

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NEWPORT NEWS

ANDRE L. GIBBONS, JR., AN INFANT, ET AL., Plaintiffs,

v.

NO. CL10-2326T-01
JURY TRIAL DEMANDED

RIVERSIDE MEDICAL GROUP, ET AL., Defendants.

**PLAINTIFFS' MOTION FOR RECONSIDERATION AND TO AMEND
RE DISMISSAL OF DEFENDANT, RIVERSIDE MEDICAL GROUP**

COMES NOW Plaintiffs again pursuant to *Va. Code* §8.01-6 and move to amend and substitute "Riverside Physician Services, Inc." for "Riverside Medical Group" re the Summons timely served on it through the Registered Agent of "Riverside Physician Services, Inc.," based on the following:

1. In pleadings and at hearing, Defendants admitted that "Riverside Medical Group" is the fictitious name of "Riverside Physician Services, Inc.," and that the Summons naming the former was served timely through the Registered Agent for the latter.
2. Yet defense counsel demanded that Riverside Medical Group was entitled to be dismissed with prejudice, variously belittling Plaintiffs' filings as "legal vomit," "nonsense," etc.
3. Plaintiffs had briefed and argued *inter alia* that they were entitled to amend under §8.01-6, and that it was legally inconsistent to dismiss Riverside Medical Group with prejudice while the identical entity, Riverside Physician Services, Inc., remained a Defendant.
4. Plaintiffs reurge the same positions – this time with two (2) decisions adverse to the defense in which Hancock Daniels Johnson & Nagle was defense counsel:
 - A. Hancock Daniel Johnson & Nagle was defense counsel in *McCarty v. Allen*, No. CL-09-12407 in Fairfax County Circuit Court, a medical malpractice case; and
 - B. Hancock Daniel Johnson & Nagle – by Richard Nagle and Heather Zaug (defense counsel at bar) – are defense counsel in *Nikes v. Abidin*, No. CL-2013-13799 in Fairfax County Circuit Court, a medical malpractice case.
5. On January 7, 2011, *McCarty* held in favor of amendment and substitution under §8.01-6. See, e.g., Exhibit A, 1/7/11 *McCarty* Transcript.
6. Ms. Zaug, Mr. Nagle, and Hancock Daniel Johnson & Nagle did not disclose the adverse decision in *McCarty* to this Court in brief or at hearing (while demeaning Plaintiffs and their counsel) and procured dismissal of Riverside Medical Group.

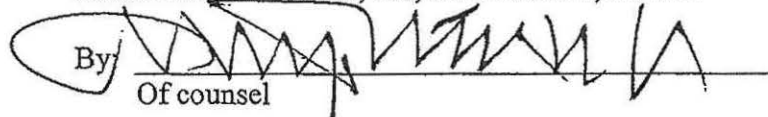
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7. Ms. Zaug, Mr. Nagle, and Hancock Daniel Johnson & Nagle also did not disclose their adverse decision in *McCarty* to the Court in *Nikes* at hearing on February 21, 2014, and thereby also procured another dismissal. *See, e.g.,* Exhibit B, 3/4/14 *Nikes* Plaintiff's Supplemental Brief in Opposition of Defendant's Motion to Dismiss Due to Misnomer.
8. On March 14, 2014, however, Judge Kassabian in *Nikes* granted Plaintiff's Motion to Reconsider, overruled Defendant's Plea in Bar, directed vacation his prior Order to the contrary, and castigated Mr. Nagle, Ms. Zaug, and Hancock Daniel Johnson & Nagle that "this Judge would have expected [defense] counsel to at least acknowledge during oral argument that this Court ruled contrary to its present position at a previous hearing, where it was a party, involving this identical issue." *See, e.g.,* Exhibit C, 3/14/14 *Nikes* Letter Opinion (emphasis added).
9. Nonetheless, Mr. Nagle, Ms. Zaug, and Hancock, Daniel, Johnson & Nagle still do not disclose *McCarty* and *Nikes* to this Court; indeed, instead they serve and file Motion for Entry of an Order by Special Appearance, dismissing Riverside Medical Group.
10. Plaintiffs oppose that Motion for Entry of an Order by Special Appearance because Riverside Medical Group should be substituted, not dismissed with prejudice as the defense Order provides.¹
11. Plaintiffs are entitled to, and justice is served by, amendment and substitution: dismissal with prejudice of Riverside Medical Group would be bad precedent.

WHEREFORE Plaintiffs pray the Court grant the Motion forthwith, vacating its prior ruling re dismissal with prejudice of Riverside Medical Group, and ordering the amendment and substitution of Riverside Medical Group by Riverside Physician Services, Inc. forthwith.

Respectfully submitted,

ANDRE L. GIBBONS, JR., AN INFANT, ET AL.

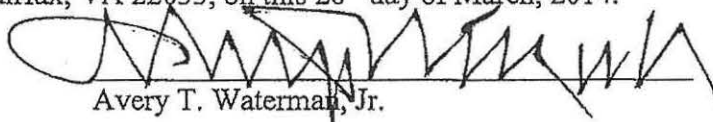
By  _____
Of counsel

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¹ Plaintiffs do not seek substitution re Riverside OB/GYN Center and Riverside OB/GYN and Family Care now: they are not the fictitious names of record of Defendant, Riverside Hospital, Inc. (though it is ironic and inequitable that Riverside can avoid amendment and substitution by using fictitious names without registering them properly).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Plaintiff's Motion for Reconsideration and to Amend re Dismissal of Defendant, Riverside Medical Group was mailed to Richard L. Nagle, Esq./Heather E. Zaug, Esq., Hancock, Daniel, Johnson & Nagle, P.C., 3975 Fair Ridge Drive, Suite 475 South, Fairfax, VA 22033, on this 28th day of March, 2014.



Avery T. Waterman, Jr.