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September 29, 2006

Hon. Travis L. Francis, P.J.Ch.
Middlesex County Superior Court
Middlesex County Courthouse
One John F. Kennedy Square
New Brunswick, NJ 08901

Re: Ausley v. County of Middlesex, etals.
Docket No. Ch-223-06

Dear Judge Francis:

This office represents the County of Middlesex, the Middlesex County Medical Examiner's Office and Dr. Fredrick DiCarlo, M.D. I am in receipt of the Verified Complaint and Order to Show Cause With Temporary Restraints, which is returnable before Your Honor, Wednesday, October 25 2006 at 3:00p.m.

On behalf of the County of Middlesex, the Middlesex County Medical Examiner and Dr. Fredrick DiCarlo, M.D., we do not oppose the relief sought and the entry of an Order consistent therewith. As such, unless Your Honor deems the presence of this office necessary, we will not be appearing on the return date of the Order to Show Cause. However, there are certain statements and facts which Your Honor should be made aware of.

As an initial matter, the tissue specimens which are the subject of this matter are not in the possession of the Middlesex County Medical Examiner. Rather, in accordance with standard practice, once the tissue samples are taken, they are sent to the State Toxicology Laboratory and physically stored at the Regional State Medical Examiner's office in Newark. While the official policy and procedure is that the State Medical Examiner will not release any tissue specimens without the approval of the respective County Medical Examiner who took the samples, the physical custody of said specimens is maintained at the Regional Medical Examiner's office in Newark. In regard thereto, I am enclosing herein, as Exhibit "A", a Memorandum dated August 21, 2006 from Dr. George Jackson, Chief State Toxicologist, to Dr. DiCarlo, which states the tissue samples "have be saved and placed in storage".

Additionally, I am enclosing herein (as Exhibit "B") my letter, dated May 30, 2006, to Michael E. Berkdand, D.O., which sets for the legal basis for the County Medical Examiner's refusal to release the requested tissue samples. As you can see, the County's position is rooted in N.J.S.A. 47:1A-1 et. seq. "Open Public Records Act" and N.J.A.C. 13:49-3.1(b).

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