

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL ACTION NO. 5:15-cv-00229-BO

COUNTY OF YADKIN,

Plaintiff,

v.

CAH ACQUISITION COMPANY 10 LLC,
HMC/CAH CONSOLIDATED, INC., and
RURAL COMMUNITY HOSPITALS OF
AMERICA LLC,

Defendants.

**PLAINTIFF'S RESPONSE
OPPOSING DEFENDANTS'
MOTION FOR STATUS
CONFERENCE AND TO CONTINUE
HEARING**

Plaintiff files this Response pursuant to Local Civil Rule 7.1(e) and vigorously opposes Defendants' Motion for Status Conference and to Continue Hearing [DE- 21] date of June 16, 2015 set by the Court on June 5, 2015 [DE-14]. This hearing needs to proceed as scheduled because Defendants' continued actions are adversely impacting patient care in Yadkin County.

Plaintiff notes that it was never contacted by opposing counsel as required under Local Rule EDNC 6.1 before Defendant filed its current motion.

In support of this Response opposing Defendants' Motion for Status Conference and to Continue Hearing, Plaintiff submits the related Memorandum.

Since Defendants' Motion for Status Conference and to Continue Hearing was filed by Alexander S. Barrett on behalf of all Defendants, Plaintiff has updated its Certificate of Service to reflect service on all Defendants through their attorney of record, Alexander S. Barrett.

Respectfully submitted this the 11th day of June, 2015.

/s/ Stephen W. Petersen

Stephen W. Petersen
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Attorneys for Plaintiff County of Yadkin

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **PLAINTIFF'S RESPONSE**
OPPOSING DEFENDANTS' MOTION TO CONTINUE HEARING was filed with the with
the Clerk of Court using the CM/ECF system which will send notice of such filing to:

J. Alexander S. Barrett
abarrett@hagandavis.com
HAGAN DAVIS MANGUM BARRETT & LANGLEY, PLLC
300 N. Greene Street, Suite 200
Greensboro, North Carolina 27401

This the 11th day of June, 2015.

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Defendants.

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S RESPONSE
OPPOSING DEFENDANTS'
MOTION FOR STATUS
CONFERENCE AND TO CONTINUE
HEARING**

In support of its Response Opposing Defendants' Motion to Continue Hearing, Plaintiff offers this Memorandum and respectfully shows:

BACKGROUND FACTS AND PROCEDURAL POSTURE

1. On May 22, 2015, the Friday before Memorial Day weekend, Plaintiff received information that Defendants were planning to shut down Yadkin County Hospital the next day.
2. On May 22, 2015, Plaintiff instituted a civil action in Wake County Superior Court under NC Rule of Civil Procedure Rule 3 and obtained a TRO from Judge Donald Stephens. The TRO ordered the hospital should not be shut down and that a hearing for Plaintiff's Motion for Preliminary Injunction would be heard on June 1, 2015.
3. Plaintiff's forwarded a copy of the TRO to counsel for Defendants at 5:59 p.m. on May 22, 2015.
4. Between 5:59 p.m. and 6:04 p.m. Defendants began to shut down the Hospital

5. On May 29, 2015, the Friday before the Preliminary Injunction hearing on Monday, June 1, 2015, Defendants removed the case to Federal Court. [DE-1].

6. Plaintiff's filed their Motion for Show Cause on the morning of Monday, June 1, 2015. [DE-7]

7. The Court issued a Notice of Hearing on June 5, 2015 setting the hearing date for Tuesday, June 16, 2015. [DE-14].

8. Late in the afternoon on Wednesday, June 10, 2015, Defendants filed the Motion for Status Conference and to Continue Hearing. [DE-21].

ARGUMENT

Defendants Motion is yet another attempt to delay this matter. Further delay in resolving Defendants' unilateral closure of the hospital in Yadkin County is adversely impacting health care of the public in Yadkin County. *See* Press story attached as Exhibit 1.

1. Defendants Motion does not Comply with Rule 6.1

Defendants' Motion does not, and cannot, show prior consultation with opposing counsel and the views of opposing counsel. That is because such consultation did not occur.

Defendants were not limited by time constraints. As they note in their Motion, on June 8, 2015, they began attempts to reach the Court's docketing clerk to inquire about scheduling matters. [¶ 8, DE-21]. However, they never made any attempt to contact opposing counsel either orally or in writing.

2. The Hearing Does Not Need to be Delayed

Defendants argue that the hearing scheduled for June 16, 2015 needs to be delayed because LR EDNC 7.1(e)(1) indicates their response to Plaintiff's Motion is due on June 22, 2015.

However, Rule 7.1(e)(1) states that responses shall be filed within 21 days, “unless otherwise ordered by the court.” The court “otherwise ordered” a shorter time when it entered its Notice of Hearing on June 5, 2015. [DE-14]. This schedule gave Defendants over 10 days to prepare their Response.

That is entirely adequate time under the circumstances that exists in this case at this time where patient care in Yadkin County is being adversely impacted by Defendants continued breach of their contract and provisions of state law. If the Court determines that the Show Cause proceeding should go forward, Defendants will have additional time to brief this matter.

3. The Rules address Conflicts between State and Federal Court Hearings

Defendants argue the hearing needs to be delayed because they had motions that were previously scheduled in Guilford County Court. This argument fails for at least two reasons.

