

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 A. Brogan Plaintiffs' Supplemental Motion to Compel the Production of Relevant Portions of Julie Ghoubrial's Deposition Transcript
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In its February 5, 2019 order declining to compel Defendant Ghoubrial to produce portions of a deposition transcript wherein Julie Ghoubrial testified about the allegations in this lawsuit, the Court advised Plaintiffs that “[t]he proper method to obtain discovery under such circumstances is intervention ... for the limited purpose of either challenging the Confidentiality Order already in place or compelling only a portion of the transcript for *in camera* inspection.” 2/5/2019 order, at 4-5 (attached as **Exhibit 1**). The Court further found that if Julie Ghoubrial “was in fact questioned about allegations in this lawsuit,” such information “is highly relevant, probative, and subject to discovery in this case,” but that the Court would not “compel the deposition for an *in camera* inspection without Plaintiffs having exhaust[ed] the usual routes to legitimately obtain the deposition transcript (via intervention in the Domestic Relations Court).” *Id.* at 5.

Based on the Court’s February 5, 2019 order, on February 12, 2019, Plaintiffs sought to intervene in *Julie Ghoubrial v. Sameh N. Ghoubrial, et al.*, Summit County Common Pleas Case No. DR 2018-04-1027 for the limited purposes of seeking amendment of the confidentiality order governing Julie Ghoubrial’s deposition testimony. *See Exhibit 2*, motion to intervene and amend confidentiality order. Despite that Plaintiffs made clear they sought intervention not as a party, but merely to subject Julie Ghoubrial’s deposition transcript to review in this case, *see id.*, Defendant

Ghoubrial relied on Civ.R.75 to argue that parties may never intervene in a divorce proceeding, even for the limited purpose of discovering evidence. *See* **Exhibit 3**, Ghoubrial Opp, at 1; **Exhibit 4**, Plaintiffs' reply in support of motion to intervene and amend confidentiality order. At no time did Defendant Ghoubrial demonstrate that Julie Ghoubrial's testimony involved any legitimately confidential information or dispute that she testified to the very allegations at issue in this case. *Id.*

On April 3, 2019, in reliance on the highly technical and questionable grounds urged by Defendant Ghoubrial,¹ the Domestic Relations Court denied Plaintiffs' motion to intervene by invoking Civ.R. 75(B) to find that "Civ.R.24(B) cannot serve as a basis for Movants to intervene in this action." *See* **Exhibit 5**, 4/3/2019 order denying motion to intervene. This ruling did not address (1) that the confidentiality order was unjustified in the first place;² (2) that such confidentiality orders may not be used to hide evidence of fraud;³ or (3) whether the information provided at Julie

¹ As Plaintiffs pointed out in their briefing on the proposed intervention and during the hearing on the motion to intervene, Civ.R. 75(B), by its terms, applies only to joinder of parties. *See* Civ.R. 75(B), which is entitled "Joinder of Parties, provides only that "Civ.R. ... 24 shall not apply in divorce, annulment, or legal separation actions." Because Plaintiffs were not seeking to join the action as a party, but only for the limited purpose of subjecting the deposition transcript of Julie Ghoubrial to an *in camera* review in the related civil action, the Domestic Relations Court should not have relied on Civ.R. 75(B) to deny the proposed intervention.

² In entering the January 25, 2019 confidentiality order, the Domestic Relations Court made no findings justifying the order, nor could it have, because Defendant Ghoubrial cannot show that keeping Julie Ghoubrial's testimony about "business information" confidential outweighs the public's interest in such information. *See* **Ex. 2**, at 5-6; and *State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481, 2012-Ohio-3328, 974 N.E.2d 89, ¶ 32-37 (where a court order restricts access to proceedings, the court must make "specific" "on the record" findings constituting "clear and convincing evidence" that such restrictions are "essential" to values higher than those protected by the First Amendment); *see also Doe v. Pub Citizen*, 749 F.3d 246, 269 (4th Cir.2014) (where fraud is concerned, "the public and press enjoy a presumptive right of access to civil proceedings and documents filed therein, notwithstanding the negative publicity those documents" may cause).

³ Court orders or agreements may not be used to hide evidence of fraudulent conduct. *See* **Ex. 2**, at 7 and **Ex. 4**, at 3-4; *see also, e.g., Cochran v. N.E. Ohio Adoption Servs.*, 85 Ohio App.3d 750, 756, 621 N.E.2d 470 (11th Dist.1993) ("[I]t is clear that the dictates of public policy would mandate disclosure of information likely to uncover fraud or misrepresentation."); and *Bartnicki v. Vopper*, 532 U.S. 514, 121 S.Ct. 1753, 149 L.Ed.2d 787 (2001) ("Deceptive, illegal or fraudulent activity simply cannot qualify for protection as a trade secret.

Ghoubrial's deposition could properly be deemed "confidential" or "sensitive."⁴ As the Court has already recognized, Julie Ghoubrial's testimony about the allegations in this lawsuit pertaining to Defendant Ghoubrial are "highly relevant, probative, and subject to discovery in this case," and thus, should be immediately produced. *See* **Ex. 1**, at 5.

Because Plaintiffs have exhausted the "usual routes" in place to obtain relevant portions of Julie Ghoubrial's transcript in compliance with the Court's February 5, 2019 order, the Court should require that her transcript⁵ be immediately produced to the Court for an *in camera* review to determine those portions of her testimony that are properly subject to discovery in this case.

Respectfully submitted,

/s/ Rachel Hazelet

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⁴ The purportedly "confidential" information at issue in the underlying confidentiality order and in Julie Ghoubrial's deposition transcript cannot be so deemed because it is already at issue in this lawsuit, through Plaintiffs' detailed allegations of Defendant Ghoubrial engaging in widespread fraud and as supported by the testimony of his own employee, Dr. Richard Gunning. *See* **Ex. 2**, at 6.

⁵ On April 3, 2019, Plaintiffs served upon Julie Ghoubrial a subpoena duces tecum for portions of the transcript wherein Julie Ghoubrial was questioned about any allegation related to this lawsuit. *See* Plaintiffs' Notice of Service of Subpoena on Julie Ghoubrial, filed concurrently with this Motion.

Certificate of Service

The foregoing document was filed on April 3, 2019, using the Court's electronic-filing system, which will serve copies on all necessary parties.

