

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

**CASE NO. : 07-60534-CIV-DIMITROULEAS
MAGISTRATE JUDGE: ROSENBAUM**

HOWARD K. STERN,

Plaintiff,

vs.

JOHN M. O'QUINN and
JOHN M. O'QUINN & ASSOCIATES PLLC
d/b/a The O'Quinn Law Firm

Defendants.

**PLAINTIFF HOWARD K. STERN'S MOTION TO DETERMINE THE
SUFFICIENCY OF DEFENDANT JOHN M. O'QUINN'S RESPONSES TO
PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS**

Plaintiff Howard K. Stern ("Stern") hereby respectfully moves this Court pursuant to Fed. R. Civ. P. 37 for an order compelling Defendant John M. O'Quinn ("O'Quinn") to provide full and complete responses to the below listed requests for admissions which were served April 4, 2008. A Memorandum of Law has simultaneously been filed in support. (Plaintiff Howard K. Stern's Memorandum of Law in Support of His Motion to Determine the Sufficiency of Defendant John M. O'Quinn's Responses to Plaintiff's First Request for Admissions).

STATEMENT OF MEETING AND CONFERRING

Counsel for Plaintiff certifies that prior to filing this motion, pursuant to S.D. Fla. Local Rule 7.1.A.3, counsel for Plaintiff and counsel for Defendants conferred in a good faith effort to resolve the matters raised in this motion. (A true and correct copy of

correspondence between Eric P. Schroeder and Robert M. Klein dated June 19, 2008, is attached hereto as Tab A.) This motion has become necessary, as it is apparent that the issues raised in this motion cannot be resolved by agreement.

THE REQUESTS AT ISSUE

WHEREFORE, Plaintiff Howard K. Stern respectfully requests that this Court compel sufficient answers to the following Requests for Admission (Defendant John M. O'Quinn's Response to Plaintiff's First Request for Admissions is attached hereto as Tab B):

A. Requests To Admit The Accuracy Of Defendant O'Quinn's Statements About Stern Which Are Set Forth In The First Amended Complaint.

Plaintiff first asks the Court to compel O'Quinn to fully respond to Requests for Admission Nos. 9 through 16, which ask O'Quinn to admit or deny whether O'Quinn is quoted accurately in the First Amended Complaint.

Plaintiff's Request for Admission No. 9: Admit that you are quoted accurately in paragraph 93 of the First Amended Complaint as to the statements you made February 19, 2007 on Rita Cosby Specials Unit, broadcast by MSNBC.

Defendant's Objection: Denied, in that the words are taken completely out of context, with certain portions omitted, and without consideration of the medium in which those words were uttered, including the complete audio and visual components of the subject television broadcasts.

Plaintiff's Request for Admission No. 10: Admit that you are quoted accurately in paragraph 110 of the First Amended Complaint as to the statements you made February 21, 2007 on On the Record with Greta Van Susteren, broadcast by Fox News.

Defendant's Objection: Denied, in that the words are taken completely out of context, with certain portions omitted, and without consideration of the medium in which those words were uttered, including the complete audio and visual components of the subject television broadcasts.

Plaintiff's Request for Admission No. 11: Admit that you are quoted accurately in paragraph 129 of the First Amended Complaint as to the statements you made March 1, 2007 on the Nancy Grace Show, broadcast by CNN Headline News.

Defendant's Objection: Denied, in that the words are taken completely out of context, with certain portions omitted, and without consideration of the medium in which those words were uttered, including the complete audio and visual components of the subject television broadcasts.

Plaintiff's Request for Admission No. 12: Admit that you are quoted accurately in paragraph 145 of the First Amended Complaint as to the

statements you made March 15, 2007 on On the Record with Greta Van Susteren, broadcast by Fox News.

Defendant's Objection: Denied, in that the words are taken completely out of context, with certain portions omitted, and without consideration of the medium in which those words were uttered, including the complete audio and visual components of the subject television broadcasts.

Plaintiff's Request for Admission No. 13: Admit that you are quoted accurately in paragraph 168 of the First Amended Complaint as to the statements you made March 20, 2007 on the Nancy Grace Show, broadcast by CNN Headline News.

