prior actions with respect to the Trust now preclude the Board from acting as trustee. This court noted Plaintiffs' objections for the record. In fact, the Judgment specifically states:

that The Hammocks Beach Corporation shall be removed as Trustee of the Trust created by Dr. and Mrs. William Sharpe . . . upon the formal appointment of the North Carolina State Board of Education as successor trustee to administer the trust for the purposes set forth in the 1950 Deed and Agreement or, in the event that the North Carolina State Board of Education refuses to accept appointment to administer the trust . . . , upon entry of an order distributing the trust property pursuant to the terms of the 1950 Deed.

In other words, this Court has already determined that the State Board of Education has the choice of accepting tender of the trusteeship or not. During closing arguments and following the verdict, Plaintiffs themselves advanced the same position the Court adopted in its final Judgment, that is, that as a result of the jury's verdict, the Board would be tendered the trusteeship and would have a choice to make as to whether to accept it. Plaintiff's arguments that the State Board of Education cannot accept tender of the trusteeship were or could have been made prior to the entry of the Judgment. There is no legal or equitable reason why the State Board of Education may not now accept tender of the successor trusteeship.

9. The end result of the State Board of Education's succeeding as trustee will be that the charitable intent of the Trust grantors, Dr. and Mrs. Sharpe, will be accomplished and maintained and the Trust will remain in existence. It is the public policy of North Carolina to preserve, to the fullest extent possible, the manifest intent of the grantor to bestow a gift for charitable purposes. There is no question that Dr. and Mrs. Sharpe intended to create a charitable trust. The Sharpes

provided in the original trust instruments that if it were determined to be impossible or impracticable for the Trust property to be used for the stated purposes, the property may then be transferred to the State Board of Education to be held "in trust" to carry out the Trust purposes. It is the Sharpes themselves who selected the State Board of Education as successor trustee. It is completely in keeping with the original Agreement and Deed that the State Board of Education succeed as trustee if it accepts tender of that successor trusteeship, as it has indicated it intends to do, subject to approval by the Council of State.

10. The terms of the original Trust instrument relating to impracticability and impossibility make clear that the State Board of Education's refusal to accept the successor trusteeship following tender is a condition precedent to the property being conveyed to Plaintiffs' and any other contingent heirs. This is evident from the language of the 1950 Deed.

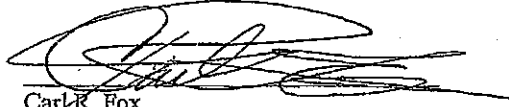
11. Plaintiffs concede that the bases for their objections to the State Board of Education's appointment are the same as the bases for their Motion for Reconsideration. Provided the Council of State approves the vesting of the title to the Trust property under N.C. Gen. Stat. §146-26, there is no legal obstacle to the State Board of Education fulfilling the duties of trustee as specified in the 1950 Deed and Agreement.

12. Plaintiffs failed to identify the authority for their effort to depose Thomas Ziko and Lewis Ledford post- Judgment. The Plaintiffs' Motion is expressly based on the pleadings and proceedings of record in this case. Plaintiff has failed to convince the Court that the post-Judgment discovery would be relevant and material to the issues before the Court. Therefore, in its discretion the Court sustains the objections to the depositions and to the production of documents by Lewis Ledford under the subpoena duces tecum served on him.

Wherefore, it is Ordered that:

1. The Plaintiffs' Motion for Reconsideration is denied.
2. Plaintiffs' Objection to the appointment of the North Carolina State Board of Education as successor trustee is overruled.
3. The State Board of Education's and putative deponents' Objections to Plaintiffs' deposition notices and subpoenas are sustained and upheld.
4. The North Carolina State Board of Education is hereby formally appointed as successor trustee to administer the Trust for the purposes set forth in the 1950 Deed and Agreement, subject only to the approval of the Council of State.
5. Once the Council of State has acted, counsel for the State Board of Education shall notify the Court and other parties of the Council's action.
6. In the event that the Council of State approves the North Carolina State Board of Education's appointment as successor trustee and acceptance and transfer of the Trust property, Hammocks Beach Corporation, Inc. shall execute a deed, prepared by the State and in a form satisfactory to the State and Hammocks Beach Corporation, Inc., transferring the Trust property to the State to be held in trust by the State Board of Education for the purposes set forth in the 1950 Deed and Agreement.
7. In the event that the Council of State disapproves of the State Board of Education's acceptance of the appointment as successor trustee to administer the Trust and transfer of the Trust property, Plaintiffs shall schedule a further hearing for consideration and entry of an order distributing the trust property pursuant to the terms of the Trust.

This 1<sup>st</sup> day of January, 2011.



Carl R. Fox  
Superior Court Judge Presiding

NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 06 CVS 18173

HARRIETT HURST TURNER and )  
JOHN HENRY HURST, )  
 )  
Plaintiffs, )

vs. )

THE HAMMOCKS BEACH )  
CORPORATION, NANCY SHARPE )  
CAIRD, SETH DICKMAN SHARPE, )  
SUSAN SPEAR SHARPE, WILLIAM )  
AUGUST SHARPE, NORTH CAROLINA )  
STATE BOARD OF EDUCATION, ROY )  
A. COOPER, III, in his capacity as )  
Attorney General of the State of North )  
Carolina, )  
 )  
Defendants. )

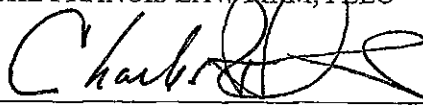
NOTICE OF FILING

FILED  
JAN 26 5:10:36  
S.C.

NOW COME Plaintiffs Harriett Hurst Turner and John Henry Hurst, by and through the undersigned counsel and file the January 21, 2011 Certificate of Service from James C. Gulick, Esq. serving the Order filed by the Honorable Carl R. Fox on January 12, 2011.

This the 26 day of January, 2011.

THE FRANCIS LAW FIRM, PLLC



Charles T. Francis  
North Carolina State Bar No.: 16348  
Attorney for Plaintiffs  
Post Office Box 164  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0801

**CERTIFICATE OF SERVICE**

I, Charles T. Francis, attorney for Plaintiffs, certify that I served the foregoing pleading upon the following parties, and in the manner below specified, by placing a copy thereof for each such party(ies) in a separate envelope bearing sufficient postage and depositing the same in the United States Mail at Raleigh, North Carolina:

James C. Gulick, Esq.  
Senior Deputy Attorney General  
Thomas J. Ziko, Esq.  
Special Deputy Attorney General  
Office of the Attorney General  
114 West Edenton Street  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

Michael L. Weisel, Esq.  
David S. Coats, Esq.  
Adam N. Olls, Esq.  
Bailey & Dixon, L.L.P.  
Post Office Box 1351  
Raleigh, North Carolina 27602

Frank E. Emory, Jr., Esq.  
Hunton & Williams, LLP  
Bank of America Plaza  
Suite 3500  
101 South Tryon Street  
Charlotte, North Carolina 28280

This the 26 day of January, 2011.

THE FRANCIS LAW FIRM, PLLC



Charles T. Francis  
North Carolina State Bar No.: 16348  
Attorneys for Plaintiffs  
Post Office Box 164  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0801

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

06 CVS 18173

HARRIETT HURST TURNER and  
JOHN HENRY HURST,

Plaintiffs,

v.

THE HAMMOCKS BEACH  
CORPORATION, NANCY SHARPE CAIRD,  
SETH DICKMAN SHARPE,  
SUSAN SPEAR SHARPE, WILLIAM  
AUGUST SHARPE, NORTH CAROLINA  
STATE BOARD OF EDUCATION,  
ROY A. COOPER, III, in his capacity as  
Attorney General of the State of  
North Carolina,

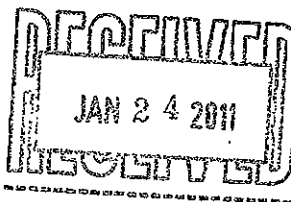
Defendants,

CERTIFICATE OF SERVICE

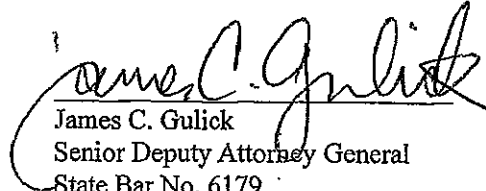
I hereby certify that a copy of the attached Order on hearing for appointment of a successor trustee in the above-referenced matter has been served on the following by first class mail, postage prepaid, addressed as follows:

Charles T. Francis, Esq.  
The Francis Law Firm, PLLC  
Post Office Box 164  
Raleigh, N.C. 27602

Frank E. Emory, Esq.  
Brent A. Rosser, Esq.  
Hunton & Williams, LLP  
Bank of America Plaza  
Suite 3500  
101 South Tryon Street  
Charlotte, N.C. 28280



Respectfully submitted, this the 21<sup>st</sup> day of January, 2011.

A handwritten signature in black ink, appearing to read "James C. Gulick", written over a horizontal line.

James C. Gulick  
Senior Deputy Attorney General  
State Bar No. 6179  
Email: [jgulick@ncdoj.gov](mailto:jgulick@ncdoj.gov)

N.C. Department of Justice  
Post Office Box 629  
Raleigh, NC 27602-0629  
(919) 716-6900  
(919) 716-6600  
(919) 716-6767 FAX

Attorney for North Carolina  
State Board of Education



FILED

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

2011 JAN 12 AM 11:15  
IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
06 CVS 18173

WAKE CO., N.C.  
BY

HARRIETT HURST TURNER and  
JOHN HENRY HURST,

Plaintiffs,

v.

THE HAMMOCKS BEACH  
CORPORATION, NANCY SHARPE  
CAIRD, SETH DICKMAN SHARPE,  
SUSAN SPEAR SHARPE, WILLIAM  
AUGUST SHARPE, NORTH CAROLINA  
STATE BOARD OF EDUCATION,  
ROY A. COOPER, III, in his capacity as  
Attorney General of the State of  
North Carolina,

Defendants,

ORDER

PURSUANT to the Court's Order and Notice of Hearing dated October 26, 2010, and a subsequent continuance, this matter came on for hearing in Wake County Superior Court before the undersigned Judge on January 3, 2011, for the purpose of formally tendering to the State Board of Education the appointment as successor trustee of the trust created by Dr. and Mrs. William Sharpe in the Deed and Agreement dated September 22, 1950 (the "Trust"). Plaintiffs Turner and Hurst were represented by Mr. Charles Francis, Esq. Hammocks Beach Corporation, Inc. was represented by Mr. Frank E. Emory, Jr., Esq. The North Carolina State Board of Education was represented by Senior Deputies Attorney General Thomas Ziko and James Gulick. There was no objection as to the time or place for the hearing. Prior to the scheduled hearing, Plaintiffs served a Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board

of Education as Successor Trustee. (Plaintiffs' Motion) Subsequent to the service of the Plaintiffs' Motion, counsel for the North Carolina State Board of Education filed objections and supplemental objections to subpoenas that counsel for Plaintiffs had served to take the testimony of witnesses and produce documents. After reviewing the record and considering arguments from counsel, the Court makes the following findings and conclusions.

1. The Plaintiffs' Motion does not specify the Rule of Civil Procedure under which Plaintiffs are applying for relief. The Motion seeks to alter or amend the Judgment and companion Order entered in this case to remedy alleged errors of law. Therefore, the Court deems it to be a motion under Rule 59 of the Rules of Civil Procedure.

