

STATE OF SOUTH CAROLINA)
 COUNTY OF DARLINGTON)
 Pee Dee Health Care, P.A.,)
 Plaintiff,)
 v.)
 Estate of Hugh S. Thompson, III,)
 Defendant.)

FILED
 APR 21 PM 12:59
 SCOTT B. SUGGS
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT

C/A NOS. 2010-CP-16-0332;
 2010-CP-16-0633

MS
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 APR 21 2014
 SC Court of Appeals

**ORDER GRANTING RULE 11
 SANCTIONS AGAINST PLAINTIFF,
 TONY R. MEGNA, ESQ., MATTHEWS
 & MEGNA, LLC, AND ANY
 SUCCESSORS OR ASSIGNEES**

This matter comes before the Court on the Defendant's Motion for Sanctions against the Plaintiff, Pee Dee Health Care, P.A. ("PDHC"), prior counsel for Plaintiff, Tony R. Megna, Esq. and Benjamin R. Matthews, Esq., their law firm, Matthews & Megna, LLC, and any successors or assignees of these persons and entities. The motion is brought pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act ("FCPSA") and Rule 11 of the South Carolina Rules of Civil Procedure. In response to Defendant's motion, counsel for Plaintiff has filed a Motion to Strike Defendant's Motion for Sanctions under the FCPSA, arguing that this motion is untimely, and consequently, that this Court lacks subject matter jurisdiction to consider Defendant's motion for sanctions under the FCPSA. The Court convened a hearing on both motions on Thursday, March 27, 2014 in Marlboro County, South Carolina. Present and participating at the hearing were James M. Griffin, Esq., appearing on behalf of Plaintiff PDHC, Mr. Megna, Mr. Matthews, and Matthews & Megna, LLC; J. Rene Josey, Esq. and John J. James, II, Esq., appeared for Defendant. At the conclusion of the hearing, the Court ruled that it would grant sanctions against Plaintiff PDHC, Mr. Megna, and Matthews & Megna, LLC under Rule 11, SCRPC. However, the Court noted that it would only grant sanctions for the time spent by Defendant's counsel in three distinct, segregated areas of the procedural history of this

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lawsuit: (1) Mr. Megna's continuing failure to accept this Court's ruling regarding his disqualification at the circuit court level following this Court's Order Disqualifying Plaintiff's Counsel Tony R. Megna, signed April 15, 2011;¹ (2) responding to various subpoenas sent out to uninvolved attorneys across the state by Mr. Megna; and (3) pursuing this present motion for sanctions. To that end, the Court asked counsel for Defendant to submit to the Court an amended affidavit specifying the amount of time they spent on these three areas mentioned above. On April 1, 2014, counsel for Defendant submitted a Supplemental Affidavit Segregating Fee Components Sought in Sanctions Request, totaling in the aggregate \$60,300. Counsel for Plaintiff has reviewed this supplemental affidavit and has submitted a response, arguing that the amended affidavit exceeds the scope of the Court's ruling on March 27, 2014. The Court has reviewed both the supplemental affidavit and Plaintiff's response, and hereby grants sanctions against Plaintiff PDHC, Tony R. Megna, Esq., Matthews & Megna, LLC, and any successors or assignees of these persons and entities in the following way:

1. Six thousand nine hundred and ten dollars (\$6,910.00) for the time spent by Defendant's counsel regarding reconsideration of Mr. Megna's disqualification. Supp. Affidavit, ¶ 2;
2. Nine thousand and seventy dollars (\$9,070.00) for the time spent by Defendant's counsel relating to inappropriate discovery requests issued by Mr. Megna and the follow-up thereto. Supp. Affidavit, ¶ 4; and
3. Eighteen thousand one hundred and seventy dollars (\$18,170.00) for the time spent by Defendant's counsel in preparing and arguing its Motion for Sanctions as well as submission of the supplemental affidavit. Supp. Affidavit, ¶¶ 5, 7, and 8. (The Court does not include the \$11,170.00 requested by Defendant's counsel for the time spent responding to Plaintiff's Motion to Strike because the Court limited the award to Rule 11 sanctions, in essence, ruling in favor of Plaintiff on its Motion to Strike as that motion only addressed Defendant's request for sanctions under the FCPSA. See Supp. Affidavit, ¶ 6.)

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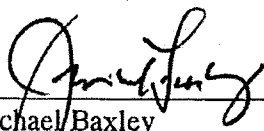
¹ The Court disqualified Mr. Megna from serving a counsel for Plaintiff in this case due to his role as Chief Executive Officer for Plaintiff PDHC. See 3.7 of the Rules of Professional Conduct, SCACR 407.

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This Court does not take the imposition of sanctions under Rule 11 lightly, but finds it appropriate here due to Mr. Megna's conduct in this case – specifically, his refusal to accept this Court's Order disqualifying him as counsel and his unwarranted and meritless attempts to entangle uninvolved third-party attorneys in this case through inappropriate discovery requests. Although the moving party here was a party to this civil action, Mr. Megna's conduct has caused that party to incur substantial and unnecessary legal bills, which have diminished the size of the estate, not to mention the inordinate delay in closing the estate. This conduct has also required the Court to spend significant time addressing these matters through hearings and phone conferences.

