

EXHIBIT 5

UNITED STATES DISTRICT COURT

for the

Middle District of North Carolina

Carrington, et al.

Plaintiff

v.

Duke, et al.

Defendant

Civil Action No. 08 CV 119

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Robert C. Ekstrand
c/o Robert C. Ekstrand, 811 Ninth Street, Suite 260, Durham, NC 27705

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Exhibit A attached.

Place: Ellis & Winters LLP, 333 N Greene St # 200 Greensboro, NC 27401-2145
Date and Time: 03/16/2012 10:00 am

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:
Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/14/2012

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR

Handwritten signature of attorney

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Duke University, who issues or requests this subpoena, are:

Thomas H. Segars, Ellis & Winters LLP, 1100 Crescent Green Drive, Suite 200, Cary, NC 27518
tom.segars@elliswinters.com, (919) 865-7000

Civil Action No. 08 CV 119

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

(iii) a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

EXHIBIT A

INTRODUCTION

A. The plaintiffs in the Carrington Action (defined below) have brought a claim against Duke (defined below) related to the provision of DukeCard information (defined below) to the Durham Police. As part of this claim, the plaintiffs seek legal fees related to their representation in seeking to quash a subpoena seeking the DukeCard information. Some of the plaintiffs claim that You (defined below) represented them in connection with that effort and seek reimbursement for Your fees. Plaintiffs that have been deposed in this action who were represented by You in connection with this effort have been unable to specify which of Your fees related to the effort to quash the subpoena. Furthermore, produced documents and testimony in depositions have referred to conversations between members of the Firm and Duke employees regarding the subpoena.

B. Additionally, the plaintiffs in the Carrington Action have brought a claim against Duke related to conversations between certain Duke Lacrosse Players and certain Duke administrators. Through references in documents produced in this litigation, deposition testimony, and publicly-available media and other reports, it would appear that You may have been present for some of these conversations or otherwise became familiar with the content of these conversations.

C. Additionally, throughout the depositions that have been taken in the Carrington Action (defined below), Your name has been mentioned in connection with

meetings with Duke administrators, the effort to obtain an additional year of NCAA eligibility for the Duke Lacrosse Players, and other events that plaintiffs in the Carrington Action maintain are relevant to their claims against Duke.

D. Accordingly, documents in Your possession appear relevant to the claims and defenses alleged in the Carrington Action.

DEFINITIONS

A. The term “communication” means any writing, or oral conversation, including, but not limited to, telephone conversations and meetings, letters, e-mails, facsimiles, or memoranda.

B. The terms “You” and “Your” refer to Robert C. Ekstrand, including all persons acting or purporting to act on behalf of You.

C. The term “Duke” means Duke University, its employees, agents, representatives, attorneys and all persons acting on its behalf.

D. The phrase “Carrington Action” means the case captioned Carrington, et al. v. Duke University, et al., 1:08 cv 119, proceeding in the Middle District of North Carolina, and all the allegations contained in the Carrington Complaint. The term “Carrington Complaint” means the First Amended Complaint filed in the Carrington Action. The Carrington Complaint is available online through the PACER website (<https://pacer.login.uscourts.gov/cgi-bin/login.pl>). Alternatively, if You would like a copy of the Carrington Complaint, You may contact the undersigned attorney who will provide You with a copy.

E. The phrase “Duke Lacrosse Player” means any members of the 2005-2006 Duke University men’s lacrosse team. These members include Zack Greer, Kyle Dowd, Matt Zash, Matt Danowski, Dan Flannery, Josh Coveleski, Ned Crotty, Bret Thompson, Peter Lamade, Brad Ross, Gibbs Fogarty, Fred Krom, Collin Finnerty, Chris Loftus, Steve Schoeffel, Michael Young, Mike Catalino, KJ Sauer, Reade Seligmann, Tom Clute, William Wolcott, Ed Douglas, David Evans, Dan Loftus, Rob Schroeder, Dan Theodoridis, Bo Carrington, Breck Archer, Ryan McFadyen, Michael Ward, Rob Wellington, Tony McDevitt, Dan Oppedisano, Sam Payton, Chris Tkac, Erik Henkelman, John Walsh, Jay Jennison, Kevin Mayer, Nick O'Hara, Casey Carroll, Glenn Nick, and Kevin Coleman.

F. The phrase “Duke Lacrosse Players” means all of the individuals identified in Paragraph E.

G. The phrase “DukeCard information” means information associated with the use by any Duke Lacrosse Player of his DukeCard between March 13, 2006 and March 14, 2006 inclusive, as referenced in Count 8 of the Carrington Complaint.

H. The term “document” means all items subject to discovery pursuant to Rule 34 of the Federal Rules of Civil Procedure. Without limiting the generality of the foregoing, the term “document” shall have its customary, broad sense to include written or graphic matter of every kind or description, including hard copy materials and electronically stored information. “Document” also includes the original of any document in whatever medium it may exist and any copy of such original differing in any

way from such original.