2. Rule 59(e) requires that a motion to alter or amend a judgment "shall be served not later than 10 days after entry of the judgment." N.C. Gen. Stat. § 1A-1, Rule 59(e). The Plaintiffs served their Motion for Reconsideration on or about December 6, 2010, more than 10 days after the entry of judgment on October 26, 2010.

3. Even if Plaintiffs' Motion had been timely filed, motions to alter or amend judgments are limited to the grounds listed in Rule 59(a). Plaintiffs' Motion fails to specify a ground for relief recognized under Rule 59(a).

4. Furthermore, the arguments Plaintiffs make in their Motion either were or could have been made prior to the entry of the Judgment. A party cannot use a Rule 59 motion to reargue matters already argued or to put forth arguments which were not made but could have been made during the trial. Regardless of what rule Plaintiffs are proceeding under, Plaintiffs' Motion is without merit.

5. Plaintiffs' argument that the State Board of Education is precluded from accepting appointment as Trustee was made and rejected by the Court prior to the submission of the case to the jury. This Court noted Plaintiffs' objections for the record. The Plaintiffs themselves told the jury during summation that if it ruled for them on all three issues and removed the Hammocks Beach Corporation as Trustee, the trusteeship would be tendered to the State Board of Education. This Court entered its Judgment and Order of October 26, 2010 consistent with its decision, the Plaintiffs' argument and the jury's verdict. Reconsideration of the Judgment and Order on these grounds is inappropriate.

6. Plaintiffs' contention in their Plaintiffs' Motion, that the jury verdict established that the Trust settlors' purposes are impossible or impractical for any trustee, including the State Board of Education, to carry out, contradicts representations made at trial by Plaintiffs to this Court and, more importantly, to the jury. In closing arguments, Plaintiffs' counsel argued to the jury repeatedly that impossibility and impracticability related to "this trustee," i.e., the Hammocks Beach Corporation. There is no reason to believe that the jury, in voting in favor of the Plaintiffs, did not act with the belief that the impossibility and impracticability related to "this trustee," the Hammocks Beach Corporation, consistent with the 1950 Deed (under which a determination of impossibility and impracticability is the clear predicate for tendering successor trusteeship to the State Board of Education), the Court's instructions and Plaintiffs' arguments.

7. Likewise, this Court rejects Plaintiffs' contention that the tender to the Board is a "mere formality" which the State Board of Education must refuse.

8. Prior to entry of the Judgment, the Court rejected Plaintiffs' argument that the State Board of Education's prior actions with respect to the Trust now preclude the Board from acting as trustee. This court noted Plaintiffs' objections for the record. In fact, the Judgment specifically states:

that The Hammocks Beach Corporation shall be removed as Trustee of the Trust created by Dr. and Mrs. William Sharpe . . . upon the formal appointment of the North Carolina State Board of Education as successor trustee to administer the trust for the purposes set forth in the 1950 Deed and Agreement or, in the event that the North Carolina State Board of Education refuses to accept appointment to administer the trust . . . upon entry of an order distributing the trust property pursuant to the terms of the 1950 Deed.

In other words, this Court has already determined that the State Board of Education has the choice of accepting tender of the trusteeship or not. During closing arguments and following the verdict, Plaintiffs themselves advanced the same position the Court adopted in its final Judgment, that is, that as a result of the jury's verdict, the Board would be tendered the trusteeship and would have a choice to make as to whether to accept it. Plaintiff's arguments that the State Board of Education cannot accept tender of the trusteeship were or could have been made prior to the entry of the Judgment. There is no legal or equitable reason why the State Board of Education may not now accept tender of the successor trusteeship.

9. The end result of the State Board of Education's succeeding as trustee will be that the charitable intent of the Trust grantors, Dr. and Mrs. Sharpe, will be accomplished and maintained and the Trust will remain in existence. It is the public policy of North Carolina to preserve, to the fullest extent possible, the manifest intent of the grantor to bestow a gift for charitable purposes. There is no question that Dr. and Mrs. Sharpe intended to create a charitable trust. The Sharpes

provided in the original trust instruments that if it were determined to be impossible or impracticable for the Trust property to be used for the stated purposes, the property may then be transferred to the State Board of Education to be held "in trust" to carry out the Trust purposes. It is the Sharpes themselves who selected the State Board of Education as successor trustee. It is completely in keeping with the original Agreement and Deed that the State Board of Education succeed as trustee if it accepts tender of that successor trusteeship, as it has indicated it intends to do, subject to approval by the Council of State.

10. The terms of the original Trust instrument relating to impracticability and impossibility make clear that the State Board of Education's refusal to accept the successor trusteeship following tender is a condition precedent to the property being conveyed to Plaintiffs' and any other contingent heirs. This is evident from the language of the 1950 Deed.

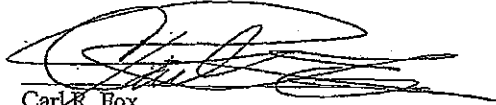
11. Plaintiffs concede that the bases for their objections to the State Board of Education's appointment are the same as the bases for their Motion for Reconsideration. Provided the Council of State approves the vesting of the title to the Trust property under N.C. Gen. Stat. §146-26, there is no legal obstacle to the State Board of Education fulfilling the duties of trustee as specified in the 1950 Deed and Agreement.

12. Plaintiffs failed to identify the authority for their effort to depose Thomas Ziko and Lewis Ledford post- Judgment. The Plaintiffs' Motion is expressly based on the pleadings and proceedings of record in this case. Plaintiff has failed to convince the Court that the post-Judgment discovery would be relevant and material to the issues before the Court. Therefore, in its discretion the Court sustains the objections to the depositions and to the production of documents by Lewis Ledford under the subpoena duces tecum served on him.

Wherefore, it is Ordered that:

1. The Plaintiffs' Motion for Reconsideration is denied.
2. Plaintiffs' Objection to the appointment of the North Carolina State Board of Education as successor trustee is overruled.
3. The State Board of Education's and putative deponents' Objections to Plaintiffs' deposition notices and subpoenas are sustained and upheld.
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5. Once the Council of State has acted, counsel for the State Board of Education shall notify the Court and other parties of the Council's action.
6. In the event that the Council of State approves the North Carolina State Board of Education's appointment as successor trustee and acceptance and transfer of the Trust property, Hammocks Beach Corporation, Inc. shall execute a deed, prepared by the State and in a form satisfactory to the State and Hammocks Beach Corporation, Inc., transferring the Trust property to the State to be held in trust by the State Board of Education for the purposes set forth in the 1950 Deed and Agreement.
7. In the event that the Council of State disapproves of the State Board of Education's acceptance of the appointment as successor trustee to administer the Trust and transfer of the Trust property, Plaintiffs shall schedule a further hearing for consideration and entry of an order distributing the trust property pursuant to the terms of the Trust.

This 1<sup>th</sup> day of January, 2011.



Carl R. Fox  
Superior Court Judge Presiding

1126

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 06 CVS 18173

WAKE COUNTY

HARRIETT HURST TURNER and  
JOHN HENRY HURST,

Plaintiffs,

vs.

THE HAMMOCKS BEACH  
CORPORATION, NANCY SHARPE  
CAIRD, SETH DICKMAN SHARPE,  
SUSAN SPEAR SHARPE, WILLIAM  
AUGUST SHARPE, NORTH CAROLINA  
STATE BOARD OF EDUCATION, ROY  
A. COOPER, III, in his capacity as  
Attorney General of the State of North  
Carolina,

Defendants.

**NOTICE OF APPEAL**

BY  
2011 JUN 26 11:10:39  
S.S.C.

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

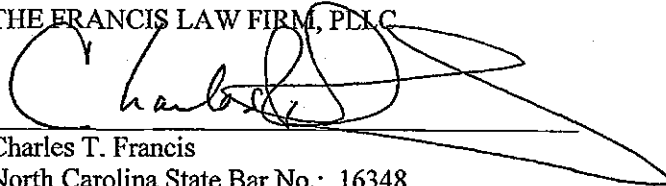
Pursuant to Rule 3 of the North Carolina Rules of Appellate Procedure, Plaintiffs Harriett Hurst Turner and John Henry Hurst, by and through undersigned counsel, hereby give Notice of Appeal to the North Carolina Court of Appeals from the Order entered by the Honorable Carl R. Fox on January 12, 2011 in the Superior Court, Wake County, appointing the North Carolina State Board of Education as successor trustee to the trust which is the subject of the above-captioned action over Plaintiffs' objections. Plaintiffs further appeal from the order entered by the Honorable Carl R. Fox on October 26, 2010 in the Superior Court, Wake County, wherein



the Court stated that it appeared that the North Carolina State Board of Education may now be entitled to tender of appointment as successor trustee.

This the 26 day of January, 2011.

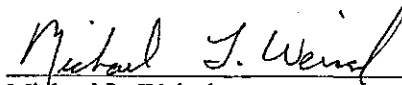
THE FRANCIS LAW FIRM, PLLC



Charles T. Francis  
North Carolina State Bar No.: 16348  
Attorney for Plaintiffs  
Post Office Box 164  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0801

and

BAILEY & DIXON, L.L.P.



Michael L. Weisel  
North Carolina State Bar No.: 9516  
David S. Coats  
North Carolina State Bar No.: 16162  
Adam N. Olls  
North Carolina State Bar No.: 38405  
Attorneys for Plaintiffs  
Post Office Box 1351  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0731

**CERTIFICATE OF SERVICE**

I, Charles T. Francis, attorney for Plaintiffs below named, certify that I served the foregoing Notice of Appeal, upon the following parties and in the manner below specified, by depositing a copy thereof for each such party(ies) in a separate envelope bearing sufficient postage and depositing the same in the United States Mail at Raleigh, North Carolina:

James Gulick, Esq.  
Senior Deputy Attorney General  
Thomas J. Ziko, Esq.  
Special Deputy Attorney General  
Office of the Attorney General  
114 West Edenton Street  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

Frank E. Emory, Jr., Esq.  
Hunton & Williams, LLP  
Bank of America Plaza, Suite 3500  
101 South Tryon Street  
Charlotte, North Carolina 28280

This the 26 day of January, 2011.

THE FRANCIS LAW FIRM, PLLC



Charles T. Francis  
North Carolina State Bar No.: 16348  
Attorney for Plaintiffs  
Post Office Box 164  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0801

## **STATEMENT OF TRANSCRIPT OPTION**

Pursuant to Appellate Rules 7(b) and 9(c), Plaintiffs-Appellants hereby make the following designations with respect to the trial, hearing, and deposition transcripts. Except as indicated below, transcripts will be electronically filed by the court reporters promptly once a docket number is assigned to this appeal.

- The transcript of the proceedings which took place during the 21 August 2007 Civil Session of the Wake County Superior Court before the Honorable R. Allen Baddour, Jr., taken by Carrie E. Rice, official court reporter, consisting of 46 pages, numbered 1 through 46, and bound in one volume. The parties may cite to this transcript as T(MTD) \_\_. Page and line references may be cited as p:ll-ll or p:ll-p:ll.
- The transcript of the trial of this matter, excluding jury selection, which took place during the 21 September through 4 October 2010 Civil Sessions of Wake County Superior Court before the Honorable Carl R. Fox, taken by Kathryn A. Harkins, Official Court Reporter, and final copy edited and produced by M. Joyce Peniston, Official Court Reporter, consisting of 1291 pages, numbered 1 through 1291 plus certificates, and bound in seven (7) volumes. The parties may cite to these transcripts as T[I] \_\_, T[II] \_\_, T[III] \_\_, T[IV] \_\_, T[V] \_\_, T[VI] \_\_, and T[VII] \_\_. Page and line references may be cited as p:ll-ll or p:ll-p:ll.
- The transcript of the proceedings which took place during the 3 January 2011 Civil Session of Wake County Superior Court before the Honorable Carl F. Fox, taken by Suzanne G. Patterson, Official Court Reporter, consisting of 111 pages, numbered 1 through 111 plus certificates, and bound in one (1) volume. The parties may cite to this transcript as T(Appt) \_\_. Page and line references may be cited as p:ll-ll or p:ll-p:ll.
- Transmitted with the record are the portions the transcript that were played before the jury of the video deposition testimony of Dewey Wells, dated 13 September 2010, taken by Mark Rabinowitz with Huseby, Inc., official court reporter, on the same day. The parties may cite to this transcript as T(DW) \_\_. Page and line references may be cited as p:ll-ll or p:ll-p:ll.

