

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. CV-2016-09-3928

Judge James Brogan

DEFENDANT SAM GHoubrial, M.D.'S
MOTION TO QUASH SUBPOENA
SERVED TO JULIE GHoubrial

Now comes Defendant Sam Ghoubril, M.D. ("Defendant Ghoubril"), by and through counsel, and hereby moves for an Order quashing the subpoena served on non-party Julie Ghoubril on or about April 25, 2024, pursuant to Civ. R. 45(C)(3)(b). *See* Subpoena, attached as Exhibit A. Plaintiffs' subpoena to Julie Ghoubril seeks documents, electronically stored information, and testimony protected by Defendant Ghoubril's spousal privilege, and no exception or waiver applies that would permit Julie Ghoubril to comply with Plaintiffs' subpoena over Defendant Ghoubril's objection. *Id.*

As the Court is well aware, Defendant Ghoubril has asserted and maintained his spousal privilege under RC. 2317.02(D) since the issue of Julie Ghoubril's testimony first became an issue in this case in 2018. Since that time, Defendant Ghoubril has maintained and never waived his spousal privilege. On the contrary, Defendant Ghoubril has gone to great lengths to preserve the statutory privilege to protect private communications with Julie Ghoubril during their marriage. The fact that Sam and Julie Ghoubril are now divorced does not terminate the application of the privilege that expressly protects the communications during the marriage.

R.C. § 2317.02(D) prohibits a husband or wife from testifying concerning any communication made by one to the other, or an act done by either in the presence of the other, during coverture, unless the communication was made, or the act done, in the known presence or hearing of a third person competent to be a witness. *See* R.C. § 2317.02(D). Here, Plaintiffs' subpoena to Julie Ghoubril seeks precisely the type of information and testimony expressly prohibited by R.C. § 2317.02(D), requiring that the subpoena be quashed. *See* Exhibit A.

Civ. R. 45(C)(3)(b) mandates that this Court "shall" quash Plaintiffs' subpoena because it necessarily requires the disclosure of information protected by the spousal privilege. *Id.* While Civ. R. 45(C)(3)(b) does permit a court to modify a subpoena if it can be modified to protect the privileged information sought, no modification to the subpoena served by Plaintiffs on Julie Ghoubril would protect Defendant Ghoubril's spousal privilege under Civ. R. 45(C)(3)(b). Plaintiffs' subpoena seeks only evidence and testimony of communications and observations between Sam and Julie Ghoubril that occurred in the marital home during their marriage and Plaintiffs' counsel has acknowledged as much numerous times over the course of several years. As such, Plaintiffs' subpoena must be quashed.

Finally, it bears noting that the subpoena to Julie Ghoubril is wholly unnecessary and boards on harassment. The June 10, 2024, hearing is to determine whether Julie Ghoubril's 2018 deposition testimony during her divorce action is protected by the spousal privilege, and if so, to what extent. This Court has already rightly determined that Julie Ghoubril's deposition testimony has no bearing on the issue of class certification, currently before the Ninth District Court of Appeals for the third time. As the issues to be determined at the June 10, 2024, hearing are purely legal, there is no reason or legitimate need for Julie Ghoubril to be forced to appear and testify at that hearing.

For the foregoing reasons, Plaintiffs' subpoena to Julie Ghoubrial requiring her to produce certain documents and electronically stored information, and to appear and testify at the June 10, 2024, hearing must be quashed. Plaintiffs' subpoena seeks only information and testimony protected by the spousal privilege which Defendant Ghoubrial continues to assert and has never waived.

Respectfully submitted,

/s/ Bradley J. Barmen

Bradley J. Barmen, Esq. (0076515)

LEWIS BRISBOIS BISGAARD AND SMITH, LLP

1375 East Ninth Street, Suite 2250

Cleveland, OH 44114

Brad.barmen@lewisbrisbois.com

Phone: 216.344.9422

Fax: 216.344.9421

Counsel for Defendant

Sam N. Ghoubrial, M.D.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was filed electronically with the Court on this 10th day of May, 2024. The parties may access this document through the Court's electronic filing system.

