

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, <i>et al.</i> , Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, <i>et al.</i> , Defendants.	Case No. CV-2016-09-3928 Judge Patricia A. Cosgrove Plaintiffs' Motion To Designate Process Server
--	---

Under Ohio Rule of Civil Procedure 4.1(B), Plaintiffs respectfully move the Court for an Order designating John Miller, 6210 Groton Avenue N.W., Canton, Ohio 44708, as process server to personally serve Michael R. Simpson and MRS Investigations LLC, 5242 Charm Street S.W., Canton, Ohio 44706 with a subpoena issued on November 2, 2017 and attached as Exhibit A. Prior attempts at United States certified mail service have failed. Mr. Miller is more than eighteen (18) years of age and is not a party to this action. A proposed Order granting this Motion is attached for the Court's convenience.

Date: January 12, 2018

Respectfully submitted,

/s/ Dean Williams

Peter Pattakos (0082884)
Dean Williams (0079785)
Daniel Frech (0082737)
THE PATTAKOS LAW FIRM LLC
101 Ghent Road
Fairlawn, Ohio 44333
Phone: 330.836.8533
Fax: 330.836.8536
peter@pattakoslaw.com
dwilliams@pattakoslaw.com
dfrech@pattakoslaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The foregoing document was served on all necessary parties by operation of the Court's e-filing system on January 12, 2018.

/s/Dean Williams
Attorney for Plaintiffs

SUBPOENA
SUMMIT COUNTY COMMON PLEAS COURT

MEMBER WILLIAMS,

CASE NO: 2016-CV-09-3928

Plaintiff,

SUBPOENA IN A CIVIL CASE

vs.

ATTORNEY: Peter Pattakos

KISLING, NESTICO & REDICK, LLC, et al.,

ADDRESS: The Pattakos Law Firm
101 Ghent Road
Fairlawn, OH 44333
peter@pattakoslaw.com

Defendants.

SUPREME CT. NO. 0082884

TO: MICHAEL R. SIMPSON AND
MRS INVESTIGATIONS LLC
5242 CHARM ST. SW
CANTON, OH 44706

PURSUANT TO CIVIL RULE 45 YOU ARE HEREBY COMMANDED TO:

XX. PRODUCE THE DOCUMENTS AND ELECTRONICALLY STORED INFORMATION
IDENTIFIED IN THE ATTACHED EXHIBIT 1 IN ACCORDANCE WITH THE INSTRUCTIONS
THEREIN ON OR BEFORE November 21, 2017 AND

XX. ATTEND AND GIVE TESTIMONY AT A DEPOSITION ON February 20, 2017, or on
another mutually convenient date, at 9:00 AM

AT THE OFFICES OF:

COHEN, ROSENTHAL, & KRAMER
700 W. SAINT CLAIR AVE., #400
CLEVELAND, OH 44113

HEREOF FAIL NOT UNDER PENALTY OF THE LAW

WITNESS MY SIGNATURE AND SEAL OF SAID COURT, THIS 2nd DAY OF NOVEMBER,
2017



Attorney Peter Pattakos

EXHIBIT A

Sandra Kurt, Summit County Clerk of Courts

RETURN OF SERVICE

Received this Subpoena on the _____ day of _____, 20____ at _____ and on the _____ day of _____, 20____, at _____, I served the same upon _____ by delivering to _____

Personally or Residential a true copy of this subpoena.

Notary Sheriff-Attorney-Process Server-

Mileage: _____ miles@ _____: TOTAL \$ _____

PROTECTION OF PERSONS SUBJECT TO SUBPOENAS:

1. A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

2. (a) A person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv) or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii),(iii),(iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

3. On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following – Fails to allow reasonable time to comply; requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by CIV R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by the expert that was not made at request of any party; subjects a person to undue burden.

4. Before filing a motion pursuant to division (C) (3) (d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C) (3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

5. If a motion is made under division(C)(3)(c) or (C)(3)(d) of this rule, the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

DUTIES IN RESPONDING TO SUBPOENAS:

1. A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents or electronically stored information pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.
2. If a request does not specify the form or forms for producing electronically stored information, a person responding to a subpoena may produce the information in a form or forms in which the information responding is ordinarily maintained if that form is reasonable useable, or in any form that is reasonably useable. Unless ordered by the court or agreed to by the person subpoenaed, a person responding to a subpoena need not produce the same electronically stored information in more than one form.
3. A person need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for a protective order, the person from whom electronically stored information is sought must show that the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the court may nonetheless order production of electronically stored information if the requesting party shows good cause. The court shall consider the factors in Civ. R. 26(B)(4) when determining if good cause exists. In ordering production of electronically stored information, the court may specify the format, extent, timing, allocation of expenses and other conditions for discovery of the electronically stored information.

4. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
5. If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies within the party's possession, custody or control. A party may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for determination of the claim of privilege or of protection as trial-preparation material. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

SANCTIONS:

1. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees of the party seeking discovery. The court from which a subpoena was issued may impose upon a party or attorney in breach of the duty imposed by division (C)(1) of this rule an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

EXHIBIT 1**INSTRUCTIONS**

- A. Definitions. In answering each request, use the following definitions:
1. The word “person” means any natural person, firm, partnership, association, corporation, whether public or private, governmental agency or entity, joint venture, or any other form of business entity.
 2. “You,” “Your” and “MRS” refer to the recipient of this subpoena, MRS Investigations LLC and its principal, Michael Simpson, both individually and collectively.
 3. “KNR” refers to Defendant, Kisling, Nestico & Redick, LLC.
 4. The term “Complaint” refers to the operative complaint filed in the above-captioned matter.
 5. The terms “Defendant” or “Defendants” refers to the Defendants in the above-captioned matter.
 6. The term “document” or “documents” means the original and a copy, regardless of origin or location, of any writing or records of any type or description, whether official or unofficial, including, but not limited to, the original and any copy of any book, pamphlet, periodical, letter, memorandum, telegram, report, record, study, inter- or intra-office communication, handwritten or other note, working paper, publication, permit, ledger and/or journal, whether general or special, chart, paper, graph, survey, index tape, disk, data sheet or data-processing card, or any other written, recorded, transcribed, filed, or graphic matter, however produced or reproduced, to which Defendant had access or now has access. “Document” or “documents” also includes any magnetically, mechanically, and/or electronically stored, maintained, and/or recorded data, whether the data consists of words, symbols, numbers, graphs, or other matters, including but not limited to **email and text messages**.
 7. “Identify” means, with respect to any individual person, that the answer shall state, to the extent known, the person’s name, sex, approximate age, present home address, present home telephone number, present business address, present business telephone number, present employer, present title, present job description, salary grade, roll group, and relationship to Defendant, if any. If Defendant does not know the person’s present home address, he shall so state and list the person’s last-known home address. If Defendant does not know the person’s name, he shall so state and provide a physical description of the person, including describing the clothing the person was wearing at the time of the events charged in the Complaint. “Identify” means, with respect to a communication, the place of the communication, the date and time of the

communication, the participants in the communication, and the substance of the communication.

8. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Interrogatory all responses that might otherwise be construed to be outside its scope.

9. The term "current" means as of the date of service of these requests for production and "concerning" or "regarding" and their cognates mean "in whole or in part."

10. "Any" includes the word "all," and "all" includes the word "any."

11. "Relate to" and "relating to" mean regarding, concerning, containing, consisting of, referring to, reflecting, supporting, demonstrating, showing, identifying, mentioning, contradicting, prepared in connection with, used in preparation for, pertaining to, having any relationship to, evidencing, constituting evidence of, or being in any way legally, logically, or factually connected with the matter discussed.

B. These requests shall be deemed continuing in nature and are to be supplemented as additional information or documents pertinent to any interrogatory is obtained or created, including, but not limited to, additional information that adds to a previous answer, corrects a previous answer, and/or clarifies a previous answer.

C. Privileges

1. For each request you refuse to answer on grounds of privilege, state:

- a. The specific privilege asserted;
- b. The basis for the privilege; and
- c. The identity of the documents and/or information claimed to be privileged.

D. Information requested is any and all information within your knowledge or that of your agents, employees, attorneys, representatives, and/or assigns.

REQUESTS

Provide the following documents in accordance with the instructions above.

1. Any list of current or past MRS customers.
2. Documentation sufficient to show what portion of Your revenue comes from Defendants and to identify all other sources of revenue for MRS and Michael Simpson apart from their work for Defendants.
3. All correspondence with KNR regarding billing, payment, invoices or services provided.
4. Any documents reflecting any non-cash compensation received by Michael Simpson or MRS Investigations from KNR (insurance benefits, retirement benefits, in-kind services, technology provided, vehicle allowance,

5. Any documentation as to what was done to earn the investigation fee You charged KNR with respect to the named plaintiffs identified in the Complaint.
6. All documents reflecting any Defendants' process or policies for selecting MRS or Michael Simpson to perform services for any of Defendants' clients.
7. All documents reflecting Simpson's or MRS's efforts to solicit or obtain business from or through any of the Defendants.
8. All documents reflecting any Defendants' efforts to solicit or obtain services from Simpson or MRS.
9. All documents reflecting efforts by any Defendant to ensure that Simpson and MRS were providing the most competitive terms and most reliable service.
10. Any written agreements between Michael Simpson or MRS and any Defendant and all documents relating to the negotiation or maintenance of any such agreements whether written or otherwise.
11. Any documents showing that Simpson or MRS performed services for any Defendant apart from investigative services.
12. Any documents containing a description of the work performed by Simpson or MRS for any Defendant.
13. All communications by Michael Simpson or MRS Investigations directly with Robert Nestico or Robert Redick, including all communications about the above captioned lawsuit.
14. All communications with any Defendant not directly related to a client matter, including all communications about the above captioned lawsuit.
15. All documents reflecting the expertise of Your staff in conducting investigations, including any accreditations or relevant training.
16. All 1099s, W-2s, W-9s, K-1s, or any other tax forms You received from any Defendant.
17. Documents reflecting any payments made to MRS or Simpson by any Defendant that were not reflected on a tax form.
18. All documents reflecting the total amount of fees, revenues, or payments MRS or Simpson collected from any Defendant on a monthly or yearly basis.
19. Any documents reflecting overhead expenses associated with the operation of MRS.
20. Tax returns for Simpson and MRS since 2011, including all relevant forms, attachments, and schedules.
21. Any documents reflecting payments made by KNR to Michael Simpson (in his personal capacity) rather than to MRS.
22. Any documents reflecting the rates MRS charges other customers for services similar or identical to those services they provide KNR.

23. Any documents in which it is claimed or asserted that Michael Simpson is or is not an employee of KNR or any Defendant.
24. Any documents in which it is claimed or asserted that MRS is or is not controlled by KNR or any Defendant.