

**IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO**

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 2016 09 3928

Judge Patricia A. Cosgrove  
(sitting by assignment)

**AARON CZETLI, AMC**  
**INVESTIGATIONS, INC., EDUARDO**  
**MATEO, GARY MONTO'S REPLY IN**  
**SUPPORT OF MOTION TO**  
**QUASH/MOTION FOR PROTECTIVE**  
**ORDER**

Unlike parties to civil litigation participating in discovery, non-parties have significantly less options when responding to oppressive and over-inclusive subpoenas. When faced with violative subpoenas issued *en masse*, the non-parties must object under Civ.R. 45(C). Thereafter, the precise language of Civ.R. 45(C)(2)(b) governs:

**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.**

(emphasis added).

Here, Plaintiffs capitulate that they issued subpoenas seeking protected personal financial information from the Subpoenaed Parties and also failed to properly tender witness fees and mileage as required by Civ.R. 45(B). With their Reply Brief, Plaintiffs now attempt to cure *one of* these defects by finally tendering the mandatory fees. (Which fees will be held by non-parties counsel until this Court rules on the issues at bar). Despite

this, Plaintiffs still not only seek production of nonexistent documents and things (with demonstrated incredulity given the nonexistence of documents), but they also want attorney's fees. Rule 45 of the Ohio Rules of Civil Procedure was not designed for such a purpose. There is absolutely nothing "frivolous" by non-parties actions in response to the subpoenas. Indeed, Subpoenaed Parties have exactly complied with the requirements of Civ.R. 45(E). The record is devoid of any basis to permit an award of attorney's fees against the Subpoenaed Parties.

What the Court actually has before it is a demonstration from each of the Subpoenaed Parties that the only responsive documents they possess are their own personal tax records.<sup>1</sup> The Subpoenaed Parties are not actual parties to this lawsuit. They have not placed their financial condition or earnings in issue. Plaintiffs appear to have attempted to place the Defendants' financials in issue by way of their scorched earth litigation, but that does not strip the Subpoenaed Parties of the protections afforded by Civ.R. 45(C) as a matter of law. See, e.g. *Ramun v. Ramun*, 7th Dist. Mahoning No. 08 MA 185, 2009-Ohio-6405, ¶ 18; *Hope Academy Broadway Campus v. White Hat Mgt., L.L.C.*, 10th Dist. Franklin No. 12AP-116, 2013-Ohio-911; *State ex rel. Fisher v. Cleveland*, 8th Dist. No. 83945, 2004-Ohio-4345, 2004 WL 1846124; *Credit Life Ins. Co.*

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<sup>1</sup> Plaintiffs now want the Court to Order the Subpoenaed Parties to "describe any privileged or protected information they have withheld." This has already been done in the Motion for Protective Order. The only documents that are responsive, privileged or not, are the Subpoenaed Parties' tax records. Just because Plaintiffs do not understand this, does not mean an order compelling any further action by the Subpoenaed Parties is warranted. Plaintiffs have abandoned pursuit of any records of Dennis Rees and therefore he is not part of this Reply brief since he is no longer involved for medical reasons.

*v. Uniworld Ins. Co. Ltd.* (S.D.Ohio 1982), 94 F.R.D. 113; *Cooper v. Hallgarten & Co.* (S.D.N.Y.1964), 34 F.R.D. 482, 484.<sup>2</sup>

While ignoring the actual authority on point offered by the Subpoenaed Parties, Plaintiffs cite *Bellamy v. Montgomery*, 188 Ohio App.3d 76, 2010-Ohio-2724 for the proposition that “under Ohio law,” Plaintiffs are entitled to access the personal financial information of nonparties. That is not the holding of the *Bellamy* case, nor is it applicable at all here. In one-sentence dicta in *Bellamy*, the Court mentioned a **party’s refusal to divulge his own financial information that he had placed in issue**. Plaintiff’s other cited case is *Hudson v. United Servs. Auto. Assn. Ins. Co.*, 150 Ohio Misc.2d 23, 2008-Ohio-7084, 902 N.E.2d 101. This case actually is cited by the Subpoenaed Parties in support of their Motion. It also concerned a **plaintiff who placed his own financial condition in issue**, thereby permitting discovery into same by the opposition.

Not the case here. This is not the pursuit of discovery from a party who has voluntarily relinquished the protections of the law by placing a matter directly in issue through litigation. These are nonparties. There is no authority for requiring them to lay bare their own personal and private financial information to suit Plaintiffs’ litigation tactics and discovery pursuits. A Protective Order should issue and the subpoenas should be quashed and/or modified to preclude Plaintiffs from delving into the personal, private, and protected financial information of non-parties.

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<sup>2</sup> Plaintiffs have ignored each of these cases that have already been cited to the Court, and therefore concede their effect on Plaintiffs’ subpoenas and the governing law.

Respectfully submitted,

**GRIFFIN LAW, LLC**

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**CERTIFICATE OF SERVICE**

Pursuant to Civ.R. 5(B)(2)(f), the undersigned certifies that a copy of the foregoing *Reply Brief in Support of Motion for Protective Order* was filed electronically with the Court on this 29th day of March, 2018. The parties, through counsel, may access this document through the Court's electronic docket system.

/s/ Stephen P. Griffin

Stephen P. Griffin, Esq. (0039655)