

**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	)	<b><u>DECISION</u></b>
LLC, et al.	)	
	)	
Defendants	)	

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This matter comes before the Court upon Plaintiffs' Motion to Compel the Continued Deposition of Alberto R. Nestico. The KNR Defendants filed a Brief in Opposition.

Plaintiffs state Mr. Nestico declined to answer, or objected to providing answers or information, concerning certain topics at his deposition:

1. KNR's advertising to and solicitation of potential clients, the extent of the resources expended by Defendants to draw clients into their high-volume business model, and the firm's support for its claim in advertising material that "it remains on the cutting edge of the field." [Nestico Tr. 76:2-77:17; 124:24-128:7; 146:13-25]

OBJECTION SUSTAINED. Plaintiffs request for this information is not well-taken. This information is not relevant nor is it likely to lead to discovery of relevant information.

2. The reasons why KNR closely tracks referrals to and from medical providers. [Nestico Tr. 209:3-210:10 and 58:1-3]

OBJECTION OVERRULED. Plaintiffs request for this information is well-taken. Mr. Nestico may answer the inquiry either through interrogatory or subsequent deposition.

3. Mr. Nestico's factual knowledge about the testimony Julie Ghoubril provided, in her divorce case with Defendant Sam Ghoubril, M.D, about the allegations in this lawsuit. [Nestico Tr. 471:10-475:13]

OBJECTION SUSTAINED. Plaintiffs request for this information is not well-taken. Requiring Mr. Nestico to testify about what he heard about the divorce proceeding or Julie Ghoubril's deposition testimony in that case would compromise the confidentiality of the proceedings as ordered by the Domestic Relations Court. Plaintiffs need only depose Julie Ghoubril.

4. KNR's decision to file this lawsuit, including tortious inference claims, against chiropractor James Fonner, with whom the firm had a referral relationship, and who countersued KNR based on allegations that the firm "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." [Nestico Tr. 644:24-645:9; 666:21-667:6]

OBJECTION SUSTAINED. Plaintiffs request for this information is not well-taken. The reasons for the lawsuit against Dr. Fonner can be found in the Complaint in Franklin County.

5. KNR's respective termination of and separation with former attorneys and key witnesses Robert Horton and Paul Steele, including litigation filed by KNR against Horton pertaining to Horton's communications with Plaintiff's counsel about the lawsuit, and threats of litigation against Steele relating to the firm's relationship with chiropractors, related allegations that Horton and Steele had violated confidentiality agreements with KNR, and the settlement agreements between the firm and these former employees. [Nestico Tr. 645:10-649:11]

OBJECTION OVERRULED. Plaintiffs request for this information is well-taken. Mr. Nestico must provide answers to this line of inquiry either by written interrogatory or deposition.

6. Mr. Nestico's awareness of the well-known racist stereotype regarding black people and fried chicken, which pertains both to (1) his acknowledgment that "the majority" of KNR's clientele comes from "lower socioeconomic backgrounds," and (2) his email to all KNR attorneys stating, "Next time get Popeye's Chicken," in response to an email about how one of the firm's clients had tried to sell, at a Youngstown-area pawn shop, a \$25 Macaroni Grill gift card distributed by the firm along with the client's settlement proceeds. [Nestico Tr. 477:11-19; 572:11-583:10]

OBJECTION SUSTAINED. Plaintiffs request for this information is not well-taken. Defendants argue the line of questioning is irrelevant, offensive, objectionable and improper. The Court finds that the probative value of the highly inflammatory area of this inquiry is outweighed by the prejudicial effect. It is not disputed that the majority of KNR clients come from the lower end of the socioeconomic population, white and black.

7. The KNR Defendants' counterclaims against Named Plaintiffs, which Defendants voluntarily dismissed without prejudice a few days before Nestico's deposition, and which were apparently intended to intimidate the Plaintiffs and chill other former clients and witnesses from participating in the lawsuit, as well as to manipulate venue. [Nestico Tr. 658:1-659:16; 662:8-663:15]

OBJECTION OVERRULED. Plaintiffs request for this information is well-taken. Mr. Nestico can provide answers to this line of inquiry either by interrogatory or deposition.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion to Compel the Continued Deposition of Alberto R. Nestico is GRANTED IN PART AND OVERRULED IN PART as set forth in the body of this Entry & Order.

IT IS SO ORDERED.



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

THE CLERK SHALL SERVE ALL COUNSEL AND PARTIES OF RECORD.