

**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. 2016-CV-09-3928 Judge James Brogan Plaintiffs' Motion to Compel the Deposition of Richard Gunning, M.D., and Motion for Sanctions against Defendant Ghoubrial
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For the second time in the last two weeks, counsel for Defendant Ghoubrial has, for extremely dubious reasons, demanded the late postponement of the duly scheduled and duly noticed deposition of Ghoubrial's employee, Dr. Richard Gunning. While the parties have since agreed to reconvene for Dr. Gunning's deposition on December 12, 2018, this motion to compel is necessary to ensure that Ghoubrial and his counsel do not engage in any further gamesmanship, including by seeking to postpone this deposition for yet a third time. Additionally, Ghoubrial and his counsel should be ordered to pay Plaintiffs' attorneys' fees necessitated by their most recent unjustified last-minute postponement, as explained further below.

On October 2, Defendant Ghoubrial filed a document captioned "Dr. Ghoubrial's Supplemental Information in Support of His Motion to Deny Addition of Dr. Ghoubrial to This Suit," which attached as an exhibit an affidavit from Dr. Gunning, by which Ghoubrial attempted to misrepresent Gunning's medical practice as independent from his own in an effort to excuse himself from liability on the claims alleged by Plaintiff Norris in the Fourth Amended Complaint. Plaintiffs' investigation shortly revealed that Dr. Gunning is actually Ghoubrial's employee,¹ and that

¹ On October 2, 2017, Ghoubrial testified in an unrelated case that, "I refer to all my doctors as my partners, but they work for me." See excerpt from Ghoubrial deposition transcript attached as **Exhibit 1** at 43:15–17.

Gunning's testimony would support Ms. Norris's claims against Ghoubrial. On October 9, Plaintiffs served a subpoena on Dr. Gunning to take his deposition (*see* Notice of Service filed Oct. 17), and Dr. Gunning confirmed his availability to be deposed on November 20 through his Attorney John Myers, who had contacted Plaintiffs' counsel to give notice of his representation of Dr. Gunning in connection with this matter. This deposition was duly scheduled and noticed to no objection by any party (*see* Notice of Deposition filed Nov. 1), and Attorney Myers—who, according to his website, “specializes” in “labor law,” representing plaintiffs who have “experienced discrimination” or “a hostile work environment” and want to “feel safe at work”—confirmed Dr. Gunning's willingness to cooperate with Plaintiffs' subpoena and provide testimony as requested. *See* excerpts from Attorney Myers' website, attached as **Exhibit 2**.

On November 2, Attorney Brad Barmen entered his appearance on behalf of Defendant Ghoubrial, and on November 7 and November 9, the attorneys from the two law firms that previously represented Ghoubrial filed motions to withdraw. Attorney Barmen is a partner at the Lewis Brisbois firm, as is Attorney Tom Mannion, who represents the KNR Plaintiffs in this action and has apparently assumed the role as lead counsel for them.² Mr. Barmen, who was on notice of the scheduled Gunning deposition when he agreed to assume responsibility as counsel for Ghoubrial, was also specifically advised of this deposition date immediately upon his entry of

² While the KNR Defendants now have attorneys from five different law firms representing them in this lawsuit, Mr. Mannion has taken two of the three depositions of the Named Plaintiffs that have taken place so far, he defended Ms. Gobrogge's deposition, and he has repeatedly insisted that his busy and volatile schedule warrants postponement, willy-nilly and for weeks on end, of depositions that Plaintiffs need to take. *See, e.g.*, Nov. 1 Mannion email, attached as **Exhibit 3** (“My 10/22 trial was then moved to 11/5, and I have trials 12/3 and 12/10 which have depositions scheduled.”); Nov. 28 Mannion email, attached as **Exhibit 4** (“You're not going to get dates between December 17 and 21st or January 3-10. We are not available on those dates.”). Mannion is also the attorney who filed KNR's lawsuit to silence key witness Rob Horton, who provided Plaintiffs with most of the emails that are quoted in the complaint (*See KNR v. Horton*, Summit County C.P. No. CV-2017-03-1236).

appearance. *See* Nov. 6 Pattakos email to Barmen, attached as **Exhibit 5**; *See also* Nov. 9 Pattakos email to Barmen and his administrative assistant Helen Szucs, attached as **Exhibit 6**.

On November 8, the parties and witness agreed to reschedule the Gunning deposition for the morning of November 21, at Mr. Mannion's request, to accommodate his schedule. *See* Nov. 8 Pattakos email, attached as **Exhibit 7**. Mr. Barmen did not object to either the November 20 date or the new November 21 date, and never gave any indication that either date might be unworkable for him until Friday November 16, three business days before the Nov. 21 deposition, when he emailed counsel to state that he had "conflicting depositions" that were set before he entered his appearance in this case, and demanded that the Gunning deposition be postponed.³ *See* Nov. 16 Barmen email, attached as **Exhibit 8**. When asked to provide documentation to confirm this alleged conflict, Mr. Barmen refused, and on November 21, the same day on which Mr. Barmen claimed to be too busy on another case to appear for Dr. Gunning's deposition, he filed a "Second Notice of Filing Supplemental Authority" in this case, which was essentially a second sur-reply to Plaintiffs' motion for leave to file their Fifth Amended Complaint, and followed up on the first "Notice of Filing of Supplemental Authority" that he filed the day before. Also on the same day (Nov. 21), Mr. Barmen filed a notice of Defendant Nestico's deposition and engaged in related correspondence in an apparently coordinated effort to dictate the terms on which Plaintiffs' deposition of Nestico would proceed. *See* Notice of Deposition filed Nov. 21; Nov. 21 emails between counsel, attached as **Exhibit 9**.

In the interim, on Nov. 6, Mr. Barmen had sent Plaintiffs' counsel a letter in which he purported to represent not only Dr. Ghoubrial, but also "any current or former member of Dr. Ghoubrial's staff," demanded that all communications to any such staff members be made through

³ Had Mr. Barmen notified counsel of this alleged conflict when he first became aware of it upon assuming the representation on or before Nov. 2, the parties and witness might have been able to agree on an alternative date prior to Nov. 21.

him, and also demanded to be advised as to whether Plaintiffs' counsel had contacted any such staff members. *See* Nov. 6 Barmen letter, attached as **Exhibit 10**. This letter did not mention Attorney Myers or Myers' previously announced representation of Dr. Gunning. In response, Plaintiffs' counsel wrote to explain that Attorney Myers had already confirmed his representation of Dr. Gunning weeks ago, and to request that Attorney Myers and Attorney Barmen provide clarification as to who actually represented Gunning in this matter. *See* Nov. 6 Pattakos email to Barmen and Myers at **Ex. 5**. Neither Barmen nor Gunning provided a response to this request.

