

<p>DISTRICT COURT, LARIMER COUNTY 201 LaPorte Avenue Suite 100 Fort Collins, CO 80521-2761</p> <hr/> <p>Plaintiff:</p> <p>LAURA STUDLEY, an individual.</p> <p>v.</p> <p>Defendant:</p> <p>JAMES A. WILKERSON, IV, M.D., in his capacity as Coroner of Larimer County, State of Colorado</p>	<p>DATE FILED: June 5, 2020 8:19 PM FILING ID: 850775247D11D CASE NUMBER: 2020CV30380</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><u>Counsel for Plaintiff:</u> Thomas B. Kelley, Atty Reg. # 1971 KILLMER LANE & NEWMAN LLP 1543 Champa St., Ste. 400 Denver, CO 80202 Phone: (303) 571-1000 Fax: (303) 571-1001 Email: tkelley@kln-law.com</p>	<p>Case Number:</p> <p>Division:</p> <p>Courtroom:</p>
<p>COMPLAINT AND APPLICATION FOR ORDER TO SHOW CAUSE RE: INSPECTION AND COPYING OF PUBLIC RECORDS</p>	

For her Complaint and Application For Order To Show Cause, directing the Defendant to show cause why he should not permit inspection of certain Public Records as requested by the Plaintiff, all pursuant to the Colorado Open Records Act, Section 24-72-201 et seq. (CORA), the Plaintiff alleges:

1. The Plaintiff is an individual who is a resident of the State of Colorado and a student at the Colorado State University School of Journalism. The Plaintiff is also a newsperson who serves as Editor-in Chief for a University newsletter, *Stay Connected*, and as a reporter for the University newspaper, *The Collegian*. The Plaintiff is a “person” for purposes of Sec. 24-72-202(3), 203(1)(a), 204(1) and (5)(a).

2. The Defendant, James A. Wilkerson IV, M.D., is the Coroner for the County of Larimer, State of Colorado, and is the Official Custodian or, in the alternative, a Custodian of the Public Record that is the subject of this action under CORA.

STATUTORY FRAMEWORK

3. CORA extends to any person, upon request to a Custodian of any Public Record, the right to inspect and copy such Record, subject to limited and specifically described exemptions. Coroners' Autopsy Reports are Public Records and subject to no exemption from the disclosure requirements under CORA. *Denver Publishing Co. v. Dreyfus*, 184 Colo. 288, 520 P.2d 104 (1974); *Freedom Newspapers, Inc. v. Bowerman*, 739 P.2d 881, 883 (Colo. App. 1987).

4. When a records Custodian denies a request to inspect any Public Record, CORA authorizes the person requesting inspection to "apply to the District Court of the district wherein the record is found for an order directing the custodian of such record to show cause why the custodian should not permit the inspection of such record," provided that the person who requested the record provides the custodian at least fourteen days advance notice of his intent to so proceed. Sec. 24-72-205(5)(a).

5. CORA directs the court to convene a hearing on the Application "at the earliest practical time." Unless the court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and shall award court costs and reasonable attorney fees to the prevailing applicant in an amount to be determined by the court..." Sec. 24-72-204(5)(b).

PLAINTIFF'S REQUEST TO INSPECT PUBLIC RECORDS AND THE DEFENDANT'S DENIALS

6. The killing of William Connole ("Connole") in 2015 has become the subject of a criminal prosecution in this court, *People of the State of Colorado v. Christopher David Parker*, Case No. D0352018-CR-000652 (the "Criminal Matter"). The Criminal matter has been pending since March 2018 and remains largely inactive due to the Court's findings that the defendant Christopher David Parker is not competent to stand trial.

7. On information and belief, in 2015, the Defendant prepared a report of the autopsy he conducted to determine the cause of death of Connole.

8. On March 4, 2020, by e-mail communication, the Plaintiff sent a request under CORA to Defendant to inspect and copy of the Coroner's Autopsy Report prepared by his office with respect to the death of Connole. A true and correct copy of that email communication is attached as **Exhibit 1**.

9. On March 11, 2020, at 11:52 AM, the Defendant, by and through his assistant and agent, Debbie Reisdorf, by email communication, denied the Plaintiff's request. As grounds for the denial, the Defendant asserted that the case of William Connole "is an open investigation and we do not release autopsy reports until the autopsy is closed. A true and correct copy of the Defendants communication of denial is attached as **Exhibit 2**.