/s/ Rachel Hazelet
Attorney for Plaintiffs

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

MEMBER WILLIAMS, et al.	)	CASE NO.: CV-2016-09-3928
)	
Plaintiffs)	JUDGE JAMES A. BROGAN
-vs-)	
)	
KISLING NESTICO & REDICK)	<u>ORDER</u>
LLC, et al.)	
)	
Defendants)	

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This matter comes before the Court upon (1) Plaintiffs' Motion to Compel discovery from Defendant Minas Floros and (2) Plaintiffs' Motion to Compel discovery from Defendant Sam Ghoubrial, M.D.

(1) Plaintiffs' Motion to Compel Discovery from Defendant Minas Floros

Plaintiffs' Motion to Compel Discovery from Defendant Minas Floros is **OVERRULED** because Plaintiffs failed to comply with Civ.R. 37(A)'s requirement to make a good faith attempt to confer with opposing counsel prior to asking for Court action. The purpose of this requirement is to endorse and enforce the view that, in general discovery is self-regulating and should require court intervention only as a last resort. See Staff Note, Civ.R. 37.

(2) Plaintiffs' Motion to Compel Discovery from Defendant Sam Ghoubrial, M.D.

Plaintiffs' Motion to Compel Discovery from Defendant Sam Ghoubrial, M.D. is **GRANTED** as Plaintiffs have demonstrated compliance with Civ.R. 37 in bringing the motion to the Court's attention after attempting to confer with opposing counsel over the issues raised. Further, the motion is granted to the extent that the Court order and requires Defendant Ghoubrial to provide complete answers to Plaintiffs' discovery requests, subject to the following Court rulings on the objections posed by Defendant Ghoubrial in response to each discovery request:

Rulings on Objections to Plaintiff Norris's First Set of Requests for Admission:
Objections in RFA 4, 9, 17 and 18 are overruled.

Rulings on Objections to Plaintiff Norris's First Set of Interrogatories:

Interrogatory 1 – objection overruled
Interrogatory 2 – objection overruled
Interrogatory 3 – objection overruled
Interrogatory 4 – objection overruled
Interrogatory 5 – objection overruled
Interrogatory 6 – objection overruled
Interrogatory 7 – objection overruled
Interrogatory 8 – objection overruled (the information sought is not covered by the attorney-client privilege because the KNR attorneys do not represent Dr. Ghoubrial)
Interrogatory 9 – objection overruled
Interrogatory 10 – objection sustained
Interrogatory 11 – objection sustained
Interrogatory 12 – objection sustained
Interrogatory 13 – objection overruled
Interrogatory 14 – objection overruled
Interrogatory 15 – objection sustained
Interrogatory 16 – objection overruled (you need not identify the patient name)
Interrogatory 17 – objection overruled (you need not identify the patient name)
Interrogatory 18 – objection overruled
Interrogatory 19 – objection overruled
Interrogatory 20 – objection overruled
Interrogatory 21 – objection sustained in part (you need to provide information only for the years 2015 and 2016 without revealing any patient names)
Interrogatory 22 – objection sustained in part (you need to provide information only for the years 2015 and 2016 without revealing patient names)
Interrogatory 23 – objection overruled
Interrogatory 24 – objection sustained in part (limit the answer to injections to KNR clients in 2015 and 2016 without reference to patient names)
Interrogatory 25 – objection sustained in part (limit the answer to injections between 2015 and 2016 without reference to patient names)
Interrogatory 26 – objection overruled
Interrogatory 27 – objection overruled
Interrogatory 28 – objection overruled
Interrogatory 29 – objection overruled
Interrogatory 30 – objection sustained
Interrogatory 31 – objection overruled
Interrogatory 32 – objection overruled
Interrogatory 33 – objection overruled (do not identify patient names)
Interrogatory 34 – objection overruled
Interrogatory 35 – objection overruled
Interrogatory 36 – objection overruled
Interrogatory 37 – objection overruled
Interrogatory 38 – objection overruled

Interrogatory 39 – objection overruled

Interrogatory 40 – objection sustained

Interrogatory 41 – objection sustained (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)

Interrogatory 42 – objection overruled (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)

Interrogatory 43 – objection sustained (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)

Interrogatory 44 – objection sustained (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)

Interrogatory 45 – objection sustained (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)

Interrogatory 46 – objection sustained (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)

Interrogatory 47 – objection sustained (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)

Rulings on Objections to Plaintiff Norris's First Set of Requests for Production of Documents:

RFP 1 – objection sustained

RFP 2 – objection overruled

RFP 3 – objection overruled

RFP 4 – objection sustained

RFP 5 – objection overruled

RFP 6 – objection overruled

RFP 7 – objection overruled

RFP 8 – objection overruled

RFP 9 – objection overruled

RFP 10 – objection sustained

RFP 11 – objection overruled

RFP 12 – objection overruled

RFP 13 – objection overruled

RFP 14 – objection overruled

RFP 15 – objection overruled

RFP 16 – objection sustained

RFP 17 – objection overruled

RFP 18 – objection overruled

RFP 19 – objection overruled

RFP 20 – objection sustained

RFP 21 – objection sustained

RFP 22 – objection overruled

RFP 23 – objection sustained

RFP 24 – objection overruled

RFP 25 – objection overruled

RFP 26 – objection overruled

RFP 27 – objection overruled

RFP 28 – objection overruled

Rulings on Objections to Plaintiffs' Second Set of Requests for Production of Documents:

Plaintiffs seek a portion of the transcript of Julie Ghoumbrial's deposition taken in Domestic Relations Court Case No. DR2018-04-1027, wherein Julie Ghoumbrial was questioned about the allegations relating to this lawsuit. Plaintiffs seek only a portion of the transcript, indicating they have reliable information that Attorney David Best posed questions to Julie Ghoumbrial about the allegations in the instant lawsuit.

Defendant Ghoumbrial objected to production of the transcript because there is a Confidentiality Order in place by Judge Quinn in Domestic Relations Court.

Upon review of the exhibits filed by Plaintiffs' it appears Mr. Ghoumbrial moved the Domestic Relations Court to deem the entire deposition transcript confidential because the testimony contained "confidential business information." That order was granted over Julie Ghoumbrial's objections. The Order states the transcript "shall only be used for the limited purposes of the within divorce case and for no other purpose of any kind or nature."