Shortly after Barmen wrote to postpone the November 21 deposition, Plaintiffs' counsel again renewed their request for clarification as to who was actually representing Dr. Gunning in this matter. Barmen finally replied, stating, "I represent Dr. Ghoubril and his practice which includes Dr. Gunning. Mr. Myers represents Dr. Gunning in his individual capacity." *See* Nov. 21 Barmen email, attached as **Exhibit 11**. Ghoubril's "practice," however, is not a party to this case, Attorney Myers has never affirmed Mr. Barmen's representation, and no confirmation has been provided as to whether Dr. Gunning has knowingly waived the conflict of interest between him and Ghoubril in this matter (if such a conflict could even be lawfully waived).⁴

Dr. Gunning's deposition was then rescheduled to take place today, on November 29, at 10:00 A.M. by agreement of the witness and all parties. *See* Second Amended Notice of Deposition,

⁴ *See, e.g.*, Prof.Cond.R. 1.7, cmt. 38 ("Some conflicts are nonconsentable because a lawyer cannot represent both clients competently and diligently."); Ohio Adv. Op. 2009-3, Supreme Court of Ohio Board of Commissioners on Grievances and Discipline, 2009 WL 1764109 ("Regardless of consent, multiple representations should not be undertaken when two clients' interests are fundamentally antagonistic"); *Columbus Bar Assn. v. Ross*, 107 Ohio St. 3d 354, 359 (2006) (nonconsentable conflict where a single attorney "represents both the defendant and the chief witness for the State in the same case."); *CenTra, Inc. v. Estrin*, 538 F.3d 402 (6th Cir. 2008) ("[A] conflict is nonconsentable when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances."); *Johnson v. Clark Gin Serv.*, E.D.La. No. 15-3290, 2016 U.S. Dist. LEXIS 166206, at *11-13 (Dec. 1, 2016) (nonconsentable conflict where plaintiffs' attorneys sought to represent several railroad employees who had an interest in shifting blame onto each other as well as the defendants regarding a train accident).

filed Nov. 20. But late yesterday, the day before the scheduled deposition, at 4:28 PM, Barmen emailed counsel to cancel yet again, stating, in part, as follows:

Counsel: Be advised that Dr. Gunning will not be appearing for deposition tomorrow. Dr. Gunning was prepared to be deposed on the allegations and issues raised in the 4th amended complaint as agreed tomorrow. However, in light of the fact that the motion for leave to file the 5th amended complaint was granted just before lunch today, we need additional time to properly address those allegations that were not in play before today. There are also personal reasons relative to Dr. Gunning that were brought to my attention today was [*sic.*] warrant a postponement of the depo.

See Nov. 28 Barmen email attached as **Exhibit 12**.

Plaintiffs' counsel immediately responded to request that Gunning appear for the duly scheduled and noticed deposition, pointing out that, 1) Local Rule 17.1 prohibits the cancellation of a duly scheduled deposition without the deposing party's consent or a court order; 2) there is nothing about the new allegations in the Fifth Amended Complaint that wouldn't be a proper subject of inquiry regarding the Fourth Amended Complaint under Civ.R. 26's "reasonably calculated to lead to the discovery of admissible evidence" standard⁵; and 3) Dr. Gunning shouldn't

⁵ There is no legitimate argument that questions about Ghoumbrial's scheme to enrich himself by administering as many high priced injections as possible to KNR clients, as alleged in the Fifth Amended Complaint, would not be "reasonably calculated to lead to the discovery of admissible evidence" regarding his scheme to enrich himself by overcharging the very same captive KNR clients for medical devices as alleged in the Fourth Amended Complaint. Ghoumbrial's assertion to the contrary not only warrants sanctions, it further reveals the motives behind Ghoumbrial's efforts to notice Mr. Nestico's deposition for the two days immediately following the Gunning deposition that was to take place today. See **Ex. 9**. Mr. Barmen admitted in his email postponing the Nov. 29 deposition (**Ex. 12**) that he did not view questions about the injections as "in play" for Dr. Gunning's deposition prior to the Court granting leave to file the Fifth Amended Complaint. Thus, he presumably intended to instruct Gunning not to answer any questions pertaining to those allegations, and the Defendants were presumably conspiring to rush into Mr. Nestico's deposition in an effort to keep him from answering any questions about the injections, including Gunning's testimony about the injections, either. See **Ex. 9**; See also *State ex rel. Ghoumbrial v. Herbert*, 10th Dist. Franklin No. 15AP-470, 2016-Ohio-1085, ¶ 4, *Bowers v. Herron*, 5th Dist. Fairfield No. 15 CA 34, 2016-Ohio-766, ¶ 5, 11 (discussed at page 7 below, confirming that Ghoumbrial and his attorneys have repeatedly been sanctioned for their obstructive conduct at depositions).

need any additional “preparation” to “properly” answer questions truthfully about his and Ghoumbrial’s treatment of KNR clients based on his own knowledge.

In reply, Mr. Barmen reiterated his insistence that Dr. Gunning would not appear for the deposition, refused to provide any additional explanation of the unspecified “personal reasons” to postpone the deposition, and stated, falsely, that Attorney Myers “has told [Plaintiffs’ counsel] more than once” to “direct all inquiries” regarding Dr. Gunning to Barmen. *See* Nov. 28 email exchange attached as **Exhibit 13**. In truth, Mr. Myers has willingly communicated with Plaintiffs’ counsel about Dr. Gunning’s deposition as a matter of routine, including as recently as Monday (Nov. 26), and has never instructed Plaintiffs’ counsel to communicate through Mr. Barmen or in any particular manner at all. *See* Nov. 28 Pattakos email attached as **Exhibit 14**. To date, Mr. Myers has provided no written communication at all regarding Mr. Barmen’s purported representation of Dr. Gunning.

The parties have agreed to reschedule Dr. Gunning’s deposition for December 12, 2018. *See* **Ex. 14**. As warranted by the facts set forth above and documented in the documents attached hereto,⁶ the Plaintiffs hereby request a Court order confirming Gunning’s duty to appear on December 12. Plaintiffs also request that Ghoumbrial and his attorney be ordered to pay Plaintiffs’ attorneys fees necessitated by the unwarranted postponement,⁷ which will further protect against any additional unwarranted postponements and deter similar gamesmanship in the future. Civ.R. 37(A)(5)(a) (requiring that Ohio courts “shall ... require the party ... whose conduct necessitated the

⁶ The undersigned hereby certifies, under Civ.R.37(A)(1) and (A)(5)(a)(i), as should be apparent from the facts set forth herein and documents attached hereto, that Plaintiffs have made every good faith effort to obtain Dr. Gunning’s deposition testimony without the Court’s intervention.

