IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, *et al.*, Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, *et al.*, Defendants.	Case No. CV-2016-09-3928 Judge James A. Brogan **Reply in Support of Plaintiffs' Motion for a Protective Order Regarding the Depositions of Robert Horton and Gary Petti**

After finally conceding that Gary Petti's deposition will take place on March 1 pursuant to Plaintiffs' duly issued subpoena,[1] the KNR Defendants acknowledge that the only issue remaining for the Court to decide on the instant motion is whether Plaintiffs or Defendants should be permitted to question Robert Horton first at his February 25 deposition. Defs' Opp. at 1.[2] This basic issue is easily resolved by either one of two simple facts: (1) that Plaintiffs issued a subpoena for Horton's deposition long before Defendants did, or, (2) that Defendants sued Horton, purportedly to enforce a confidentiality agreement, causing Horton to give them an affidavit and stop communicating with Plaintiffs about this case.

Despite the simplicity of this issue, or perhaps precisely because of it, Defendants have filed an extraordinary 34-page opposition brief loaded with nonsensical, unsupported, and irrelevant

[1] Defendants only made this concession after Plaintiffs filed their Jan. 18 motion for a protective order. Prior to this filing, Defense counsel had rather vehemently insisted on usurping Plaintiffs' subpoena by proceeding with Petti's deposition on February 1. *See* **Ex. 7** to Plaintiffs' Jan. 18 motion, Jan. 17 Mannion email ("You are not Judge Pattakos. You are not Supreme Court Justice Pattakos. You are not the writer of the rules. You are actually required to FOLLOW the rules. The OHIO rules. Not California. Not the rules by Peter Pattakos. Your games are way past being old, and we've given you way too much deference. Both parties have a right to take depositions. And we are taking Mr. Petti on 2/1.").

[2] Defendants captioned their Jan. 25 opposition to Plaintiffs' Jan. 18 motion for a protective order re: the Horton and Petti depositions as their own, "Motion to Compel Deposition of Robert Horton, Esq. and Response to Plaintiffs' Motion for a Protective Order." Defendants' Jan. 25 brief is referred to herein as their opposition brief ("Defs' Opp." or "Opp.").

attacks on Plaintiffs' counsel (submitted under the guise of an "unclean hands" argument), as well as 70 pages of exhibits and long block quotes from defense counsel's emails that show nothing as much as the extent of the obstruction and harassment Plaintiffs have faced in conducting a basic investigation of their claims. Indeed, this extremely lengthy and overheated brief only strengthens the inference that Defendants seek to compound an improper influence over Horton by their extraordinary insistence on questioning him first at his deposition. As to any legitimate need for Defendants to question Horton first, their brief is silent.

Plaintiffs see no need to respond point by point to Defendants' bizarre attacks and inapposite arguments and will decline the opportunity do so unless otherwise instructed by the Court. The undersigned will, however, briefly address the especially egregious claim that he failed to allow Ms. Gobrogge a fair opportunity to pump breast milk at her deposition. But not before briefly discussing Defendants' failure to engage on the merits of the issue that is actually at hand.

I. Defendants ignore controlling precedent holding that the depositions of non-party witnesses "must be compelled through a subpoena as provided in Civ.R. 45."

For all the ink spilled in Defendants' brief, not a drop was used to address the controlling precedent holding that depositions of non-party witnesses "must be compelled through a subpoena as provided in Civ.R. 45." *Bank of New York Mellon v. Wahle*, 9th Dist. Summit No. 26313, 2012-Ohio-6152, ¶ 28; *State ex rel. Ghoubrial v. Herbert*, 10th Dist. Franklin No. 15AP-470, 2016-Ohio-1085, ¶ 11 ("The Supreme Court of Ohio expressly stated the use of a subpoena is not only a way to compel a non-party witness but the way it should be done."). Thus, the Court need only note that Plaintiffs issued their subpoena for Horton's deposition last November, long before Defendants' attempted to usurp this subpoena by issuing their own just two weeks ago. *Compare* Plaintiffs' notice of service of subpoena filed Nov. 8, 2018 with Defendants' notice of service of subpoena filed on