**STATEMENT OF RULE 9(d) DOCUMENTARY EXHIBITS**

Submitted contemporaneously with the proposed record on appeal are certain exhibits of Plaintiffs that were admitted into evidence at trial and Defendant's Exhibit 13, the October 29, 1987 Consent Judgment. The exhibits are contained in one indexed volume. For ease of reference the volume of exhibits has been consecutively paginated from pages 1 through 287, and the parties' briefs will reference pages from these exhibits as Doc. Ex. p \_\_.

The Francis Law Firm, PLLC  
ATTORNEYS & COUNSELORS AT LAW

CHARLES T. FRANCIS  
MATTHEW L. BOYATT

February 2, 2011

MAILING ADDRESS:  
POST OFFICE BOX 164  
RALEIGH, NORTH CAROLINA 27602

TWO HANNOVER SQUARE  
434 FAYETTEVILLE STREET  
SUITE 2300  
RALEIGH, NORTH CAROLINA 27601

TELEPHONE (919) 828-0801  
TELECOPY (919) 828-0804

VIA ELECTRONIC MAIL AND HAND DELIVERY

Ms. Suzanne Patterson  
Court Reporter  
Wake County Courthouse  
6th Floor  
Raleigh, North Carolina 27601

Re: Harriett Hurst Turner and John Henry Hurst v. The Hammocks  
Beach Corporation, et al.; Wake County File No.: 06 CVS 18173

Dear Ms. Patterson:

As you know, I represent plaintiffs in the above-referenced lawsuit. A Notice of Appeal has been filed by plaintiffs from the Superior Court's January 12, 2011 Order appointing the State as successor trustee.

I am writing this letter to you pursuant to Rule 7(a)(1) of the North Carolina Rules of Appellate Procedure to order and contract for the transcription of proceedings in this matter. We have agreed that you will prepare a complete transcript of the hearing held before the Honorable Carl R. Fox in the above-mentioned matter on January 3, 2011. We have agreed that we will pay your usual and customary fees for this transcription.

Rule 7(b) of the North Carolina Rules of Appellate Procedure makes this transcript due in electronic "PDF" format 60 days after service of this contract. We would appreciate receiving the transcript as soon as possible. If, however, circumstances arise that preclude the above-referenced deadline and you will be obtaining an extension of time, please let me know. Please send a compact disc with the transcript in "PDF" format to me at the above address.

Ms. Suzanne Patterson  
Page 2  
February 2, 2011

Thank you for your help with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles T. Francis". The signature is stylized with large, sweeping loops and a long horizontal stroke at the end.

Charles T. Francis

CTF:gam

cc: James C. Gulick, Esq.  
Thomas A. Ziko, Esq.  
Frank E. Emory, Jr., Esq.  
Michael L. Weisel, Esq.  
David S. Coats, Esq.  
Adam N. Olls, Esq.

The Francis Law Firm, PLLC  
ATTORNEYS & COUNSELORS AT LAW

CHARLES T. FRANCIS  
MATTHEW L. BOYATT

MAILING ADDRESS:  
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RALEIGH, NORTH CAROLINA 27601

TELEPHONE (919) 828-0801  
TELECOPY (919) 828-0804

February 2, 2011

VIA ELECTRONIC MAIL AND HAND DELIVERY

Ms. Kate Harkins  
Court Reporter  
Wake County Courthouse  
6th Floor  
Raleigh, North Carolina 27601

**Re: Harriett Hurst Turner and John Henry Hurst v. The Hammocks  
Beach Corporation, et al.; Wake County File No.: 06 CVS 18173**

Dear Ms. Harkins:

As you know, I represent plaintiffs in the above-referenced lawsuit. A Notice of Appeal has been filed by plaintiffs from the Superior Court's January 12, 2011 Order appointing the State as successor trustee.

I am writing you pursuant to Rule 7(a)(1) of the North Carolina Rules of Appellate Procedure to order and contract for transcription of the trial in this matter, excluding jury selection. The trial began on September 21, 2010 and the verdict was returned by the jury on October 4, 2010. Other than jury selection, I am requesting transcription of the entire trial. My request includes, but is not limited to, opening statements, all witness examinations, arguments on Motions for Directed Verdict, the charge conference, closing arguments, all comments and discussion by the Court and counsel recorded in the presence of the jury and outside the presence of the jury, the Court's instructions to the jury and the post-verdict conference between the Court and counsel on the process in the case going forward. I believe that you have already produced selected portions of the above requested by The Hammocks Beach Corporation or the State. Ginny Marshall, my legal assistant, will follow up with you on the details and timing of transcription and production.

Rule 7(b) of the North Carolina Rules of Appellate Procedure makes this transcript due in electronic "PDF" format 60 days after service of this contract. We would appreciate receiving the transcript as soon as possible. If, however, circumstances arise that preclude the above-referenced deadline and you will be obtaining an extension of time, please let me know. Please send a compact disc with the transcript in "PDF" format to me at the above address.

Ms. Kate Harkins  
Page 2  
February 2, 2011

Thank you for your help with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles T. Francis". The signature is stylized with a large initial "C" and a long, sweeping flourish that extends to the right.

Charles T. Francis

CTF:gam

cc: James C. Gulick, Esq.  
Thomas A. Ziko, Esq.  
Frank E. Emory, Jr., Esq.  
Michael L. Weisel, Esq.  
David S. Coats, Esq.  
Adam N. Olls, Esq.



The Francis Law Firm, PLLC  
ATTORNEYS & COUNSELORS AT LAW

CHARLES T. FRANCIS  
MATTHEW L. BOYATT

February 4, 2011

MAILING ADDRESS:  
POST OFFICE BOX 164  
RALEIGH, NORTH CAROLINA 27602

TWO HANNOVER SQUARE  
434 FAYETTEVILLE STREET  
SUITE 2300  
RALEIGH, NORTH CAROLINA 27601

TELEPHONE (919) 828-0801  
TELECOPY (919) 828-0804

VIA ELECTRONIC MAIL AND HAND DELIVERY

Ms. Kate Harkins  
Court Reporter  
Wake County Courthouse  
6th Floor  
Raleigh, North Carolina 27601

Re: Harriett Hurst Turner and John Henry Hurst v. The Hammocks  
Beach Corporation; Wake County File No.: 06 CVS 18173


Dear Ms. Harkins:

On February 2, 2011, I wrote to you to order and contract for transcription of the trial in this matter, excluding jury selection. A copy of that letter is attached and incorporated by reference.

You have requested that I send you another letter agreeing to pay your estimated charge for production of the trial transcript. You have indicated that the trial transcript will consist of 2,330 pages. You have estimated the cost to produce that trial transcript to be \$8,788.50. I have agreed to pay your estimate of \$8,788.50, your usual and customary fee, for production of the trial transcript.

Thank you for your help with this matter.

Sincerely,



Charles T. Francis

CTF:gam

Enclosure

cc: James C. Gulick, Esq.  
Thomas A. Ziko, Esq.  
Frank E. Emory, Jr., Esq.  
Michael L. Weisel, Esq.  
David S. Coats, Esq.  
Adam N. Olls, Esq.

The Francis Law Firm, PLLC  
ATTORNEYS & COUNSELORS AT LAW

CHARLES T. FRANCIS  
MATTHEW L. BOYATT

MAILING ADDRESS  
POST OFFICE BOX 164  
RALEIGH, NORTH CAROLINA 27602

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SUITE 2300  
RALEIGH, NORTH CAROLINA 27601

TELEPHONE (919) 828-0801  
TELECOPY (919) 828-0804

February 2, 2011

VIA ELECTRONIC MAIL AND HAND DELIVERY

Ms. Kate Harkins  
Court Reporter  
Wake County Courthouse  
6th Floor  
Raleigh, North Carolina 27601

Re: Harriett Hurst Turner and John Henry Hurst v. The Hammocks  
Beach Corporation, et al.; Wake County File No.: 06 CVS 18173

Dear Ms. Harkins:

As you know, I represent plaintiffs in the above-referenced lawsuit. A Notice of Appeal has been filed by plaintiffs from the Superior Court's January 12, 2011 Order appointing the State as successor trustee.

I am writing you pursuant to Rule 7(a)(1) of the North Carolina Rules of Appellate Procedure to order and contract for transcription of the trial in this matter, excluding jury selection. The trial began on September 21, 2010 and the verdict was returned by the jury on October 4, 2010. Other than jury selection, I am requesting transcription of the entire trial. My request includes, but is not limited to, opening statements, all witness examinations, arguments on Motions for Directed Verdict, the charge conference, closing arguments, all comments and discussion by the Court and counsel recorded in the presence of the jury and outside the presence of the jury, the Court's instructions to the jury and the post-verdict conference between the Court and counsel on the process in the case going forward. I believe that you have already produced selected portions of the above requested by The Hammocks Beach Corporation or the State. Ginny Marshall, my legal assistant, will follow up with you on the details and timing of transcription and production.

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Ms. Kate Harkins  
Page 2  
February 2, 2011

Thank you for your help with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles T. Francis". The signature is stylized with a large initial "C" and a long, sweeping horizontal stroke at the end.

Charles T. Francis

CTF:gam

cc: James C. Gulick, Esq.  
Thomas A. Ziko, Esq.  
Frank E. Emory, Jr., Esq.  
Michael L. Weisel, Esq.  
David S. Coats, Esq.  
Adam N. Olls, Esq.

FILED

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
06 CVS 18173  
WAKE COUNTY, C.S.C.

BY \_\_\_\_\_

HARRIETT HURST TURNER and  
JOHN HENRY HURST,

Plaintiffs,

vs.

THE HAMMOCKS BEACH  
CORPORATION, NANCY SHARPE  
CAIRD, SETH DICKMAN SHARPE,  
SUSAN SPEAR SHARPE, WILLIAM  
AUGUST SHARPE, NORTH CAROLINA  
STATE BOARD OF EDUCATION, ROY  
A. COOPER, III, in his capacity as  
Attorney General of the State of North  
Carolina,

Defendants.