⁷ So far, the fees unnecessarily incurred by Plaintiffs as a result of the misconduct alleged herein amount to \$1795.50, for 30 minutes engaging in correspondence over the postponement and rescheduling of the deposition and 5 hours and 48 minutes drafting this motion, at Attorney Pattakos’s hourly rate of \$285. To the extent a reply brief is necessary Plaintiffs will update their requested fee amount in that brief.

motion [to compel], the party or attorney advising that conduct, or both to pay movant's reasonable expenses incurred in making the motion, including attorneys' fees," if the opposing party's actions were not "substantially justified."). The need for such an order is further confirmed by the fact that Ghoubrial and his attorneys, including Attorney David Best who represents the KNR Defendants in this case,⁸ have been repeatedly sanctioned by Ohio courts for obstructing discovery. *E.g., State ex rel. Ghoubrial v. Herbert*, 10th Dist. Franklin No. 15AP-470, 2016-Ohio-1085, ¶ 4 ("The court finds that the attorney for [Ghoubrial] obstructed the process to such degree that the discovery rules were violated."); *Bowers v. Herron*, 5th Dist. Fairfield No. 15 CA 34, 2016-Ohio-766, ¶ 5, 11 ("[T]he trial court specifically ordered that Attorney Best compensate: Defendants' reasonable attorneys' fees, costs, and expenses arising from a follow-up deposition of Dr. Ghoubrial upon the nine unanswered questions ... and Defendants' reasonable attorneys' fees for time spent preparing the Motion to Compel, Motion for Attorneys' Fees and Costs, and the Reply in Support of the Motions.").

Respectfully submitted,

/s/ Peter Pattakos

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⁸ Attorney Best has served as personal attorney for Ghoubrial and his various business entities in many matters over the years. Best entered an appearance in this case on behalf of the KNR Defendants earlier this year, before Plaintiffs moved to add Ghoubrial as a Defendant. The Court should be further advised that Attorney Best just last month appeared on Dr. Ghoubrial's behalf in the currently pending divorce proceedings between him and his wife, Julie (Summit County C.P. No. DR-2018-04-1027), and asked Julie questions at her deposition in those proceedings about the Plaintiffs' allegations in this lawsuit (the truth of which was confirmed by Julie on the record in that deposition). Plaintiffs' discovery requests for the relevant portions of that deposition transcript are currently pending.

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Certificate of Service

The foregoing document was filed on November 29, 2018, using the Court's electronic-filing system, which will serve copies on all necessary parties. Counsel for deponent Gunning, John Myers, Esq. (johnmyerscolpa@gmail.com), was also emailed a copy of this document on this date.

/s/ Peter Pattakos

Attorney for Plaintiffs

Sam N. Ghoubrial 10/2/2017

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<p>1</p> <p>2 IN THE COURT OF COMMON PLEAS</p> <p>3 FRANKLIN COUNTY, OHIO</p> <p>4</p> <p>5 TINA YORKE,)</p> <p>6)</p> <p>7 Plaintiff,)</p> <p>8 VS.)</p> <p>9 SAMUEL MARRIOTT, et al.,)</p> <p>10 Defendants.)</p> <p>11)</p> <p>12 - - -</p> <p>13 DEPOSITION OF SAM N. GHOUBRIAL, M.D.</p> <p>14 Monday, October 2, 2017</p> <p>15 - - -</p> <p>16</p> <p>17 The deposition of SAM N. GHOUBRIAL M.D., called by</p> <p>18 the Plaintiff for examination under the Ohio Rules of</p> <p>19 Civil Procedure, taken before me, Stacey Mocz, Notary</p> <p>20 Public in and for the State of Ohio, at 195 Wadsworth</p> <p>21 Road, Suite 402, Wadsworth, Ohio commencing at 1:18 p.m.</p> <p>22 on the date above set forth.</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 INDEX</p> <p>2 PAGE</p> <p>3 EXAMINATION</p> <p>4 BY MR. KRAL 7</p> <p>5 BY MR. ROBY 32</p> <p>6 BY MR. KRAL 77</p> <p>7 BY MR. ROBY 85</p> <p>8</p> <p>9 OBJECTIONS:</p> <p>10 BY MR. ROBY 15</p> <p>11 BY MR. ROBY 15</p> <p>12 BY MR. ROBY 16</p> <p>13 BY MR. ROBY 16</p> <p>14 BY MR. ROBY 17</p> <p>15 BY MR. ROBY 18</p> <p>16 BY MR. ROBY 20</p> <p>17 BY MR. ROBY 23</p> <p>18 BY MR. ROBY 23</p> <p>19 BY MR. ROBY 23</p> <p>20 BY MR. ROBY 24</p> <p>21 BY MR. ROBY 25</p> <p>22 BY MR. ROBY 25</p> <p>23 BY MR. ROBY 26</p> <p>24 BY MR. ROBY 27</p> <p>25 BY MR. ROBY 28</p>
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<p>1 APPEARANCES:</p> <p>2 On Behalf of the Plaintiff:</p> <p>3 DONALD J. KRAL, ESQ.</p> <p>4 Kisling, Nestico & Redick, LLC</p> <p>5 2550 Corporate Exchange Drive</p> <p>6 Suite 101</p> <p>7 Columbus, Ohio 43231</p> <p>8 614-487-8669</p> <p>9 dkral@knllegal.com</p> <p>10 On Behalf of the Defendant:</p> <p>11 ROBERT S. ROBY, ESQ.</p> <p>12 Curry, Roby & Mulvey Co., LLC</p> <p>13 30 Northwoods Boulevard</p> <p>14 Suite 300</p> <p>15 Columbus, Ohio 43235</p> <p>16 614-430-8885</p> <p>17 Rroby@crmlaws.com</p> <p>18 On Behalf of Sam N. Ghoubrial, M.D.:</p> <p>19 DAVID M. BEST, ESQ.</p> <p>20 David M. Best Co., L.P.A.</p> <p>21 4900 West Bath Road</p> <p>22 Akron, Ohio 44333</p> <p>23 dmbest@dmbestlaw.com</p> <p>24</p> <p>25</p> <p>Also present:</p> <p>KURT HENSCHL, Videographer</p>	<p>1 BY MR. ROBY 29</p> <p>2 BY MR. ROBY 30</p> <p>3 BY MR. ROBY 31</p> <p>4 BY MR. ROBY 31</p> <p>5 BY MR. KRAL 37</p> <p>6 BY MR. KRAL 39</p> <p>7 BY MR. KRAL 40</p> <p>8 BY MR. BEST 44</p> <p>9 BY MR. KRAL 46</p> <p>10 BY MR. KRAL 47</p> <p>11 BY MR. KRAL 48</p> <p>12 BY MR. KRAL 48</p> <p>13 BY MR. KRAL 49</p> <p>14 BY MR. KRAL 64</p> <p>15 BY MR. KRAL 65</p> <p>16 BY MR. KRAL 67</p> <p>17 BY MR. KRAL 68</p> <p>18 BY MR. KRAL 70</p> <p>19 BY MR. KRAL 70</p> <p>20 BY MR. KRAL 71</p> <p>21 BY MR. KRAL 71</p> <p>22 BY MR. KRAL 71</p> <p>23 BY MR. KRAL 71</p> <p>24 BY MR. KRAL 72</p> <p>25 BY MR. KRAL 73</p>