Plaintiffs cite *Grantz v. Discovery for Youth*, 12th Dist. Butler Nos. CA2004-09-216, CA2004-09-217, 2005 Ohio 680, for the proposition that a court may order disclosure of information (covered by another court's confidentiality order) when pertinent to pending civil and criminal actions. Plaintiffs ask this Court to compel a copy of the transcript for *in camera* review pursuant to the *Grantz* case. Plaintiffs argue there is no legitimate argument for shielding Julie Ghoumbrial's deposition testimony from these proceedings particularly as related to the veracity of Plaintiffs' allegations against Dr. Ghoumbrial in this lawsuit.

Defendant Ghoumbrial objects to production of the deposition transcript because it is protected by a confidentiality designation by the Domestic Relations Court. Defendant further distinguishes the *Grantz* case as it dealt exclusively with the release of a juvenile's records only after the juvenile and his parents executed waivers authorizing the release pursuant to R.C. 1347.08. Defendant Ghoumbrial also argues the three-part test *Grantz* utilized for *in camera* inspection of such records is only applicable to confidential juvenile records and *Grantz* is wholly inapplicable to getting confidential records from a Domestic Relations court.

The Court agrees that *Grantz* is distinguishable and inapposite to the issues raised herein. There are principles of comity and courtesy between separate divisions of courts and courts respect the separate jurisdiction of each separate division of court. The proper method to obtain discovery under such circumstances is intervention in the proceedings. For example, a third-party (such as Plaintiffs' counsel) may intervene in the Domestic Relations Court

proceedings for the limited purpose of either challenging the Confidentiality Order already in place or compelling only a portion of the transcript for *in camera* inspection.

Under the circumstances, and upon Plaintiffs' representation that Julie Ghoumbrial was in fact questioned about allegations in this lawsuit, the Court finds the information inquired into during Julie Ghoumbrial's deposition testimony is highly relevant, probative, and subject to discovery in this case. However, it is well-settled that different divisions of the Common Pleas Court maintain separate and distinct jurisdiction over their own statutorily assigned matters and this Court is not inclined to compel the deposition for an *in camera* inspection without Plaintiffs having exhausting the usual routes to legitimately obtain the deposition transcript (via intervention in the Domestic Relations Court). Accordingly, the objection is sustained regarding Request for Production of Documents 1.

Rulings on Objections to Plaintiffs' Second set of Interrogatories:
Interrogatory 1 – objection overruled

Rulings on Objections to Plaintiffs Second Set of Requests for Admission:
Objections in RFA 1- 4 are overruled

Finally, Defendant Ghoumbrial's sur-reply brief sought sanctions against Plaintiffs' counsel under Civ.R. 11 and R.C. 2323.51. This separate request for sanctions is
OVERRULED.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion to Compel Discovery from Defendant Minas Floros is OVERRULED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion to Compel Discovery from Defendant Ghoumbrial is GRANTED subject to the separate rulings on the objections in the body of the Decision.

IT IS SO ORDERED.



JUDGE JAMES A. BROGAN
Sitting by Assignment #18JA1214
Pursuant to Art. IV, Sec. 6
Ohio Constitution

CC: ALL COUNSEL/PARTIES OF RECORD

**IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
SUMMIT COUNTY, OHIO**

<p>JULIE GHoubRIAL,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>SAMEH N. GHoubRIAL, ET AL.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. DR 2018-04-1027</p> <p>Judge John P. Quinn</p> <p>Motion to Intervene and for Amendment of the January 25, 2019 Confidentiality Order re: Julie Ghoubrial's Deposition Testimony</p>
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I. Introduction and Statement of Facts

This motion to intervene is made for the limited purpose of seeking amendment of this Court's January 25, 2019 Order providing for the confidentiality of the transcript of Plaintiff Julie Ghoubrial's deposition testimony. *See* Jan. 25 Order attached as **Exhibit 1**. This amendment is sought to release Julie's deposition testimony for the limited purpose of subjecting it to *in camera* review by presiding Judge James A. Brogan in Summit County Common Pleas Case No. CV-2016-09-3928 (the "civil case"), and a determination by Judge Brogan of whether portions of that transcript should be released to the plaintiffs in the civil case—Member Williams, Thera Reid, Monique Norris, and Richard Harbour—who are the Intervening Parties here.

The Intervening Parties seek this relief because their investigation has revealed that Julie was questioned for approximately one hour at her deposition in this domestic relations case by Attorney David Best—who also represents Sameh Ghoubrial, M.D. in the civil case, where Dr. Ghoubrial is also a defendant—and these questions pertained precisely to the allegations at issue in the civil case.¹

¹ As Attorney Best only asked a limited set of questions at Julie's deposition, the Court may relatively efficiently refer to the questions asked by Attorney Best to confirm that these questions pertain to the allegations in the civil case. *See also* **Ex. 5**, attached, containing an excerpt from the pending complaint in the civil case with the pertinent allegations against Dr. Ghoubrial.

EXHIBIT 2

Judge Brogan has indeed ruled that this information, to the extent it is contained in Julie's transcript, "is highly relevant, probative, and subject to discovery in" the civil case. *See* Judge Brogan's Feb. 5, 2019 Order, attached as **Exhibit 2**, at 3. Judge Brogan has deferred his decision on whether to order Ghoubril to produce the transcript in the civil case, in consideration of the "principles of comity and courtesy between separate divisions of courts" and "respect [for] the separate jurisdiction of" this Domestic Relations Court. *Id.* at 4–5. First, Judge Brogan noted that, "a third-party ... may intervene in the Domestic Relations Court for the limited purpose of either challenging the Confidentiality Order already in place or compelling only a portion of the transcript for in camera inspection." *Id.* Then, after reiterating that "it is well-settled that different divisions of the Common Pleas Court maintain separate and distinct jurisdiction over their own statutorily assigned matters," Judge Brogan held that "this Court is not inclined to compel the deposition for an *in camera* inspection without Plaintiffs having exhausted the usual routes to legitimately obtain the deposition transcript (via intervention in [this] Domestic Relations Court)." *Id.* at 5.

