

IN THE UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JOHN A. KING;

Plaintiff,

v.

LANCE ROLLO, individually and in
his official capacity as Attorney at
Law;

Defendants.

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Case Number:

1:09cv15

FILED

JAN 28 2009

**U.S. DISTRICT COURT
CLARKSBURG, WV 26301**

COMPLAINT

Come now the Plaintiff, John A. King, and for his cause of action against the Defendants alleges as follows:

JURISDICTION AND VENUE

1. Defendant Lance Rollo et.al., is an attorney licensed to practiced in the State of West Virginia, and is a resident of Morgantown, West Virginia.
2. At all times during which the events are the basis of this lawsuit occurred, the Defendant was domiciled in or a resident of the State of West Virginia.
3. Plaintiff is a resident of Birmingham, Alabama.
4. This court has original jurisdiction in this case pursuant to 28 USC 1332, 2201, and 2202.
5. The amount in controversy exclusive of interest and costs exceeds \$75,000.00 dollars.
6. Venue is proper is in this judicial district pursuant 28 USC 1391(a) (1) because all Defendants are domiciled in, or reside in, this judicial district.

FACTS

1. Plaintiff is a licensed physician that worked in Putnam County, West Virginia in 2002-2003. The Plaintiff was the subject of an adverse peer review process with suspension of privileges on June 5, 2003. The Plaintiff relied on attorney Jim McQueen to be local counsel, along with attorney Robert Coleman to represent the Plaintiff in this adverse peer review proceeding occurring on July 2, 2003.

Attorneys Coleman and McQueen made discovery requests for full documentation of Plaintiff's file regarding the subject matter of this peer review proceeding to Gordon Copeland and Janice White of Steptoe & Johnson. It was later discovered in civil action 05-C-151 and civil action 05-C-5000 that the law firm of Steptoe & Johnson withheld peer review materials which was to be utilized in Plaintiff's defense at the adverse peer review hearing on July 2, 2003. The law firm of Offutt, Fischer, and Nord stated that disciplined physicians have a statutory right to access the contents of their peer review file. However this was denied by the law firm of Steptoe & Johnson and so was asserted as factual to the Court in Putnam County, West Virginia.

2. The Plaintiff fully understands that Putnam General Hospital by and through counsel of Steptoe & Johnson unilaterally made the decision to produce Plaintiff's privileging and credentialing file without his consent and Plaintiff never waived any protections afforded under West Virginia Code section 30-3(C)-3 with respect to his credential privileging file.
3. The law firm of Offutt, Fischer, and Nord affirmed to the court that the Plaintiff could not waive the peer review privilege with respect to materials to which he has not seen. Furthermore, Plaintiff has not seen the entire peer review file according to the law firm of Offutt, Fischer, and Nord which was utilized to defend Putnam General Hospital in various medical malpractice cases.
4. Certainly the court should view this as a fraudulent misrepresentation with regards to the legal behavior of Steptoe & Johnson.
5. It is important for the court to be mindful that on April 30, 2007 the National Practitioner Data Bank report revealed that the conclusion of the fair hearing related to the summary suspension of Plaintiff of June 5, 2003 was concluded. There was no finding of imminent danger to the health of any individual and the suspension of spinal clinical privileges was not substantiated. There was a further finding of lack of sufficient evidence to warrant any continued suspension of spinal privileges and therefore they have been reinstated to this physician (Plaintiff). At the conclusion of this hearing all privileges on June 5, 2003 have been returned and the suspension was lifted (See enclosed Exhibit A).
6. The legal debacle of the law firm of Steptoe & Johnson was transferred to the law firm of Offutt, Fischer, and Nord and LeClair Ryan with the failure to adhere to the federal statutes of the Healthcare Quality Improvement Act of 1986 in regards to the alleged fair hearing process of the Plaintiff. In fact Gordon Copeland in the letter dated September 19, 2003 to attorney Troy Giatras, stated that "First he is entitled to conclude the hearing on the summary suspension. The scheduled hearing is only on the summary suspension. No final determination can be made in this hearing on whether adverse action is necessary." Plaintiff had relied on the competence of the attorney Jim McQueen and Robert Coleman to ensure that the Plaintiff received all pertinent medical and radiological records for his defense of

the adverse peer review and that all studies such as discograms, MRIs, myelograms, CT scans, and EMG reports were sent and reviewed by the expert, Dr. Edgar Dawson, of Putnam General Hospital. Furthermore, Dr. Edgar Dawson admitted under oath that the Hospital did not send the complete records. It was then later revealed after careful concealment that Putnam General Hospital's expert, Dr. Edgar Dawson was dying of metastatic cancer.