EXHIBIT 1

Sam N. Ghoubrial 10/2/2017

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<p>1 A. <u>Clearwater is just the billing company for --</u></p> <p>2 Q. So who did the service -- excuse me.</p> <p>3 Where was -- the provider's location is</p> <p>4 listed as Hanchrist, but where was the actual</p> <p>5 service being performed?</p> <p>6 A. The service was performed in Columbus.</p> <p>7 Q. Where?</p> <p>8 A. It was being performed at Town and Country.</p> <p>9 Q. Okay. And do you pay for, like, lease there?</p> <p>10 A. No, sir.</p> <p>11 Q. Do you utilize their staff there?</p> <p>12 A. No, sir.</p> <p>13 Q. Do you hire their secretaries?</p> <p>14 A. None.</p> <p>15 Q. Do you hire their nurses?</p> <p>16 A. No.</p> <p>17 Q. Okay. So you're completely independent from</p> <p>18 them?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Do you have the same location you do your exams</p> <p>21 week in, week out?</p> <p>22 A. I'm not sure I follow the question.</p> <p>23 Q. Do you have an exam room when you go there?</p> <p>24 A. I use one of their rooms when I'm there.</p> <p>25 Q. Okay. Do you pay rent for that room?</p>	<p>1 Q. Okay. And I see that Clearwater is located in</p> <p>2 Bath, Ohio?</p> <p>3 A. I think that is the post office box address.</p> <p>4 Q. Okay. And what is Clearwater?</p> <p>5 A. It's just the billing. <u>Clearwater bills for the</u></p> <p>6 <u>provider.</u></p> <p>7 Q. Okay. And is Ms. Esterle an owner of Clearwater?</p> <p>8 A. No, sir.</p> <p>9 Q. Member of Clearwater?</p> <p>10 A. No, sir.</p> <p>11 Q. A partner of Clearwater?</p> <p>12 A. No, sir.</p> <p>13 Q. But when you said she's your partner, what do you</p> <p>14 mean by that?</p> <p>15 A. She's a -- she works for me in the practice. I</p> <p>16 refer to all my doctors as my partners, but they</p> <p>17 work for me.</p> <p>18 Q. And the practice we're here, what is that called?</p> <p>19 A. I'm sorry?</p> <p>20 Q. We're here at an office building in Wadsworth,</p> <p>21 Ohio.</p> <p>22 A. It's <u>Wadsworth Primary Care.</u></p> <p>23 Q. And is she a member or a partner in that?</p> <p>24 A. She's an employee.</p> <p>25 Q. Okay. And are you an owner, member, or partner</p>
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<p>1 A. I do not.</p> <p>2 Q. Do you have any type of business agreement with</p> <p>3 Town and Country?</p> <p>4 A. Absolutely not.</p> <p>5 Q. How do you -- is there any form of compensation</p> <p>6 for the use of their room?</p> <p>7 A. No, sir.</p> <p>8 Q. When you go down there, are there times where</p> <p>9 Town and Country refers to you a new patient?</p> <p>10 A. On occasion.</p> <p>11 Q. Okay. Do you ever have patients down there that</p> <p>12 were not referred to you other than by Town and</p> <p>13 Country?</p> <p>14 A. I believe there have been.</p> <p>15 Q. And how would they have gotten a hold of you?</p> <p>16 A. I don't know.</p> <p>17 Q. Okay. Is Ms. -- Dr. Esterle a member of</p> <p>18 Hanchrist?</p> <p>19 A. No, sir.</p> <p>20 Q. A member of it?</p> <p>21 A. No, sir.</p> <p>22 Q. Owner?</p> <p>23 A. No.</p> <p>24 Q. Partner?</p> <p>25 A. No.</p>	<p>1 in that?</p> <p>2 MR. BEST: Excuse me. I object.</p> <p>3 The Judge has already made a</p> <p>4 ruling. I've let you talk about all this</p> <p>5 even though it's not appropriate and it's</p> <p>6 beyond the scope.</p> <p>7 There's been a ruling by Judge</p> <p>8 O'Donnell in this case, so he's done</p> <p>9 talking about it.</p> <p>10 MR. ROBY: Well, that's not correct.</p> <p>11 There was an issue as it relates to the</p> <p>12 subpoena, and it wasn't Judge O'Donnell</p> <p>13 who ruled.</p> <p>14 MR. BEST: Well, let me get that. I</p> <p>15 have it --</p> <p>16 MR. ROBY: Okay.</p> <p>17 MR. BEST: -- so maybe I misspoke</p> <p>18 about the judge.</p> <p>19 MR. ROBY: It would be Judge Bender</p> <p>20 because Judge O'Donnell's on maternity</p> <p>21 leave until this week.</p> <p>22 MR. BEST: Well, it's in Judge</p> <p>23 O'Donnell's Court, so I --</p> <p>24 MR. ROBY: The signature is Judge</p> <p>25 Bender; would you agree?</p>

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Welcome to John F. Myers Attorney At Law

If you've run into legal issues in Akron, OH, you know it can be tough to find an attorney at law to represent you correctly. Sometimes it can come down to not knowing where to even begin to search for the right discrimination attorney or employment lawyer to help you. This is where I, John F. Myers Attorney at Law, come in as your Akron, OH employment lawyer.

I specialize in labor law, meaning that if you've experienced discrimination at any point in your job, or if you've experienced a hostile work environment, you don't have to be silent about it anymore. At my law office, you will be able to receive the kind of help you need to resolve these painful situations.

It can be very difficult to begin a civil litigation process on your own, so why not let me provide my wealth of knowledge and experience to your case? With the right employment lawyer to help you, you have a much better chance of succeeding and earning what you deserve.

When you've been discriminated against, it can be very hard to trust someone else to help you. You need a discrimination lawyer to make the whole process much easier to handle. With my expertise in this area of labor law, you can rest assured that you will be in the right hands.

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Don't allow another day to pass without doing something about a hostile work environment, the sexual harassment you might be experiencing, or the discrimination you might be facing: contact me today to work on your behalf. With my help, we can put up a fight so you can have the respect you deserve and go to work feeling safe. The time for hesitation has passed; call me today!

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proceed with other depositions prior to Nestico's even after postponing his for a month ("Just let me know who is okay to be deposed before Rob, if anyone."). There is simply no indication that we ever agreed to postpone *all* depositions by one month and all evidence is clearly to the contrary.

With this, following up on today's mediation where your client did not show the slightest interest in resolving this matter with us despite your repeated statements to the contrary to induce us to postpone Mr. Nestico's deposition, I must respectfully ask you to please stop jerking us around. You can not on one hand insist on tight discovery deadlines, and then obstruct and delay every time we try to get any depositions scheduled, including by saying that any one of the dozens of attorneys who represent the Defendants in this case is unavailable, even when we already had dates confirmed. We have had November 20 blocked off for nearly a month now. Enough is enough. We need to get these done. If an earlier date in November would work for these depositions, and we can confirm with the witnesses, that would be fine. Otherwise, again, we will need another extension of the discovery deadline.