Notably, Dr. Ghoubril himself sought the January 25, 2019 Confidentiality Order, over Julie's objection, on the sole grounds that it contained "confidential business information regarding [his] business." *See* Dr. Ghoubril's motion to mark Julie's deposition transcript as confidential, attached as **Exhibit 3**. Dr. Ghoubril's business practices, however, are precisely at issue in the civil case, where he is alleged to have committed serial fraud against thousands of patients who were directed to treat with him by the Kisling Nestico & Redick law firm ("KNR"). Given the information that has already come to light in the civil case, as summarized below, there is no legitimate argument that the information at issue is "confidential." Indeed, Dr. Ghoubril only sought the Confidentiality Order in this Court after Plaintiffs' requested a copy of the transcript in the civil case, over Julie's objection on grounds that (1) Dr. Ghoubril's motion was "inappropriate and based on inaccurate and misleading information"; (2) her deposition testimony was not covered

by any preexisting confidentiality agreements; (3) the testimony “was hers and hers alone.” *See* Julie’s response to Dr. Ghoubril’s motion to mark deposition transcript as confidential, attached as **Exhibit 4**.

Even if the information at issue could legitimately be considered “confidential,” it is well established that courts should avoid shielding evidence of fraud on confidentiality grounds. Moreover, the First Amendment guarantees public access to Court proceedings, which may be sealed only when specific on-record findings are made to show that the restrictions are narrowly tailored and necessary to preserve value higher than litigants’ and the public’s First Amendment rights. No such findings were made in entering the Confidentiality Order at issue here (*See* **Ex. 1**), and no good reason exists to keep this information shielded from the civil proceedings—particularly where the Intervening Parties only seek to subject the transcript to in camera review by Judge Brogan, who would only release the portions of the transcript deemed to be relevant to the civil case, and even then only subject to the protective order in place in that case.

Thus, as explained further below, the above-identified plaintiffs in the civil case hereby seek amendment of the Court’s Jan. 25 Confidentiality Order to subject Julie’s deposition transcript to Judge Brogan’s review and jurisdiction in the civil case, where any legitimately confidential information will be subject to the Protective Order in that case.

II. Law and Argument

A. Civ.R. 24(B) permits intervention to allow applicants to discover information that is subject to confidentiality orders.

Civ.R. 24(B) provides, in pertinent part, that “anyone may be permitted to intervene in an action ... when an applicant’s claim or defense and the main action have a question of law or fact in common.” Where, as here, “intervention is used to challenge a protective order, courts have expressly held that the legal or factual nexus required by the rule is relaxed,” and “satisfied merely by virtue of the fact that the party seeking intervention is making a challenge to the validity of the

protective order.” *Adams v. Metallica, Inc.*, 143 Ohio App.3d 482, 491-494, 758 N.E.2d 286 (1st Dist.2001) (citing cases).² See also *Meyer Goldberg, Inc. v. Fisher Foods*, 823 F.2d 159, 164 (6th Cir.1987) (intervention is proper where the intervening party seeks “to pursue a related claim in a somewhat similar time frame ..., and to seek out discovery material to assist in that pursuit in which the public has a strong interest.”); Civ.R. 54 (any “order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties”).

B. The First Amendment guarantees public access to judicial proceedings, which may be restricted only when specific findings are made to show, by clear and convincing evidence, that the restriction is (1) necessary to preserve values higher than litigants’ and the public’s First Amendment rights, and (2) is narrowly tailored to accomplish this purpose.

“What transpires in the courtroom is public property.” *State ex rel. Dispatch Printing Co. v. Lias*, 68 Ohio St.3d 497, 502, 628 N.E.2d 1368 (1994) citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569–73, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980). “Attendance at a public trial,” and, consequently, attention to the docket in litigation proceedings, “promotes fairness and enhances public confidence in the judicial system.” *Id.* The guarantee that the workings of the judiciary branch remain public “is a cornerstone of our democracy which should not be circumvented unless there are extreme overriding circumstances.” *Id.* citing *State v. Lane* (1979), 60 Ohio St.2d 112, 119, 14 O.O.3d 342, 397 N.E.2d 1338. Accordingly, “closed proceedings,” including confidentiality and gag

² The *Adams* court held that “the avoidance of repetitive discovery, ... the nature of the protective order, the parties’ reliance on it, the ability to gain access to the information in other ways, ... the nature of the material for which protection is sought, the need for continued secrecy, and the public interest involved” are all relevant factors for the court to consider in deciding on whether a protective order should bar disclosure of protected information to the intervening party. *Adams*. 143 Ohio App.3d 482 at 492. While the Intervening Parties here primarily challenge the Jan. 25 Order on First Amendment grounds, the *Adams* factors weigh heavily in favor of disclosure as well, as made clear below. Specifically, (1) the Intervening Parties have no other way to access Julie’s deposition testimony unless the Jan. 25 Order is lifted; (2) Julie’s testimony goes directly to the merits of the allegations in the civil case, which, (3) pertain to business practices that are not actually confidential, as well as (4) the public’s interest in deterring the fraudulent high-volume business practices at issue.

orders, “although not absolutely precluded, must be rare and only for cause shown that outweighs the value of openness.” *Press-Enterprise Co. v. Superior Court of California, Riverside County*, 464 U.S. 501, 509, 104 S. Ct. 819, 78 L. Ed. 2d 629 (1984).

Thus, under Ohio law, an order restricting access to judicial proceedings cannot issue without specific findings showing that such order is (1) necessary to preserve values higher than litigants’ and the public’s First Amendment rights, and (2) that they are narrowly tailored to accomplish this purpose. *State ex rel. National Broadcasting Co. v. Court of Common Pleas of Lake County*, 52 Ohio St. 3d 104, 108, 556 N.E.2d 1120 (1990); *State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St. 3d 481, 2012-Ohio-3328, 974 N.E.2d 89, ¶ 32–37. These findings must be “specific,” “on the record,” and constitute “clear and convincing evidence” that the restrictions are “essential” to protect higher values than those protected by the First Amendment. *Id.* See also Sup.R. 45(E)(2).

Moreover, public access may not be restricted on the mere assumption that reputational harm will result from making judicial proceedings available to the public, because:

The natural desire of parties to shield prejudicial information contained in judicial records from competitors and the public ... cannot be accommodated by courts without seriously undermining the tradition of an open judicial system. Indeed, common sense tells us that the greater the motivation a corporation has to shield its operations, the greater the public’s need to know.

Brown & Williamson Tobacco Corp. v. F.T.C., 710 F.2d 1165, 1180 (6th Cir. 1983). See also *Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 225 (6th Cir. 1996) (“The private litigants’ interest in protecting their vanity or their commercial self-interest simply does not qualify as grounds for imposing a prior restraint. It is not even grounds for keeping the information under seal.”); *Doe v. Pub. Citizen*, 749 F.3d 246, 269 (4th Cir. 2014) (in “consumer fraud cases,” “the public and press enjoy a presumptive right of access to civil proceedings and documents filed therein, notwithstanding the negative publicity those documents may shower upon a company”).

