

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,	)	CASE NO. CV-2016-09-3928
	)	
Plaintiffs,	)	JUDGE JAMES A. BROGAN
	)	
v.	)	
	)	
KISLING, NESTICO & REDICK, LLC, et al.,	)	<b><u>NOTICE OF SERVICE OF SUBPOENA ON</u></b>
	)	<b><u>RYAN H. FISCHER, ESQ.</u></b>
Defendants.	)	
	)	

Defendants, Kisling, Nestico & Redick, LLC, Alberto R. Nestico and Robert Redick, hereby give notice that Defendants perfected service, under Civ.R. 45, of the attached subpoena on Ryan H. Fischer, Esq. via Process Server on May 28, 2019, at Lowe Eklund Wakefield, 1660 W. 2<sup>nd</sup> Street, Suite 610, Cleveland, Ohio 44113. See Affidavit of Service attached.

Respectfully submitted,

/s/ James M. Popson  
 James M. Popson (0072773)  
 Sutter O'Connell  
 1301 East 9th Street  
 3600 Erieview Tower  
 Cleveland, OH 44114  
 (216) 928-2200 phone  
 (216) 928-4400 facsimile  
[jpopson@sutter-law.com](mailto:jpopson@sutter-law.com)

Counsel for Defendants  
Kisling Nestico & Redick LLC, Alberto R. Nestico  
and Robert Redick

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of June, 2019, the foregoing Notice of Service of Subpoena on Ryan H. Fischer, Esq. was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

/s/ James M. Popson  
James M. Popson (0072773)

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 2016 09 3928

Judge James A. Brogan

To: **Ryan H. Fischer, Esq.**  
**Lowe Eklund Wakefield Co., LPA**  
**1660 W 2<sup>nd</sup> St., Suite 610**  
**Cleveland, OH 44113**

**DEPOSITION SUBPOENA DUCES TECUM**

YOU ARE COMMANDED to appear to be deposed and to testify in the above case and to produce and permit inspection, copying, testing or sampling of the documents or objects identified on Exhibit A to this subpoena at the place, date, and time specified below. Said deposition will continue from day to day until completed.

**PLACE OF DEPOSITION**

Sutter O'Connell  
3600 Erieview Tower  
1301 E. 9th St.  
Cleveland, OH 44114

**DATE**

**6/3/2019**

**TIME**

**1:30 P.M.**

/s/ James M. Popson

James M. Popson (0072773)  
SUTTER O'CONNELL CO.  
1301 East 9th Street  
3600 Erieview Tower  
Cleveland, Ohio 44114  
(216) 928-2200 phone  
(216) 928-4400 facsimile  
[jpopson@sutter-law.com](mailto:jpopson@sutter-law.com)

Thomas P. Mannion (0062551)  
Lewis Brisbois  
1375 E. 9<sup>th</sup> Street, Suite 2250  
Cleveland, Ohio 44114  
(216) 344-9467 phone  
(216) 344-9241 facsimile  
[Tom.mannion@lewisbrisbois.com](mailto:Tom.mannion@lewisbrisbois.com)

R. Eric Kennedy (0006174)  
Daniel P. Goetz (0065549)  
Weisman Kennedy & Berris Co LPA  
101 W. Prospect Avenue  
1600 Midland Building  
Cleveland, OH 44115  
(216) 781-1111 phone  
(216) 781-6747 facsimile  
[ekennedy@weismanlaw.com](mailto:ekennedy@weismanlaw.com)  
[dgoetz@weismanlaw.com](mailto:dgoetz@weismanlaw.com)

Counsel for Defendants

## OHIO RULE 45

**(C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS**

(1) A PARTY OR AN ATTORNEY RESPONSIBLE FOR THE ISSUANCE AND SERVICE OF A SUBPOENA SHALL TAKE REASONABLE STEPS TO AVOID IMPOSING UNDUE BURDEN OR EXPENSE ON A PERSON SUBJECT TO THAT SUBPOENA.