Jan. 15, 2019.[3]

Defendants nevertheless argue that Plaintiffs' subpoena should be disregarded because Defendants allegedly reached an agreement with Horton's counsel to appear for a deposition on their terms. Defs' Opp. at 30. This so-called "agreement" with Horton, however, only further shows the influence Defendants have gained over him since having sued him for sharing information with Plaintiffs about this case. Indeed, Defendants are apparently oblivious not just to the fact that two of the affidavits attached to their brief are executed by individuals whom KNR has filed lawsuits against (Horton and chiropractor James Fonner), but also the inferences raised when a personal-injury firm goes about seeking to enforce confidentiality agreements regarding its business practices as if it were the C.I.A.[4]

[3] Defendants make much of the five notices of Horton's deposition that they've filed (*e.g.*, Opp. at 3, 9–10), but, importantly, and as is made clear by the dates of the notices in comparison to the dates of the subpoena that Defendants finally did issue two weeks ago, none of these notices was filed pursuant to a valid subpoena. Additionally, all of these notices were filed after KNR sued Horton and obtained their affidavit from him. It is certainly true, as Defendants state, that Defendants have been trying to schedule Horton's deposition "for OVER A YEAR" (Opp. at 1), albeit without a subpoena. It's also true, however, that these efforts were immediately opposed by Plaintiffs' counsel as an apparent effort to further manipulate Horton's testimony in the wake of their lawsuit against him and to proceed prematurely with his deposition before Plaintiffs had a chance to question Mr. Nestico or conduct written discovery—particularly after Defendants' position did not change even after Horton's counsel confirmed that Mr. Horton would only appear for a deposition once, on consecutive days if necessary. *See*, *e.g.*, **Ex. 1**, **Ex. 2** to Plaintiffs' Jan. 18 motion.

[4] KNR sued Mr. Horton for violating a confidentiality agreement after he provided documents and other information to Plaintiffs on which their claims are based. *See KNR v. Horton*, Summit C.P. No. CV-2017-03-1236. KNR sued chiropractor James Fonner for allegedly having interfered with KNR's "business relationships," causing Fonner to countersue based on allegations that KNR "has a scheme in place whereby it sends clients who were allegedly injured in motor vehicle accidents to its 'preferred chiropractors,'" who were required to "follow [KNR's] demands and requests as it relates to treatment, billing, and reducing bills." *See Kisling, Nestico & Redick, LLC v. Fonner*, Franklin County C.P. No. 15-CV-003216, Sept. 15, 2015 Counterclaim of Dr. James E. Fonner at ¶ 2–5, attached as **Exhibit 1**. Like with Horton, KNR now purports to be concerned that Plaintiffs' counsel attempted to "induce" Fonner into breaching the confidentiality agreement they reached with him after having sued him. Opp. at 24–25. KNR has also threatened to sue its former employee/attorney Paul Steele, alleging that Steele violated his confidentiality agreement with the firm by communicating with certain chiropractors whose relationships with KNR are apparently (and significantly) viewed by the firm as proprietary. *See* letters between attorneys for KNR and Steele attached as **Exhibit 2**. While

Of course, the chilling effect that Defendants' lawsuit against Horton has had on his communication with Plaintiffs (not to mention the impact it has had on other potential witnesses, including other former KNR employees) is all the more reason not to depart from the normal practice of allowing the party with the burden of proof to question a witness first. That this is a fraud case where Defendants are on notice of and in possession of all the evidence of their own conduct further shows the lack of merit in their position. It is simply absurd for a law firm that has already filed and threatened lawsuits against those who've dared speak against their business practices (including Horton and their former clients who have come forward as plaintiffs in this suit (*See also* KNR's counterclaims against the Named Plaintiffs)), to also claim an extraordinary entitlement to dictate the terms of Plaintiffs' efforts to conduct discovery on the same subjects. Thus, even if Defendants had issued a subpoena to Horton before Plaintiffs did, there would still be good reason to rule in Plaintiffs' favor on this issue.