First, the Rules address scheduling conflicts between federal and state cases. The Guidelines adopted by the State-Federal Judicial Council of North Carolina on June 20, 1985 state, in part:

IN ORDER TO PROVIDE A UNIFORM STANDARD FOR THE
RESOLUTION OF SCHEDULING CONFLICTS BETWEEN AND AMONG THE
STATE AND FEDERAL TRIAL AND APPELLATE COURTS OF NORTH
CAROLINA THE FOLLOWING GUIDELINES ARE HEREBY ESTABLISHED:

1. It shall be the duty of counsel, other than solo practitioners, to have another member of the firm reasonably well acquainted with the case to the end that, where practicable, substitution of counsel may be made in order to avoid conflict.

...

4. It shall be the duty of any attorney promptly upon learning of a scheduling conflict to give written notice to opposing counsel, the clerk of all courts and the presiding judges, if known, in all cases, stating therein the circumstances relevant to a resolution of the conflict under these guidelines.

5. The judges of the courts involved in a scheduling conflict shall promptly confer, resolve the conflict, and notify counsel of the resolution.

Defendants have not complied with these rules. Defendants are the parties that removed the matter to Federal Court. Therefore, they are the cause of any scheduling conflict that might exist. Being knowledgeable of how to remove a matter to federal court, Defendants should also be familiar with the rules regarding how to resolve scheduling conflicts between the courts. Until Plaintiff received Defendants Motion to Continue the Hearing, they had not received anything in writing (or orally) from Defendants regarding any scheduling conflict.

Second, dispositive motions in state court are typically handled through a calendar call system at the beginning of the week during which the hearings are set for the remainder of the week. Assuming this is a typical state court situation, Defendants' hearings in Guilford County can be heard some other day during the week that begins on June 15th.

4. **Status Conference should not be used to Delay this Hearing**

The Defendants' operating procedure so far in this case is to wait until the last minute and then conduct some procedural gamesmanship to further delay this matter. A status conference is not needed at this time. The Court's Notice of Hearing is clear as to what should happen next. Beyond the hearing on contempt, a status hearing is premature in that Defendants have not yet answered the complaint.

CONCLUSION

For these reasons, Plaintiff opposes Defendants current motion.

Respectfully submitted this the 11th day of June, 2015.

/s/ Stephen W. Petersen

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The undersigned hereby certifies that the foregoing **MEMORANDUM IN SUPPORT OF PLAINTIFF'S RESPONSE OPPOSING DEFENDANTS' MOTION FOR STATUS CONFERENCE AND TO CONTINUE HEARING** was filed with the clerk using the CM/ECF system which will send notice of such filing to:

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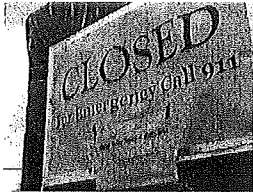
**EXHIBIT 1 TO
MEMORANDUM IN SUPPORT OF
PLAINTIFF'S RESPONSE
OPPOSING DEFENDANTS'
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HEARING**

PRESS STORY DATED JUNE 9, 2015



Patients Struggling After Yadkin Hospital Closure

8:12 p.m. EDT June 9, 2015



(Photo: WFMY News 2)

YADKINVILLE, N.C. -- It's been more than two weeks since [Yadkin Valley Community Hospital closed](#) ([/story/news/local/2015/05/22/yadkin-county-hospital-closes/27822475/](#)), and some patients say they still feel left in the dark.

Yadkin Valley Community Hospital was the county's only hospital, and the closure is affecting more than just the people in need of an emergency room.

Betty Fulk, a Yadkinville resident, says her family doctor worked out of the hospital. When the hospital closed, so did her doctor's office.

Fulk and her daughter, Angle Wagner, are both diabetic. Wagner suffers from Diabetic neuropathy, a type of nerve damage common in diabetics.

"It's like burning and stabbing in your feet, and like hot nails just being drove into them," Wagner said.

Fulk and her daughter say they're running out of their prescriptions. Fulk says she is out of one medication and has 16 days left on another. Wagner is already out of a prescription that helps her with her pain.

"We can't control our blood sugar, and it could spike either too high or too low," Wagner said. "And, it could lead to death."

Fulk and Wagner say they have not been able to pick up prescriptions from their pharmacist because their pharmacist can't get in touch with their former doctor.

Wagner also has not been able to get pain treatment. She was scheduled to meet with her doctor about treatment options the week after the hospital closed. Her mother had to drive her to a hospital 20 miles away to get treatment.

READ MORE: [State Agrees To Help Fix Yadkin Co. Hospital Closure](#) ([/story/news/local/2015/05/28/yadkin-valley-community-hospital-yadkinville-leaders-help-hospital-license-closure-dhhs/28092809/](#))

Fulk and Wagner have requested [medical records](#) ([/story/news/2015/05/28/yadkin-valley-hospital-whats-next/28129639/](#)) from the hospital so they can transfer to a new doctor, but they've been told they'll have to wait three to eight weeks to receive them.

WFMY News 2 reached out to the company that used to run the hospital, Rural Community Hospitals of America. So far, the company has not responded.

The hospital's executives are scheduled to appear at a federal court hearing June 16. They're on trial for allegedly ignoring a court order to remain open until the end of their lease, which was set to expire July 31.

READ MORE: [Yadkin Co. Hospital Executives Could Face Jail Time](#) ([/story/news/2015/06/01/yadkin-county-hospital-jail-time/28337117/](#))