(2)(A) A PERSON COMMANDED TO PRODUCE UNDER DIVISIONS (A)(1)(B), (III), (IV), (V), OR (VI) OF THIS RULE NEED NOT APPEAR IN PERSON AT THE PLACE OF PRODUCTION OR INSPECTION UNLESS COMMANDED TO ATTEND AND GIVE TESTIMONY AT A DEPOSITION, HEARING, OR TRIAL.

(B) SUBJECT TO DIVISION (D)(2) OF THIS RULE, A PERSON COMMANDED TO PRODUCE UNDER DIVISIONS (A)(1)(B), (III), (IV), (V), OR (VI) OF THIS RULE MAY, WITHIN FOURTEEN DAYS AFTER SERVICE OF THE SUBPOENA OR BEFORE THE TIME SPECIFIED FOR COMPLIANCE IF SUCH TIME IS LESS THAN FOURTEEN DAYS AFTER SERVICE, SERVE UPON THE PARTY OR ATTORNEY DESIGNATED IN THE SUBPOENA WRITTEN OBJECTIONS TO PRODUCTION. IF OBJECTION IS MADE, THE PARTY SERVING THE SUBPOENA SHALL NOT BE ENTITLED TO PRODUCTION EXCEPT PURSUANT TO AN ORDER OF THE COURT BY WHICH THE SUBPOENA WAS ISSUED. IF OBJECTION HAS BEEN MADE, THE PARTY SERVING THE SUBPOENA, UPON NOTICE TO THE PERSON COMMANDED TO PRODUCE, MAY MOVE AT ANY TIME FOR AN ORDER TO COMPEL THE PRODUCTION. AN ORDER TO COMPEL PRODUCTION SHALL PROTECT ANY PERSON WHO IS NOT A PARTY OR AN OFFICER OF A PARTY FROM SIGNIFICANT EXPENSE RESULTING FROM THE PRODUCTION COMMANDED.

(3) ON TIMELY MOTION, THE COURT FROM WHICH THE SUBPOENA WAS ISSUED SHALL QUASH OR MODIFY THE SUBPOENA, OR ORDER APPEARANCE OR PRODUCTION ONLY UNDER SPECIFIED CONDITIONS, IF THE SUBPOENA DOES ANY OF THE FOLLOWING:

(A) FAILS TO ALLOW REASONABLE TIME TO COMPLY;

(B) REQUIRES DISCLOSURE OF PRIVILEGED OR OTHERWISE PROTECTED MATTER AND NO EXCEPTION OR WAIVER APPLIES;

(C) REQUIRES DISCLOSURE OF A FACT KNOWN OR OPINION HELD BY AN EXPERT NOT RETAINED OR SPECIALLY EMPLOYED BY ANY PARTY IN ANTICIPATION OF LITIGATION OR PREPARATION FOR TRIAL AS DESCRIBED BY CIV.R. 26(B)(5), IF THE FACT OR OPINION DOES NOT DESCRIBE SPECIFIC EVENTS OR OCCURRENCES IN DISPUTE AND RESULTS FROM STUDY BY THAT EXPERT THAT WAS NOT MADE AT THE REQUEST OF ANY PARTY;

(D) SUBJECTS A PERSON TO UNDUE BURDEN.

(4) BEFORE FILING A MOTION PURSUANT TO DIVISION (C)(3)(D) OF THIS RULE, A PERSON RESISTING DISCOVERY UNDER THIS RULE SHALL ATTEMPT TO RESOLVE ANY CLAIM OF UNDUE BURDEN THROUGH DISCUSSIONS WITH THE ISSUING ATTORNEY. A MOTION FILED PURSUANT TO DIVISION (C)(3)(D) OF THIS RULE SHALL BE SUPPORTED BY AN AFFIDAVIT OF THE SUBPOENAED PERSON OR A CERTIFICATE OF THAT PERSON'S ATTORNEY OF THE EFFORTS MADE TO RESOLVE ANY CLAIM OF UNDUE BURDEN.