II. Defendants egregiously mislead the Court by claiming that Ms. Gobrogge was denied the opportunity to pump breast milk at her deposition.

Finally, Plaintiffs wish to direct the Court to portions of Gobrogge's transcript that show the extraordinary perfidy in Defendants' accusation that Plaintiffs' counsel abused Ms. Gobrogge by denying her an opportunity to pump breast milk at her deposition. Defs' Opp. at 20–21.

As the record shows, the second day of Ms. Gobrogge deposition began at 9:16 a.m., with

---

the accusations in Defendants' opposition brief pertaining to Fonner (at 24–28) are facially incredible and completely irrelevant to the issue at hand, Plaintiffs will note that they first contacted Fonner through the attorney, David Goldstein, who represented Fonner in the lawsuit that KNR filed against him. Plaintiffs had every reason to expect that Fonner would communicate with them through counsel to agree upon and finalize a date and time for his deposition as necessary. Indeed, a name search for James E. Fonner on the Franklin County docket makes clear that he is no stranger to litigation. Simply, Plaintiffs' counsel had no reason not to speak with Fonner once he voluntarily and unexpectedly showed up at counsel's office and was willing to have a conversation. While Fonner misrepresents this conversation in the affidavit that KNR had him execute for their motion, these misrepresentations are so far beside the point that Plaintiffs will decline the opportunity to address them here.

the first break taken between 10:07 and 10:15 a.m. after Ms. Gobrogge said her "neck was really bothering her." Gobrogge Tr. at 339:1–2, 386:18–387:14. KNR's counsel had previously indicated the need to a break at "close to 11:00" to accommodate for Ms. Gobrogge's breast pumping schedule. *Id.* at 386:4–9.[5] At some point before 11 a.m., Ms. Gobrogge was presented with an email she sent in 2014 in which she instructs KNR staff that Defendant Ghoubrial "is now working with Shaker Square [chiropractic]" and "is always the first option" among doctors to recommend to KNR clients. *Id.* at 416:1–23, 418:1–17, Ex. 62. Critically, Ms. Gobrogge was then asked to reconcile her instructions in this email with her repeated testimony from the previous day that KNR closely directs and monitors its referrals to healthcare providers not as part of a quid pro quo relationship but rather to make sure these referrals are distributed evenly "to make sure that we're referring to different doctors in that geographical location." *Compare Id.* at 236:13–19, 238:6–20, 239:15–240–20, 254:9–14 with *Id.* at 418:20–419:5.

For the next five pages of testimony, Ms. Gobrogge talked around the question, including with an assist from an egregiously suggestive speaking objection by Mr. Mannion from which Gobrogge dutifully took her cue. *Id.* at 419–424; *Compare* Mannion at 422:7–9 ("Peter, perhaps part of the trouble is you're mixing and matching MDs with chiropractors in your question.") with Gobrogge at 423:12–20 ("I don't – I don't understand. I guess I'm kind of getting lost here. Chiropractors are not medical doctors, so they – there's two different treatments. I've been to a chiropractor. They do adjustments and therapy whereas a medical doctor can prescribe treatment and recommendations. So to me, they're very different. Well, it's not even just to me. They are different.").