- C. The Jan. 25 Confidentiality Order is not supported by the required findings that the need for confidentiality outweighs First Amendment considerations, nor could it be.

Here, not only did the Court decline to make any specific on-record findings to show that the Confidentiality Order was justified by clear and convincing evidence, it did not make any findings at all, nor did it refer to Julie's various grounds for objecting to the order. *See* Order, **Ex. 1**. Thus, the Intervening Parties would be entitled to obtain a writ of prohibition or mandamus against the Court to have the Order lifted or declared void. *See* Summit County Court of Appeals No. CA-28642, *State ex rel. Advance Ohio Media v. Breaux*; *State ex rel. Beacon Journal v. Bond*, 98 Ohio St. 3d 146, 160 (2002) ("Although prohibition is the appropriate remedy to invalidate such orders, mandamus is the appropriate vehicle to compel disclosure of specific records").

Moreover, it would not be possible for the Court to make the required findings to justify the Confidentiality Order, because Dr. Ghoumbrial cannot show that his purported interest in protecting "confidential business information" outweighs the Intervening Parties' right of public access to Court proceedings. Indeed, the information contained Julie's testimony that Dr. Ghoumbrial seeks to keep sealed cannot be considered "confidential" at all because it is already at issue in the pending civil case, where the Plaintiffs come forward with detailed allegations about a fraudulent scheme implemented by Ghoumbrial to enrich himself at the expense of the unsuspecting patients directed to treat with him by the KNR firm. *See* **Exhibit 5**, excerpts from Fifth Amended Complaint in civil case containing detailed allegations against Dr. Ghoumbrial by his former patients. Supporting these allegations, Dr. Ghoumbrial's own employee Richard Gunning, M.D., contacted the Intervening Parties' attorneys in the civil case to report that Ghoumbrial pressured him into executing an affidavit, spoke over the phone for two hours about the fraudulent business practices at issue, and has since provided public testimony concerning the same. *See* **Exhibit 6**, excerpt from Plaintiffs' Motion to

Compel the Continued Deposition of Richard Gunning, M.D., at 4-6 (quoting Dr. Gunning's deposition transcript which has been filed and is a public record in the civil case).

Finally, even if the fraudulent practices Dr. Ghoubril seeks to shield were not already in public view, a Confidentiality Order would be further unwarranted due to the public's interest in understanding the truth about the high-volume and highly advertised fraud at issue in this case. *See, e.g., Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1180 (6th Cir. 1983) ("[C]ommon sense tells us that the greater the motivation a corporation has to shield its operations, the greater the public's need to know."). Even if such information could be legitimately considered "confidential" in the civil case (it cannot), the law abhors confidentiality as an excuse for shielding evidence of fraud. *Eagle v. Fred Martin Motor Co.*, 157 Ohio App.3d 150, 2004-Ohio-829, 809, N.E.2d 1161, ¶ 64 (9th Dist.) citing *King v. King*, 63 Ohio St. 363, 372, 59 N.E. 111 (1900) ("[C]ontracts which bring about results which the law seeks to prevent are unenforceable as against public policy. Moreover, actual injury is never required to be shown; it is the tendency to the prejudice of the public's good which vitiates contractual relations."); *Cochran v. N.E. Ohio Adoption Servs.*, 85 Ohio App.3d 750, 756, 621 N.E.2d 470 (11th Dist. 1993) ("[I]t is clear that the dictates of public policy would mandate disclosure of information likely to uncover fraud or misrepresentation.").³

³ *See also Cochran v. N.E. Ohio Adoption Servs.*, 85 Ohio App.3d 750, 756, 621 N.E.2d 470 (11th Dist. 1993) ("[I]t is clear that the dictates of public policy would mandate disclosure of information likely to uncover fraud or misrepresentation."); *Goodman v. Genworth Fin. Wealth Mgmt.*, 881 F.Supp.2d 347, 355 (E.D.N.Y. 2012) citing RESTATEMENT (THIRD) OF UNFAIR COMPETITION, § 40, comment c, *Bartnicki v. Vopper*, 532 U.S. 514, 121 S.Ct. 1753, 149 L.Ed.2d 787 (2001) ("Deceptive, illegal or fraudulent activity simply cannot qualify for protection as a trade secret."); *Soc. of Lloyds v. Ward*, S.D. Ohio No. No. 1:05-CV-32, 2006 U.S. Dist. LEXIS 29, *27-28 (Jan. 3, 2006) (holding that "documents that are neither privileged nor confidential are not covered" by confidentiality agreements, and that such agreements may not be "interpret[ed in a manner as to] lead to nonsensical results ... [or] to perpetrate frauds and injustices in violation of public policy"); *In re JDS Uniphase Corp. Sec. Litig.*, 238 F.Supp.2d 1127, 1137-1138 (N.D. Cal. 2002) ("To the extent that this agreement can be read to prohibit an employee from providing any information about any wrongdoing by [defendant], it is plainly unenforceable. ... [Defendant] cannot use its confidentiality agreements to chill former employees from voluntarily participating in legitimate investigations into

- D. To the extent that the Jan. 25 Confidentiality Order purports to bar *in camera* review in the civil case, it is not narrowly tailored, as any legitimate concerns over the “confidentiality” of Julie’s testimony are adequately protected by the Protective Order in the civil case.**

It is worth emphasizing again that the Intervening Parties are not asking this Court to make Julie’s deposition transcript public. Rather, they only seek to subject Julie’s testimony to Judge Brogan’s *in camera* review to determine which, if any, limited portions of the testimony are subject to discovery in the civil case, where a protective order is already in place to prevent public disclosure of legitimately confidential information. *See* Protective Order in the civil case, attached as **Exhibit 7**. To the extent that this Court’s Jan. 25 Confidentiality Order purports to bar *in camera* review by Judge Brogan for this purpose, it cannot possibly be narrowly tailored as required by the First Amendment and controlling Supreme Court of Ohio precedent and court rules. *State ex rel. National Broadcasting Co.*, 52 Ohio St. 3d 104, 108; *Wolff*, 2012-Ohio-3328, ¶ 32–37; Sup.R. 45(E)(2).