(5) IF A MOTION IS MADE UNDER DIVISION (C)(3)(C) OR (C)(3)(D) OF THIS RULE, THE COURT SHALL QUASH OR MODIFY THE SUBPOENA UNLESS THE PARTY IN WHOSE BEHALF THE SUBPOENA IS ISSUED SHOWS A SUBSTANTIAL NEED FOR THE TESTIMONY OR MATERIAL THAT CANNOT BE OTHERWISE MET WITHOUT UNDUE HARDSHIP AND ASSURES THAT THE PERSON TO WHOM THE SUBPOENA IS ADDRESSED WILL BE REASONABLY COMPENSATED.

**(D) DUTIES IN RESPONDING TO SUBPOENA**

(1) A PERSON RESPONDING TO A SUBPOENA TO PRODUCE DOCUMENTS SHALL, AT THE PERSON'S OPTION, PRODUCE THEM AS THEY ARE KEPT IN THE USUAL COURSE OF BUSINESS OR ORGANIZED AND LABELED TO CORRESPOND WITH THE CATEGORIES IN THE SUBPOENA. A PERSON PRODUCING DOCUMENTS OR ELECTRONICALLY STORED INFORMATION PURSUANT TO A SUBPOENA FOR THEM SHALL PERMIT THEIR INSPECTION AND COPYING BY ALL PARTIES PRESENT AT THE TIME AND PLACE SET IN THE SUBPOENA FOR INSPECTION AND COPYING.

(2) IF A REQUEST DOES NOT SPECIFY THE FORM OR FORMS FOR PRODUCING ELECTRONICALLY STORED INFORMATION, A PERSON RESPONDING TO A SUBPOENA MAY PRODUCE THE INFORMATION IN A FORM OR FORMS IN WHICH THE INFORMATION IS ORDINARILY MAINTAINED IF THAT FORM IS REASONABLY USEABLE, OR IN ANY FORM THAT IS REASONABLY USEABLE. UNLESS ORDERED BY THE COURT OR AGREED TO BY THE PERSON SUBPOENAED, A PERSON RESPONDING TO A SUBPOENA NEED NOT PRODUCE THE SAME ELECTRONICALLY STORED INFORMATION IN MORE THAN ONE FORM.

(3) A PERSON NEED NOT PROVIDE DISCOVERY OF ELECTRONICALLY STORED INFORMATION WHEN THE PRODUCTION IMPOSES UNDUE BURDEN OR EXPENSE. ON MOTION TO COMPEL DISCOVERY OR FOR A PROTECTIVE ORDER, THE PERSON FROM WHOM ELECTRONICALLY STORED INFORMATION IS SOUGHT MUST SHOW THAT THE INFORMATION IS NOT REASONABLY ACCESSIBLE BECAUSE OF UNDUE BURDEN OR EXPENSE. IF A SHOWING OF UNDUE BURDEN OR EXPENSE IS MADE, THE COURT MAY NONETHELESS ORDER PRODUCTION OF ELECTRONICALLY STORED INFORMATION IF THE REQUESTING PARTY SHOWS GOOD CAUSE. THE COURT SHALL CONSIDER THE FACTORS IN CIV. R. 26(B)(4) WHEN DETERMINING IF GOOD CAUSE EXISTS. IN ORDERING PRODUCTION OF ELECTRONICALLY STORED INFORMATION, THE COURT MAY SPECIFY THE FORMAT, EXTENT, TIMING, ALLOCATION OF EXPENSES AND OTHER CONDITIONS FOR THE DISCOVERY OF THE ELECTRONICALLY STORED INFORMATION.

(4) WHEN INFORMATION SUBJECT TO A SUBPOENA IS WITHHELD ON A CLAIM THAT IT IS PRIVILEGED OR SUBJECT TO PROTECTION AS TRIAL PREPARATION MATERIALS, THE CLAIM SHALL BE MADE EXPRESSLY AND SHALL BE SUPPORTED BY A DESCRIPTION OF THE NATURE OF THE DOCUMENTS, COMMUNICATIONS, OR THINGS NOT PRODUCED THAT IS SUFFICIENT TO ENABLE THE DEMANDING PARTY TO CONTEST THE CLAIM.

