

SANDRA KURT  
2017 MAR 29 PM 12:46  
MEMBER WILLIAMS,  
SUMMIT COUNTY  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS  
COUNTY OF SUMMIT

MEMBER WILLIAMS,  
Plaintiff,  
  
-vs-  
  
KISLING, NESTICO & REDICK,  
LLC, et al.  
  
Defendants;

( CASE NO.: CV-2016-09-3928  
) JUDGE ALISON BREAUX  
(  
) **ORDER**  
( (Denying and Striking Plaintiff's Motion for  
) Leave to File Second Amended Complaint;  
) Granting Defendants' Motion to Strike  
) Confidential and Proprietary Information and  
) Restrict Public Access; Granting Defendants'  
) Motion for Sua Sponte Order Prohibiting  
) Statements or Dissemination of Information to  
\*\*\* the Public, Media, or Press )

This matter comes before the Court on the Motion for Leave to File Second Amended Complaint filed by Plaintiff, Member Williams, on March 22, 2017. Defendant, Kisling, Nestico & Redick, LLC and proposed Defendants Alberto R. Nestico and Robert Redick (Defendants), filed their Motion to Strike Confidential and Proprietary Information and Seal and Restrict Public Access on March 23, 2017. Defendants also filed their Motion for a Sua Sponte Order Prohibiting Statements or Dissemination of Information to the Public, Media, or Press on March 23, 2017. Plaintiff filed her Notice of Intent to File Opposition to Defendants' Motion for Gag Order and Motion to Strike on March 24, 2017. This Court held an emergency telephone status conference with all counsel of record present on March 27, 2017 at 11:00 a.m. This Court notes the rapid developments commencing mere hours after the emergency telephone status conference has had a direct effect on this present order.

Upon due consideration of the evidence presented, the facts of this case, S.C.C. 7.04(E) and Sup.R. 45(E) and applicable law, this Court finds that Defendants' motions are well-taken and must be GRANTED.

**ANALYSIS**

**A. FACTS AND ARGUMENTS PRESENTED**

In Plaintiff's First Amended Complaint, she alleges Defendant, Kisling, Nestico & Redick (KNR), and proposed Defendants Alberto R. Nestico (Nestico), and Robert Redick (Redick), have engaged, and continue to engage, in a deliberate scheme to defraud their clients

by charging them expenses for investigations that are never actually performed. Specifically, Plaintiff alleges she entered into a contingency fee agreement with KNR allowing KNR to “deduct only reasonable expenses from a client’s share of” a settlement or judgment. (Amended Complaint, ¶¶5; 10-12.) During the course of representation, KNR obtained a settlement for Plaintiff. According to Plaintiff, she signed a Settlement Memorandum outlining the settlement amount along with the fees and expenses that were deducted from that amount to be paid to KNR, with the remainder paid to Plaintiff. (Amended Complaint, ¶¶14; 29.) Included in the fees and expenses to be paid to KNR was a \$50.00 fee paid to MRS Investigations, Inc. (*Id.* at 29.) Plaintiff asserts KNR never advised her of the purpose of the charge to MRS Investigations, Inc. and never obtained her consent to same. Plaintiff contends “[n]o services were ever provided to Plaintiff in connection with the \$50 payment to MRS Investigations, Inc.” (*Id.*)

In her Motion for Leave to File Second Amended Complaint, Plaintiff attached her proposed Second Amended Complaint asserting twelve additional causes of action against Defendant KNR and added Defendants Nestico and Redick. In these additional causes of action, Plaintiff asserts Defendants “engaged in a deliberate scheme to defraud their clients,” including failing to disclose conflicts of interest, charging fraudulent narrative and investigation fees, and pressuring clients into engaging into unwanted healthcare with certain healthcare providers. (See, generally, Plaintiff’s Second Amended Complaint).

Plaintiff further identifies two additional Plaintiffs, Naomi Wright and Matthew Johnson, who claim Defendants “deceived and coerced” them into accepting a high-interest loan agreement and unlawfully asserted liens against their respective lawsuit proceeds after Plaintiffs Wright and Johnson terminated their relationship with Defendants. *Id.* at ¶4. Plaintiff attached approximately forty-five (45) pages of internal KNR documents, including inter-office emails and memoranda between employees regarding both general policy and specific matters, in support of her allegations.

Defendants assert the materials included in Plaintiff’s Motion for Leave to File Second Amended Complaint were subject to a pending Motion for Protective Order filed October 12, 2016. In their October 12, 2016 Motion, Defendants seek an order from this Court to 1) prevent Plaintiff from disclosing “attorney’s eyes only” documents to “Robert Horton or any law firm that is a competitor of KNR,” and 2) bar experts “who are competitors of KNR from reviewing ‘attorney’s eyes only’ information.” (Defendant KNR’s Motion for Protective

Order). Defendants further assert the materials included in Plaintiff's Motion for Reconsideration of the Court's March 16, 2017 Order Regarding Dismissal of Claims Against Defendant Nestico (Motion for Reconsideration) are the very materials it moved this Court to safeguard through its petition for a protective order.