/s/ Bradley J. Barmen

Bradley J. Barmen (0076515)

Counsel for Defendant

Sam N. Ghoubrial, M.D.

SUBPOENA
SUMMIT COUNTY COMMON PLEAS COURT

MEMBER WILLIAMS,

CASE NO: 2016-CV-09-3928

Plaintiff,

SUBPOENA IN A CIVIL CASE

vs.

ATTORNEY: Peter Pattakos

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

ADDRESS: The Pattakos Law Firm

101 Ghent Road

Fairlawn, OH 44333

peter@pattakoslaw.com

Defendants.

SUPREME CT. NO. 0082884

TO: JULIE GHoubrial
4836 LAKE VIEW DR.
PENINSULA, OH 44264

PURSUANT TO CIVIL RULE 45 YOU ARE HEREBY COMMANDED TO:

XX. PRODUCE THE FOLLOWING DOCUMENTS AND ELECTRONICALLY STORED INFORMATION ON OR BEFORE **June 3, 2024**: Any documents, including electronic recordings, in your possession, custody, or control related to the "olives" kickback scheme involving Sam Ghoumbrial, Minos Floros, and/or Rob Nestico, which you have previously described in your conversations with the undersigned counsel and in your October 2018 deposition in your divorce proceedings with Sam Ghoumbrial.

XX. ATTEND AND GIVE TESTIMONY AT A HEARING before Judge James A. Brogan, or any other judge sitting in his stead, on **June 10, 2024, at 10:00 a.m.** in the Visiting Judge Courtroom at the Summit County Court of Common Pleas, 205 S. High Street, Akron, OH 44308.

You may contact the Plaintiffs attorney Peter Pattakos regarding this subpoena at the above mailing address, by phone at 330.836.8533, or by email at peter@pattakoslaw.com. Witness fees have been tendered with this subpoena as required by Ohio law.

HEREOF FAIL NOT UNDER PENALTY OF THE LAW

WITNESS MY SIGNATURE AND SEAL OF SAID COURT, THIS 25th DAY OF APRIL, 2024:



Attorney Peter Pattakos



RETURN OF SERVICE

Received this Subpoena on the 25TH day of APRIL, 2024 at _____ and on
the 25TH day of APRIL, 2024, at _____, I served the same upon

JULIE GIBSON by delivering to

Julie Gibson AT HER HOME AT 4836 Lakeview Dr, Peninsula, OH 44264
at 5:19pm

Personally or Residential a true copy of this subpoena.

Notary

Sam B. Sheriff-Attorney Process Server-

Mileage: 24 miles @ \$0.10 : TOTAL \$ 2.40

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)(ii), (iii), (iv) or (v) 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)(ii), (iii), (iv), or (v) 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 – Fails to allow reasonable time to comply; requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; 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)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by the expert that was not made at request of any party; 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.

DUTIES IN RESPONDING TO SUBPOENAS:

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 responding 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 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 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.

SANCTIONS:

1. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney who frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees of the party seeking discovery. The court from which a subpoena was issued may impose upon a party or attorney in breach of the duty imposed by division (C)(1) of this rule an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. CV-2016-09-3928

Judge James Brogan

DEFENDANT SAM GHoubRIAL, M.D.'S
MOTION TO QUASH SUBPOENA

Now comes Defendant Sam Ghoubril, M.D. ("Ghoubril"), by and through counsel, and hereby moves for an Order quashing the subpoena Plaintiffs attempted to serve upon Defendant Ghoubril pursuant to Civ. R. 45(C)(3). Separate and apart from the fact that the subpoena Plaintiffs attempted to serve on Ghoubril on or about April 25, 2024, by taping it to the front door of his home, was never properly served or accepted, a subpoena to a Party is improper and defective on its face. As such, and out of an abundance of caution, Plaintiffs' subpoena must be quashed.