7. Plaintiff had relied on attorneys Robert Coleman and Jim McQueen to have an immediate conclusion of the fair hearing process on July 2 with the immediate return of Plaintiff's privileges. However, the law firm of Steptoe & Johnson realizing the mental confusion and the inadequacy of records that have been provided to Dr. Edgar Dawson, requesting an immediate continuation of this alleged fair hearing process with a second opinion to be forthcoming.
8. Plaintiff requested through his counsels, Robert Coleman and Jim McQueen, an immediate injunction for the Court in Putnam County to intervene in the fair hearing process. Both attorneys, Coleman and McQueen, refused to seek court intervention.
9. Plaintiff then terminated the services of Jim McQueen and then sought counsel through the law firm of Giatras & Webb. Plaintiff paid the law firm of Giatras & Webb a retainer of \$18,000.00 in July and August, 2003 for aggressive representation and a successful conclusion of the peer review process. This law firm also failed to pursue an immediate injunction for the Court in Putnam County to intervene in this alleged fair hearing process. This law firm did produce a draft lawsuit to file against Putnam General Hospital and the Hospital Corporation of America; however, it was never filed.
10. To further validate the illegal peer review process Dr. Greg Kelly, Chief of Staff, Putnam General Hospital, stated under sworn testimony "that no one suggested to me that the suspension was based on sort of a health emergency" (See Exhibit B).
11. On May 7, 2004 Putnam General Hospital reported to the National Practitioner Data Bank the underlying investigation in this matter was not completed; however, the West Virginia Board of Osteopathic Medicine chose to revoke the license of Dr. John A. King, Plaintiff, based upon this adversarial peer review finding which was never completed until April 30, 2007 and based upon an incomplete peer review finding at Putnam General Hospital.

STATEMENT

12. West Virginia recognizes albeit on a limited basis, the right of a physician to have a decision by a hospital to revoke, suspend, restrict, refute, renew, and have his staff privileges reviewed by the Court. The claims which the Plaintiff relied upon the attorneys Coleman, McQueen, Giatras & Webb, and the law firm of Steptoe & Johnson should allow him access to the protections of the 14th Amendment to the

Federal Constitution and also state law claims which afford him the right to review Defendants' actions in suspending and revoking his staff privileges, the effect is the same.

13. Plaintiff had a right to fair and impartial treatment in a process to have all the requested materials provided in the defense of the fair hearing by the law firm of Steptoe & Johnson.
14. Putnam General Hospital along with the law firm of Steptoe & Johnson sought to avail themselves of the protections of the Federal Healthcare Quality Improvement act of 1986 while at the same time claiming they need not afford the Plaintiff any remote standards of due process that would have been just, fair, and impartial.
15. Plaintiff was entitled to judicial review and the determination of the adequacy and fairness of the entire process. This process was denied by attorneys Coleman, McQueen, Giatras & Webb, and Steptoe & Johnson.
16. The Supreme Court of Appeals of West Virginia revisited the issue with *Mahmoodian v. United Hospital Center, Inc.*, 404 S.E. 2d 750 (West Virginia 1991). In *Mahmoodian*, the court stated in syllabus number 1, "the decision of a private office to revoke, suspend, restrict, or refuse to renew the staff appoint or clinical privileges of a medical staff member is subject to limited judicial review to ensure there was substantial compliance with the Hospital's medical staff by-laws covering such a decision, as well as to ensure the medical staff by-laws afford basic notice and fair hearing procedures including an impartial tribunal" 404 S.E. 2d at 751.
17. The 4th Circuit held in *Mahmoodian*, supra. that "a physician is entitled to have an adverse action taken by a hospital regarding his staff privileges undergo judicial scrutiny to determine whether there were arbitrary, unreasonable, or capricious". The court equates the standards to the due process requirements found in the Federal and West Virginia State Constitutions. These due process rights were aborted by attorneys Coleman, McQueen, Giatras & Webb, and the law firm of Steptoe & Johnson with attorney Lance E. Rollo (Defendant) also failing to fully litigate and prosecute the claims of the legal malpractice claims filed against attorneys McQueen, Giatras & Webb, and the law firm of Steptoe & Johnson.
18. Putnam General Hospital through the counsel of Steptoe & Johnson was bound by the fair hearing procedure provisions contained in the medical staff by-laws rather than the fraudulent concealment of any and all materials that would have aided Plaintiff's defense in the fair hearing process and should have been provided to Dr. Edgar Dawson. Defendants failed to litigate this entire process against the law firm of Steptoe & Johnson.

