

ATTACHMENT 1

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Nov 25 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Debra Nelson, Plaintiff, v. Hunt Law, LLC and Bonnie Travaglio Hunt, Esq., Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT C/A NO.: 2025-CP-10-03145 ORDER GRANTING DEFENDANTS' MOTION TO DISMISS THE COMPLAINT
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This matter came before the court on Defendants' Motion to Dismiss the Complaint filed June 25, 2025. A hearing took place July 31, 2025, in courtroom 3-B of the Charleston County Courthouse. Plaintiff appeared *pro se*, and Andrew W. Countryman appeared as counsel for Defendants. After careful consideration of the Motion and other pertinent pleadings filed/submitted and oral argument presented at the hearing, I GRANT Defendants' Motion to Dismiss.

BACKGROUND

Plaintiff filed this action against Defendants on May 30, 2025. The action sounds in and alleges professional negligence against Defendants. Plaintiff filed a Complaint but not a summons. Plaintiff filed her own factual Affidavit with the Complaint, which sets forth an alleged factual basis for her claims against Defendants. Plaintiff is not a licensed lawyer. Plaintiff served Defendants with the Affidavit but did not perfect service of the Complaint (or a summons, as Plaintiff has not filed one).

Defendants, through counsel, filed an Answer and Motion to Dismiss contemporaneously on June 25, 2025. Defendants served Plaintiff with the Motion to

Dismiss and Answer via US Mail on that same day pursuant to SCRCP 5(b)(1). Plaintiff filed a Memorandum in Opposition to the Motion to Dismiss (with exhibit(s)) on July 11, 2025. Plaintiff also filed a "Preliminary Memorandum of Law Regarding Expert Affidavit Requirement" (with exhibits) on July 16, 2025. Plaintiff then filed "Supplemental Documents" on August 4, 2025.

RULING

1. S.C. Code § 15-36-100 (Failure to File Expert Affidavit)

In an action for damages alleging professional negligence against a South Carolina professional, the plaintiff must file as part of the complaint, an affidavit of an expert witness specifying at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. S.C. Code § 15-36-100(B). This specifically applies to lawyers. S.C. Code § 15-36-100(G)(2).

The expert must be licensed to practice law in their jurisdiction, have board certification or actual professional knowledge in the relevant area of practice; or possess "scientific, technical, or other specialized knowledge which may assist the trier of fact," with an explanation of credentials and qualifications. S.C. Code § 15-36-100(A). The contemporaneous filing of an expert affidavit is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant. S.C. Code § 15-36-100(C)(2).

The application of the common knowledge exception depends on the facts of each case. Sharpe v. S.C. Dept. Mental Health, 292 S.C. 11, 354 S.E.2d 778 (Ct. App. 1987).

“Under the common knowledge exception, expert testimony is not required where the common knowledge or experience of laymen is extensive enough to recognize or infer negligence on the part of the professional and to determine the presence of the required causal link between the professional’s performance and the alleged malpractice.” *See Jackson v. Henry*, Appellate Case No. 2016-001064, UP No. 2018-UP-312 (S.C. Ct. App. Jul. 11, 2018) *quoting* Wagenmann v. Adams, 829 F.2d 196, 219 (1st Cir. 1987).

If an affidavit is not filed within the period specified in this subsection or as extended by the trial court and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim. S.C. Code § 15-36-100(C)(1). If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading, that the affidavit is defective, the plaintiff’s complaint is subject to dismissal for failure to state a claim, except that the plaintiff may cure the alleged defect by amendment within thirty days of service of the motion alleging that the affidavit is defective. S.C. Code § 15-36-100(E).

In November 2024, Plaintiff retained Defendants to represent her on claims against Plaintiff’s former employer for sexual and racial discrimination, retaliation, hostile work environment, and related claims under 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e, *et seq.*). Defendants filed a lawsuit against Plaintiff’s former employer, and that action was removed to federal court. Nelson v. Curtis-Wright

Corporation, et al; 2:25-cv-00405-DCN-MHC. On Defendants' Motion, the federal court relieved Defendants as Plaintiff's counsel in the federal case on February 20, 2025.

Plaintiff maintains Defendants were negligent in their handling of the federal case. Specifically, Plaintiff alleges Defendants: (a) refused to bring certain claims Plaintiff wanted them to bring; (b) misrepresented their competence to handle Plaintiff's case; (c) refused to retain or recommend appropriate co-counsel; (d) withdrew from the representation without adequate protections; (e) failed to return unearned portions of submitted retainer funds; and (f) provided misleading information about Plaintiff's rights to a fee dispute. Compl., para. 17.

These are complex issues relating to federal law, litigation strategy and decisions, lawyer competency, and a fee dispute. These are not areas within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the Defendants' conduct. An expert affidavit is therefore required to support Plaintiff's claims of professional negligence against the Defendants.

Plaintiff is not a lawyer, nor does the affidavit of fact she filed meet the requirements detailed in the expert affidavit statute. Moreover, even assuming *arguendo* that section (E) applies, and Plaintiff had thirty days from service of Defendants' Motion to Dismiss to cure any defect, that deadline expired on July 30, 2025. Plaintiff has filed no expert affidavit during that period or at any time since. Defendants filed a Motion to Dismiss contemporaneously with their initial pleading raising Plaintiff's failure to file an expert affidavit as a ground for dismissal. The Complaint is therefore subject to dismissal for failure to state a claim under S.C. Code §15-36-100.