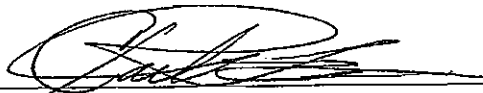
**ORDER ON NORTH CAROLINA STATE  
BOARD OF EDUCATION'S MOTION TO  
DISMISS APPEAL OF ORDER ENTERED  
OCTOBER 26, 2010**

THIS MATTER came on for hearing in Wake County Superior Court before the Honorable Carl R. Fox, Superior Court Judge Presiding, on February 28, 2011 upon the North Carolina State Board of Education's Motion to Dismiss Appeal of Order Entered October 26, 2010 ("Motion to Dismiss") pursuant to North Carolina Rule of Appellate Procedure 25(a). Plaintiffs Turner and Hurst were represented by Charles T. Francis of The Francis Law Firm, PLLC and by Michael L. Weisel and Adam N. Olls of Bailey and Dixon, L.L.P. The North Carolina State Board of Education was represented by Senior Deputy Attorney General James Gullick. After reviewing the Motion to Dismiss and Plaintiffs' Response to North Carolina State Board of Education's Motion to Dismiss Appeal of Order Entered October 26, 2010 and

considering arguments of counsel, the Court is of the opinion that the North Carolina State Board of Education is not entitled to move for dismissal pursuant to North Carolina Rule of Appellate Procedure 25(a) in that it is not a party. Therefore it is

ORDERED AND ADJUDGED that the North Carolina State Board of Education's Motion to Dismiss Appeal of Order Entered October 26, 2010 is DENIED.

This the 3rd day of March, 2011.



---

The Honorable Carl R. Fox  
Superior Court Judge Presiding

NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.: 06 CVS 18173

HARRIETT HURST TURNER and )  
JOHN HENRY HURST, )

Plaintiffs, )

vs. )

THE HAMMOCKS BEACH )  
CORPORATION, NANCY SHARPE )  
CAIRD, SETH DICKMAN SHARPE, )  
SUSAN SPEAR SHARPE, WILLIAM )  
AUGUST SHARPE, NORTH CAROLINA )  
STATE BOARD OF EDUCATION, ROY )  
A. COOPER, III, in his capacity as )  
Attorney General of the State of North )  
Carolina, )

Defendants. )

**MOTION FOR EXTENSION OF TIME TO  
PRODUCE TRANSCRIPT**

FILED  
2011 MAR 29 PM 3:03  
WAKE COUNTY, N.C.

Plaintiffs Harriett Hurst Turner and John Henry Hurst ("Plaintiffs"), by and through counsel, move this Court pursuant to Rules 7(b)(1) and 27(c) of the North Carolina Rules of Appellate Procedure for an order extending the time for an additional thirty (30) days to and including May 4, 2011 to produce the transcript of (i) the trial in this matter, excluding jury selection, which took place during the September 21 through October 4, 2010 Civil Sessions of Wake County before the Honorable Carl R. Fox, Superior Court Judge; and (ii) the proceedings which took place during the January 3, 2011 Civil Session of Wake County before the Honorable Carl R. Fox, Superior Court Judge. The transcript is necessary for Plaintiffs' appeal to the North Carolina Court of Appeals from the January 12, 2011 and October 26, 2010 Orders of the Superior Court. In support this Motion, Plaintiffs show unto the Court as follows:

1. On January 26, 2010, Plaintiffs timely filed their Notice of Appeal from (i) the Order denying Plaintiffs' Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee and appointing the North Carolina State Board of Education as successor trustee entered by the Honorable Carl R. Fox on January 12, 2011 in the Superior Court, Wake County; and (ii) the Order initiating the process of offering appointment as successor trustee to the North Carolina State Board of Education entered by the Honorable Carol R. Fox on October 26, 2010 in the Superior Court, Wake County.

2. Counsel for Plaintiffs timely contracted with (i) Ms. Kate Harkins, Official Court Reporter, Wake County, to transcribe the trial in this matter, excluding jury selection, which took place during the September 21 through October 4, 2010 Civil Sessions of Wake County before the Honorable Carl R. Fox, Superior Court Judge; (ii) Ms. Suzanne Patterson, Official Court Reporter, Wake County, to transcribe the proceedings which took place during the January 3, 2011 Civil Session of Wake County before the Honorable Carl R. Fox, Superior Court Judge in the above-captioned case. Pursuant to Rule 7(a)(1) of the North Carolina Rules of Appellate Procedure, Plaintiffs filed written documentation of these transcript contracts with the Clerk of the Wake County Superior Court on February 2 and 4, 2011. The original deadline to produce these transcripts is April 4, 2011.

3. On March 24 and 25, 2011, representatives of counsel for Plaintiffs spoke with Ms. Patterson and Ms. Harkins, respectively, regarding the status of the transcripts. Both Ms. Patterson and Ms. Harkins indicated that, due to other commitments, each needed additional time to complete the transcript.

4. The initial sixty (60) day period in which to prepare and deliver the completed transcript, as provided by Rule 7(b) of the North Carolina Rules of Appellate Procedure, has not expired.

5. Good cause exists to grant the extension of time requested by this Motion.

6. A proposed order is attached hereto as Exhibit A.

WHEREFORE, Plaintiffs respectfully request that the Court enter an order extending the time to produce the transcript and for certification by the Court Reporter that this has occurred by an additional thirty (30) days, to and including May 4, 2011.

This the 29 day of March, 2011.

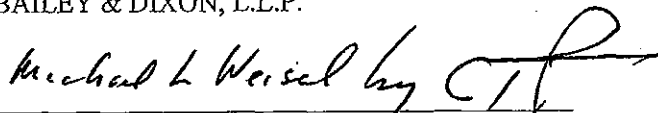
THE FRANCIS LAW FIRM, PLLC



Charles T. Francis  
North Carolina State Bar No.: 16348  
Post Office Box 164  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0801

and

BAILEY & DIXON, L.L.P.



Michael L. Weisel  
North Carolina State Bar No.: 9516  
David S. Coats  
North Carolina State Bar No.: 16162  
Adam N. Olls  
North Carolina State Bar No.: 38405  
Post Office Box 1351  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0731

*Attorneys for Plaintiffs*



CERTIFICATE OF SERVICE

I, Charles T. Francis, attorney for Plaintiffs below named, certify that I served the foregoing Motion for Extension of Time to Produce Transcript, upon the following parties and in the manner below specified, by depositing a copy thereof for each such party(ies) in a separate envelope bearing sufficient postage and depositing the same in the United States

Mail at Raleigh, North Carolina:

James Gulick, Esq.  
Senior Deputy Attorney General  
Thomas J. Ziko, Esq.  
Special Deputy Attorney General  
Office of the Attorney General  
114 West Edenton Street  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

Frank E. Emory, Jr., Esq.  
Hunton & Williams, LLP  
Bank of America Plaza, Suite 3500  
101 South Tryon Street  
Charlotte, North Carolina 28280

Ms. Kate Harkins  
Court Reporter  
Wake County Courthouse  
6th Floor  
Raleigh, North Carolina 27601

Ms. Suzanne Patterson  
Court Reporter  
Wake County Courthouse  
6th Floor  
Raleigh, North Carolina 27601

This the 29 day of March, 2011.

THE FRANCIS LAW FIRM, PLLC



---

Charles T. Francis  
North Carolina State Bar No.: 16348  
Attorney for Plaintiffs  
Post Office Box 164  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0801

**EXHIBIT A**

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

FILE NO.: 06 CVS 18173

HARRIETT HURST TURNER and )  
JOHN HENRY HURST, )

Plaintiffs, )

vs. )

THE HAMMOCKS BEACH )  
CORPORATION, NANCY SHARPE )  
CAIRD, SETH DICKMAN SHARPE, )  
SUSAN SPEAR SHARPE, WILLIAM )  
AUGUST SHARPE, NORTH CAROLINA )  
STATE BOARD OF EDUCATION, ROY )  
A. COOPER, III, in his capacity as )  
Attorney General of the State of North )  
Carolina, )

Defendants. )

**ORDER**

THIS MATTER is before the Court upon Plaintiffs' Motion for Extension of Time To Produce Transcript of (i) the trial in this matter, excluding jury selection, which took place during the September 21 through October 4, 2010 Civil Sessions of Wake County before the Honorable Carl R. Fox, Superior Court Judge; and (ii) the proceedings which took place during the January 3, 2011 Civil Session of Wake County before the Honorable Carl R. Fox, Superior Court Judge, in the above-captioned case.

IT APPEARS to the Court that the time has not yet expired for production of the transcripts and Plaintiffs' Motion is timely filed and good cause exists to grant Plaintiffs' Motion.

WHEREFORE, Plaintiffs' Motion for Extension of Time To Produce Transcript is hereby GRANTED. Plaintiffs shall have to and including May 4, 2011 to produce a transcript of the trial and proceedings referenced above.

SO ORDERED, this the \_\_\_\_ day of \_\_\_\_\_, 2011.

---

Superior Court Judge Presiding

FILED

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

WAKE COUNTY

2011 MAR 30 AM 10:06

FILE NO.: 06 CVS 18173

WAKE COUNTY, C.S.C.

HARRIETT HURST TURNER and )  
JOHN HENRY HURST, )

Plaintiffs, )

vs. )

THE HAMMOCKS BEACH )  
CORPORATION, NANCY SHARPE )  
CAIRD, SETH DICKMAN SHARPE, )  
SUSAN SPEAR SHARPE, WILLIAM )  
AUGUST SHARPE, NORTH CAROLINA )  
STATE BOARD OF EDUCATION, ROY )  
A. COOPER, III, in his capacity as )  
Attorney General of the State of North )  
Carolina, )

Defendants. )

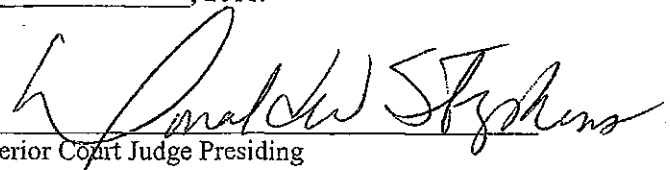
ORDER

THIS MATTER is before the Court upon Plaintiffs' Motion for Extension of Time To Produce Transcript of (i) the trial in this matter, excluding jury selection, which took place during the September 21 through October 4, 2010 Civil Sessions of Wake County before the Honorable Carl R. Fox, Superior Court Judge; and (ii) the proceedings which took place during the January 3, 2011 Civil Session of Wake County before the Honorable Carl R. Fox, Superior Court Judge, in the above-captioned case.

IT APPEARS to the Court that the time has not yet expired for production of the transcripts and Plaintiffs' Motion is timely filed and good cause exists to grant Plaintiffs' Motion.

WHEREFORE, Plaintiffs' Motion for Extension of Time To Produce Transcript is hereby GRANTED. Plaintiffs shall have to and including May 4, 2011 to produce a transcript of the trial and proceedings referenced above.

SO ORDERED, this the 24 day of March, 2011.

  
\_\_\_\_\_  
Superior Court Judge Presiding

No.: P11-201

TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

HARRIETT HURST TURNER and )  
JOHN HENRY HURST, )

Plaintiffs-Appellants, )

vs. )

THE HAMMOCKS BEACH )  
CORPORATION, NANCY )  
SHARPE CAIRD, SETH )  
DICKMAN SHARPE, SUSAN )  
SPEAR SHARPE, WILLIAM )  
AUGUST SHARPE, NORTH )  
CAROLINA STATE BOARD OF )  
EDUCATION, ROY A. COOPER, )  
III, in his capacity as Attorney )  
General of the State of North )  
Carolina, )

Defendants-Appellees. )

From Wake County  
No. 06 CVS 18173

CLERK OF COURT  
OF NORTH CAROLINA

2011 MAY -3 AM 10:02

FILED

\*\*\*\*\*

PLAINTIFFS-APPELLANTS' MOTION FOR EXTENSION OF TIME TO  
PRODUCE TRANSCRIPT

\*\*\*\*\*

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Plaintiffs-Appellants Harriett Hurst Turner and John Henry Hurst  
(Appellants), by and through counsel, move this Court pursuant to Rules 7(b)(1)  
and 27(c) of the North Carolina Rules of Appellate Procedure for an order



extending the time for an additional ninety (90) days to and including 3 August 2011 to produce the transcript of (i) the trial in this matter, excluding jury selection, which took place during the 21 September through 4 October 2010 Civil Sessions of Wake County before the Honorable Carl R. Fox, Superior Court Judge; and (ii) the proceedings which took place during the 3 January 2011 Civil Session of Wake County before the Honorable Carl R. Fox, Superior Court Judge. The transcript is necessary for Appellants' appeal to this Court from the 12 January 2011 and 26 October 2010 orders of the trial court. In support this motion, Appellants show unto the Court as follows:

1. On 26 January 2010, Appellants timely filed their notice of appeal from (i) the order denying Plaintiffs' Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee and appointing the North Carolina State Board of Education as successor trustee entered by the Honorable Carl R. Fox on 12 January 2011 in the Superior Court, Wake County; and (ii) the order initiating the process of offering appointment as successor trustee to the North Carolina State Board of Education entered by the Honorable Carol R. Fox on 26 October 2010 in the Superior Court, Wake County.