Defendant's Objection: Denied, in that the words are taken completely out of context, with certain portions omitted, and without consideration of the medium in which those words were uttered, including the complete audio and visual components of the subject television broadcasts.

Plaintiff's Request for Admission No. 14: Admit that you are quoted accurately in paragraph 181 of the First Amended Complaint as to the statements you made March 26, 2007 on the Nancy Grace Show, broadcast by CNN Headline News.

Defendant's Objection: Denied, in that the words are taken completely out of context, with certain portions omitted, and without consideration of the medium in which those words were uttered, including the complete audio and visual components of the subject television broadcasts.

Plaintiff's Request for Admission No. 15: Admit that you are quoted accurately in paragraph 195 of the First Amended Complaint as to the statements you made March 27, 2007 on the Nancy Grace Show, broadcast by CNN Headline News.

Defendant's Objection: Denied, in that the words are taken completely out of context, with certain portions omitted, and without consideration of the medium in which those words were uttered, including the complete audio and visual components of the subject television broadcasts.

Plaintiff's Request for Admission No. 16: Admit that you are quoted accurately in paragraph 208 of the First Amended Complaint as to the

statements you made March 27, 2007 on On the Record with Greta Van Susteren, broadcast by Fox News.

Defendant's Objection: Denied, in that the words are taken completely out of context, with certain portions omitted, and without consideration of the medium in which those words were uttered, including the complete audio and visual components of the subject television broadcasts.

Reasons supporting Motion as related to Request for Admission Nos. 9 through 16:

Defendant O'Quinn's identical, qualified denial to each of the above Requests for Admission is so over-qualified with generalized, non-specific objections that it is meaningless, and it is therefore impossible to determine if it is a full denial, a partial denial or a denial at all.

Under the Federal Rules, O'Quinn must "specifically deny it or state in detail why the answering party cannot truthfully admit or deny it" the Request at issue. Fed. R. Civ. Proc. 36(a)(4) (emphasis added). O'Quinn's failure to identify for any of the eight separate statements at issue: 1) the portion of the quoted statement that is in error; 2) the part of statement that is quoted correctly; 3) how the quotation is "taken out of context"; 4) what "certain portions [are] omitted" and 5) how that "medium in which those words were uttered" causes the quotation to be in error, causes Defendant's responses to the Request to Admit to be insufficient and evasive. Plaintiff therefore moves for an Order compelling Defendant to specify the grounds for each denial and if Defendant cannot do so, to admit the Request without qualification.

B. Request To Admit That Defendant O’Quinn Has No Knowledge Of Life Insurance Policies For Anna Nicole Smith

Plaintiff next asks the Court to compel O’Quinn to appropriately respond to Request for Admission No. 18, which relates to Mr. O’Quinn’s knowledge or lack thereof regarding life insurance policies in which a third-party would benefit upon the death of Anna Nicole Smith.

Plaintiff’s Request for Admission No. 18: Admit that you have no knowledge of any life insurance policies in which a third-party would benefit upon the death of Anna Nicole Smith.

Defendant’s Objection: After a reasonable inquiry, the information known or readily available to O’Quinn is insufficient to enable him to admit or deny.

Reasons supporting Motion as related to Request for Admission No. 18: Defendant O’Quinn’s answer that he does not have sufficient information to admit or deny is evasive and insufficient. The Request asks a “yes or no question”: does O’Quinn have any knowledge that there are or were any life insurance policies in which a third party would benefit upon the death of Anna Nicole Smith or does he not know of any such policies? Either Defendant O’Quinn has that information and he can deny the request, or he does not have such information and he must admit the request. The Request is simply not susceptible to a “I can neither admit nor deny” response. Defendant O’Quinn’s answer – which is essentially that he does not have enough information to know whether

he has knowledge of the life insurance policies – is nonsensical and meaningless. Plaintiff therefore moves for an Order compelling Defendant to either admit or deny the Request without qualification as stated or for the Court to treat Defendant's response as an admission.

Respectfully submitted this 30th day of June, 2008.

/s/ L. Lin Wood

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2008, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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This 30th day of June, 2008.

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