As things stand, the Defendants should plan to make whatever arrangements they need for Julie and Dr. Gunning's depositions on Nov. 20. Otherwise, if they need to speak with these witnesses on the record they can issue their own subpoenas and proceed that way.

Peter Pattakos

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This email might contain confidential or privileged information. If you are not the intended recipient, please delete it and alert us.

On Thu, Nov 1, 2018 at 11:23 AM Mannion, Tom <Tom.Mannion@lewisbrisbois.com> wrote:

Thomas P. Mannion
Attorney | Cleveland Managing Partner
Tom.Mannion@lewisbrisbois.com

T: 216.344.9467 F: 216.344.9421 M: 216.870.3780

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Williams v KNR

Mannion, Tom <Tom.Mannion@lewisbrisbois.com>

Wed, Nov 28, 2018 at 8:48 PM

To: Peter Pattakos <peter@pattakoslaw.com>, "Barmen, Brad" <Brad.Barmen@lewisbrisbois.com>

Cc: "James M. Popson" <jpopson@sutter-law.com>, David Best <dmb@dmbestlaw.com>, Joshua Cohen <jcohen@crklaw.com>, John Myers <johnmyerscolpa@gmail.com>, "Szucs, Helen" <Helen.Szucs@lewisbrisbois.com>

Delaying? Just stop. I don't know who you think you are, what glue you think we are sniffing to give any credence to this type of rhetoric, or what you think you have to gain I already called accusations. Apparently, it's your modus operandi. But it doesn't do any good.

How can you claim we are delaying? We have tried to get this case on a faster track. We have tried to expedite discovery. We gave you numerous dates for Attorney Nestico - which dates were BEFORE the dates you're discussing. We told you we were good to go on November 29 and 30th, the dates you noticed Nestico for, and you canceled. We are actually trying to move the case quicker along than you. It's a simple concept, Peter: "Before" versus "After". We offered before. You're requesting after. Delay equals after. Attempting to avoid delay equals before. We are before, you are after. We are "move things forward" - you are "delaying". I'm just trying to put this in the most elementary terms possible, because you've apparently completely lost your sense of perspective. You canceled. You declined dates that are earlier rather than later. You wanted extensions. And then you claim we are attempting to delay. Seriously, the practice of law is tough enough.

Much like you can explain the allegations of your complaint, you also can't explain your current false accusation of delay. You are the one who canceled Nestico's deposition. You are the one that refused dates shortly thereafter. You were the one that apparently is refusing the December 13 and 14th dates for Mr. Nestico as well. All of those dates were BEFORE the date you are suggesting. How can you possibly say we are trying to delay.

We told you multiple times that we are not available between the 17th and 21st or the first part of January. Perhaps you should revisit the local rules yourself for sending emails like this.

Stop with the blatant misrepresentations and false accusations. We literally sent you two dates for Rob N earlier today - and those were before your dates. We sent you dates previous to that. We sent you multiple dates. You're not going to get dates between December 17 and 21st or January 3-10. We are not available on those dates. What don't you understand about that? My December 10th trial was moved to April, because plaintiffs counsel's mother died. Therefore, we offered December 13 and 14th, which is after Dr. Gunning. . My trial was moved yesterday, and we offered the dates today. Stop

From: Peter Pattakos <peter@pattakoslaw.com>

Date: November 28, 2018 at 7:20:11 PM EST

To: Barmen, Brad <Brad.Barmen@lewisbrisbois.com>

Cc: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>, James M. Popson <jpopson@sutter-law.com>, David Best <dmb@dmbestlaw.com>, Joshua Cohen <jcohen@crklaw.com>, John Myers <johnmyerscolpa@gmail.com>, Szucs, Helen <Helen.Szucs@lewisbrisbois.com>

Subject: [EXT] Re: Williams v KNR

External Email

Counsel:

Please see the attached Third Amended Notice of Deposition of Dr. Gunning that was filed with the Court today.

Also, I believe this is about the tenth time since you first postponed the Gunning deposition that I have asked for new dates for Nestico's deposition. At this point, I can make myself available for this on any two consecutive days between Dec. 17-21, and Jan 3-10. Please stop delaying with this and get me dates ASAP. If I don't hear from you by Friday on this you should assume that these dates are no longer available.

Thank you.

Peter Pattakos
The Pattakos Law Firm LLC

Sandra Kurt, Summit County Clerk of Courts

EXHIBIT 4

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.comwww.pattakoslaw.com

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Peter Pattakos

The Pattakos Law Firm LLC

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Fairlawn, OH 44333

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peter@pattakoslaw.comwww.pattakoslaw.com

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On Wed, Nov 28, 2018 at 4:28 PM Barmen, Brad <Brad.Barmen@lewisbrisbois.com> wrote:

Counsel:

Be advised that Dr. Gunning will not be appearing for deposition tomorrow. Dr. Gunning was prepared to be deposed on the allegations and issues raised in the 4th amended complaint as agreed tomorrow. However, in light of the fact that the motion for leave to file the 5th amended complaint was granted just before lunch today, we need additional time to properly address those allegations that were not in play before today. There are also personal reasons relative to Dr. Gunning that were brought to my attention today warrant a postponement of the depo.

I have confirmed with Dr. Gunning that he can be available to appear for deposition on the 5th amended complaint on 12/12, 12/13, or 12/14.

I apologize for any inconvenience.

your attention to this matter is appreciated.

regards

Brad

**Brad J. Barmen**

Partner

Brad.Barmen@lewisbrisbois.com

T: 216.586.8810 F: 216.344.9421

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From: Mannion, Tom**Sent:** Wednesday, November 28, 2018 10:17 AM**To:** James M. Popson; Barmen, Brad; David Best; peter@pattakoslaw.com; Joshua Cohen**Subject:** Williams v KNR



Peter Pattakos <peter@pattakoslaw.com>

Member Williams, et al. vs. Kisling, Nestico & Redick, LLC, et al.

Peter Pattakos <peter@pattakoslaw.com>

Tue, Nov 6, 2018 at 1:46 PM

To: Brad.Barmen@lewisbrisbois.com

Cc: John Myers <johnmyerscolpa@gmail.com>

Dear Brad and John,

Attached is a letter that Brad just sent me in which he states that his "representation of Dr. Ghoumbrial and his practice extends to his staff" and in which he also seems to suggest that he somehow now represents "all current or former members of Dr. Ghoumbrial's staff." This is concerning for various reasons, including that I have already been contacted by John who has informed me that he represents Dr. Gunning in connection with the subpoena that I served on Dr. Gunning.

Brad, are you making statements that you represent current and former members of Dr. Ghoumbrial's staff without the authorization of those staff members? If you are really representing these people, why would you need me to tell you whether I've attempted to contact them? Otherwise, why do you believe you're entitled to receive this information from me, which is my work product?

John, have you withdrawn from your representation of Dr. Gunning? Can you confirm that Dr. Gunning is now representing him and not you? Or are you both representing him?