Given these protections, and the guarantee that any legitimately confidential information pertaining to Dr. Ghoubrial’s business will remain so subject to the Protective Order in the civil case, there is no justification for undermining “the basic tenet of Ohio jurisprudence that cases should be decided on their merits” by keeping Julie’s testimony hidden from the Intervening Parties. *Perotti v. Ferguson*, 7 Ohio St.3d 1, 3, 454 N.E.2d 951 (1983). *See also, e.g., Franklin United Methodist Home, Inc. v. Lancaster Pollard & Co.*, 909 F.Supp.2d 1037, 1044-1045 (S.D.Ind.2012) (“[C]ourts asked

alleged wrongdoing by [defendant].”); *Maddox v. Williams*, 855 F.Supp. 406, 414–15 (D.D.C. 1994) (“If [Defendants’] strategy were accepted, those seeking to bury their unlawful or potentially unlawful acts from consumers, from other members of the public, and from law enforcement or regulatory authorities could achieve that objective by a simple yet ingenious strategy: all that would need to be done would be to delay or confuse any charges of health hazard, fraud, corruption, overcharge, nuclear or chemical contamination, bribery, or other misdeeds, by focusing instead on inconvenient documentary evidence and labeling it as the product of theft, violation of proprietary information, interference with contracts, and the like. The result would be that even the most severe public health and safety dangers would be subordinated in litigation and in the public mind to the malefactors’ tort or contract claims, real or fictitious. The law does not support such a strategy or inversion of values.”).

to issue discovery orders in litigation pending before them have not shied away from” compelling “confidential” information, even if it would modify or circumvent a discovery order by another court, if ... such a result was considered justified.”) (citing cases); *United States v. GAF Corp.*, 596 F.2d 10, 16 (2d Cir. 1979) (“[Protective] orders are subject to modification to meet the reasonable requirements of parties in other litigation.”); *Meyer Goldberg, Inc. v. Fisher Foods*, 823 F.2d 159, 163-164 (6th Cir.1987) (“Given that proceedings should normally take place in public, imposing a good cause requirement on the party seeking modification of a protective order is unwarranted. If access to protected fruits can be granted without harm to legitimate secrecy interests, or if no such interests exist, continued judicial protection cannot be justified. In that case, access should be granted even if the need for the protected materials is minimal.”).

III. Conclusion

For the foregoing reasons, the Court should grant this motion to intervene, and amend the Jan. 25 Confidentiality Order to subject Julie’s deposition transcript to Judge Brogan’s review and jurisdiction in the civil case, where any legitimately confidential information will be subject to the Protective Order in that case.

Respectfully submitted,

/s/ Peter Pattakos

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Certificate of Service

The foregoing document was filed on February 12, 2019, using the Court's electronic-filing system, which will serve copies on all necessary parties.

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Attorney for Plaintiffs

**IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
SUMMIT COUNTY, OHIO**

JULIE GHOUBRIAL	)	CASE NO: DR-2018-04-1027
)	
Plaintiff,)	
	)	JUDGE QUINN
-vs-)	
)	
SAMEH N. GHOUBRIAL, et al.	)	MAGISTRATE DENNIS
)	
Defendants.)	
)	
	)	Brief in Opposition of Intervening
	)	Parties' Motion to Intervene and
	)	for Amendment of the January 25,
	)	2019 Confidentiality Order re:
	)	Julie Ghoumbrial's Deposition
	)	Testimony

Now comes, Sameh Ghoumbrial, by and through counsel, and hereby submits his Opposition of Intervening Parties' Motion to Intervene and for Amendment of the January 25, 2019 Confidentiality Order re: Julie Ghoumbrial's Deposition Testimony.

In their brief, Intervening Parties cite to Ohio Civ. R. 24(B) for the basis of their intervention into the divorce matter. However, Ohio Civ. R. 24 **DOES NOT APPLY** in divorce cases. Ohio Civ. R. 75(B) states that:

“(B) Joinder of parties. Civ.R. 14, 19, 19.1, and 24 shall not apply in divorce, annulment, or legal separation actions, however:

(1) A person or corporation having possession of, control of, or claiming an interest in property, whether real, personal, or mixed, out of which a party seeks a division of marital property, a distributive award, or an award of spousal support or other support, may be made a party defendant;

(2) When it is essential to protect the interests of a child, the court may join the child of the parties as a party defendant and appoint a guardian ad litem and legal counsel, if necessary, for the child and tax the costs;

EXHIBIT 3

(3) The court may make any person or agency claiming to have an interest in or rights to a child by rule or statute, including but not limited to R.C. 3109.04 and R.C. 3109.051, a party defendant;

(4) When child support is ordered, the court, on its own motion or that of an interested person, after notice to the party ordered to pay child support and to his or her employer, may make the employer a party defendant.”

The Eleventh District Court of Appeals described the application of Ohio Civ. R. 75(B) in *Rymers v. Rymers*, 2010 Ohio 4289 as follows:

“Civ.R. 75(B) precludes intervention in a divorce action unless ‘[a] person or corporation having possession of, control of, or claiming an interest in property, whether real, personal, or mixed, out of which a party seeks a division of marital property, a distributive award, or an award of spousal support or other support, may be made a party defendant.’ Civ.R. 75(B)(1). In order to intervene, the intervenor applicant must have claimed an ‘interest in property.’ *Moore v. Moore*, 175 Ohio App.3d 1, 2008-Ohio-255, 884 N.E.2d 1113, ¶17. ‘Interest’ means a ‘lien or ownership, legal or equitable.’ *Id.*”

The Intervening Parties are not alleging any interest in an asset or debt of the marital estate. The Intervening Parties are seeking to intervene for the limited purpose, as they state in their brief, “to determine which, if any, limited portions of the testimony are subject to discovery in the civil case.” This is *specifically barred* under Ohio Civ. R. 75(B). Therefore, based on the plain language of Ohio Civ. R. 75(B), the Intervening Parties’ Motion must be denied.

Due to the fact that the Intervening Parties have no basis for intervening in the divorce proceedings, the remainder of the Intervening Parties’ arguments are irrelevant and must be stricken from the record. However, it is important to note that the confidentiality order is good policy and must remain in place. The Ghoubril’s are attempting to resolve their divorce matter. The parties have voluntarily submitted to depositions. Both parties are office holders in the various businesses at issue in this matter. The parties should be able to testify regarding the business and

marriage without fear of outside parties invading the process. Further, the parties are freely testifying regarding the status of the businesses while under the impression that a confidentiality order is in place. A precedent allowing third parties to invade the discovery process in a divorce matter will have drastic effects and cause increased contention in a divorce. Therefore, confidentiality agreements and orders should not be disturbed for any reason.