Therefore, the Court grants Defendant's Motion for Sanctions under Rule 11, SCRCP in the amount of Thirty-Four Thousand One Hundred and Fifty Dollars (\$34,150.00) against Pee Dee Health Care, P.A., Tony R. Megna, Esq., Matthews & Megna, LLC, and any successors or assignees of these persons and entities.


IT IS SO ORDERED.



J. Michael Baxley
Presiding Circuit Court Judge
Fourth Judicial Circuit

April 15, 2014

Hartsville, South Carolina

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DARLINGTON COUNTY, SC

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2014 APR 21 PM 1:00
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DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-16-0332; 2010-CP-16-0633

Pee Dee Health Care, P.A.

Estate of Hugh S. Thompson, III

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: James M. Griffin, Esq.	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: **Motion to Alter or Amend is DENIED. See Page 2.**

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

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MAY 14 AM 11:17
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CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, SC

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$ TRUE CERTIFIED COPY
		\$ <i>John B. Suggs</i>

If applicable, describe the property, including tax map information and address, referenced in the order.
CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, SC

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

James M. Griffin
Circuit Court Judge

2048
Judge Code

May, 2014
Date

For Clerk of Court Office Use Only

This judgment was entered on the 14 day of May, 20 14 and a copy mailed first class or placed in the appropriate attorney's box on this 14 day of May, 20 14 to attorneys of record or to parties (when appearing pro se) as follows:


ATTORNEY(S) FOR THE PLAINTIFF(S)

James M. Griffin, Esq.
Lewis, Babcock & Griffin, LLP
Post Office Box 11208
Columbia, South Carolina 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

J. Rene Josey, Esq.
Turner, Padgett, Graham & Laney, P.A.
Post Office Box 5478
Florence, South Carolina 29502

John J. James, II, Esq.
Paulling & James, LLP
112 Cashua Street
Post Office Box 507
Darlington, South Carolina 29540


CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

On April 15, 2014, following a hearing on March 27, 2014, the Court issued an Order granting sanctions under Rule 11, SCRPC against Plaintiff Pee Dee Health Care, P.A. ("PDHC"), prior counsel for Plaintiff, Tony R. Megna, Esq., the law firm of Matthews & Megna, LLC, and any successors or assignees of these persons or entities. Plaintiff, Mr. Megna, and Matthews & Megna, LLC have now made a motion to alter or amend the Court's Order pursuant to Rule 59(e), SCRPC. Since the issuance of the Order granting sanctions, the ruling judge, the Honorable J. Michael Baxley, has retired from the Circuit Court bench. Consequently, the Honorable Paul M. Burch, as Chief Administrative Judge for the Fourth Judicial Circuit, has undertaken review of this matter, and because the matter has been thoroughly litigated, the Court has determined to issue an Order without a hearing.

In their motion, the moving parties ask the Court to reverse its Order granting sanctions under Rule 11 for several reasons. First, the Defendant's motion for sanctions under Rule 11 was untimely and the Court lacked the jurisdiction to consider the motion. Second, due to defense counsel's prior representation of Plaintiff in a worker's compensation matter, continued representation of Defendant in the case at bar violates Rule 1.7 of the South Carolina Rules of Professional Conduct and the common law duty of loyalty, constituting inequitable conduct which should bar equitable relief such as Rule 11 sanctions here. Third, the Court should not have granted sanctions for the time spent by defense counsel in responding to Plaintiff's Motion for Reconsideration of this Court's Order disqualifying Mr. Megna under Rule 3.7 of the South Carolina Rules of Professional Conduct because Rule 3.7 allows an attorney who is likely to be a witness at trial to participate as an advocate in pre-trial matters. The moving parties note that the

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DARLINGTON COUNTY, SC

Court's Order disqualifying Mr. Megna affected a substantial right, requiring an immediate appeal and a motion to reconsider as a prerequisite to that appeal. Fourth, the Court erred in awarding \$9,070.00 for the time spent by defense counsel responding to Mr. Megna's inappropriate discovery requests to third parties because defense counsel failed to provide the Court with sufficient documentation to support thirty (30) hours of time spent in responding to such discovery requests. Fifth, the Court should reduce the amount awarded for the time spent by defense counsel in preparing and arguing the sanctions motion as well as submission of the post-hearing supplemental affidavit because Defendant did not prevail on all of the claims it pursued, specifically sanctions under the South Carolina Frivolous Civil Proceedings Sanctions Act. Lastly, Plaintiff's counsel claims the Court awarded an amount greater than that requested by defense counsel for the time spent in preparing and arguing the sanctions motion and the submission of the post-hearing supplemental affidavit.

After consideration of the above-mentioned arguments, the Court DENIES the moving parties' Motion to Alter or Amend pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure.

AND IT IS SO ORDERED.



Circuit Court Judge


2048

Judge Code

May 12, 2014

Date

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2014 MAY 14 AM 11:17
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