Please let me know what's going on here because, as I'm sure you both understand, the inference that Dr. Ghoumbrial is trying to coerce his employees into silence and into accepting conflicted representation is plain and troubling.

Also, Brad, as I'm sure you were made aware when you signed on to this case, Dr. Gunning's deposition is scheduled for the afternoon of November 20 at my office. We may be able to move this to the morning of Nov. 21 at Tom Mannion's request but that depends on Dr. Gunning's availability and if Dr. Gunning is not available on that morning we are going forward on Nov. 20.

Please advise. Thank you.

Peter Pattakos
The Pattakos Law Firm LLC
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330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com
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[Quoted text hidden]

**Williams- Letter to Pattakos from BJB 11.6.18 4844-8682-5082 v.pdf**

44K

Peter Pattakos <peter@pattakoslaw.com>



Williams v. KNR depositions1 message

Peter Pattakos <peter@pattakoslaw.com>

Fri, Nov 9, 2018 at 3:28 PM

To: helen.szucs@lewisbrisbois.com

Cc: Brad.Barmen@lewisbrisbois.com

Hello Ms. Szucs,

I received your phone message asking about a deposition scheduled for next Tuesday, 11/13. There is no deposition going forward on that date. The only depositions currently confirmed and scheduled are Julie Ghoubrial at 1PM on November 20, Richard Gunning, MD at 8AM on November 21, and Rob Nestico's on November 29 and 30 at 8AM. All depositions will be at my office, address below.

Thanks.

Peter Pattakos
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EXHIBIT 6



Peter Pattakos <peter@pattakoslaw.com>

Williams v. KNR: Deposition of Richard Gunning MD

Peter Pattakos <peter@pattakoslaw.com>

Thu, Nov 8, 2018 at 4:57 PM

To: David Best <dmb@dmbestlaw.com>, Brad.Barmen@lewisbrisbois.com, "Mannion, Tom" <tom.mannion@lewisbrisbois.com>, Shaun Kedir <shaunkedir@kedirlaw.com>, "James M. Popson" <jpopson@sutter-law.com>

Cc: Joshua Cohen <jcohen@crklaw.com>, Rachel Hazelet <rhazelet@pattakoslaw.com>

Counsel:

I have received confirmation from Dr. Gunning's attorney John Myers that Dr. Gunning is willing to reschedule his deposition to November 21 at 8AM to accommodate Mr. Mannion's schedule as Mr. Mannion has requested. Thus, we will proceed at that time per the attached amended notice of deposition that was filed today.

Thank you.

Peter Pattakos
The Pattakos Law Firm LLC
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Fairlawn, OH 44333
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peter@pattakoslaw.com
www.pattakoslaw.com

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On Fri, Nov 2, 2018 at 6:16 PM Peter Pattakos <peter@pattakoslaw.com> wrote:

OK, so one attorney from one of the 5 firms that is representing the KNR Defendants in this case is going out of the country and that means we can't even have a phone call to schedule depositions until 11/12 or 11/13 or later? Gentlemen, please, this is getting very ridiculous.

Tom Mannion emailed me separately to say that he is available for a deposition on the morning of 11/21, with a hard stop at noon. I am waiting to hear back from Dr. Gunning on whether that works for him. If it does, we will proceed with him on that morning at 8AM, and will have Julie Ghoumbrial's deposition at 1PM on 11/20. I know Mr. Mannion said he is unavailable on 11/20, but that is not a legitimate reason to postpone this date where we already have a witness confirmed and where Mr. Best—who represents the KNR Defendants in this case, who just a couple of weeks ago asked questions of Julie on Dr. Ghoumbrial's behalf at Julie's deposition in the divorce case, and asked her questions about the allegations in our case—has already confirmed his availability. If Dr. Gunning is not available on 11/21, we will proceed with him on 11/20 as noticed and again I'm sure Mr. Best is fully competent to represent the KNR Defendants in that deposition as well given his extensive involvement with Dr. Ghoumbrial and his practice over the years.

I will let everyone know if Dr. Gunning is available on 11/21 and will re-notice his deposition for that morning if so. I expect to hear back from his counsel first thing next week.

In the meantime, **all counsel please let me know if you are not available on either the morning or afternoon of 11/12 or 11/13 for a scheduling call.**

Thank you.

Peter Pattakos
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On Thu, Nov 1, 2018 at 5:27 PM David Best <dmb@dmbestlaw.com> wrote:

As I have informed you for some time I am leaving the country early Saturday morning and other than a brief stop in Akron on the 12th and 13th of November I am out until the morning of November 19th. David Best

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From: Peter Pattakos <peter@pattakoslaw.com>

Sent: Thursday, November 1, 2018 4:12:08 PM

To: Mannion, Tom

Cc: James M. Popson; David Best; Shaun Kadir; padkinson@poling-law.com; Joshua Cohen; Rachel Hazelet

Subject: Re: [EXT] Re: I am not available 11/21 for Julie Ghoubril... plus, we agreed to 30-day stay on depositions. What exactly do you think you're doing?

All:

I propose that we set up a call next week with counsel for all parties to get dates for these depositions nailed down. Plaintiffs need to proceed with depositions in the order and general timeframe set forth in my email of yesterday (attached here for your convenience), which is entirely reasonable under the circumstances. If one or more of you is unable to proceed in this manner to due scheduling conflicts or whatever, and that legitimately necessitates postponement, then we will have to ask for a commensurate extension of the deadline.

Please send me times next week when you are NOT available for such a call and I will try to find a time that works for everyone, including the witnesses whose counsel is not copied here.

Thank you.

Peter Pattakos
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On Thu, Nov 1, 2018 at 3:22 PM Peter Pattakos <peter@pattakoslaw.com> wrote:

Tom, if your schedule is so packed and you really need to be at all of these depositions than your clients probably should not have insisted on such a tight discovery deadline. All other counsel is available on 11/20 and we intend to proceed with Julie and Dr. Gunning on that date. Your clients should also make arrangements for December as it is completely ridiculous for you to block off full weeks of unavailability when we are working with such a limited timeframe that your clients insisted on.

Peter Pattakos
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peter@pattakoslaw.com
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Peter Pattakos <peter@pattakoslaw.com>

Depos

Barmen, Brad <Brad.Barmen@lewisbrisbois.com>

Fri, Nov 16, 2018 at 9:08 AM

To: Peter Pattakos <peter@pattakoslaw.com>, Deena Valentine <dvalentine@griff-law.com>

Cc: Barb Day <bday@sutter-law.com>, David Best <dmb@dmbestlaw.com>, "James M. Popson" <jpopson@sutter-law.com>, "jcasey@dicellolaw.com" <jcasey@dicellolaw.com>, "Nathan F. Studeny" <nstudeny@sutter-law.com>, Shaun Kedir <shaunkedir@kedirlaw.com>, "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>, "Stephen P. Griffin" <sgriffin@griff-law.com>, John Myers <johnmyerscolpa@gmail.com>, "Szucs, Helen" <Helen.Szucs@lewisbrisbois.com>

Counsel:

Be advised that I have a conflict on 11/21 and am not available to appear at the deposition of Dr. Gunning currently scheduled to begin at 8:00am. As you all now know, I was recently retained to represent Dr. Ghoubril and his practice. As such it is necessary that I be present when Dr. Gunning is deposed. I had tried to reschedule my conflicting depositions, which were set before I was retained in this case but we are up against a discovery deadline and was unable to do so. I have spoken to John Myers, who remains Dr. Gunning's personal counsel, and he indicated Dr. Gunning is willing to reschedule the deposition.