It was squarely in the middle of Ms. Gobrogge's efforts to evade Plaintiffs' questioning on

[5] In their opposition brief (at 20), Defendants erroneously state that this exchange took place at page 183 of Gobrogge's deposition. Apart from this single erroneous citation, Defendants fail to provide any additional citations to the transcript for their accusations about the breast-milk pumping.

this highly pertinent subject that Mr. Mannion—not Ms. Gobrogge—insisted that a break be taken, ostensibly so Ms. Gobrogge could pump her breast milk. Indeed, Plaintiffs' counsel was in the middle of asking a follow-up question when Mr. Mannion interrupted to insist on this break. *Id.* at 423:21–424:3. In response, Plaintiffs' counsel explained that a question was pending, and indicated that the break could be taken as soon as the line of questioning was complete, as is proper. *Id.* at 424:4–425:10. Mr. Mannion nevertheless insisted that "we need to stop right this second," and when Plaintiffs' counsel asked Ms. Gobrogge if she really needed to take a break, Mr. Mannion would not even allow her to respond. *Id.* at 425:11–18. Then, after abruptly changing course and purporting to allow Ms. Gobrogge to "answer the question," Mr. Mannion physically pulled her out of her chair and out of the room against Plaintiffs' counsel's objections after she provided yet another completely unresponsive answer. *Id.* at 425:25–430:5, 431:5–431:23. At this point, the break was taken. It was 11:03 a.m, or, in other words, "close to 11:00" as Defendants had requested. *Id.* at 430:3–4, 386:4–9

Perhaps when a party is already willing to use an employee's status as a breast-feeding mother as an excuse to interrupt and obstruct incriminating testimony at her deposition, it's not much of an additional stretch to misrepresent the record as wildly as KNR has here. In any event, it says plenty that Defendants seek to go down this road and apparently in any other barely conceivable direction away from their conduct that is actually at issue in this case.

Thus, as explained above and more fully in Plaintiffs' motion, and as only confirmed by Defendants' opposition brief, Plaintiffs should be permitted to question Mr. Horton first at his deposition consistent with the duly issued subpoena they issued to him as well as their burden of proof.

Respectfully submitted,

/s/ Peter Pattakos
Peter Pattakos (0082884)
Dean Williams (0079785)
Rachel Hazelet (0097855)
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
rhazelet@pattakoslaw.com

Joshua R. Cohen (0032368)
Ellen Kramer (0055552)
COHEN ROSENTHAL & KRAMER LLP
The Hoyt Block Building, Suite 400
Cleveland, Ohio 44113
Phone: 216.781.7956
Fax: 216.781.8061
jcohen@crklaw.com
ekramer@crklaw.com

Attorneys for Plaintiffs

Certificate of Service

The foregoing document was filed on January 28, 2019 using the Court's e-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

KISLING, NESTICO & REDICK, L.L.C.	:	CASE NO.: 15 CV 003216
Plaintiff,	:	JUDGE SHEERHAN
v.	:	
JAMES E. FONNER, et al.	:	
Defendants.	:	

DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT AND COUNTERCLAIM

(Jury Demand Endorsed Herein)

Defendants James E. Fonner, Jeffery Greenwood, and First Choice Chiropractic, LLC ("Defendants"), by and through their counsel, David A. Goldstein Co., L.P.A., and for their Answer to Plaintiff's Complaint, states as follows:

FIRST DEFENSE

TORTIOUS INTERFERENCE WITH CONTRACT

1. Answering Paragraph 1 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

2. Answering Paragraphs 2 through 4 of Plaintiff's Complaint, Defendants state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore, deny the same.

3. Answering Paragraph 5 of Plaintiff's Complaint, Defendants admit that they had contact with Sharon Phenice for purposes of treating her for injuries she sustained. However, Defendants deny the remaining allegations contained therein.

EXHIBIT 1

4. Answering Paragraph 6 of Plaintiff's Complaint, Defendants admit the allegation contained therein.

5. Answering Paragraphs 7 through 10 of Plaintiff's Complaint, Defendants state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore, deny the same.

6. Answering Paragraph 11 of Plaintiff's Complaint, Defendants admit that they had contact with Donald Swickheimer for purposes of treating his for injuries he sustained. However, Defendants deny the remaining allegations contained therein.