(5) IF INFORMATION IS PRODUCED IN RESPONSE TO A SUBPOENA THAT IS SUBJECT TO A CLAIM OF PRIVILEGE OR OF PROTECTION AS TRIAL-PREPARATION MATERIAL, THE PERSON MAKING THE CLAIM MAY NOTIFY ANY PARTY THAT RECEIVED THE INFORMATION OF THE CLAIM AND THE BASIS FOR IT. AFTER BEING NOTIFIED, A RECEIVING PARTY MUST PROMPTLY RETURN, SEQUESTER, OR DESTROY THE SPECIFIED INFORMATION AND ANY COPIES WITHIN THE PARTY'S POSSESSION, CUSTODY OR CONTROL. A PARTY MAY NOT USE OR DISCLOSE THE INFORMATION UNTIL THE CLAIM IS RESOLVED. A RECEIVING PARTY MAY PROMPTLY PRESENT THE INFORMATION TO THE COURT UNDER SEAL FOR A DETERMINATION OF THE CLAIM OF PRIVILEGE OR OF PROTECTION AS TRIAL PREPARATION MATERIAL. IF THE RECEIVING PARTY DISCLOSED THE INFORMATION BEFORE BEING NOTIFIED, IT MUST TAKE REASONABLE STEPS TO RETRIEVE IT. THE PERSON WHO PRODUCED THE INFORMATION MUST PRESERVE THE INFORMATION UNTIL THE CLAIM IS RESOLVED.

**EXHIBIT A**

Ryan H. Fischer, Esq. (hereinafter "Deponent") is required to produce at the time of his deposition any and all files, records, notes, correspondence, or other documentary material in his possession, custody or control pertaining to this litigation, including any maintained in electronic format, including, but not limited to:

1. All documents or materials received, reviewed or relied upon Deponent in formulating any opinions expected to be offered at deposition or trial of this matter;
2. All correspondence, files, notes, materials, memoranda, e-mails or other information received by Deponent from the following in connection with this case:
  - a. Member Williams
  - b. Thera Reid
  - c. Naomi Wright
  - d. Monique Norris
  - e. Matthew Johnson
  - f. Richard Harbour
  - g. Peter Pattakos, Esq.
  - h. Rachel Hazlet, Esq.
  - i. Dean Williams, Esq.
  - j. Joshua Cohen, Esq.
  - k. Ellen Kramer, Esq.
  - l. Subodh Chandra, Esq.
  - m. Any lawyer or other representative of the persons listed in 2(a) through 2(l), above
3. All reports and drafts of any reports, affidavits, or documents connected with this litigation by Deponent, including drafts reflecting changes made by other persons;
4. A listing of all cases in which Deponent has testified as an expert at trial or by deposition within the preceding four years;
5. A copy of Deponent's current or most recent curriculum vitae or resume;
6. All correspondence, materials and documents from or to this expert, from or to any attorney representing a party to this litigation.
7. All correspondence, materials and documents which mention how Deponent was hired or retained in this case.
8. Copies of any billing materials or notes used by Deponent to record any time spent or activities performed for litigation services in this matter.

9. A list of all litigation cases that Deponent has ever been hired in to review material or render opinions.
10. All correspondence from or to Deponent from or to any other witness or consultant in this case.
11. A list of all publications reviewed, considered or relied upon by Deponent in formulating any opinions to be offered in this litigation.
12. Deponent's original complete file (as opposed to a copy), including the jacket/cover for said file, and all documents and materials contained therein at any time (or in any other file maintained or prepared by Deponent with respect to this litigation including any electronic files) that Deponent has been provided, reviewed, received, referred to, written, considered, relied upon, created or prepared relating to any aspect of this lawsuit.
13. Any and all documents, records, reports, drafts, drafts of reports, deposition transcripts, deposition summaries, letters, notes, handwritten notes, notations, time records, telephone messages, memoranda, documents, photographs, slides, videotapes, magazine articles, newspaper articles, treatises, journals, codes, regulations, statutes, trade magazines, calculations, measurements, highlighted materials, publications, web based materials or internet sites, and any other tangible items which Deponent reviewed, created, participated in the creation of, consulted, contributed to, received, referred to, or relied upon in connection with Deponent's work on this case, regardless of whether originally issued or presently maintained in hard copy or electronic form.
14. A copy of all reports or Affidavits issued by Deponent with respect to this matter and any prior versions thereof.
15. All documents referencing, directly or indirectly, Deponent's investigation and analysis of, and/or which form the basis of this Deponent's opinion concerning any defendant in this case.
16. Any and all documents, accounts, invoices, bills or time records reflecting Deponent's services performed in this matter or sent by Deponent in relation to this case, and any fee agreements entered into by Deponent in relation to this case, regardless of whether originally issued or presently maintained in hard copy or electronic form.
17. A list of all articles, books and other papers authored or co-authored by Deponent.
18. The names and addresses of all individuals who provided information to Deponent regarding the above-referenced litigation.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served this 23rd day of May, 2019 to the