19. Plaintiff, Dr. King, should have been entitled to an opportunity to prove the facts as alleged by him with regards to violations of the standards of the Healthcare Quality Improvement Act in a determination based upon those facts in a competent court of law and whether he could recover damages from the participants in the process.
20. Contrary to the assertions of the law firm of Steptoe & Johnson, the West Virginia peer review organization protection statute did not provide Putnam General Hospital nor the law firm of Steptoe & Johnson with immunity from Plaintiff's claims if they did not act in good faith. Plaintiff was and is entitled to have an opportunity to establish the law firm of Steptoe & Johnson, Giatras & Webb, and attorneys Coleman and McQueen and now attorney Lance E. Rollo (Defendant), did not act in good for faith for a competent court to rule on these issues after a full airing and maturity of the facts.
21. Plaintiff, John A. King, employed the Defendant, attorney Lance E. Rollo, in the spring of 2006. Defendant Rollo filed Notices of Appearances on April 19, 2006 in civil action number 2:06-121; civil action number 2:06-122; and civil action number 2:06-123 involving the law firms of McQueen & Murphy, law firms of Steptoe & Johnson, and law firm of Giatras & Webb. Defendant Rollo also filed a Notice of Appearance on April 19, 2006 regarding the law firm of McQueen & Murphy affirming to the court that Defendant Rollo "shall serve as local counsel for the aforementioned Plaintiff and all correspondence, communication, pleadings, notices, motions, and other related documents of the Plaintiff should be delivered or electronically transmitted along with the all the other parties directly to the undersigned counsel". On April 20, 2006 Defendant Rollo entered a Nunc Pro Tunc Order which is signed by Judge Copenhaver on April 20, 2006 (See Exhibits for the appropriate documentation).
22. Defendant Rollo was paid by Plaintiff for the legal services for Plaintiff King to fully litigate all the above mentioned cases and to act as local counsel for Attorney Richard G. Poff.
23. The cases in which Defendant Rollo agreed to represent Plaintiff and agree to file suit on behalf of the Plaintiff are: *King v. McQueen & Murphy, et al.*, United States District Court in Southern District of West Virginia; *King v. Giatras & Webb, et al.*, United States District Court in Southern District of West Virginia; *King v. Steptoe & Johnson, et al.*, United States District Court of the Southern District of West Virginia; *King v. Hospital Corporation of America, et al.*, civil action number 2:06-0341 (under seal) United States District Court of the Southern District of West Virginia.
24. The Plaintiff asserts that he complied with all the requests of the Defendant Rollo by meeting with him, by discussing the facts of each case and answering all questions Defendant Rollo asked and cooperating with the prosecution of each case and claim in every way, including but not limited to discussing the requests

for production, by providing him with all the documents in his possession, by discussing with him the interrogatories and as answers to the extent said interrogatories were disclosed by Defendant Rollo. Additionally, Plaintiff relied upon Defendant Rollo to meet deadlines and statutes of limitations, to answer questions of a legal nature normally handled by attorneys, and to type and draft the answers for Plaintiff based upon the information and answers Plaintiff provided to Defendant Rollo before any adverse action was taken against the Plaintiff.