2. Counsel for Appellants timely contracted with (i) Ms. Kate Harkins, Official Court Reporter, Wake County, to transcribe the trial in this matter,

excluding jury selection, which took place during the 21 September through 4 October 2010 Civil Sessions of Wake County before the Honorable Carl R. Fox, Superior Court Judge; and (ii) Ms. Suzanne Patterson, Official Court Reporter, Wake County, to transcribe the proceedings which took place during the 3 January 2011 Civil Session of Wake County before the Honorable Carl R. Fox, Superior Court Judge in the above-captioned case. Pursuant to Rule 7(a)(1) of the North Carolina Rules of Appellate Procedure, Appellants filed written documentation of these transcript contracts with the Clerk of the Wake County Superior Court on 2 February and 4 February 2011. The original deadline to produce these transcripts was 4 April 2011.

3. By order dated 29 March 2011, the trial court extended the time for the court reporters to produce a transcript of the trial and proceeding referenced above to and including 4 May 2011.

4. On 29 April 2011, the undersigned counsel for Appellants spoke with Ms. Patterson and Ms. Harkins, respectively, regarding the status of the transcripts. Both Ms. Patterson and Ms. Harkins indicated that, due to other commitments, each needed additional time to complete the transcript.

5. Ms. Patterson, the court reporter for the proceedings which took place on 3 January 2011, indicates that she expects to deliver the transcript of the hearing

held that day before the Honorable Carl R. Fox in the near future, as early as 6 May 2011 or the week following.

6. However, Kate Harkins, the court reporter producing a transcript of the trial which took place 21 September 2010 through 4 October 2010 indicates that due to her work load she requires additional time to complete the transcript. Ms. Harkins indicates that she is engaged in the production of a transcript in a criminal matter due for retrial by the end of May. Ms. Harkins further indicates that she is contracting out production of portions of the trial transcript and does not expect to complete the trial transcript until some time in the summer of 2011.

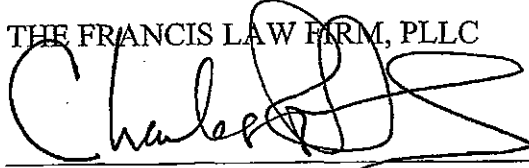
7. The time to produce the transcript has not yet expired.

8. Good cause exists to grant the extension of time requested by this motion.

WHEREFORE, Appellants respectfully request that the Court enter an order extending the time to produce the transcript and for certification by the court reporter that this has occurred by an additional ninety (90) days, to and including 2 August 2011.

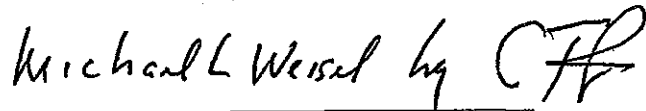
Respectfully submitted, this the 3rd day of May, 2011.

THE FRANCIS LAW FIRM, PLLC



Charles T. Francis  
North Carolina State Bar No.: 16348  
cfrancis@thefrancislawfirm.com  
Post Office Box 164  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0801

BAILEY & DIXON, L.L.P.



Michael L. Weisel  
North Carolina State Bar No.: 9516  
mlweisel@bdixon.com  
David S. Coats  
North Carolina State Bar No.: 16162  
dcoats@bdixon.com  
Adam N. Olls  
North Carolina State Bar No.: 38405  
aolls@bdixon.com  
Post Office Box 1351  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0731

*Attorneys for Plaintiffs-Appellants Harriett  
Hurst Turner and John Henry Hurst*

**CERTIFICATE OF SERVICE**

I, Charles T. Francis, attorney for Plaintiffs-Appellants Harriett Hurst Turner and John Henry Hurst, certify that I served the foregoing Motion for Extension of Time to Produce Transcript, upon the following parties and in the manner below specified, by depositing a copy thereof for each such party(ies) in a separate envelope bearing sufficient postage and depositing the same in the United States Mail at Raleigh, North Carolina:

James Gulick, Esq.  
Senior Deputy Attorney General  
Thomas J. Ziko, Esq.  
Special Deputy Attorney General  
Office of the Attorney General  
114 West Edenton Street  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

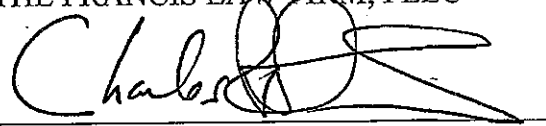
Frank E. Emory, Jr., Esq.  
Hunton & Williams, LLP  
Bank of America Plaza, Suite 3500  
101 South Tryon Street  
Charlotte, North Carolina 28280

Ms. Kate Harkins  
Court Reporter  
Wake County Courthouse  
6th Floor  
Raleigh, North Carolina 27601

Ms. Suzanne Patterson  
Court Reporter  
Wake County Courthouse  
6th Floor  
Raleigh, North Carolina 27601

This the 3rd day of May, 2011.

THE FRANCIS LAW FIRM, PLLC

A handwritten signature in black ink, appearing to read "Charles T. Francis", written over a horizontal line.

Charles T. Francis  
North Carolina State Bar No.: 16348  
Post Office Box 164  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0801



## North Carolina Court of Appeals

Fax: (919) 831-3615  
Web: <http://www.nccourts.org>

JOHN H. CONNELL, Clerk  
Court of Appeals Building  
One West Morgan Street  
Raleigh, NC 27601  
(919) 831-3600  
From Wake  
( 06CVS18173 )

Mailing Address:  
P. O. Box 2779  
Raleigh, NC 27602

No. P11-201

HARRIETT HURST TURNER AND  
JOHN HENRY HURST,

PLAINTIFFS-APPELLANTS,

VS.

THE HAMMOCKS BEACH  
CORPORATION, NANCY  
SHARPE CAIRD, SETH  
DICKMAN SHARPE, SUSAN  
SPEAR SHARPE, WILLIAM  
AUGUST SHARPE, NORTH  
CAROLINA STATE BOARD OF  
EDUCATION, ROY A. COOPER,  
III, IN HIS CAPACITY AS ATTORNEY  
GENERAL OF THE STATE OF NORTH  
CAROLINA,

DEFENDANTS-APPELLEES.

### ORDER

The following order was entered:

The motion filed in this cause on the 3rd of May 2011 and designated 'Plaintiffs-Appellants' Motion for Extension of Time to Produce Transcript' is allowed in part. Transcript shall be produced and delivered on or before 3 June 2011.

By order of the Court this the 3rd of May 2011.

WITNESS my hand and official seal this the 3rd day of May 2011.

A handwritten signature in black ink, appearing to read "John H. Connell".

John H. Connell  
Clerk, North Carolina Court of Appeals

Copy to:  
Mr. Charles Francis, For Turner, Harriett Hurst, et al  
Michael L. Weisel, For Turner, Harriett Hurst, et al

Mr. David S. Coats, Attorney at Law  
Mr. Adam N. Oils, Attorney at Law  
Mr. James Gulick, Senior Deputy Attorney General, For Hammocks Beach Corporation  
Mr. Thomas J. Ziko, Senior Deputy Attorney General  
Frank E. Emory, Jr., For Hammocks Beach Corporation, et al  
Hon. Nancy L. Freeman, Clerk of Superior Court



No.: P11-201

TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

HARRIETT HURST TURNER and )  
JOHN HENRY HURST, )

Plaintiffs-Appellants, )

vs. )

THE HAMMOCKS BEACH )  
CORPORATION, NANCY )  
SHARPE CAIRD, SETH )  
DICKMAN SHARPE, SUSAN )  
SPEAR SHARPE, WILLIAM )  
AUGUST SHARPE, NORTH )  
CAROLINA STATE BOARD OF )  
EDUCATION, ROY A. COOPER, )  
III, in his capacity as Attorney )  
General of the State of North )  
Carolina, )

Defendants-Appellees. )

FILED  
2011 MAY 27 AM 11:26  
COURT OF NORTH CAROLINA

From Wake County  
No. 06 CVS 18173

\*\*\*\*\*

PLAINTIFFS-APPELLANTS' FURTHER MOTION FOR EXTENSION OF  
TIME TO PRODUCE TRANSCRIPT

\*\*\*\*\*

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Plaintiffs-Appellants Harriett Hurst Turner and John Henry Hurst (Appellants), by and through counsel, move this Court pursuant to Rules 7(b)(1) and 27(c) of the North Carolina Rules of Appellate Procedure for an order

extending the time for an additional thirty (30) days to and including 3 July 2011 to produce the transcript of (i) the trial in this matter, excluding jury selection, which took place during the 21 September through 4 October 2010 Civil Sessions of Wake County before the Honorable Carl R. Fox, Superior Court Judge; and (ii) the proceedings which took place during the 3 January 2011 Civil Session of Wake County before the Honorable Carl R. Fox, Superior Court Judge. The transcript is necessary for Appellants' appeal to this Court from the 12 January 2011 and 26 October 2010 orders of the trial court. In support this motion, Appellants show unto the Court as follows:

1. On 26 January 2010, Appellants timely filed their notice of appeal from (i) the order denying Plaintiffs' Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee and appointing the North Carolina State Board of Education as successor trustee entered by the Honorable Carl R. Fox on 12 January 2011 in the Superior Court, Wake County; and (ii) the order initiating the process of offering appointment as successor trustee to the North Carolina State Board of Education entered by the Honorable Carol R. Fox on 26 October 2010 in the Superior Court, Wake County.

2. Counsel for Appellants timely contracted with (i) Ms. Kate Harkins, Official Court Reporter, Wake County, to transcribe the trial in this matter, excluding jury selection, which took place during the 21 September through 4 October 2010 Civil Sessions of Wake County before the Honorable Carl R. Fox, Superior Court Judge; and (ii) Ms. Suzanne Patterson, Official Court Reporter, Wake County, to transcribe the proceedings which took place during the 3 January 2011 Civil Session of Wake County before the Honorable Carl R. Fox, Superior Court Judge in the above-captioned case. Pursuant to Rule 7(a)(1) of the North Carolina Rules of Appellate Procedure, Appellants filed written documentation of these transcript contracts with the Clerk of the Wake County Superior Court on 2 February and 4 February 2011. The original deadline to produce these transcripts was 4 April 2011.

3. By Order dated 29 March 2011, the trial court extended the time for the court reporters to produce a transcript of the trial and proceeding referenced above to and including 4 May 2011.

4. By Order dated 3 May 2011, this Court extended the time for the court reporters to produce a transcript of the trial and proceeding referenced above to and including 3 June 2011.