following by electronic mail:

Peter Pattakos  
The Pattakos Law Firm, LLC  
101 Ghent Road  
Fairlawn, Ohio 44333  
[peter@pattakoslaw.com](mailto:peter@pattakoslaw.com)

Counsel for Plaintiffs

Joshua R. Cohen  
Cohen Rosenthal & Kramer LLP  
3208 Clinton Avenue  
1 Clinton Place  
Cleveland, Ohio 44113-2809  
[jcohen@crklaw.com](mailto:jcohen@crklaw.com)

Counsel for Plaintiffs

Shaun H. Kedir  
KEDIR LAW OFFICES LLC  
1400 Rockefeller Building  
614 West Superior Avenue  
Cleveland, Ohio 44113  
[shaunkedir@kedirlaw.com](mailto:shaunkedir@kedirlaw.com)

Counsel for Defendant Minas Floros, D.C.

Bradley J. Barmen  
LEWIS BRISBOIS BISGAARD & SMITH  
LLP  
1375 E. 9th Street, Suite 2250  
Cleveland, Ohio 44114  
[Brad.barmen@lewisbrisbois.com](mailto:Brad.barmen@lewisbrisbois.com)

Counsel for Defendant Dr. Sam Ghoubril

/s/ James M. Popson

James M. Popson (0072773)



THE STATE OF OHIO

ss.

Summit County

Affidavit of Service of Subpoena by Sheriff or Officer, Attorney or Private Person

On the 28th day of May, 2019

I served this Subpoena on the within named:

Ryan H. Fisher, Esq.

as follows:

by serving to Pam Dawber @ 10:25 AM, @ 1660 W. 3rd St, Suite 610, Cleveland, OH

SHERIFF'S FEES

Service on	\$
Copy	
Miles Travel	
Return	
\$	
Witness entitled to	miles

By [Signature]  
 Deputy Sheriff  
 described and sworn before me  
 Notary Public  
 his \_\_\_\_\_ day of \_\_\_\_\_ 2019