I am available for a conference call this afternoon or anytime Monday to discuss available dates to conduct Dr. Gunning's deposition. I am happy to circulate a call in number for a conference call once I know everyone's availability.

I appreciate your courtesy in this matter and I apologize for any inconvenience.

Regards

Brad

**Brad J. Barmen****Partner****Brad.Barmen@lewisbrisbois.com****T: 216.586.8810 F: 216.344.9421**1375 E. 9th Street, Suite 2250, Cleveland, OH 44114 | LewisBrisbois.com**Representing clients from coast to coast. View our locations nationwide.**



Peter Pattakos <peter@pattakoslaw.com>

William - Nestico deposition

Mannion, Tom <Tom.Mannion@lewisbrisbois.com>

Wed, Nov 21, 2018 at 4:37 PM

To: Peter Pattakos <peter@pattakoslaw.com>, "Barmen, Brad" <Brad.Barmen@lewisbrisbois.com>

Cc: Barb Day <bday@sutter-law.com>, David Best <dmb@dmbestlaw.com>, "James M. Popson" <jpopson@sutter-law.com>, "Nathan F. Studeny" <nstudeney@sutter-law.com>, Shaun Kedir <shaunkedir@kedirlaw.com>, John Myers <johnmyerscolpa@gmail.com>, "Szucs, Helen" <Helen.Szucs@lewisbrisbois.com>, "Snell, Jackie" <Jackie.Snell@lewisbrisbois.com>

Rob's deposition has been set for a long time. You will have a right to question after Brad. Or take him up on his offer to ask questions first. But the deposition is going forward. It is properly noticed and everyone is available.

From: Peter Pattakos <peter@pattakoslaw.com>**Date:** November 21, 2018 at 4:10:10 PM EST**To:** Barmen, Brad <Brad.Barmen@lewisbrisbois.com>**Cc:** Mannion, Tom <Tom.Mannion@lewisbrisbois.com>, Barb Day <bday@sutter-law.com>, David Best <dmb@dmbestlaw.com>, James M. Popson <jpopson@sutter-law.com>, Nathan F. Studeny <nstudeney@sutter-law.com>, Shaun Kedir <shaunkedir@kedirlaw.com>, John Myers <johnmyerscolpa@gmail.com>, Szucs, Helen <Helen.Szucs@lewisbrisbois.com>, Snell, Jackie <Jackie.Snell@lewisbrisbois.com>**Subject:** [EXT] Re: William - Nestico deposition

Brad,

Per my last email, I will not be taking Mr. Nestico's deposition next week and we'll need to get new dates on the calendar for that. If you need to get a sworn statement from Mr. Nestico in the meantime, I'm sure he'll give you an affidavit without you having to go to the expense of a deposition.

Anyway, I'm surprised that you were able to pull all of this together today, along with your two notices of supplemental authority that you just sent to the Court. I thought you were too busy on another case today which is why we had to postpone Dr. Gunning's deposition. What gives?

Peter Pattakos
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On Wed, Nov 21, 2018 at 12:57 PM Barmen, Brad <Brad.Barmen@lewisbrisbois.com> wrote:

All:

Attached please find my Notice of Deposition of Robert Nestico being filed today. I have set Mr. Nestico's deposition for 1pm at the KNR offices in Fairlawn and I have secured a court reporter.

I am noticing Mr. Nestico's deposition because I have yet to see confirmation from any other party since the issue regarding Dr. Gunning's deposition was resolved. As everyone already had the 29th and 30th set aside for Mr. Nestico's deposition, this should not be a problem.

Peter, I have no objection if you want to question Mr. Nestico before I do. I just want to ensure his deposition is conducted on the dates previously agreed upon as his testimony is important for the defense of my client. I have not secured a videographer and I have no intention of doing so. If you want to tape the deposition you will need to make the necessary arrangements.

Any questions feel free to contact me. Otherwise happy Thanksgiving to all.

Your attention to this matter is appreciated.

Regards

Brad

From: Peter Pattakos [mailto:peter@pattakoslaw.com]

Sent: Friday, November 16, 2018 3:56 PM

To: Mannion, Tom

Cc: Barmen, Brad; Barb Day; David Best; James M. Popson; Nathan F. Studeny; Shaun Kedir; John Myers; Szucs, Helen

Subject: Re: [EXT] Re: Depos

Tom, like I said in my separate email to Jim, I need to take Dr. Gunning's deposition before Mr. Nestico's and Dr. Gunning is not available on any workable date before the 11/29 or 11/30. Thus, there does not appear to be a better solution unless I am really missing something here. Again, this last minute postponement by Mr. Barmen is not my fault. Please provide new dates for Mr. Nestico's deposition ASAP and we can work from there. Thank you.

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

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Bradley J. Barmen
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114
Brad.Barmen@lewisbrisbois.com
Direct: 216.586.8810

November 6, 2018

VIA ELECTRONIC MAIL ONLY

Peter Pattakos, Esq.
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, OH 44333
peter@pattakoslaw.comm

Re: Member Williams, et al. v. Kisling, Nestico & Redick, LLC, et al.
Case No. CV-2016-09-3928

Dear Mr. Pattakos:

As you know, I now represent Dr. Ghoumbrial and his practice. My representation of Dr. Ghoumbrial and his practice extends to his staff. As such, any and all communication regarding Dr. Ghoumbrial in this matter should be directed solely to my attention. There should be no attempts made to contact any employee of Dr. Ghoumbrial or member of his staff.

If you have contacted any current or former member of Dr. Ghoumbrial's staff prior to my retention please advise me of who you contacted and when. I trust there will be no further such attempts now that I have been retained.

Your attention to this matter is appreciated.

Very truly yours,

/s/ Bradley J. Barmen

Bradley J. Barmen of
LEWIS BRISBOIS BISGAARD & SMITH LLP

BJB:hs

cc: Daniel Frech, Esq.



Peter Pattakos <peter@pattakoslaw.com>

Depos

Barmen, Brad <Brad.Barmen@lewisbrisbois.com>

Wed, Nov 21, 2018 at 5:35 PM

To: Peter Pattakos <peter@pattakoslaw.com>

Cc: David Best <dmb@dmbestlaw.com>, "James M. Popson" <jpopson@sutter-law.com>, "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>, "Nathan F. Studeny" <nstudeny@sutter-law.com>, Shaun Kedir <shaunkedir@kedirlaw.com>, John Myers <johnmyerscolpa@gmail.com>

I represent Dr. Ghoumbrial and his practice which includes Dr. Gunning. Mr. Myers represents Dr. Gunning in his individual capacity.

