

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,	)	CASE NO. CV-2016-09-3928
)	
Plaintiffs,	)	JUDGE ALISON BREAUX
)	
v.)	
)	
KISLING, NESTICO & REDICK, LLC,	)	<u>DEFENDANTS' BRIEF IN OPPOSITION TO</u>
et al.,	)	<u>PLAINTIFFS' MOTION FOR LEAVE TO FILE</u>
	)	<u>INSTANTER SUR-REPLY BRIEF IN</u>
	)	<u>OPPOSITION TO DEFENDANTS' MOTION</u>
Defendants.	)	<u>FOR JUDGMENT ON THE PLEADINGS</u>
)	

Plaintiffs' Motion for Leave to File Instanter a Sur-Reply Brief in Opposition to Defendants' Motions for Judgment on the Pleadings should be denied. The only party misleading this Court is Plaintiffs.

A reply brief, let alone a sur-reply brief, should not set forth new arguments, evidence, or legal theories, but instead, is limited to matters in rebuttal. *In re Fuel Adjustment Clauses for Columbus S. Power Co. & Ohio Power Co.*, 140 Ohio St.3d 352, 2014-Ohio-3764, 18 N.E.3d 1157, ¶ 37; *Manufacturers Equip. Co. v. StarStone LLC*, 2nd Dist. Montgomery No. 26725, 2016-Ohio-3276, ¶ 14. Indeed, Plaintiffs' Sur-Reply is nothing but an attempt to get in the last word. Plaintiffs should be denied this attempt.

Plaintiffs' Sur-Reply Brief raises for the first time a claim based on the allegation that KNR offers "free consultation." Nowhere in the Second Amended Complaint does it assert a claim based on the allegation that KNR offers "free consultation." Rather, the Second Amended Complaint focuses on the investigation fee, the alleged quid pro quo relationship with the Akron Square Chiropractic, and the pre-settlement loans with Liberty Capital.

Plaintiffs are now arguing the "free consultation" claim in a vain attempt to get around the express Ohio law that the OCSPA does not apply to transactions between attorneys and their clients. Because there is no such claim in the Second Amended Complaint, Plaintiffs' Motion for Leave to File Instanter the Sur-Reply Brief should be denied.

Finally, Plaintiffs misconstrue Defendants' argument regarding this Court's order dismissing Plaintiffs' fraud and unjust enrichment claims against Nestico. The Court did not revisit that order. The order is still valid and enforceable. Instead, the Court merely allowed Plaintiffs to file a Second Amended Complaint, with the exception of the fraud and unjust enrichment claims against Nestico. The Motion for Leave should be denied and the Sur-Reply Brief should be stricken.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Defendants' Unopposed Motion to Continue the Status Conference was filed electronically with the Court on this 5th day of September, 2017. The parties may access this document through the Court's electronic docket system.

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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.)	CASE NO. CV-2016-09-3928
)	
Plaintiffs,	)	JUDGE ALISON BREAUX
)	
v.	)	<u>JUDGMENT ENTRY AND ORDER</u>
	)	<u>REGARDING DEFENDANTS' BRIEF IN</u>
KISLING, NESTICO & REDICK, LLC,	)	<u>OPPOSITION TO PLAINTIFFS' MOTION</u>
et al.,	)	<u>FOR LEAVE TO FILE INSTANTER SUR-</u>
	)	<u>REPLY BRIEF IN OPPOSITION TO</u>
Defendants.	)	<u>DEFENDANTS' MOTION FOR JUDGMENT</u>
	)	<u>ON THE PLEADINGS</u>

This matter comes before the Court on Defendants' Brief in Opposition to Plaintiffs' Motion for Leave to File Instanter Sur-Reply Brief in Opposition to Defendants' Motion for Judgment on The Pleadings.

This Court finds Plaintiffs' Motion for Leave to File Instanter Sur-Reply Brief exceeds the scope of rebutting Defendants' response, and introduces new evidence, namely the "free consultation" claim. *In re Fuel Adjustment Clauses for Columbus S. Power Co. & Ohio Power Co.*, 140 Ohio St.3d 352, 2-14-Ohio-3764, 18 N.E.3d 1157, at 37. Further, this Court finds that the only purpose for Plaintiffs' Sur-Reply was to get in the last word.

Upon due consideration, this Court finds Defendants' Brief in Opposition to Plaintiffs' Motion for Leave to File Instanter Sur-Reply Brief in Opposition to Defendants' Motion for Judgment on The Pleadings is well-taken and hereby DENIES Plaintiffs' Motion for Leave to File Instanter Sur-Reply Brief in Opposition to Defendants' Motion for Judgment on the Pleadings.

SO ORDERED:

Judge Alison Breaux