5. On 25 May 2011, Kate Harkins, the court reporter, producing the trial transcript contacted the undersigned asking that we request a further extension of time to produce the transcript. Ms. Harkins indicates that due to her workload she requires additional time to complete the transcript.

6. The time to produce the transcript has not yet expired.

7. Good cause exists to grant the extension of time requested by this motion.

WHEREFORE, Appellants respectfully request that the Court enter an order extending the time to produce the transcript and for certification by the court reporter that this has occurred by an additional thirty (30) days, to and including 3 July 2011.

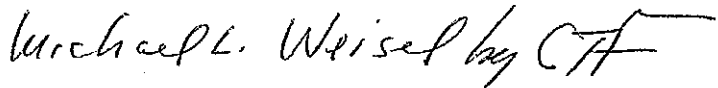
Respectfully submitted, this the 27th day of May, 2011.

THE FRANCIS LAW FIRM, PLLC



Charles T. Francis  
North Carolina State Bar No.: 16348  
cfrancis@thefrancislawfirm.com  
Post Office Box 164  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0801

BAILEY & DIXON, L.L.P.



Michael L. Weisel  
North Carolina State Bar No.: 9516  
mlweisel@bdixon.com  
David S. Coats  
North Carolina State Bar No.: 16162  
dcoats@bdixon.com  
Adam N. Olls  
North Carolina State Bar No.: 38405  
aolls@bdixon.com  
Post Office Box 1351  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0731

*Attorneys for Plaintiffs-Appellants Harriett  
Hurst Turner and John Henry Hurst*

**CERTIFICATE OF SERVICE**

I, Charles T. Francis, attorney for Plaintiffs-Appellants Harriett Hurst Turner and John Henry Hurst, certify that I served the foregoing Motion for Extension of Time to Produce Transcript, upon the following parties and in the manner below specified, by depositing a copy thereof for each such party(ies) in a separate envelope bearing sufficient postage and depositing the same in the United States

Mail at Raleigh, North Carolina:

James Gulick, Esq.  
Senior Deputy Attorney General  
Thomas J. Ziko, Esq.  
Special Deputy Attorney General  
Office of the Attorney General  
114 West Edenton Street  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

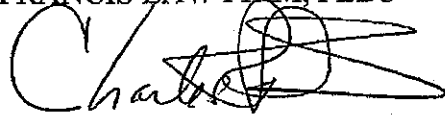
Frank E. Emory, Jr., Esq.  
Hunton & Williams, LLP  
Bank of America Plaza, Suite 3500  
101 South Tryon Street  
Charlotte, North Carolina 28280

Ms. Kate Harkins  
Court Reporter  
Wake County Courthouse  
6th Floor  
Raleigh, North Carolina 27601

Ms. Suzanne Patterson  
Court Reporter  
Wake County Courthouse  
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Raleigh, North Carolina 27601

This the 27th day of May, 2011.

THE FRANCIS LAW FIRM, PLLC

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## North Carolina Court of Appeals

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No. P11-201

HARRIETT HURST TURNER AND  
JOHN HENRY HURST,

PLAINTIFFS-APPELLANTS,

VS.

THE HAMMOCKS BEACH  
CORPORATION, NANCY  
SHARPE CAIRD, SETH  
DICKMAN SHARPE, SUSAN  
SPEAR SHARPE, WILLIAM  
AUGUST SHARPE, NORTH  
CAROLINA STATE BOARD OF  
EDUCATION, ROY A. COOPER,  
III, IN HIS CAPACITY AS ATTORNEY  
GENERAL OF THE STATE OF NORTH  
CAROLINA,

DEFENDANTS-APPELLEES.

### ORDER

The following order was entered:

The motion filed in this cause on the 27th of May 2011 and designated 'Plaintiffs-Appellants' Further Motion for Extension of Time to Produce Transcript' is allowed. Transcript shall be produced and delivered on or before 5 July 2011.

By order of the Court this the 31st of May 2011.

WITNESS my hand and official seal this the 31st day of May 2011.

A handwritten signature in cursive script, appearing to read "John H. Connell".

John H. Connell  
Clerk, North Carolina Court of Appeals

Copy to:  
Mr. Charles Francis, For Turner, Harriett Hurst, et al  
Michael L. Weisel, For Turner, Harriett Hurst, et al



Mr. David S. Coats, Attorney at Law  
Mr. Adam N. Oils, Attorney at Law  
Mr. James Guick, Senior Deputy Attorney General, For N.C. Board of Education  
Mr. Thomas J. Ziko, Senior Deputy Attorney General  
Frank E. Emory, Jr., For Hammocks Beach Corporation, et al  
Hon. Nancy L. Freeman, Clerk of Superior Court

STATE OF NORTH CAROLINA

COUNTY OF WAKE

HARRIETT HURST TURNER and  
JOHN HENRY HURST,

Plaintiffs,

vs.

THE HAMMOCKS BEACH  
CORPORATION, NANCY SHARPE  
CAIRD, SETH DICKMAN SHARPE,  
SUSAN SPEAR SHARPE, WILLIAM  
AUGUST SHARPE, NORTH CAROLINA  
STATE BOARD OF EDUCATION, ROY  
A. COOPER, III, in his capacity as  
Attorney General of the State of North  
Carolina,

Defendants.

**FILED**

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
7/11 JUN -6 AM 9:02 06 CVS 18173

WAKE COUNTY, C.S.C.

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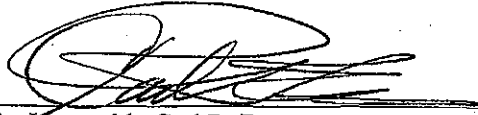
)

**ORDER ON DEFENDANT HAMMOCKS  
BEACH CORPORATION'S MOTION TO  
DISMISS PLAINTIFFS' APPEAL**

THIS MATTER came on for hearing in Wake County Superior Court before the Honorable Carl R. Fox, Superior Court Judge Presiding, on May 31, 2011 upon Defendant Hammocks Beach Corporation's Motion to Dismiss Plaintiffs' Appeal (the "Motion"). Plaintiffs Turner and Hurst were represented by Charles T. Francis of The Francis Law Firm, PLLC and by Michael L. Weisel and Adam N. Olls of Bailey & Dixon, L.L.P. The Hammocks Beach Corporation ("HBC") was represented by Frank E. Emory, Jr. of Hunton & Williams LLP. After considering the oral arguments, legal briefs and attached exhibits submitted by counsel and appropriate matters of record, the Court is of the opinion that HBC's Motion should be denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant Hammocks Beach Corporation's Motion to Dismiss Plaintiffs' Appeal is DENIED.

This the 3<sup>rd</sup> day of June, 2011.

A handwritten signature in black ink, appearing to read 'Carl R. Fox', is written over a horizontal line.

The Honorable Carl R. Fox  
Superior Court Judge Presiding

No.: P11-201

TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

HARRIETT HURST TURNER and )  
JOHN HENRY HURST, )

Plaintiffs-Appellants, )

vs. )

THE HAMMOCKS BEACH )  
CORPORATION, NANCY )  
SHARPE CAIRD, SETH )  
DICKMAN SHARPE, SUSAN )  
SPEAR SHARPE, WILLIAM )  
AUGUST SHARPE, NORTH )  
CAROLINA STATE BOARD OF )  
EDUCATION, ROY A. COOPER, )  
III, in his capacity as Attorney )  
General of the State of North )  
Carolina, )

Defendants-Appellees. )

CLERK OF NORTH CAROLINA

2011 JUN 27 PM 3:48

FILED

From Wake County  
No. 06 CVS 18173

\*\*\*\*\*

PLAINTIFFS-APPELLANTS' FURTHER MOTION FOR EXTENSION OF  
TIME TO PRODUCE TRANSCRIPT

\*\*\*\*\*

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Plaintiffs-Appellants Harriett Hurst Turner and John Henry Hurst  
(Appellants), by and through counsel, move this Court pursuant to Rules 7(b)(1)  
and 27(c) of the North Carolina Rules of Appellate Procedure for an order

extending the time for an additional thirty (30) days to and including 4 August 2011 to produce the transcript of (i) the trial in this matter, excluding jury selection, which took place during the 21 September through 4 October 2010 Civil Sessions of Wake County before the Honorable Carl R. Fox, Superior Court Judge; and (ii) the proceedings which took place during the 3 January 2011 Civil Session of Wake County before the Honorable Carl R. Fox, Superior Court Judge. The transcript is necessary for Appellants' appeal to this Court from the 12 January 2011 and 26 October 2010 orders of the trial court. In support this motion, Appellants show unto the Court as follows:

1. On 26 January 2010, Appellants timely filed their notice of appeal from (i) the order denying Plaintiffs' Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee and appointing the North Carolina State Board of Education as successor trustee entered by the Honorable Carl R. Fox on 12 January 2011 in the Superior Court, Wake County; and (ii) the order initiating the process of offering appointment as successor trustee to the North Carolina State Board of Education entered by the Honorable Carol R. Fox on 26 October 2010 in the Superior Court, Wake County.

2. Counsel for Appellants timely contracted with (i) Ms. Kate Harkins, Official Court Reporter, Wake County, to transcribe the trial in this matter, excluding jury selection, which took place during the 21 September through 4 October 2010 Civil Sessions of Wake County before the Honorable Carl R. Fox, Superior Court Judge; and (ii) Ms. Suzanne Patterson, Official Court Reporter, Wake County, to transcribe the proceedings which took place during the 3 January 2011 Civil Session of Wake County before the Honorable Carl R. Fox, Superior Court Judge in the above-captioned case. Pursuant to Rule 7(a)(1) of the North Carolina Rules of Appellate Procedure, Appellants filed written documentation of these transcript contracts with the Clerk of the Wake County Superior Court on 2 February and 4 February 2011. The original deadline to produce these transcripts was 4 April 2011.

3. By Order dated 29 March 2011, the trial court extended the time for the court reporters to produce a transcript of the trial and proceeding referenced above to and including 4 May 2011.

4. By Order dated 3 May 2011, this Court extended the time for the court reporters to produce a transcript of the trial and proceeding referenced above to and including 3 June 2011.

5. By Order dated 31 May 2011, this Court extended the time for the court reporters to produce a transcript of the trial and proceeding referenced above to and including 5 July 2011.

6. On 21 June 2011, Kate Harkins, the court reporter producing the trial transcript, contacted the undersigned asking that we request a further extension of time to produce the transcript. Ms. Harkins indicates that due to her workload she requires additional time to complete the transcript.

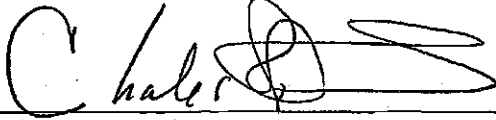
7. The time to produce the transcript has not yet expired.

8. Good cause exists to grant the extension of time requested by this motion.

WHEREFORE, Appellants respectfully request that the Court enter an order extending the time to produce the transcript and for certification by the court reporter that this has occurred by an additional thirty (30) days, to and including 4 August 2011.

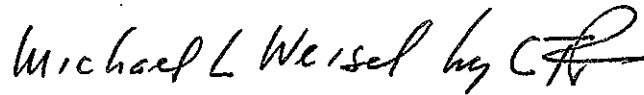
Respectfully submitted, this the 27 day of June, 2011.

THE FRANCIS LAW FIRM, PLLC



Charles T. Francis  
North Carolina State Bar No.: 16348  
cfrancis@thefrancislawfirm.com  
Post Office Box 164  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0801

BAILEY & DIXON, L.L.P.