Wherefore, for all of the above reasons and as a matter of law, the Intervening Parties' Motion to Intervene must be denied.

Respectfully submitted,

/s/ Adam R. Morris

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CERTIFICATE OF SERVICE

I, Adam R. Morris, do hereby certify that a copy of the foregoing has been sent via e-mail
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**IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
SUMMIT COUNTY, OHIO**

<p>JULIE GHoubRIAL,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>SAMEH N. GHoubRIAL, et al.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. DR 2018-04-1027</p> <p>Judge John P. Quinn</p> <p>Reply in Support of Motion to Intervene and for Amendment of the January 25, 2019 Confidentiality Order re: Julie Ghoubrial's Deposition Testimony</p>
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In his two separate opposition briefs, Dr. Ghoubrial does not deny that a portion of Julie's deposition testimony is, as Judge Brogan found, "highly relevant" to and "probative" of the well-pleaded and well-documented fraud claims at issue in the civil case. *See* Motion, **Ex. 2**. Nor does Dr. Ghoubrial set forth any legitimate reason why this highly relevant and probative evidence of fraud should be kept hidden from the alleged victims, his former patients, who seek to discover it subject to the protective order in that action. Instead, he offers misrepresentations and circular platitudes that run counter to the bedrock principles mandating open court proceedings (Motion at 4–5), disclosure of evidence of fraud (*Id.* at 7, fn 3), avoidance of duplicative discovery (*Id.* at 8–9), and that cases be decided on their merits (*Id.* at 8); and in doing so, relies primarily on a misreading of Civ.R. 75(B) that, even if correct, would be beside the point.

Dr. Ghoubrial mainly argues that Civ.R. 75(B) bars intervention under Civ.R. 24, and thus, that the Jan. 25 Confidentiality Order should stand. But Civ.R. 75(B), by its terms, only applies to "joinder of parties," and the Intervening Parties do not seek to join this case as a party. *See Adams v. Metallica, Inc.*, 143 Ohio App.3d 482, 491-493, 758 N.E.2d 286 (1st Dist. 2001) (distinguishing between "cases in which the parties seeking to intervene were attempting to litigate the merits of the underlying suit" and those "[w]here intervention is instead used as a means of challenging a

EXHIBIT 4

protective order” and finding that “the old rules and analyses have been deemed ‘not helpful’” in the latter group of cases). Not only would Dr. Ghoubrial’s requested application of Rule 75(B) run counter to the well-established principle that non-parties may seek amendment of confidentiality orders to obtain information relevant to separate legal matters¹ (as Judge Brogan specifically instructed the Intervening Parties to do here (Motion, **Ex. 2**)), but it would make no sense for the Rule to apply to bar the instant motion when the non-parties could seek the same relief in a separate action for a writ of mandamus or prohibition. *State ex rel. Beacon Journal v. Bond*, 98 Ohio St. 3d 146, 160 (2002). In any event, it does not matter whether “intervention” is technically permitted here, because this Court may, in its discretion, take notice of the publicly available facts that warrant amendment of the January 25, 2019 Confidentiality Order (including Judge Brogan’s order attached as **Ex. 2** to the Intervening Parties’ motion and the rest of the docket in the civil case) and make that amendment *sua sponte*.

The serial misrepresentations of law² and fact³ in Dr. Ghoubrial’s opposition briefs notwithstanding, there is no good reason for this Court to withhold permission from Judge Brogan

¹ See Mot. at 8–9; See also *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 777–78 (3d Cir. 1994) (citing numerous cases across multiple jurisdictions for the proposition that “the procedural device of permissive intervention is appropriately used to enable a litigant who was not an original party to an action to challenge protective or confidentiality orders entered in that action”).

² The opposition brief filed by Attorney Best (at pages 3–5) wrongly states that the legal standards cited by the Intervening Parties relating to the First Amendment’s guarantee of open courts are “applicable only to criminal matters.” This misrepresentation is belied by the very first case cited by the Intervening Parties on these principles, *State ex rel. Dispatch Printing Co. v. Lias*, 68 Ohio St.3d 497, 502, 628 N.E.2d 1368 (1994), which pertained not to a criminal matter but rather a “custody proceeding involving a minor child,” where The Supreme Court of Ohio recognized that “children have a very special place in life which law should reflect,” and “matters involving children have always been subject to close scrutiny and supervision of the courts.” In the wake of this recognition, the *Lias* Court nevertheless went on to hold, *inter alia*, that “a public right of access to *pretrial proceedings*,” even in child custody cases, “while not absolute, is embraced by both the United States and Ohio Constitutions,” and if such proceedings are to “be closed to the press and public,” courts must first “conduct an evidentiary hearing” to show that the need for closure outweighs the benefits of public access, and must conduct this hearing “with counsel for the parties,” and “the press and

to confirm the relevance of Julie's deposition testimony to the civil case, and provide for limited production of portions of this testimony, if at all, under the applicable protective order in that action. Whether or not, as Dr. Ghoumbrial argues (Best Opp. at 2, 6), the civil case ultimately leads to "depletion of the marital estate" upon a finding of his liability there, it is certainly not this Court's mandate to help parties personally gain by hiding evidence of fraud, and Dr. Ghoumbrial's suggestion to the contrary should be decisively rejected.⁴ Again, and again contrary to Dr. Ghoumbrial's arguments in opposition, the Intervening Parties do not seek to discover any personal information that is not relevant to the civil case, and any legitimate concerns about the confidentiality of business

the public, if any, present and participating." *Id.* (emphasis added). The *Lias* Court also cited (at 502) the U.S. Supreme Court's holding in *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 567, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980) for the proposition that, "the underpinnings justifying public access to criminal trials apply with equal force to civil trials."

