

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08 CVS 007955

HOPE-A WOMEN'S CANCER CENTER, P.A.,)
and RALEIGH ORTHOPAEDIC)
CLINIC, P.A.)

Plaintiffs)

v.)

MOTION TO DISQUALIFY

STATE OF NORTH CAROLINA; MICHAEL F.)
EASLEY, Governor of the State of North)
Carolina, in his official capacity; NORTH)
CAROLINA DEPARTMENT OF HEALTH)
AND HUMAN SERVICES; DEMPSEY E.)
BENTON, Secretary of the North Carolina)
Department of Health and Human Services, in)
his official capacity; DAN A. MYERS, M.D.,)
Chairman of the North Carolina State Health)
Coordinating Council, in his official capacity;)
JEFF HORTON, Acting Director, Division of)
Health Service Regulation, North Carolina)
Department of Health and Human Services, in)
his official capacity; and LEE B. HOFFMAN,)
Chief of the Certificate of Need Section, Division)
of Health Service Regulation, North Carolina)
Department of Health and Human Services, in)
her official capacity,)

Defendants.)

NOW COME Defendants, through counsel, and move to disqualify the North Carolina Institute for Constitutional Law (hereafter "the Institute") from appearing as counsel of record for Plaintiffs in this action and show unto the Court as follows:

1. Plaintiffs Hope-A Women's Cancer Center, P.A. and Raleigh Orthopaedic Clinic, P.A. (collectively "Plaintiffs") filed this action challenging several aspects of the manner in which the State Medical Facilities Plan is issued pursuant to North Carolina's Certificate of Need laws;

2. Plaintiffs are both for-profit medical providers;
3. Plaintiffs' Complaint, filed on 6 May, 2008, listed the law firm of Nelson Mullins Riley & Scarborough, LLP, as counsel of record on their behalf;
4. On 14 November, 2008, a notice of appearance was filed in which the Institute purported to also make an appearance as counsel of record for Plaintiffs;
5. The Institute is registered under North Carolina law as a non-profit corporation;
6. N.C. GEN. STAT. § 84-5 prohibits the practice of law by corporations in this State;
7. The only statutory exception to N.C. GEN. STAT. § 84-5 is contained in N.C. GEN. STAT. § 84-5.1 which permits nonprofit corporations organized pursuant to Chapter 55A, for the exclusive purpose of providing indigent legal services, to render such services;
8. The exception contained in N.C. GEN. STAT. § 84-5.1 does not apply in the present case because (a) the Institute is not organized for the sole purpose of rendering indigent legal services; and (b) the Plaintiffs in this action are for-profit entities that have previously retained private counsel in this action; and
9. Accordingly, the Institute is not permitted under North Carolina law to represent Plaintiffs in this action.

WHEREFORE, Defendants respectfully request that the Court issue an order disqualifying the Institute from representing Plaintiffs in this lawsuit.

Respectfully submitted, this the 18th day of December, 2008.

ROY COOPER
Attorney General



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **MOTION TO DISQUALIFY** was this day served upon the following by electronic transmission and by depositing a copy of same in the United States Mail, first-class postage prepaid, and addressed as follows:


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COUNSEL FOR PLAINTIFFS

This the 18th day of December, 2008.


Mark A. Davis
Special Deputy Attorney General