2. Failure to State a Claim SCRPC 12(b)(6)

A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed “to state facts sufficient to constitute a cause of action” in the pleadings filed with the court. SCRCP 12(b)(6). The motion will not be sustained if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case. Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987); McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997). The question to be considered is whether, in the light most favorable to the plaintiff, the pleadings articulate any valid claim for relief. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987); Cowart v. Poore, 337 S.C. 359, 523 S.E.2d 182 (Ct. App. 1999).

A claimant in a legal malpractice action must establish four elements: (1) the existence of an attorney-client relationship, (2) a breach of duty by the attorney, (3) damage to the client, and (4) proximate causation of the client’s damages by the breach. Holmes v. Haynsworth, Sinkler & Boyd, P.A., 408 S.C. 620, 636, 760 S.E.2d 399, 407 (2014). Furthermore, a claimant is required to demonstrate that “he or she ‘most probably would have been successful in the underlying suit if the attorney had not committed the alleged malpractice.’” Doe v. Howe, 367 S.C. 432, 442, 626 S.E.2d 25, 30 (Ct. App. 2005) (*quoting* Summer v. Carpenter, 328 S.C. 36, 42, 492 S.E.2d 55, 58(1997)); Brown v. Theos, 345 S.C. 626, 550 S.E.2d 304 (2001); Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988); Floyd v. Kosko, 285 S.C. 390, 329 S.E.2d 459 (Ct.App.1985); Hall v. Fedor, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002).

Plaintiff’s bases her claims against Defendants on her allegations they failed to properly pursue claims against her employer in the federal case in which Defendants were

relieved as Plaintiff's counsel. Plaintiff says she lost the opportunity to pursue those claims because Defendants failed or refused to bring them in the federal case. However, that case is actively pending, and Plaintiff is pursuing the very claims against her former employer she maintains Defendants' negligence precluded her from bringing. Thus, Plaintiff is unable to demonstrate she most probably would have been successful in the underlying suit if the Defendants had not committed the alleged malpractice. She cannot prove the "case within the case," making it impossible to establish the essential element of causation.

Further, the written fee agreement between Plaintiff and Defendants, which Plaintiff filed as an exhibit to her Affidavit brief (in response to the Motion to Dismiss), defines Defendants' scope of representation to include the specific claims they brought against Plaintiff's former employer. Other written correspondence Plaintiff filed with her briefing shows Defendants communicated the scope of representation, which would not include pursuing claims for cyber intrusion or invasion of privacy.

Moreover, the fee agreement clearly states the \$4,500 "retainer" fee Plaintiff submitted was a "non-refundable retainer" for Defendants to take Plaintiff's case. It was a not a retainer in the form of money to be held in trust and billed against. In addition to the nonrefundable \$4,500 retainer fee, the written agreement provided Defendants' legal fee would be 1/3 of any recovery in the pursuit of Plaintiff's claims, as well as for reimbursement of costs incurred.

Defendants explained this to Plaintiff in writing *before* they entered the representation agreement, as emails between Plaintiff and Defendants (which Plaintiff filed with her

Affidavit brief) show. Plaintiff has thus failed to state facts sufficient to constitute a cause of action for negligence against Defendants relating to the \$4,500 retainer fee.

The Complaint alleges damages in the amount of “at least \$4,250 in fees and expenses.” South Carolina has adopted the “American Rule” with respect to recovery of attorney’s fees and costs in a civil case. Judy v. Judy, 403 S.C. 203, 743 S.E.2d 672 (Ct. App. 2013); 2. S.C. Jur. *Attorney’s Fees* § 2. As a general rule, attorney’s fees are not recoverable unless authorized by a statute or contract. Id., see also Jackson v. Speed, 326 S.C. 289, 307, 486 S.E.2d 750 (1997) and Hegler v. Gulf Ins. Co., 270 S.C. 548, 549, 243 S.E.2d 443, 444 (1978). Attorney’s fees are not recoverable as a damage in a legal malpractice case unless the plaintiff can show the underlying claim would have been meritorious. Floyd v. Kosko, 285 S.C. 390, 329 S.E.2d 459 (Ct. App. 1985). Plaintiff cannot show that because the underlying claim is still pending.

Even in the light most favorable to Plaintiff, the pleadings fail to articulate any valid claim for relief against Defendants. The Complaint does not state facts sufficient to support the essential elements of causation or damages required to maintain claims sounding in professional negligence. The Complaint is therefore subject to dismissal for failure to state a claim under SCRPC 12(b)(6).

3. Insufficiency of Process/Service of Process

SCRPC 3(a) requires service of a filed summons and complaint to initiate a civil action. SCRPC 4 discusses service of process. The summons and complaint must be issued by the plaintiff or her lawyer. SCRPC 4(a). SCRPC 4(b) prescribes the required contents of the summons. The summons and complaint must be served together. SCRPC 4(d).

Plaintiff filed a Complaint but no summons, and she has not perfected service of either on Defendants. Plaintiff filed an Affidavit of Service, but it only shows service of Plaintiff's own Affidavit and not the Complaint (or a summons, which Plaintiff has not filed). Defendants raised SCRPC 12(b)(4) (insufficiency of process) and SCRPC 12(b)(5) (insufficiency of service of process) in their Answer and Motion to Dismiss. The Complaint is therefore subject to dismissal for insufficiency of process and insufficiency of service of process.

CONCLUSION

I THEREFORE GRANT Defendants' Motion to Dismiss and hereby dismiss this matter with prejudice.

[judge's signature page to follow]



Charleston Common Pleas

Case Caption: Debra Nelson VS Hunt Law Llc , defendant, et al
Case Number: 2025CP1003145
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So Ordered

s/Jennifer B. McCoy #2764

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ELECTRONICALLY FILED - 2025 Aug 07 11:39 AM - CHARLESTON - COMMON PLEAS - CASE#2025CP1003145