Plaintiffs' improper subpoena to Ghoubril seeks to compel both the production of documents and electronically stored information, as well as his attendance at the hearing currently scheduled for June 10, 2024. *See* Subpoena, attached as Exhibit A. However, Civ. R. 45 is clear and unequivocal, "[a] subpoena may not be used to obtain the attendance of a party or the production of document by a party in discovery." Civ. R. 45(A)(1). In addition, a party's attendance at a deposition, hearing, or trial can only be secured by a notice under Civ. R. 30, and documents or electronically stored information can only be secured from a party pursuant to Civ. R. 34. *Id.* As such, Plaintiffs' subpoena to Ghoubril is improper and must be quashed.

Plaintiffs' counsel is bound by and presumed to know the Civil Rules. Despite this, he nonetheless attempted to serve a subpoena on Ghoubril, a named Defendant in this matter, in an improper attempt to obtain documents and electronically stored information long after the close of discovery. Plaintiffs and their counsel cannot be permitted to circumvent the Civil Rules and this Court's Scheduling Orders by improperly attempting to serve a subpoena on a party Defendant long after the close of discovery. As such, not only should Plaintiffs' improperly served subpoena be quashed, Plaintiffs should be ordered to reimburse Defendant Ghoubril for all costs incurred in the filing of this motion.

Respectfully submitted,

/s/ Bradley J. Barmen

Bradley J. Barmen, Esq. (0076515)

LEWIS BRISBOIS BISGAARD AND SMITH, LLP

1375 East Ninth Street, Suite 2250

Cleveland, OH 44114

Brad.barmen@lewisbrisbois.com

Phone: 216.344.9422

Fax: 216.344.9421

Counsel for Defendant

Sam N. Ghoubril, M.D.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was filed electronically with the Court on this 10th day of May, 2024. The parties may access this document through the Court's electronic filing system.

/s/ Bradley J. Barmen

Bradley J. Barmen (0076515)

Counsel for Defendant

Sam N. Ghoubrial, M.D.

SUBPOENA
SUMMIT COUNTY COMMON PLEAS COURT

MEMBER WILLIAMS,

CASE NO: 2016-CV-09-3928

Plaintiff,

SUBPOENA IN A CIVIL CASE

vs.

ATTORNEY: Peter Pattakos

KISLING, NESTICO & REDICK, LLC, *et al.*,ADDRESS: The Pattakos Law Firm
101 Ghent Road
Fairlawn, OH 44333
peter@pattakoslaw.com

Defendants.

SUPREME CT. NO. 0082884

TO: SAM GHOUBRIAL
3454 Skye Ridge Dr
Richfield, Ohio 44286

PURSUANT TO CIVIL RULE 45 YOU ARE HEREBY COMMANDED TO:

XX. PRODUCE THE FOLLOWING DOCUMENTS AND ELECTRONICALLY STORED INFORMATION ON OR BEFORE **June 3, 2024**: Any documents, including electronic recordings, in your possession, custody, or control related to the "olives" kickback scheme involving you, Minos Floros, and/or Rob Nestico, which your ex-wife Julie has previously described in her conversations with the undersigned counsel and in her October 2018 deposition in your divorce proceedings with her.

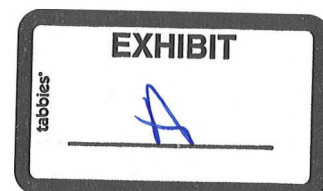
XX. ATTEND AND GIVE TESTIMONY AT A HEARING before Judge James A. Brogan, or any other judge sitting in his stead, on **June 10, 2024, at 10:00 a.m.** in the Visiting Judge Courtroom at the Summit County Court of Common Pleas, 205 S. High Street, Akron, OH 44308.

HEREOF FAIL NOT UNDER PENALTY OF THE LAW


WITNESS MY SIGNATURE AND SEAL OF SAID COURT, THIS 25th DAY OF April, 2024



Attorney Peter Pattakos



RETURN OF SERVICE

Received this Subpoena on the 25th day of April, 20 24 at Fairlawn OH and
on the 25th day of April, 20 24 at Richfield served the same upon
Sam Ghoubrial by delivering to
Sam Ghoubrial by leaving at his usual place of residence at 3454 Skye Ridge Drive, Richfield
OH 44286
a true copy of this subpoena. 

Sheriff-Attorney-Process Server-Notary

Mileage: 30 miles @ \$0.10 : TOTAL \$ 3.00

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