7. Answering Paragraph 12 of Plaintiff's Complaint, Defendants admit the allegation contained therein.

8. Answering Paragraphs 13 through 16 of Plaintiff's Complaint, Defendants state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore, deny the same.

9. Answering Paragraph 17 of Plaintiff's Complaint, Defendants admit that they had contact with Shaquella West for purposes of treating her for injuries she sustained. However, Defendants deny the remaining allegations contained therein.

10. Answering Paragraph 18 of Plaintiff's Complaint, Defendants admit the allegation contained therein.

11. Answering Paragraphs 19 through 22 of Plaintiff's Complaint, Defendants state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore, deny the same.

12. Answering Paragraph 23 of Plaintiff's Complaint, Defendants admit that they had contact with Vanessa Reeves for purposes of treating her for injuries she sustained. However, Defendants deny the remaining allegations contained therein.

13. Answering Paragraph 24 of Plaintiff's Complaint, Defendants admit the allegation contained therein.

14. Answering Paragraphs 25 and 26 of Plaintiff's Complaint, Defendants' deny the allegations contained therein.

15. Answering Paragraph 27 of Plaintiff's Complaint, Defendants admit the allegations contained therein.

RESPONDEAT SUPERIOR

16. Answering Paragraph 32 of Plaintiff's Complaint, Defendants reallege and reaver all previous answers as though fully rewritten herein.

17. Answering Paragraph 33 of Plaintiff's Complaint, Defendants deny the allegations contained therein.

SECOND DEFENSE

18. Plaintiff has failed to join necessary parties needed for a just adjudication of this action pursuant to Rule 19 and 19.1 of the Ohio Rules of Civil Procedure.

THIRD DEFENSE

19. Plaintiff's Complaint fails to state a claim upon which relief can be granted pursuant to Rule 12(B)(6) of the Ohio Rules of Civil Procedure and therefore, Plaintiff is barred from recovery.

FOURTH DEFENSE

20. Plaintiff's claims are barred under the doctrines of waiver, latches and estoppel.

FIFTH DEFENSE

21. Plaintiff's claims are barred under the doctrine of fraud and/or illegality.

SIXTH DEFENSE

22. Plaintiff's claims are barred due to accord and satisfaction.

SEVENTH DEFENSE

23. Plaintiff's claims are barred due to release.

EIGHTH DEFENSE

24. Defendants did not intentionally interfere with any relationship.

NINTH DEFENSE

25. Any damages sustained by Plaintiff are the result of Plaintiff's own conduct.

TENTH DEFENSE

26. Defendants reserve the right to add additional defenses.

WHEREFORE, having fully answered, Defendants, respectfully request that this Honorable Court dismiss Plaintiff's Complaint at Plaintiff's cost and that Defendants recover their costs incurred herein, including reasonable attorneys fees, and for such other relief as the Court deems just and appropriate.

COUNTERCLAIM AGAINST PLAINTIFF

Defendants James E. Fonner, Jeffery Greenwood, and First Choice Chiropractic, LLC ("Defendants"), and for their Counterclaim states as follows:

COUNT ONE

ABUSE OF PROCESS

1. Defendants, for their Counterclaim against Plaintiff, incorporate Plaintiff's Complaint not for the truth asserted, this Defendants' Answers, thereto, and this Defendant's Counterclaim, as if fully rewritten herein.

2. Plaintiff has a scheme in place whereby it sends clients who were allegedly injured in motor vehicle accidents to its "preferred chiropractor".

3. In order to be a "preferred chiropractor" for Plaintiff, the chiropractor and/or the chiropractic entity is requested to follow Plaintiff's demands and requests as it relates to treatment, billing and reducing bills if a matter settles.

4. Defendants was deemed a "preferred chiropractor" for Plaintiff however Defendants would not follow Plaintiff's requests and demands as it related to Plaintiff's clients.