INSTRUCTIONS

A. These requests seek only documents created on or before April 11, 2007.

B. Any singular form of any word shall be construed to include the plural and any plural form shall be read to include the singular. Any past tense of a verb shall be construed to include the present tense and any present tense shall be construed to include the past tense.

C. To the extent that You consider any of the following requests or questions objectionable, respond to as much of each and every part thereof which is not objectionable in Your view, and separately state the part that is objectionable and the ground for each objection.

D. Duke recognizes that many documents You possess would be protected by the attorney-client or work product privileges. Duke does not seek those protected documents. However, Duke also recognizes that to the extent that You communicated with third parties, communicated with Your clients in the presence of third parties present, or engaged in public interviews on behalf of (and presumably with the consent of) Your clients, that any such claim of privilege would be waived as to the issues relevant to those conversations.

E. If You object to any discovery request on the basis of attorney-client privilege, work-product doctrine, or any other privilege, state the privilege claimed, and

identify the document or communication for which such privilege is claimed, stating the following:

- A. The date of the communication;
- B. The description of the document or communication protected, including the identity of all persons present or all persons who authored, transmitted or received a copy of such communication, and the number of pages, if written;
- C. The subject matter of the document or communication;
- D. The basis on which the privilege is claimed.

DOCUMENTS AND TANGIBLE THINGS REQUESTED

1. Please produce all Documents that reflect or refer to any communication made on or after March 13, 2006, between a Duke Lacrosse Player, on the one hand, and Duke President Richard Brodhead, on the other hand. In connection with this request, Duke seeks only non-privileged Documents, as stated in Instructions Paragraph D.

2. Please produce all Documents that reflect or refer to any communication made on or after March 13, 2006, between a Duke Lacrosse Player, on the one hand, and Duke Executive Vice-President Tallman Trask, on the other hand. In connection with this request, Duke seeks only non-privileged Documents, as stated in Instructions Paragraph D.

3. Please produce all Documents that reflect or refer to any communication made on or after March 13, 2006, between a Duke Lacrosse Player, on the one hand, and

Duke Dean of Students Sue Wasiolek, on the other hand. In connection with this request, Duke seeks only non-privileged Documents, as stated in Instructions Paragraph D.

4. Please produce all Documents that refer to or reflect (1) Your attempts to obtain DukeCard information from any person; (2) Duke's disclosure of DukeCard information to the Durham Police; (3) the subpoena issued by the State of North Carolina seeking DukeCard information for the Duke Lacrosse Players from Duke; or (4) the efforts by any of the Duke Lacrosse Players to quash the subpoena referenced in the preceding clause. In connection with this request, Duke seeks only non-privileged Documents, as stated in Instructions Paragraph D.

5. Please produce all Documents that reflect Your disclosure of DukeCard information to any member of the Durham Police Department for any Duke Lacrosse Player.

6. Your name appears more than throughout the book "Until Proven Innocent," authored by K.C. Johnson and Stuart Taylor. Your name appears regularly in blog entries on the website Durham-in-Wonderland, authored by K.C. Johnson. Please produce all Documents that reflect or refer to or constitute communications made on or after March 13, 2006, between You, on the one hand, and K.C. Johnson or Stuart Taylor, on the other hand, in which You discussed or referred to (1) Your attempts to obtain DukeCard information from any person; (2) Duke's disclosure of DukeCard information to the Durham Police; (3) the subpoena issued by the State of North Carolina seeking DukeCard information for the Duke Lacrosse Players from Duke; (4) the efforts by any

of the Duke Lacrosse Players to quash the subpoena referenced in the preceding clause; or (5) communications between a Duke Lacrosse Player, on the one hand, and Duke President Richard Brodhead, Duke Executive Vice-President Tallman Trask, or Duke Dean of Students Sue Wasiolek, on the other hand.

7. Please produce all Documents You gave or discussed with K.C. Johnson or Stuart Taylor at any time on or after March 13, 2006 that referred to (1) Your attempts to obtain DukeCard information from any person; (2) Duke's disclosure of DukeCard information to the Durham Police; (3) the subpoena issued by the State of North Carolina seeking DukeCard information for the Duke Lacrosse Players from Duke; (4) the efforts by any of the Duke Lacrosse Players to quash the subpoena referenced in the preceding clause; or (5) communications between a Duke Lacrosse Player, on the one hand, and Duke President Richard Brodhead, Duke Executive Vice-President Tallman Trask, or Duke Dean of Students Sue Wasiolek, on the other hand.

8. Please produce all communications between You, on the one hand, and any person, on the other hand, concerning Counts 8, 11 or 19 of the Carrington Complaint. For purposes of this request, Duke is not seeking communications between You, on the one hand, and agents of Yours, Ryan McFadyen (or his agents), Matthew Wilson (or his agents), or Breck Archer (or his agents). In connection with this request, Duke seeks only non-privileged Documents, as stated in Instructions Paragraph D.