Michael L. Weisel  
North Carolina State Bar No.: 9516  
mlweisel@bdixon.com  
David S. Coats  
North Carolina State Bar No.: 16162  
dcoats@bdixon.com  
Adam N. Olls  
North Carolina State Bar No.: 38405  
aolls@bdixon.com  
Post Office Box 1351  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0731

*Attorneys for Plaintiffs-Appellants Harriett  
Hurst Turner and John Henry Hurst*



**CERTIFICATE OF SERVICE**

I, Charles T. Francis, attorney for Plaintiffs-Appellants Harriett Hurst Turner and John Henry Hurst, certify that I served the foregoing Motion for Extension of Time to Produce Transcript, upon the following parties and in the manner below specified, by depositing a copy thereof for each such party(ies) in a separate envelope bearing sufficient postage and depositing the same in the United States Mail at Raleigh, North Carolina:

James Gulick, Esq.  
Senior Deputy Attorney General  
Office of the Attorney General  
114 West Edenton Street  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

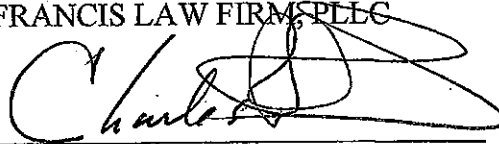
Frank E. Emory, Jr., Esq.  
Hunton & Williams, LLP  
Bank of America Plaza, Suite 3500  
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Charlotte, North Carolina 28280

Ms. Kate Harkins  
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Wake County Courthouse  
6th Floor  
Raleigh, North Carolina 27601

Ms. Suzanne Patterson  
Court Reporter  
Wake County Courthouse  
6th Floor  
Raleigh, North Carolina 27601

This the 27 day of June, 2011.

THE FRANCIS LAW FIRM, PLLC

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Charles T. Francis  
North Carolina State Bar No.: 16348  
Post Office Box 164  
Raleigh, North Carolina 27602  
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## North Carolina Court of Appeals

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No. P11-201

HARRIETT HURST TURNER AND  
JOHN HENRY HURST,

PLAINTIFFS-APPELLANTS,

VS.

THE HAMMOCKS BEACH  
CORPORATION, NANCY  
SHARPE CAIRD, SETH  
DICKMAN SHARPE, SUSAN  
SPEAR SHARPE, WILLIAM  
AUGUST SHARPE, NORTH  
CAROLINA STATE BOARD OF  
EDUCATION, ROY A. COOPER,  
III, IN HIS CAPACITY AS ATTORNEY  
GENERAL OF THE STATE OF NORTH  
CAROLINA,

DEFENDANTS-APPELLEES.

### ORDER

The following order was entered:

The motion filed in this cause on the 27th of June 2011 and designated 'Plaintiffs-Appellants' Further Motion for Extension of Time to Produce Transcript' is allowed. Transcript shall be produced and delivered on or before 4 August 2011.

By order of the Court this the 28th of June 2011.

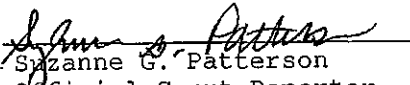
WITNESS my hand and official seal this the 28th day of June 2011.

A handwritten signature in black ink, appearing to read "John H. Connell".

John H. Connell  
Clerk, North Carolina Court of Appeals

Copy to:  
Mr. Charles Francis, For Turner, Harriett Hurst, et al  
Michael L. Weisel, For Turner, Harriett Hurst, et al

Mr. David S. Coats, Attorney at Law  
Mr. Adam N. Oils, Attorney at Law  
Mr. James Gulick, Senior Deputy Attorney General, For N.C. Board of Education  
Mr. Thomas J. Ziko, Senior Deputy Attorney General  
Frank E. Emory, Jr., For Hammocks Beach Corporation, et al  
Hon. Nancy L. Freeman, Clerk of Superior Court

1	STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
		SUPERIOR COURT DIVISION
2	COUNTY OF WAKE	FILE NUMBER: 06 CVS 18173
3	_____ )	
4	HARRIETT HURST TURNER and )	
	JOHN HENRY HURST, )	
5	)	
	Plaintiffs, )	
6	)	
	VS. )	CERTIFICATE OF DELIVERY
7	)	
	THE HAMMOCKS BEACH CORPORATION, )	
8	NANCY SHARPE CAIRD, SETH DICKMAN )	
	SHARPE, SUSAN SPEAR SHARPE, )	
9	WILLIAM AUGUST SHARPE, NORTH )	
	CAROLINA STATE BOARD OF )	
10	EDUCATION, ROY A COOPER, III, in )	
	his capacity as Attorney General )	
11	of the State of North Carolina, )	
	)	
12	Defendants. )	
13	_____ )	
14		
15	This is to certify that the transcript from January	
16	3, 2011, consisting of 111 pages and one Volume in the	
17	above-entitled case was requested of Suzanne G. Patterson on	
18	the 2nd day of February, 2011, and was delivered and/or	
19	mailed to the attorney(s) of record as indicated below on	
20	the 29th day of June, 2011	
21		
22	 Suzanne G. Patterson Official Court Reporter	
23	Charles T. Francis	
24	The Francis Law Firm, PLLC	
	Post Office Box 164	
25	Raleigh, NC 27602	

Suzanne G. Patterson, RPR  
Official Court Reporter

No.: P11-201

TENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

HARRIETT HURST TURNER and )  
JOHN HENRY HURST, )  
 )  
Plaintiffs-Appellants, )

vs. )

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CAROLINA STATE BOARD OF )  
EDUCATION, ROY A. COOPER, )  
III, in his capacity as Attorney )  
General of the State of North )  
Carolina, )

From Wake County  
No. 06 CVS 18173

Defendants-Appellees. )  
)

\*\*\*\*\*

PLAINTIFFS-APPELLANTS' FURTHER MOTION FOR EXTENSION OF  
TIME TO PRODUCE TRANSCRIPT

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Plaintiffs-Appellants Harriett Hurst Turner and John Henry Hurst  
(Appellants), by and through counsel, move this Court pursuant to Rules 7(b)(1)  
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1. On 26 January 2010, Appellants timely filed their notice of appeal from (i) the order denying Plaintiffs' Motion for Reconsideration of Order and Objection to Appointment of North Carolina State Board of Education as Successor Trustee and appointing the North Carolina State Board of Education as successor trustee entered by the Honorable Carl R. Fox on 12 January 2011 in the Superior Court, Wake County; and (ii) the order initiating the process of offering appointment as successor trustee to the North Carolina State Board of Education entered by the Honorable Carol R. Fox on 26 October 2010 in the Superior Court, Wake County.

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4. By Order dated 3 May 2011, this Court extended the time for the court reporters to produce a transcript of the trial and proceeding referenced above to and including 3 June 2011.

5. By Order dated 31 May 2011, this Court extended the time for the court reporters to produce a transcript of the trial and proceeding referenced above to and including 5 July 2011.



6. By Order dated 28 June 2011, this Court extended the time for the court reporters to produce a transcript of the trial and proceeding referenced above to and including 4 August 2011.

7. A further extension is necessary because the production of the trial transcript has been re-assigned from Kate Harkins to another court reporter by the Administrative Office of the Courts.

8. On 18 July 2011, the undersigned, Charles T. Francis, received a telephone call from David Jester, the Court Reporting Manager in the Administrative Office of the Courts. In a voicemail left on that day and in a subsequent telephone discussion, Mr. Jester indicated that the trial court reporter, Kate Harkins, has developed health issues requiring hospitalization and that she was no longer working for the Administrative Office of the Courts. Mr. Jester further indicated that due to Ms. Harkins' backlog of transcripts, it was necessary to re-assign production of the trial transcript in this matter to another court reporter. Mr. Jester further indicated that production of the trial transcript in this matter has been re-assigned to Joyce Peniston.

9. The new court reporter, Joyce Peniston, advised the undersigned that she has received the materials necessary to produce the transcript from Ms. Harkins. Ms. Peniston has further advised that she is presently working on the matter and is in the process of editing and proofreading the trial transcript. Ms.

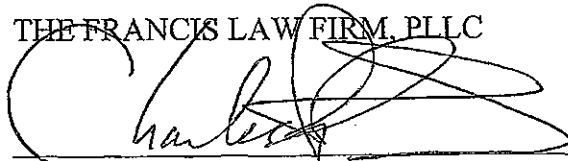
Peniston contacted the undersigned and asked that we request a further extension of time to produce the transcript. The basis for this request is that the production of this transcript was re-assigned to her in late July. Though she is presently working on the matter, Ms. Peniston requires additional time to complete the transcript.

10. The time to produce the transcript has not yet expired.
11. Good cause exists to grant the extension of time requested by this motion.

WHEREFORE, Appellants respectfully request that the Court enter an order extending the time to produce the transcript and for certification by the court reporter that this has occurred by an additional thirty (30) days, to and including 3 September 2011.

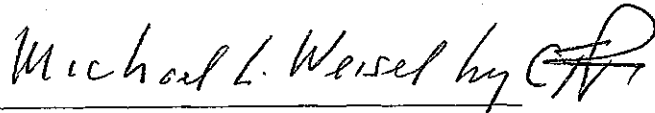
Respectfully submitted, this the 29th day of July, 2011.

THE FRANCIS LAW FIRM, PLLC



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Raleigh, North Carolina 27602  
Telephone: (919) 828-0731

*Attorneys for Plaintiffs-Appellants Harriett  
Hurst Turner and John Henry Hurst*

**CERTIFICATE OF SERVICE**

I, Charles T. Francis, attorney for Plaintiffs-Appellants Harriett Hurst Turner and John Henry Hurst, certify that I served the foregoing Motion for Extension of Time to Produce Transcript, upon the following parties and in the manner below specified, by depositing a copy thereof for each such party(ies) in a separate envelope bearing sufficient postage and depositing the same in the United States Mail at Raleigh, North Carolina:

James Gulick, Esq.  
Senior Deputy Attorney General  
Office of the Attorney General  
114 West Edenton Street  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

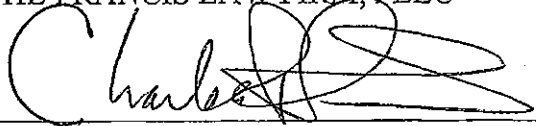
Frank E. Emory, Jr., Esq.  
Hunton & Williams, LLP  
Bank of America Plaza, Suite 3500  
101 South Tryon Street  
Charlotte, North Carolina 28280

M. Joyce Peniston  
3800 Cardinal Bluff Lane  
Indian Trail, North Carolina 28079

Ms. Suzanne Patterson  
Court Reporter  
Wake County Courthouse  
6th Floor  
Raleigh, North Carolina 27601

This the 29th day of July, 2011.

THE FRANCIS LAW FIRM, PLLC

A handwritten signature in black ink, appearing to read "Charles T. Francis", written over a horizontal line.

Charles T. Francis  
North Carolina State Bar No.: 16348  
Post Office Box 164  
Raleigh, North Carolina 27602  
Telephone: (919) 828-0801



## North Carolina Court of Appeals

Fax: (919) 831-3615  
Web: <http://www.nccourts.org>

JOHN H. CONNELL, Clerk  
Court of Appeals Building  
One West Morgan Street  
Raleigh, NC 27601  
(919) 831-3600

Mailing Address:  
P. O. Box 2779  
Raleigh, NC 27602

From Wake  
( 06CVS18173 )

No. P11-201

HARRIETT HURST TURNER AND  
JOHN HENRY HURST,

PLAINTIFFS-APPELLANTS,

VS.

