

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

TIFFANY R. LEWIS, Individually and)
as The Parent and Guardian of TYRA)
CURTIS, a minor,)
)
Plaintiffs,) C.A. No. N13C-10-175 RRC
)
v.)
)
DIANE McCracken, M.D.,)
ALL ABOUT WOMEN OF)
CHRISTIANA CARE, INC.)
)
Defendants.)

Submitted: February 19, 2018
Decided: March 7, 2018

On Plaintiffs' Motion for Sanctions. **DENIED.**

ORDER

Ben T. Castle, Esquire and Bruce L. Hudson, Esquire, Hudson & Castle Law, LLC,
Wilmington, Delaware, Attorneys for Plaintiffs.

Gregory S. McKee, Esquire, Wharton Levin Ehrmantraut & Klein, P.A.,
Wilmington, Delaware, Attorney for Defendants.

David Batten, Esquire, Batten Lee PLLC, Raleigh, North Carolina, Attorney *pro hac*
vice for Defendants.

COOCH, R.J.

This 7th day of March 2018, upon consideration of Plaintiffs' Motion
for Sanctions, it appears to the Court that:

1. Plaintiffs filed a Motion for Sanctions against counsel for Defendants, Gregory S. McKee, “pursuant to Superior Court Civil Rule 11(c) and the Court’s inherent power to police proceedings.”¹ The Court ruled from the bench on February 19, 2018 at the conclusion of oral argument that Plaintiffs’ Motion for Sanctions was denied and that a written order would follow.
2. Mr. McKee had requested in his response to the motion “that the Court issue an Order/Opinion that reflects that the statements at issue had support in the evidentiary record”² For all of the reasons stated on the record at oral argument, this Court finds that Mr. McKee’s representations to the Court and counsel at the October 31, 2017 sidebar conferences at issue in this Motion for Sanctions in the underlying medical negligence trial were supported by the evidentiary record. Sanctions are not warranted pursuant to this Court’s “power to police proceedings.”
3. Additionally, and as noted by the Court at oral argument, Rule 11(b) of the Superior Court Rules of Civil Procedure pertains to an attorney’s written representations to the Court.³ “Rule 11 is not designed to reach all measures of attorney misconduct. Rather it applies only to the conduct surrounding the duty of a person presenting to the court a pleading, motion or other paper and certifying that the paper complies with the standards of Rule 11.”⁴ Attorney conduct, *per se*, is not within the purview of Rule 11.⁵ The disputed representations at certain sidebar conferences during the trial did not involve Mr. McKee’s “advocating[] a

¹ Pl.s’ Mot. for Sanctions at 1 (citing *Speidel v. St. Francis Hosp., Inc.*, 2003 WL 21524694, at *5 (Del. Super. Ct. July 3, 2003).

² Def.s’ Resp. to Pl.s’ Mot. for Sanctions at 16.

³ Del. Super. Ct. Civ. R. 11(b).

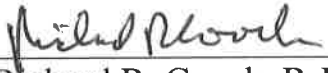
⁴ § 4.02 APPLICABILITY TO ATTORNEY CONDUCT, Rule 11 Sanctions § 4.02 (American Bar Association 2004) (applying Federal Rules of Civil Procedure); *see also* Lawrence S. Drexler, *News from the Front Rule 11: Another Look*, DEL. LAW., Dec. 1993, at 4, 6 (“[T]he rule continues to require a writing”); 3 Barron & Holtzoff, *Federal Practice and Procedure* § 1331, 433 (C. Wright ed. 1958) (“The rule applies only to assertions contained in papers filed with or submitted to the court. It does not cover matters arising for the first time during oral presentations to the court”).

⁵ § 4.02 APPLICABILITY TO ATTORNEY CONDUCT, Rule 11 Sanctions § 4.02 (American Bar Association 2004).

pleading, written motion, or other paper”⁶ Plaintiffs’ counsel have not maintained otherwise. As such, representations made to the Court during a sidebar conference are not sanctionable conduct pursuant to Superior Court Civil Rule 11(c). Plaintiffs’ Motion for Sanctions should not have been brought alternatively pursuant to Superior Court Civil Rule 11(c) as that rule provides no theoretical basis for relief for Plaintiffs.

Plaintiffs’ Motion for Sanctions is **DENIED**.

IT IS SO ORDERED.


Richard R. Cooch, R.J.

cc: Prothonotary

⁶ Del. Super. Ct. Civ. R. 11(b).