RULE 44. RULES OF CIVIL PROCEDURE, Part C & D

(C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS  
 (1) A PARTY OR AN ATTORNEY RESPONSIBLE FOR THE SERVICE AND SERVICE OF A SUBPOENA SHALL TAKE REASONABLE STEPS TO AVOID IMPOSING UNDUE BURDEN OR EXPENSE ON A PERSON SUBJECT TO THAT SUBPOENA.  
 (2) A PERSON COMMANDED TO PRODUCE UNDER DIVISIONS (A)(1)(B), (D), (E), (F), OR (M) OF THIS RULE NEED NOT APPEAR IN PERSON AT THE PLACE OF PRODUCTION OR INSPECTION UNLESS COMMANDED TO ATTEND AND GIVE TESTIMONY AT A DEPOSITION, HEARING, OR TRIAL.  
 (3) SUBJECT TO DIVISION (D)(2) OF THIS RULE, A PERSON COMMANDED TO PRODUCE UNDER DIVISIONS (A)(1)(B), (A), (E), (F), OR (M) OF THIS RULE MAY, WITHIN FOURTEEN DAYS AFTER SERVICE OF THE SUBPOENA OR BEFORE THE TIME SPECIFIED FOR COMPLIANCE IF SUCH TIME IS LESS THAN FOURTEEN DAYS AFTER SERVICE, SERVE UPON THE PARTY OR ATTORNEY DESIGNATED IN THE SUBPOENA WRITTEN OBJECTIONS TO PRODUCTION. IF OBJECTION IS MADE, THE PARTY SERVING THE SUBPOENA SHALL NOT BE ENTITLED TO PRODUCTION EXCEPT PURSUANT TO AN ORDER OF THE COURT BY WHICH THE SUBPOENA WAS ISSUED. IF OBJECTION HAS BEEN MADE, THE PARTY SERVING THE SUBPOENA, UPON NOTICE TO THE PERSON COMMANDED TO PRODUCE, MAY MOVE AT ANY TIME FOR AN ORDER TO COMPEL THE PRODUCTION. AN ORDER TO COMPEL PRODUCTION SHALL PROTECT ANY PERSON WHO IS NOT A PARTY OR AN OFFICER OF A PARTY FROM SIGNIFICANT EXPENSE RESULTING FROM THE PRODUCTION COMMANDED.  
 (4) ON TIMELY MOTION, THE COURT FROM WHICH THE SUBPOENA WAS ISSUED SHALL QUASH OR MODIFY THE SUBPOENA, OR ORDER APPEARANCE OR PRODUCTION ONLY UNDER SPECIFIED CONDITIONS, IF THE SUBPOENA DOES ANY OF THE FOLLOWING:  
 (A) FAILS TO ALLOW REASONABLE TIME TO COMPLY;  
 (B) REQUIRES DISCLOSURE OF PRIVILEGED OR OTHERWISE PROTECTED MATTER AND NO EXCEPTION OR WAIVER APPLIES;  
 (C) REQUIRES DISCLOSURE OF A FACT KNOWN OR OPINION HELD BY AN EXPERT NOT RETAINED OR SPECIALLY EMPLOYED BY ANY PARTY IN ANTICIPATION OF LITIGATION OR PREPARATION FOR TRIAL, AS DESCRIBED BY CIVR, 3035(B), IF THE FACT OR OPINION DOES NOT DESCRIBE SPECIFIC EVENTS OR OCCURRENCES IN DISPUTE AND RESULTS FROM STUDY BY THAT EXPERT THAT WAS NOT MADE AT THE REQUEST OF ANY PARTY;  
 (D) SUBJECTS A PERSON TO UNDUE BURDEN;  
 (E) BEFORE FILING A MOTION PURSUANT TO DIVISION (C)(4) OF THIS RULE, A PERSON REQUESTING DISCOVERY UNDER THIS RULE SHALL ATTEMPT TO RESOLVE ANY CLAIM OF UNDUE BURDEN THROUGH DISCUSSIONS WITH THE ISSUING ATTORNEY. A MOTION FILED PURSUANT TO DIVISION (C)(4) OF THIS RULE SHALL BE SUPPORTED BY AN AFFIDAVIT OF THE SUBPOENAED PERSON OR A CERTIFICATE OF THAT PERSON'S ATTORNEY OF THE EFFORTS MADE TO RESOLVE ANY CLAIM OF UNDUE BURDEN.  
 (5) IF A MOTION IS MADE UNDER DIVISION (C)(4) OR (C)(5) OF THIS RULE, THE COURT SHALL QUASH OR MODIFY THE SUBPOENA UNLESS THE PARTY IN WHOSE BEHALF THE SUBPOENA IS ISSUED SHOWS A SUBSTANTIAL NEED FOR THE TESTIMONY OR MATERIAL THAT CANNOT BE OTHERWISE MET WITHOUT UNDUE HARDSHIP AND ASSURES THAT THE PERSON TO WHOM THE SUBPOENA IS ADDRESSED WILL BE REASONABLY COMPENSATED.  
 (D) DUTIES IN RESPONDING TO SUBPOENA