5. Plaintiff became upset at Defendants for their failure to follow Plaintiff's demands as it related to Plaintiff's clients.

6. Upon information and belief, Plaintiff has a preferred chiropractic relationship with Town and Country Chiropractic and Nazreen Khan, DC.

7. Upon information and belief, due to the unique relationship by and between Plaintiff and Town and Country Chiropractic and Nazreen Khan, DC and the failure of Defendants to comply with Plaintiff's demands as it related to treating

Plaintiff's clients, it was determined to file a lawsuit against Defendants in order to financial harm Defendants and their reputation.

8. The filing of said lawsuit and accusations made against Defendants would benefit Plaintiff and Town and Country Chiropractic and Nazreen Khan, DC.

9. Upon information and belief it is a common practice that patients terminated their legal relationship with one law firm and switch to another law firm and Plaintiff is well aware of this fact,

10. Plaintiff has used the legal process for an ulterior purpose.

11. Plaintiff willfully and/or intentionally has filed said actions to harass, annoy and/or coerce Defendants in to paying it monies which it is not rightfully entitled to from Defendants.

12. The filing of said actions and use of the judicial system by Plaintiff is not proper.

13. As a direct and proximate result of Plaintiff's wrongful use of process for an ulterior purpose, Defendants have suffered damages in an amount to be determined at trial.

WHEREFORE, Defendants demand judgment against Plaintiff in an amount in excess of $25,000, attorneys' fees as provided by statute, damages as provided by statute, and any other such relief as this Court deems just and proper.

Respectfully submitted,

/s/ David A. Goldstein
DAVID A. GOLDSTEIN (0064461)
David A. Goldstein Co., L.P.A.
326 S. High Street, Suite 500
Columbus, OH 43215
(614) 222-1889
(614) 222-1899 (Fax)
dgoldstein@dgoldsteinlaw.com
Attorney for Defendants

JURY DEMAND

A trial by jury composed of the maximum number of jurors permitted under the law is hereby demanded.

/s/ David A. Goldstein
DAVID A. GOLDSTEIN (0064461)
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been delivered via electronic docketing system to all counsel of record.

/s/ David A. Goldstein
David A. Goldstein (0064461)

G:\DAG Cases\500-15071\Answer and Counter.doc

KEGLER BROWN HILL + RITTER

Kegler Brown Hill + Ritter Co. LPA
65 East State Street, Suite 1800
Columbus, OH 43215
(614) 462-5400
www.keglerbrown.com

Jonathan E. Coughlan, Esq.
Direct Dial: (614) 462-5455
Facsimile: (614) 464-2634
E-mail: jcoughlan@keglerbrown.com

February 26, 2016

VIA FACSIMILE and REGULAR U.S. MAIL
614-540-7473

Paul Steele, Esq.
Mularski, Bonham, Dittmer & Phillips LLC
107 W. Johnstown Rd
Gahanna, Oh 43230

RE: Kisling, Nestico & Redick

Dear Mr. Steele:

This law firm represents Kisling, Nestico & Redick (KNR). Your employment ended with KNR on September 15, 2015. As you know, you have obligations to KNR through the KNR Employee Manual, which you acknowledged receiving and reading on February 5, 2014. (A copy of the signature page is attached) Your obligations as detailed in the Employee Manual required you to maintain confidential certain firm information. Section 5-12 of the Employee Manual is entitled "Confidential Company Information" and states:

> During the course of work, an employee may become aware of confidential information about Kisling, Nestico & Redick's business, including but not limited to information regarding Firm finances, pricing, products and new product development, software and computer programs, marketing strategies, suppliers, customers and potential customers. An employee also may become aware of similar confidential information belonging to the Firm's clients. It is extremely important that all such information remain confidential, and particularly not be disclosed to our competitors. Any employee who improperly copies, removes (whether physically or electronically), uses or discloses confidential information to anyone outside of the Firm may be subject to disciplinary action up to and including termination. Employees may be required to sign an agreement reiterating these obligations.