25. Defendant Rollo failed to prosecute the above referenced claims, failed to provide disclosures pursuant to Rule 26(a) (1) of the FRCP on or before September 15, 2006 regarding civil action number 2:06-0123.
26. Defendant Rollo failed to exchange pre-discovery disclosures pursuant to Rule 26(a) (1) of the Federal Rules of Civil Procedure by September 29, 2006 regarding civil action number 2:06-0123.
27. Defendant Rollo failed to provide reports from retained experts due in accordance with Rule 26(a) (2) of FRCP by the deadline date of February 2, 2007 regarding civil action number 2:06-0123.
28. Defendant Rollo failed to comply with Judge Copenhaver's Order dated July 12, 2006 to make Rule 26(a)(1) disclosures on September 14, 2006 regarding civil action number 2:06-0123.
29. Defendant Rollo failed to communicate with Attorney Richard G. Poff regarding a letter dated July 28, 2006 when the U.S. Department of Justice's Special Prosecutor requested a copy of the letter Statement of Material Evidence to Attorney Poff stated to having filed with the Court. According to the Special Prosecutor assigned to the sealed complaint with the Department of Justice this Statement of Material Evidence was never served on the Attorney General. Contrary to the normal professional behavior of most attorneys, Defendant Rollo never prepared, draft answers to interrogatories, or provided disclosures to the court and clearly failed to meet deadlines.
30. With regards to each and every case and claim in which Defendant Rollo agreed to represent and/or undertook to represent Plaintiff King, Defendant Rollo owed Plaintiff King the duty to meet the standard of care, skill, and diligence of other similarly situated legal providers in the same general line of practice in the same general area ordinarily have and exercise in a like cases.
31. Defendant Rollo breached said duty and failed by his acts and/or omissions to exercise that level of reasonable care, skill, diligence, as other similarly situated legal service providers in the same general line of practice in the same general area ordinarily have and exercise in a like cases.

32. Facing a mountain of adverse publicity produced by the trial lawyers for their own economic advantage and gain, the media, and the fraudulent activities of the law firm of Steptoe & Johnson, the failure of Defendant Rollo to litigate the above mentioned claims, Plaintiff had no other choice but to pursue bankruptcy in November 2007. Trustee Thomas Reynolds provided the United States District Court in the Southern District of Alabama Northeastern Division his Second Notice of Intent to Abandon the asset of Defendant Rollo in a legal malpractice claim. Trustee Thomas Reynolds deems the cause of action abandoned and no longer property of the Bankruptcy Estate subject to further administration.
33. In case number 2:06-0123 Defendant Rollo failed to provide the pre-discovery disclosures under Rule 26(a) (1) of the FRCP by September 29, 2006 (See Exhibit C attached hereto). Defendant Rollo failed to provide reports from retained experts due in accordance to Rule 26(a) (2) of FRCP by February 2, 2007 regarding case number 2:06-0123.
34. Defendant Rollo from January 17, 2007 was provided a letter by Attorney Nathaniel Tawney requesting the Rule 26(a) (1) disclosures which were due January 5, 2007 pursuant to Court's Order of December 22, 2006. Attorney Toney further stated in this letter dated January 17, 2007 "that if I do not hear from you by the end of this week I will seek appropriate relief from the court".
35. Defendant Rollo failed to produce Rule 26(a) (1) disclosures on or before September 15, 2006 regarding civil action 2:06-0123.
36. Attorney Nathaniel Tawney produced a Motion to Compel Rule 26(a) (1) disclosures to Defendant Rollo pursuant to the requirement of Rule 37 of the FRCP in an attempt to resolve the discovery dispute without success; however Attorney Toney further requested for relief that his clients be awarded costs incurred in prosecuting this motion and such other and further relief as the Court may deem appropriate. Defendant Rollo failed to comply with Judge Copenhaver's Order dated July 12, 2006 to make Rule 26(a) (1) disclosures by September 14, 2006 regarding civil action number 2:06-0123.
37. Defendant Rollo on February 16, 2007 (without the written consent or permission of the Plaintiff) filed a Motion to Dismiss civil action number 2:06-0123.
38. Judge Mary Stanley on January 23, 2007 produced an Order related to case number 2:06-CV-00121; 2:06-CV-00122; 2:06-CV-00123, pursuant to Attorney Richard G. Poff's Motion to Withdraw from counsel for Plaintiff. Judge Stanley further cited the court's local rule of civil procedure 83.4 providing "no attorney who has entered an appearance in any civil action shall withdraw the appearance or have it stricken from the record except by order". Judge Stanley ordered on January 23, 2007 that "Plaintiff, Attorney Richard G. Poff, and Defendant Rollo shall appear in person on Tuesday, February 20, 2007 at 3:00 p.m. A failure to

appear may result and imposition of sanctions in any or all of the cases including the sanction of dismissal with prejudice”.