10. On May 5, 2020, _M, the undersigned, by email communication, sent to the Defendant a request to reconsider his denial of the Plaintiff's request. A true and correct copy of that communication is attached as **Exhibit 3**. By this communication, the Plaintiff communicated her intent to file this action, pursuant to Sec. 24-72-205(5)(a), C.R.S. Plaintiff, through the undersigned, reiterated that intent by email communication of May 13, 2020, a copy of which is attached as **Exhibit 4**.

11. On May 15, 2020, by email communication , the Defendant, by and through the County Attorney, withdrew from his declaration of policy under which his office does not release Autopsy Reports until case are closed, and asserted that he had "reviewed the William Connole autopsy report and determined that the information contained in the autopsy report, if released, would be contrary to the public interest under C.R.S. 24-72-204(2)(a)(I) as it would compromise the ongoing investigation by another agency." A copy of that correspondence is attached as **Exhibit 5**.

12. An autopsy report is not subject to discretionary withholding under Section 24-72-204(2)(a)(I), C.R.S., Rather, to withhold the autopsy report, defendant must prove to this Court that release of the Autopsy Report "would cause substantial harm to the public interest." Section 24-72-204(6), C.R.S. To meet that burden, Defendant must show (1) that disclosure of the Autopsy Report would result in an "extraordinary situation" the General Assembly could not have identified in advance," and (2) "cause substantial harm to the public interest." *Zubeck v. El Paso Cnty. Ret. Plan*, 961 P.2d 597, 601 (Colo. App. 1998) (emphasis added) (citing *Civil Serv. Comm'n v. Pinder*, 812 P.2d 645 (Colo. 1991). On information and belief, Defendant cannot meet that burden cannot be met as to the five-year-old investigation of the death of William Connole.

13. As additional grounds for withholding the Connole Autopsy Report, The Defendant asserted that release of the Autopsy Report would violate Colorado Rules of Professional Conduct (CCPC) 3.6 and 3.8(f).

14. CCPC Rule 3.6 prohibits attorneys in criminal matters from making an extrajudicial statement likely to receive publicity that he/she knows, or should know...will have a substantial likelihood of materially prejudicing an adjudicative proceeding;" CCPC Rule 3.8(f) requires prosecuting attorneys to refrain from public comments "that have a substantial likelihood of heightening public condemnation unless such comments are permitted under Rule 3(b) or 3.6(c)" and to "exercise reasonable care to prevent investigators and law enforcement personnel...from making a statement the prosecutor would be prohibited from making under Rule 3.6 or this Rule." However, Rule 3.6(b)(2) expressly provides that a public statement that

merely recites “information contained in a public record” violates no rule, and Rule 3.8(f) incorporates the same carve-out. Hence, the Defendant’s reliance on CCPC Rules 3.6 and 3.8(f) is a non-sequitur, and the Autopsy Report is a Public Record open for inspection unless the Defendant meets the *Pinder/Zubeck* standard.

CORA VIOLATION

15. Defendant’s withholding of the autopsy report from Plaintiff pursuant to Section 24-72-204(2)(a)(I), C.R.S., Section 24-72-204(6), and/or CCPC Rule 3.6 and 3.8(f) was and is not proper. The Plaintiff is entitled to inspect and copy the Autopsy Report, and the Defendant violated CORA by denying the Plaintiff the right to do so.

16. In addition, the Defendant violated CORA with his (a) initial denial of the right to inspect Public Records based on his policy of withholding all autopsy reports until a cases is closed and (b) failure to consider redactions of information he claims is toxic to any continuing investigation or eventual trial in the criminal matter and releasing a redacted version.

PRAYER FOR RELIEF

Wherefor, the Plaintiff prays for judgment is it favor and against the Defendant, and that the Court afford the plaintiff relief as follows:

- a. Order, that Defendant show cause why he should not permit inspection and copying of the Autopsy Report of the death of William Connole;
- b. Set a show-cause hearing at the earliest practical time;
- c. Order the defendant to submit a copy of the autopsy report for *in camera* review;
- d. Find that Defendant violated CORA by initially denying the request based upon a policy of denying the rights to inspect autopsy reports whenever a case is not deemed closed;
- e. Find that the Defendant violated CORA by failing to consider redaction of the Connole Autopsy Report and releasing a redacted version of the Autopsy Report;
- f. Order the Defendants to permit the Plaintiffs to inspect and copy the Dufour Autopsy Report.
- g. Order the defendant to pay the Plaintiff his court costs and reasonable attorney fees.
- h. Order such further relief as the Court deems proper.

Respectfully submitted this 5th day of June 2020.

s/ Thomas B. Kelley _____
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