This Court held an emergency telephone status conference on the record on March 27, 2017 at 11:00 a.m. Counsel for both parties was present. Defendants reiterated their position previously asserted in their October 12, 2017 motion and raised their concerns over the dissemination of potentially protected documents to the media by Plaintiff's counsel. Plaintiff's counsel asserted any dissemination of materials was vital to the public interest and protected by the First Amendment. This Court indicated it would issue a gag order if the public airing of materials subject to the pending motion for protection order continued. In particular, the Court indicated it would issue a sua sponte order prohibiting statements or dissemination of information to the public, media or press if Counsel continued to make accessible the materials sought to be protected by a protective order still pending before the Court. In response to Plaintiff's counsel's request for clarification and inquiry into what the Court meant by "if this continues," the Court replied:

**THE COURT:** I am talking about putting online the documents and items that are subject to a pending motion that is before me right now for which we have an oral argument scheduled on April 5<sup>th</sup>. That is what I am talking about.

I do not appreciate that you put those things into the record when I have not yet ruled on whether they are protected or not. (Hearing Transcript, Page 10, Lines 3-13.

\* \* \*

Moreover, the Court finds concerning the publication of an article on Cleveland.com not less than two hours after the commencement of the emergency telephone status, which includes a link to a copy of Plaintiff's Second Amended Complaint. Said article was published March 27, 2017 at 12:31 p.m. (See, [http://www.cleveland.com/akron/index.ssf/2017/03/class-action\\_suit\\_claims\\_pers.html](http://www.cleveland.com/akron/index.ssf/2017/03/class-action_suit_claims_pers.html)).

This Court finds Plaintiff's Second Amended Complaint, Exhibits to same, and Motion for Reconsideration contain internal office correspondence, client spreadsheets, and the personal identifying information of KNR's clients, including the name of a minor. This Court further finds Plaintiff's Second Amended Complaint, Exhibits to same, and Motion for Reconsideration all contain information subject to the provisions of S.C.C. Rule 7.04(E) and Sup. R. 45(E)(2).

While this Court has not yet ruled on whether or not certain materials that are the subject of the protection order will be admissible, counsel for both sides are certainly aware the motion is **still pending**, creating the possibility some or all of those materials would be inadmissible in future proceedings or subject to sealing.

The Supreme Court of Ohio has distinguished gag orders limiting the *parties'* freedom to disseminate information from gag orders on the *media*. *In re T.R.*, 52 Ohio St. 3d 6 at 21, 556 N.E.2d 439 (Ohio, 1990). The *T.R.* court expressly held that gag orders "are considered a less restrictive alternative to restrictions imposed directly on the media." *Id.* at 40, citing *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 564, 96 S. Ct. 2791, 49 L.Ed.2d 683 (1976). Most analogous to the matter before this Court is the Ohio Supreme Court's unequivocal point in *T.R.* that:

In the presumptively *open* atmosphere of the adult criminal or civil trial, orders which are effectively prior restraints on the litigants have been frequently used...**to secure a litigant's confidentiality interest in information subject to civil discovery**, e.g., *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (protective order prohibiting defendant newspaper from publishing confidential material obtained from plaintiff in libel action); *Triangle Ink & Color Co., Inc. v. Sherwin-Williams Co.* (N.E. Ill. 1974), 61 F.R.D. 634 (protection of trade secrets)[.] (Empahsis added).

\* \* \*

After review, the Court, relying on the extraordinary amount of dissemination of materials that are the subject of pending motions through social media and other Internet avenues, finds it necessary to issue a gag order limiting the parties' and their counsel's freedom to disseminate

information regarding any materials that are the subject of pending motions as well as any information that is the subject of the hearing on April 5<sup>th</sup>, 2017. This gag order includes the dissemination of any court documents, exhibits, and filings to the press or the public by any means, including but not limited to social media such as Twitter, Facebook, or LinkedIn, and law firm websites, including links thereto.

Furthermore, this Court finds the actions of counsel have compelled it to issue an order to the Summit County Clerk of Courts to restrict online access to any and all filings in this matter **forthwith**. Any concerns about “secret proceedings” is easily resolved by this restriction, as a copy of any filings or documents not under seal may be requested from the Clerk of Courts, and any hearing conducted by this Court remains a proceeding open to the public.

This Court previously indicated at the telephone status conference it would rule on the pending motion for protective order by March 29, 2017, but given the rapidity of the breakdown in communication between the parties and the Court subsequent to the telephone status conference, this Court will hold its ruling on the pending motion for protective order in abeyance until after April 5, 2017.

### **COURT ORDERS**

Based on the foregoing, Plaintiff’s Leave to File Second Amended Complaint is **DENIED**. Plaintiff’s Leave to File Second Amended Complaint is hereby **STRIKEN FROM THE RECORD**.

The Plaintiff may renew its Motion for Leave to File Second Amended Complaint after the hearing on April 5<sup>th</sup>, 2017.

The Summit County Clerk of Courts shall hereby **RESTRICT PUBLIC ACCESS** to any and all filings in this matter **FORTHWITH**.

This Court hereby issues a **GAG ORDER** on all parties and their counsel regarding the dissemination of any information that is the subject of any pending motion for protective order,

as well as any **information that is the subject of the hearing on April 5<sup>th</sup>, 2017**. This gag order includes the **dissemination of any court documents, exhibits, and filings to the press or the public by any means**, including *but not limited to* social media such as Twitter, Facebook, or LinkedIn, and law firm websites.

The Court will consider lifting or otherwise modifying these orders after the hearing on April 5<sup>th</sup>, 2017.

The hearing on any and all pending motions, the issue of the gag order issued by this Court, and the issue of Defendant Nestico's attorneys' fees with regard to the research and preparation of Defendant Nestico's Motion for Judgment on the Pleadings Regarding Plaintiff's First Amended Complaint is confirmed for **April 5<sup>th</sup>, 2017 at 9:00 a.m.**

**IT IS SO ORDERED**

  
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JUDGE ALISON BREAUX