39. On January 30, 2007 Judge Copenhaver produced an Order regarding the *King v. McQueen & Murphy* case civil action 2:06-0121 that with the memorandum opinion adopting the magistrate judge’s proposed findings and recommendation that this civil action be dismissed and stricken from the docket. Indeed, Defendant Rollo had failed to litigate any portion of this case.
40. On February 21, 2007 Judge Stanley dismissed case number 2:06-CV-00122 involving *King v. Steptoe & Johnson*, that the case be dismissed with prejudice.

COUNT I – NEGLIGENCE/LEGAL MALPRACTICE

1. Plaintiff incorporates by reference all paragraphs above as if fully set forth herein.
2. Plaintiff alleges that an attorney-client relationship existed between the Plaintiff and the Defendant because he had hired the Defendant to represent him in these matters, had filed suit, had failed to exercise any reasonable level of care, skill, or diligence as other similarly situated legal service providers in the same general line and the same general area ordinarily have and exercise in like cases.
3. Plaintiff alleges that Defendant Rollo was negligent and incompetent in his representation of the Plaintiff as an attorney and has failed to practice within the established standards of care, skill, and diligence required by the State Bar of West Virginia, failing to comply with the required Federal Rules of Civil Procedure.
4. As a direct and proximate cause of the negligence and incompetence of Defendant Rollo, Plaintiff alleges that he was financially harmed and that he lost monies that would have been awarded to him as the result of the successful prosecution regarding the cases against *McQueen & Murphy*, *Giatras & Webb*, and *Steptoe & Johnson*, including the sealed false claims case would have been awarded to the Plaintiff as a result of successful prosecution.

COUNT II – BREACH OF CONTRACT

1. Plaintiff incorporates by reference all paragraphs above as if fully set forth herein.
2. Plaintiff alleges that a contract exists between the Plaintiff and the Defendant because Plaintiff hired Defendant to represent Plaintiff in the above stated claims. At all times Defendant Rollo indicated to Plaintiff the cases were proceeding and never indicating otherwise to him.

3. Plaintiff alleges Defendant Rollo failed to represent him in these cases and perform the necessary duties to provide a successful conclusion.
4. As a direct and proximate result of the breaches of contract by Defendant Rollo Plaintiff alleges that he was financially harmed and that he lost monies that would have been awarded to him as the result of the successful prosecution regarding the cases against *McQueen & Murphy*, *Giatras & Webb*, and *Steptoe & Johnson*, including the sealed false claims case would have been awarded to the Plaintiff as a result of successful prosecution.
5. Defendant Rollo failed to keep the Plaintiff informed, failed to timely respond to discovery or undertake discovery on behalf of the Plaintiff.
6. With regard to each and every case and claim in which Defendant Rollo agreed to represent and/or undertook to represent Plaintiff, Defendant Rollo owed Plaintiff the duty to meet the standard of care, skill, and diligence as other similarly situated legal services providers in the same general line of practice and the same general area ordinarily have and exercise in like cases.
7. Defendant Rollo breached said duty and failed by his acts and/or omissions to exercise the level of care, skill, or diligence as other similarly situated legal services providers in the same general line of practice and the same general area ordinarily have and exercise in like cases.

DAMAGES

1. Plaintiff incorporates by reference all paragraphs above as if fully set forth herein.
2. Plaintiff alleges he suffered monetary damages as direct and proximate result of the negligence, malpractice, and breach of contract of Defendant Rollo of the direct and proximate result of the breaches of the contract with him.
3. Plaintiff estimates that based on the information with loss of career and earning potential his direct and proximate cause of the failure to litigate the above referenced claims to be \$25,000,000.00 (Twenty Five million dollars).
4. At the trial of this cause the Plaintiff will present evidence to prove with specificity the amount of losses that Plaintiff suffered.

Therefore, Plaintiff prays as follows:

1. The Plaintiff be awarded a judgment for compensatory damages against Defendant Rollo in the amount of \$25,000,000.00 (Twenty-Five Million Dollars) along with \$25,000,000.00 (Twenty-Five Million Dollars) in punitive damages along with costs of court, attorney fees, interest, pre-judgment interest as allowed by law and any and further such other relief to which Plaintiff may be entitled.

2. That a jury try the issues of this case when joined.
3. That the Plaintiff have such, further, and general relief as he may be entitled to received.

Respectfully submitted on this the 26th day of January, 2009



John A. King, Plaintiff – pro se
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