THE HAMMOCKS BEACH  
CORPORATION, NANCY  
SHARPE CAIRD, SETH  
DICKMAN SHARPE, SUSAN  
SPEAR SHARPE, WILLIAM  
AUGUST SHARPE, NORTH  
CAROLINA STATE BOARD OF  
EDUCATION, ROY A. COOPER,  
III, IN HIS CAPACITY AS ATTORNEY  
GENERAL OF THE STATE OF NORTH  
CAROLINA,

DEFENDANTS-APPELLEES.

### ORDER

The following order was entered:

The motion filed in this cause on the 29th of July 2011 and designated 'Plaintiffs-Appellants' Further Motion for Extension of Time to Produce Transcript' is allowed. Transcript shall be produced and delivered on or before 2 September 2011.

By order of the Court this the 1st of August 2011.

WITNESS my hand and official seal this the 1st day of August 2011.

A handwritten signature in black ink, appearing to read "John H. Connell".

John H. Connell  
Clerk, North Carolina Court of Appeals

Copy to:  
Mr. Charles Francis, For Turner, Harriett Hurst, et al  
Michael L. Weisel, For Turner, Harriett Hurst, et al

Mr. David S. Coats, Attorney at Law  
Mr. Adam N. Olls, Attorney at Law  
Mr. James Gulick, Senior Deputy Attorney General, For N.C. Board of Education  
Mr. Thomas J. Ziko, Senior Deputy Attorney General  
Frank E. Emory, Jr., For Hammocks Beach Corporation, et al  
Hon. Nancy L. Freeman, Clerk of Superior Court

1	STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
2	COUNTY OF WAKE	SUPERIOR COURT DIVISION
		FILE NUMBER 06 CVS 18173

4	HARRIETT HURST TURNER and	)
5	JOHN HENRY HURST,	)
		)
6	Plaintiffs,	)
		)
7	vs.	)
		)
8	THE HAMMOCKS BEACH	)
9	CORPORATION, NANCY SHARPE	)
10	CAIRD, SETH DICKMAN SHARPE,	)
11	SUSAN SPEAR SHARPE, WILLIAM	)
	AUGUST SHARPE,	)
		)
	Defendants.	)

CERTIFICATE OF DELIVERY

12 This is to certify that the transcript in the  
13 above-entitled case, which was heard on September 21, 2010  
14 through October 4, 2010 before the HONORABLE CARL R. FOX, was  
15 requested of M. Joyce Peniston on July 18, 2011, and  
16 electronically delivered and mailed hard copy to the attorney  
17 of record, as indicated below, on the 29th day of August,  
18 2011.

*M. Joyce Peniston*

---

M. Joyce Peniston  
Peniston Court Reporting  
3800 Cardinal Bluff Lane  
Indian Trail, NC 28079-6776  
(704) 882-4957 (Office)

23 Charles T. Francis, Esq.  
24 The Francis Law Firm, PLLC  
25 Two Hannover Square  
434 Fayetteville Street, Ste. 2300  
Raleigh, North Carolina 27601  
cfrancis@thefrancislawfirm.com



**STIPULATIONS SETTling RECORD ON APPEAL**

Counsel for Plaintiffs-Appellants, The Hammocks Beach Corporation and the North Carolina State Board of Education stipulate and agree as follows:

1. The proposed record on appeal was timely served on 3 October 2011, in apt time, by mail to counsel for The Hammocks Beach Corporation and by hand-delivery to counsel for the North Carolina State Board of Education.

2. Defendants-Appellees served their Joint Amendments and Objections to Plaintiffs-Appellants' Proposed Record on Appeal on 31 October 2011. Defendants-Appellees objected to the inclusion of certain documents from the record on appeal, the omission of certain documents from the record on appeal, the designation of certain transcripts, and the wording of the Statement of Organization of Trial Tribunal.

3. The parties were unable to reach an agreement about the inclusion of certain documents in the record on appeal. The parties determined that judicial settlement of the supplemental record documents was inappropriate under the criteria listed in N.C.R.App.P. 11(c). Accordingly, all of these documents are included in the Rule 11(c) Supplement to the Printed Record on Appeal. The parties shall cite to this document as "(R S p \_\_)."

4. All hearings relevant to this appeal were held after proper notice to the parties. Notices of hearing are therefore omitted from this record.

5. All captions, signatures, headings of papers, certificates of service and documents filed with the trial court that are not necessary for an understanding of the appeal may be omitted from the record, except as required by Rule 9 of the Rules of Appellate Procedure.

6. When a document appears multiple times in the Record (i.e., if it was marked as an exhibit twice), subsequent copies of the document may be omitted from the record and replaced with reference to the included copy of the document.

7. Subject to Paragraph 8 below, the parties stipulate that the following documents constitute the agreed-upon record on appeal to be filed with the Clerk of the Court of Appeals:

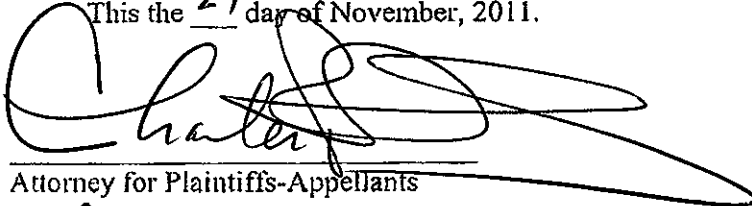
- a. This printed record on appeal, consisting of pages 1 through 326;

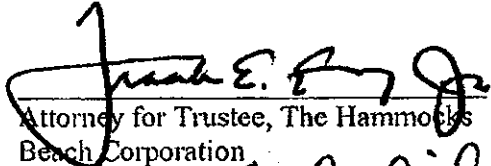
- b. The transcript of the proceedings which took place during the 21 August 2007 Civil Session of the Wake County Superior Court described in the Statement of Transcript Option (R p 257) (an electronic copy of which will be submitted by the court reporter upon receipt of a docket number for the appeal);
  - c. The trial transcripts described in the Statement of Transcript Option (R p 257) (an electronic copy of which will be submitted by the court reporter upon receipt of a docket number for the appeal);
  - d. The transcript of the proceedings which took place during the 3 January 2011 Civil Session of Wake County Superior Court described in the Statement of Transcript Option (R p 257) (an electronic copy of which will be submitted by the court reporter upon receipt of a docket number for the appeal);
  - e. The Dewey Wells deposition transcript described in the Statement of Transcript Option (R p 257) (a paper copy of which is being filed contemporaneously with this printed record on appeal);
  - f. The Rule 9(d) documentary exhibits labeled "Trial Exhibits," consisting of one volume numbered consecutively from pages 1 through 287 (three paper copies of the one-volume Rule 9(d) documentary exhibits are being filed contemporaneously with this printed record on appeal); and
  - g. The "Rule 11(c) Supplement to the Printed Record on Appeal," consisting of pages 327 through 842 (three copies of which are being filed contemporaneously with this printed record on appeal).
8. The parties stipulate that the following documents are being included in the record on appeal over the objection of Defendants-Appellees:
- a. The complete trial transcripts, described in the Statement of Transcript Option (R p 257) to the extent they include proceedings other than the closing arguments, charge conference, and post-verdict proceedings regarding tender to the State Board of Education in the trial of this matter, which took place during the 21 September through 4 October 2010 Civil Sessions of Wake County

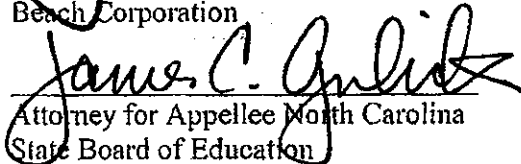
Superior Court (an electronic copy of which will be submitted by the court reporter upon receipt of a docket number for the appeal);

- b. The transcript of the proceedings which took place during the 3 January 2011 Civil Session of Wake County Superior Court described in the Statement of Transcript Option (R p 257) (an electronic copy of which will be submitted by the court reporter upon receipt of a docket number for the appeal);
- c. The Dewey Wells deposition transcript described in the Statement of Transcript Option (R p 257) (a paper copy of which is being filed contemporaneously with this printed record on appeal); and
- d. The additional Rule 9(d) documentary exhibits labeled "Trial Exhibits," consisting of one volume numbered consecutively from pages 59 through 265 (three paper copies of which are being filed contemporaneously with this printed record on appeal).

This the 21 day of November, 2011.

  
Attorney for Plaintiffs-Appellants

  
Attorney for Trustee, The Hammocks  
Beach Corporation

  
Attorney for Appellee North Carolina  
State Board of Education

**PROPOSED ISSUES ON APPEAL**

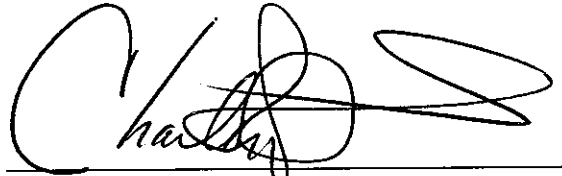
Pursuant to Appellate Rule 10, Plaintiffs-Appellants intend to present the following proposed issues on appeal:

1. Whether the trial court erred in appointing the Board as trustee to the Trust?
2. Whether the trial court erred in refusing to allow Plaintiffs to pursue post-judgment discovery regarding the Board's representations that it would not and could not accept tender of appointment as trustee to the Trust?

**STATEMENT OF DEPOSIT OF APPEAL BOND**

I, Charles T. Francis, state that contemporaneously with the filing of this Record on Appeal, I am depositing with the Clerk of the North Carolina Court of Appeals a check for \$250.00 on behalf of Plaintiffs-Appellants. This sum is deposited as an appeal bond, satisfying the requirements of N.C. Gen. Stat. § 1-285.

This the 21 day of November, 2011.

  
\_\_\_\_\_  
Charles T. Francis

**IDENTIFICATION OF COUNSEL FOR THE APPEAL**

For the Plaintiffs-Appellants:

**THE FRANCIS LAW FIRM, PLLC**

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For Trustee The Hammocks  
Beach Corporation:

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Facsimile: (704) 378-4890

For Appellee North Carolina  
State Board of Education:

**NORTH CAROLINA DEPARTMENT  
OF JUSTICE**

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James C. Gulick  
Senior Deputy Attorney General  
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jgulick@ncdoj.gov

Post Office Box 629  
Raleigh, North Carolina 27602-0629  
Telephone: (919) 716-6920  
Facsimile: (919) 716-6767

**CERTIFICATE OF SERVICE**

I, Charles T. Francis, attorney for Plaintiffs-Appellants Harriett Hurst Turner and John Henry Hurst, certify that I served the foregoing Final Record on Appeal along with the Rule 9(d) Documentary Exhibits and the Rule 11(c) Supplement to the Printed Record on Appeal upon the following parties and in the manner below specified, by depositing a copy thereof for each such party(ies) in a separate envelope bearing sufficient postage and depositing the same in the United States Mail at Raleigh, North Carolina:

James Gulick, Esq.  
Senior Deputy Attorney General  
Thomas J. Ziko, Esq.  
Senior Deputy Attorney General  
Office of the Attorney General  
114 West Edenton Street  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001

Frank E. Emory, Jr., Esq.  
Brent A. Rosser, Esq.  
Ryan G. Rich, Esq.  
Hunton & Williams LLP  
Bank of America Plaza, Suite 3500  
101 South Tryon Street  
Charlotte, North Carolina 28280

This the 2<sup>1</sup> day of November, 2011.

A handwritten signature in black ink, appearing to read "Charles T. Francis", written over a horizontal line.

Charles T. Francis