Sent from my iPhone

[Quoted text hidden]

LB-Logo_7c9c5bd0-0a1e-47b8-a3b1-a4b5cdfed8fa.png
32K**EXHIBIT 11**

Williams v KNR

Barmen, Brad <Brad.Barmen@lewisbrisbois.com> Wed, Nov 28, 2018 at 4:28 PM
To: "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>, "James M. Popson" <jpopson@sutter-law.com>, David Best <dmb@dmbestlaw.com>, "peter@pattakoslaw.com" <peter@pattakoslaw.com>, Joshua Cohen <jcohen@crklaw.com>
Cc: "johnmyerscolpa@gmail.com" <johnmyerscolpa@gmail.com>, "Szucs, Helen" <Helen.Szucs@lewisbrisbois.com>

Counsel:

Be advised that Dr. Gunning will not be appearing for deposition tomorrow. Dr. Gunning was prepared to be deposed on the allegations and issues raised in the 4th amended complaint as agreed tomorrow. However, in light of the fact that the motion for leave to file the 5th amended complaint was granted just before lunch today, we need additional time to properly address those allegations that were not in play before today. There are also personal reasons relative to Dr. Gunning that were brought to my attention today was warrant a postponement of the depo.

I have confirmed with Dr. Gunning that he can be available to appear for deposition on the 5th amended complaint on 12/12, 12/13, or 12/14.

I apologize for any inconvenience.

your attention to this matter is appreciated.

regards
Brad



Brad J. Barmen
Partner
Brad.Barmen@lewisbrisbois.com
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From: Mannion, Tom
Sent: Wednesday, November 28, 2018 10:17 AM
To: James M. Popson; Barmen, Brad; David Best; peter@pattakoslaw.com; Joshua Cohen
Subject: Williams v KNR

[Quoted text hidden]



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32K

EXHIBIT 12

Williams v KNR

Barmen, Brad <Brad.Barmen@lewisbrisbois.com>

Wed, Nov 28, 2018 at 5:29 PM

To: Peter Pattakos <peter@pattakoslaw.com>

Cc: "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>, "James M. Popson" <jpopson@sutter-law.com>, David Best <dmb@dmbestlaw.com>, Joshua Cohen <jcohen@crklaw.com>, John Myers <johnmyerscolpa@gmail.com>, "Szucs, Helen" <Helen.Szucs@lewisbrisbois.com>

Peter

For the reasons stated Dr. Gunning will not be appearing tomorrow. I’ve offered you 3 alternative dates two weeks from now. I do not owe you any additional explanation and your threats mean nothing to me. If you feel the need to file a motion file a motion. I’ll respond. Further, John has told you more than once to call me relative to these issues yet you continue to call him. Please direct your inquiries to me as previously indicated.

Regards
Brad

Sent from my iPhone

On Nov 28, 2018, at 5:19 PM, Peter Pattakos <peter@pattakoslaw.com> wrote:

External Email

Brad,

To add to the below, why would Dr. Gunning need special "preparation" to tell the truth based on his own knowledge? Before you became involved, he was apparently willing to do just that. Since you have become involved there has been nothing but obstruction.

We will see you tomorrow morning or Dr. Gunning and Dr. Ghoubrial will both be held in contempt and sanctioned.

Peter Pattakos
The Pattakos Law Firm LLC
101 Ghent Road
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330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com
www.pattakoslaw.com

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On Wed, Nov 28, 2018 at 5:09 PM Peter Pattakos <peter@pattakoslaw.com> wrote:

Brad,

If Dr. Gunning doesn't show up for his deposition tomorrow he will be in violation of Local Rule 17.1, which provides that "Counsel for the deponent shall not cancel a deposition or limit the length of a deposition without stipulation of the examining counsel or order of the court." If you continue to obstruct we will seek an order holding your client and Dr. Gunning in contempt of court. There is nothing about the Fifth Amended Complaint that wouldn't be a proper subject of inquiry ("reasonably calculated to lead to the discovery of admissible evidence") regarding the Fourth Amended Complaint. If these so-called "personal reasons" actually do "warrant a postponement of the depo," you should explain what they are. Otherwise, we will expect to see Dr. Gunning tomorrow and will seek a contempt order as well as sanctions if he does not show.

Peter Pattakos
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On Wed, Nov 28, 2018 at 4:28 PM Barmen, Brad <Brad.Barmen@lewisbrisbois.com> wrote:
Counsel:

Be advised that Dr. Gunning will not be appearing for deposition tomorrow. Dr. Gunning was prepared to be deposed on the allegations and issues raised in the 4th amended complaint as agreed tomorrow. However, in light of the fact that the motion for leave to file the 5th amended complaint was granted just before lunch today, we need additional time to properly address those allegations that were not in play before today. There are also personal reasons relative to Dr. Gunning that were brought to my attention today warrant a postponement of the depo.

I have confirmed with Dr. Gunning that he can be available to appear for deposition on the 5th amended complaint on 12/12, 12/13, or 12/14.

I apologize for any inconvenience.

your attention to this matter is appreciated.

regards
Brad

Brad J. Barmen
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From: Mannion, Tom
Sent: Wednesday, November 28, 2018 10:17 AM
To: James M. Popson; Barmen, Brad; David Best; peter@pattakoslaw.com; Joshua Cohen
Subject: Williams v KNR

Attached is confirmation of Naomi Wright's depostion notice being withdrawn.

What are you doing re: Member Williams? Are you producing her tomorrow or are we looking at new dates?

Thomas P. Mannion
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Peter Pattakos <peter@pattakoslaw.com>

Williams v KNR

Peter Pattakos <peter@pattakoslaw.com>

Wed, Nov 28, 2018 at 6:17 PM

To: Brad.Barmen@lewisbrisbois.com

Cc: "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>, "James M. Popson" <jpopson@sutter-law.com>, David Best <dmb@dmbestlaw.com>, Joshua Cohen <jcohen@crklaw.com>, John Myers <johnmyerscolpa@gmail.com>, Helen.Szucs@lewisbrisbois.com

Brad,

You are making quite a record with your continued obstruction but I suppose it's just as well. We will proceed with Dr. Gunning's deposition on 12/12 at 10AM. I trust the third time will be a charm here.

Also, regarding Mr. Myers, please note that he has never once told me to call you about Dr. Gunning and he has never confirmed that you legitimately represent him at all. If Dr. Gunning has actually waived the massive conflict of interest between him and Ghoubril here (to the extent such a conflict could even be legitimately waived, which is doubtful), I would certainly appreciate confirmation of that from someone besides you but please be assured that such confirmation has not been provided to date in any form despite my repeated requests.

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