(1) A PERSON RESPONDING TO A SUBPOENA TO PRODUCE DOCUMENTS SHALL THE PERSONS OPTION PRODUCE THEM AS THEY ARE KEPT, THE ORIGINAL SOURCE OF BUSINESS, OR ORGANIZED AND LABELED, OR FOUND WITH THE CATEGORIES IN THE SUBPOENA. A PERSON PRODUCING DOCUMENTS OR ELECTRONICALLY STORED INFORMATION PURSUANT TO A SUBPOENA FOR THEM SHALL PERMIT THEIR INSPECTION AND COPYING BY ALL PARTIES PRESENT AT THE TIME AND PLACE SET IN THE SUBPOENA FOR INSPECTION AND COPYING.  
 (2) IF A REQUEST DOES NOT REPLY TO THE FORM OR FORMS PRODUCING ELECTRONICALLY STORED INFORMATION, A PERSON RESPONDING TO A SUBPOENA MAY PRODUCE INFORMATION A FOR OR FORMS IN WHICH THE INFORMATION IS ORIGINAL, MAINTAINED, IF THAT FORM IS REASONABLY USABLE, OR IN ANY FORM THAT IS REASONABLY USABLE, UNLESS ORDERED BY THE COURT OR AGREED BY THE PERSON SUBPOENAED. PERSON RESPONDING TO A SUBPOENA NEED NOT PRODUCE THE ELECTRONICALLY STORED INFORMATION MORE THAN ONE FORM.  
 (3) A PERSON NEED NOT PROVIDE DISCOVERY OF ELECTRONICALLY STORED INFORMATION WHEN THE PRODUCTION IMPOSES UNDUE BURDEN OR EXPENSE ON NOTICE TO COMPEL DISCOVERY FOR PROTECTIVE PURPOSES. THE PERSON FROM WHOM ELECTRONICALLY STORED INFORMATION IS BOUGHT MUST SHOW THAT THE INFORMATION IS NOT REASONABLY ACCESSIBLE BECAUSE OF UNDUE BURDEN OR EXPENSE IF A SHOWING OF UNDUE BURDEN OR EXPENSE MADE. THE COURT MAY MODIFY RULES PRODUCTION OF ELECTRONICALLY STORED INFORMATION IF THE REQUESTING PARTY SHOWS CAUSE. THE COURT SHALL CONSIDER THE FACTORS RELEVANT WHEN GRABBING IF GOOD CAUSE EXISTS. IN ORDERING PRODUCTION OF ELECTRONICALLY STORED INFORMATION, THE COURT MAY SPECIFY FORMAT, TIMING, ALLOCATION OF EXPENSES AND OTHER CONDITIONS FOR THE DISCOVERY OF THE ELECTRONICALLY STORED INFORMATION.  
 (4) WHEN INFORMATION SUBJECT TO A SUBPOENA IS WITHHELD, CLAIM THAT IT IS PRIVILEGED OR SUBJECT TO PROTECTION AS TRIAL PREPARATION MATERIAL, THE CLAIM SHALL BE MADE, ESSE, AND SUPPORTED BY A DESCRIPTION OF THE NATURE OF THE EVIDENCE, CIRCUMSTANCES, OR THINGS NOT PRODUCED THAT IS SUFFICIENT TO ENABLE THE DEMAND PARTY TO CONTEST THE CLAIM.  
 (5) IF INFORMATION IS PRODUCED IN RESPONSE TO A SUBPOENA AND IS SUBJECT TO A CLAIM OF PRIVILEGE OR OF PROTECTION AS TRIAL PREPARATION MATERIAL, THE PERSON MAKING THE CLAIM MAY, AFTER BEING ADVISED OF THE INFORMATION OF THE CLAIM AND THE BASIS THEREFOR, REQUEST TO RECEIVE THE SPECIFIED INFORMATION AND ANY COPIES WITHIN THE PARTY'S POSSESSION, CUSTODY OR CONTROL. A PARTY MAY USE DISCLOSE THE INFORMATION UNTIL THE CLAIM IS RESOLVED. A RECEIVING PARTY MAY PRESENT THE INFORMATION TO THE COURT UNDER SEAL, DETERMINE THE CLAIM OF PRIVILEGE OR OF PROTECTION AS TRIAL PREPARATION MATERIAL. IF THE RECEIVING PARTY DISCLOSED THE INFORMATION BEFORE THE CLAIM IS RESOLVED, THE RECEIVING PARTY MUST PRESERVE THE INFORMATION UNTIL THE CLAIM IS RESOLVED.

FORM RC 105-1 07/2018