We recently learned that you have contacted Westgate Chiropractor, Town & Country Chiropractor among others and solicited their participation in a referral arrangement with you practice. As you know, KNR has close working relationships with

EXHIBIT 2

KEGLER BROWN HILL + RITTER

these medical providers and your actions could well be viewed as a violation of your obligations under the Employee Manual.

A primary objective of the Employee Manual was to prevent the misuse of KNR's Confidential Information by its employees and former employees. Your actions appear to be the very harm the Employee Manual was designed to prevent. The Employee Manual requires you to keep KNR's Confidential Information in strict confidence and prohibits its use by you or anyone else. You are hereby instructed to cease and desist from any further violations of the terms of the Employee Manual.

The purpose of this letter is to remind you of your obligations and to inform you that if you take any further actions which violate your obligations as they relate to KNR's Confidential Information, we will pursue appropriate legal action against you. Accordingly, your cooperation in adhering to your obligations is expected and appreciated.

Very truly yours,

Jonathan E. Coughlan

cc: Rob Nestico

General Handbook Acknowledgment

This Employee Manual is an important document intended to help you become acquainted with Kisling, Nestico, & Redick, LLC. This document is intended to provide guidelines and general descriptions only; it is not the final word in all cases. Individual circumstances may call for individual attention.

Because the Firm's operations may change, the contents of this Manual may be changed at any time, with or without notice, in an individual case or generally, at the sole discretion of management.

Please read the following statements and sign below to indicate your receipt and acknowledgment of this Employee Manual.

I have received and read a copy of Kisling, Nestico, & Redick, LLC's Employee Manual. I understand that the policies, rules and benefits described in it are subject to change at the sole discretion of the Firm at any time.

I further understand that my employment is terminable at will, either by myself or the Firm, with or without cause or notice, regardless of the length of my employment or the granting of benefits of any kind.

I understand that no contract of employment other than "at will" has been expressed or implied, and that no circumstances arising out of my employment will alter my "at will" status except IN AN INDIVIDUAL CASE OR GENERALLY in a writing signed by the Partners of the Company.

I understand that my signature below indicates that I have read and understand the above statements and that I have received a copy of the Firm's Employee Manual.

Employee's Printed Name: Paul Steele Position: Atty

Employee's Signature: _____ Date: 9/25/14

The signed original copy of this acknowledgment should be given to management - it will be filed in your personnel file.

Charles J. Kettlewell LLC

Of Counsel:
Kitrick, Lewis & Harris Co., LPA

Attorney & Counselor at Law
445 Hutchinson Avenue, Suite 100
Columbus, OH 43235-8630
www.legalethics.pro
P: 614 436-2750
F: 614 436-2865

Of Counsel:
Robert J. Wagoner Co., LLC

March 1, 2016

VIA EMAIL ONLY

Jonathan Coughlan, Esq.
Kegler Brown Hill & Ritter Co. LPA
65 East State Street, Suite 1800
Columbus, OH 43215
jcoughlan@keglerbrown.com

Re: KNR/Paul Steele

Dear Mr. Coughlan:

Please accept this correspondence in response to your letter of February 26, 2016 to my client, Paul Steele. To the extent additional communications should be necessary related to claims made by KNR against Mr. Steele, please continue to assume I am representing him on all KNR related matters and address all such correspondence to me.

Had this matter been given a little more thoughtful reflection before your letter was sent, I expect either KNR or you would have realized that sending such a letter to Mr. Steele would be a waste of everyone's time. Obviously Mr. Steele and I acknowledge that your letter and enclosure correctly references the KNR employee manual which Mr. Steele did, in fact, sign on February 5, 2014. However, the employee manual section referenced in your letter is speaking about actions by employees of KNR, and not past employees. This is clearly conveyed in language used in the handbook as the punishment for this violation is termination.