³ Among the many factual misrepresentations contained in Dr. Ghoumbrial's opposition briefs, Attorney Best states (Best Opp. at 6) that he "does not represent Dr. Ghoumbrial" in the civil case, and that "The Intervening Parties' representation otherwise was a knowing and improper attempt to mislead this Court." Attorney Best has, however, confirmed at depositions in the civil case that he represents Ghoumbrial's interests in that case, and specifically stated that he represents "Ghoumbrial, Inc." as noted in the transcript of Defendant Alberto R. Nestico's deposition that was taken last week. *See* excerpt from Nestico transcript, 298:6–10, attached as **Exhibit 1**. Additionally, Dr. Ghoumbrial's claim (Best Opp. at 3, 6) that the Intervening Parties seek access to Julie's transcript for "improper purposes," including to "harass, embarrass, and sling mud at Dr. Ghoumbrial" is disproven by the fact that the Intervening Parties have only requested access to portions of Julie's testimony that pertain to the allegations in the civil case. Similarly, Dr. Ghoumbrial's statement that the civil case is "nothing more than a fishing expedition" (Best Opp. at 8) is belied by the detailed and well-documented allegations in that case (*See* Motion, **Ex. 5**), the testimony given by witnesses including Dr. Ghoumbrial's own employee Dr. Gunning (*See Id.*, **Ex. 6**), and, *inter alia*, the fact that the court has consistently rejected defendants' repeated requests for dismissal and other efforts to evade discovery (*See Id.*, **Ex. 2**).

⁴ The Court should similarly reject Dr. Ghoumbrial's unsupported hypothesis (Morris Opp. at 3) that this lawsuit will somehow become more contentious and that other "drastic effects" will result if this Court doesn't assist him in hiding evidence of the widespread fraud alleged. It is just as likely that the parties find it easier to resolve their dispute as relevant facts in the civil case come to light, and in any event Ghoumbrial fails to present any justification to overcome the well-established public policy favoring disclosure of evidence of fraud. *See* Mot. at 7, fn 3; *See also Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 587, 96 S.Ct. 2791, 49 L.Ed.2d 683 (1976), Brennan, J. concurring ("Sunlight is said to be the best of disinfectants.").

information are amply covered by the protective order in that case. For these reasons, explained more fully in the Intervening Parties' motion, the Jan. 25 Confidentiality Order should be amended to allow for Judge Brogan's *in camera* review of Julie's transcript, and production of the portions relevant to and probative of the claims at issue in the civil case.

Respectfully submitted,

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Certificate of Service

The foregoing document was filed on February 20, 2019, using the Court's electronic-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos

Attorney for Plaintiffs

**IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
SUMMIT COUNTY, OHIO**

JULIE GHOUBRIAL	)	CASE NO. DR-2018-04-1027
)	
)	
Plaintiff)	
	)	JUDGE JOHN QUINN
-VS-	)	MAGISTRATE SHARON DENNIS
)	
SAMEH GHOUBRIAL	)	<u>JUDGMENT ENTRY</u>
)	
)	
Defendant)	
)	

1. This matter is before the Court on the motion filed February 12, 2019 by Member Williams, Thera Reid, Monique Norris, and Richard Harbour (“Movants”) to intervene in this pending divorce case and to amend the confidentiality order approved by this Court on January 25, 2019, which ordered that the deposition of Plaintiff (“Wife”) be marked confidential.

2. As a basis for intervention, Movants cite to Civ.R. 24(B). Civ.R. 24(B) has been held as a proper procedural mechanism for parties to intervene in civil actions in order to modify protective orders. *See Adams v. Metalicca, Inc.*, 143 Ohio App.3d 482, 491 (1st Dist.2001). However, Civ.R. 75(B) provides that Civ.R. 24 is inapplicable in divorce cases. *See also Davis v. Cincinnati Enquirer*, 164 Ohio App.3d 36, 2005-Ohio-5719, ¶ 14 (1st Dist.) (noting, where a newspaper had requested access to sealed records in a divorce case, the newspaper should not have been permitted to file motions or memoranda in that case pursuant Civ.R. 75(B)), and *Rymers v. Rymers*, 11th Dist. Lake Nos. 2009-L-109, 2009-L-156, 2010-Ohio-4289, ¶ 25-29.

3. Accordingly, Civ.R. 24(B) cannot serve as a basis for Movants to intervene in this action.

EXHIBIT 5

4. Nonetheless, assuming that intervention were proper in this case, Movants argue that the confidentiality order should be modified based upon the First Amendment right of public access to judicial proceedings. However, depositions are not the type of proceedings to which the First Amendment right of public access attaches. *See State Ex. Rel. Toledo Blade Co. v. Henry Cty. Court of Common Pleas*, 125 Ohio St.3d 149, 2010-Ohio-1533, ¶ 22, *State ex rel. Nat. Broadcasting Co., Inc. v. Court of Common Pleas of Lake Cty.*, 52 Ohio St.3d 104, 107 (1990), quoting *Press-Ent. Co. v. Superior Court of California for Riverside Cty.*, 478 U.S. 1, 8 (1986) (First Amendment right of access to judicial proceedings attaches to proceedings that have “historically been open to the press and general public” and in which “public access plays a significant positive role in the functioning of the particular process in question”), and *Adams* at 487, quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1984) (discovery has not historically been open to the public).

5. Further, although Movants do not rely upon Sup.R. 44-47 in their motion as a basis for amending the confidentiality order, the Court notes that at issue here is a transcript of a deposition that has not been filed with the Court. *See State ex rel. Richfield v. Laria*, 138 Ohio St.3d 168, 2014-Ohio-243, ¶ 8 (the procedures in Sup.R. 44-47 “are the sole vehicle for obtaining” court records in actions commenced after July 1, 2009), Sup.R. 44(B) (a “court record” includes a “case document”), Sup.R. 44(C)(1) (a “case document[s]” include, subject to exclusions, certain documents that are *submitted* to a court or *filed* with a clerk of court), Sup.R. 44(C)(2) (excluding from the term “case document” a document exempt from disclosure under federal, state or common law), *State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St.3d 350, 354, 1997-Ohio-271 (1997), and *Seattle Times Co.* at 32-34 (pretrial depositions were not open to the public at common law). *See also State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481,

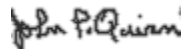
2012-Ohio-3328, (2012) (holding that “sealed bills of particulars are not exempt from disclosure under state law as either discovery materials or work product”). The unfiled deposition transcript is not a court record for purposes of the Rules of Superintendence.

6. Movants’ motion is DENIED.

It is so ORDERED.

TO THE CLERK:

PURSUANT TO CIVIL RULE 58(B), THE CLERK IS DIRECTED TO SERVE UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR NOTICE OF THE FILING OF THIS JUDGMENT ENTRY AND OF THE DATE OF ENTRY UPON THE JOURNAL.



Judge JOHN QUINN

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