

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO.: 3:11-CV-617-FDW-DSC**

MARY B. RUDOLPH, et. al.,)
)
Plaintiffs,)
)
v.)
)
BEACON INDEPENDENT LIVING, LLC, et. al.,)
)
Defendants.)
)
)

MEMORANDUM AND ORDER

THIS MATTER is before the Court on “Defendants Bruce Bleiman and Beacon Independent Living, LLC’s Motion for Sanctions Pursuant to Rule 37 of the Federal Rules of Civil Procedure Against Frank McCollum and Counsel for Plaintiff Mary Rudolph” (doc. 127) filed on July 11, 2012 and the parties’ associated briefs and exhibits. See docs. 127-1, 127-2, 129, 130, 152, 153, 154, and 161.

This Motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b)(1), and is now ripe for the Court’s consideration.

The Court notes that this Motion was filed on the heels of Plaintiff’s “Motion for Contempt of Court” filed on July 10, 2012 seeking that Defendants Bruce L. Bleiman and Beacon Independent Living, LLC be held in contempt of court for failing to comply with the Court’s Order dated June 14, 2012. The Court presently views this litigation as having degenerated into a steady barrage of accusations of misconduct and unethical behavior resulting in a race to the courthouse to seek Court intervention and sanctions. The Court admonishes the parties and their counsel to proceed in a calmer and more deliberate manner as this case goes forward.

After carefully considering the record, the applicable authority and the parties' arguments, the Court will grant in part and deny in part Defendants' Motion. Pursuant to the May 24, 2012 subpoena to non-party Frank McCollum, he is ordered to produce the original August 2011 version of the "Timeline" which he created with his former counsel, William Terpening. The Court finds that the attorney-client privilege covering this document was waived when McCollum discussed the document and its contents with Plaintiff's counsel, Adam Horner, during settlement negotiations. With regard to Defendants' requests for sanctions and payment of attorney's fees, the Court will deny the Motion.

NOW THEREFORE, IT IS ORDERED:

1. "Defendants Bruce Bleiman and Beacon Independent Living, LLC's Motion for Sanctions Pursuant to Rule 37 of the Federal Rules of Civil Procedure Against Frank McCollum and Counsel for Plaintiff Mary Rudolph" (doc. 127) is GRANTED IN PART AND DENIED IN PART. That is, non-party Frank McCollum is ordered to produce the original August 2011 version of the "Timeline" which he created with his former counsel, William Terpening to Defendants by August 6, 2012. All other relief requested in the Motion is DENIED.

2. The Clerk is directed to send copies of this Memorandum and Order to counsel for the parties; and to the Honorable Frank D. Whitney.

SO ORDERED.

Signed: August 1, 2012



David S. Cayer
United States Magistrate Judge 