Moreover, Mr. Nestico and you apparently forget that on September 17, 2015 Mr. Nestico signed a Settlement Agreement and Release of **All** Claims. (09/17/15 Settlement Agreement) (Emphasis added.) (Enclosed)

As such, with regards to KNR's relationship with and/or Mr. Steele's relationships with "Westgate Chiropractor, Town & Country Chiropractor, among others," as referenced in your letter, the operative portion of the 09/17/15 Settlement Agreement provides as follows:

> WHEREAS, both of the Parties are **permitted to contact all individuals with whom they have had prior professional relationships with as lawyers****** (Emphasis added.)

Obviously Mr. Steele is not prohibited by the 09/17/15 Settlement Agreement from contacting Westgate Chiropractor, Town & Country Chiropractor, and/or anyone else with

whom he had a prior professional relationship with as a lawyer precisely because **he expressly reserved the right to do so** in the 09/17/15 Settlement Agreement that you I and negotiated on behalf of our respective clients.

Additionally, to the extent that KNR is now taking the position that it can pursue claims against Mr. Steele based on its employee handbook, I would draw you and your client's attention to the following paragraph from the 09/17/15 Settlement Agreement:

> **Except with respect to any claim arising under or relating to this Agreement,**[1] **KNR,** its representatives, successors, agents, assigns and attorneys, and those claiming through them, and its directors, officers, members, principals, employees, subsidiaries, parents, affiliates, representatives, successors, agents, assigns and attorneys, **hereby RELEASE AND FOREVER DISCHARGE Steele**, his heirs, representatives, successors, agents, assigns and attorneys, and those claiming through them, **from all actions and causes of actions, suits, debts, claims, and demands whatsoever, in law or in equity, which they ever had, may now have, or may hereafter have, whether known or unknown, on the effective date of this Agreement.** (Emphasis added.)

As you can see from the foregoing, as of September 17, 2015 when Mr. Nestico executed the 09/17/15 Settlement Agreement, KNR expressly released Mr. Steele from any pre-existing claims, whether known or unknown, which included any claims that could have been based on the employee handbook. Given both of these provisions in the 09/17/15 Settlement Agreement, Mr. Steele and I are both at a loss as to why you sent any letter to him last week.

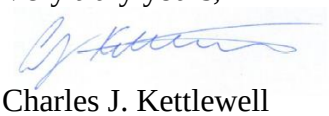
Finally, even if: 1) the 09/17/15 Settlement Agreement did not expressly permit Mr. Steele to contact anyone with whom he had a prior professional relationship; and, 2) the 09/17/15 Settlement Agreement did not release Mr. Steele from all prior claims KNR may have had based on some alleged breach of an employee handbook; KNR still would have no legal basis whatsoever for claiming that Mr. Steele cannot communicate with Westgate Chiropractor, Town & Country Chiropractor, and/or anyone else who is in the business of providing services to individuals in need of legal representation. These are publicly available companies that advertise their services on the internet and elsewhere. Even if the employee handbook had any bearing in this situation (and it most certainly does not given the subsequent 09/17/15 Settlement Agreement and release therein), simply including a company that advertises its services to the public in an employee handbook does not suddenly make these services "confidential" or "proprietary" and therefore subject to some cause of action by the employer against the employee.

The reality is that neither I, Mr. Steele, nor any court with jurisdiction cares about KNR's "close working relationships" with third parties that do business with other lawyers. KNR is not legally entitled to have a mutually exclusive relationship with any of these third parties, and their money and your energy would be better spent elsewhere as Mr. Nestico signed a Settlement

[1] Obviously claims based on the KNR employee handbook are not claims arising under or relating to the 09/17/15 Settlement Agreement.

Agreement with Mr. Steele, and Mr. Steele has not breached any of the terms of that agreement and all other claims KNR may have had were released.

Very truly yours,



Charles J. Kettlewell

Enclosure: