

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-011712

10/08/2013

HONORABLE ARTHUR T. ANDERSON

CLERK OF THE COURT
L. Nelson
Deputy

WILLIAM STEWART

BENJAMIN ROBERT JEMSEK

v.

BROWN COMMUNITY MANAGEMENT INC,
et al.

NATHAN T METZGER

MINUTE ENTRY

Courtroom ECB-511:

3:13 p.m. This is the time set for Status Conference. Plaintiff, William Stewart, is telephonically represented by counsel, Benjamin Robert Jemsek. Defendants, Brown Community Management, Inc. and Scottsdale Trails Association, are telephonically represented by counsel, Nathan T. Metzger.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Discussion is held regarding Defendant's Motion to Reduce Deposition Fee of Brian Miller, M.D.

The issue has been raised with the Court regarding the deposition fee to be paid to Brian Miller, M.D. Dr. Miller charges \$750.00 per hour with a two hour minimum, or \$1500.00 total, which is nonrefundable. Further, Dr. Miller has advised counsel that he will not agree to a deposition date until he receives prepayment in full, as well as a list of questions that will be asked of him at the deposition.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-011712

10/08/2013

In *Sanchez v. Gama, et al.*, 2013 WL 4430914 ¶19 (Ariz. App. Div. 1), the Court addressed the legal basis of paying an expert witness fee to a treating physician. After reviewing a treating physician's factual role in litigation, the Court held that an expert witness fee will typically not be required.

¶19 Therefore, we hold that *Whitten* is applicable to physicians in civil litigation. Whether a treating physician is a fact or expert witness depends on the content of the physician's testimony. When a treating doctor is testifying only to the injury, medical treatment, and other first-hand knowledge not obtained for purposes of litigation, the treating doctor is a fact witness and need not be compensated as an expert.

In light of *Sanchez* and the avowal that Dr. Miller will be deposed as Plaintiff's treating physician,

THE COURT FINDS that Dr. Miller is not legally entitled to an expert witness fee.

IT IS ORDERED the parties arrange for a mutually convenient time and place to take Dr. Miller's deposition.

The Court knows of no ground for a witness to be provided the deposition questions before the deposition session.

IT IS THEREFORE ORDERED the parties are not required to submit questions to the witness prior to the deposition.

IT IS FURTHER ORDERED that if Dr. Miller contests any aspect of the Court's Orders, he may file objections and request a hearing with this Court, no later than **October 25, 2013**. Failure to do so will constitute a waiver of those objections and expose Dr. Miller to a citation of contempt, if he refuses to appear for his deposition as arranged.

3:25 p.m. Hearing concludes.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-011712

10/08/2013

exception defined in the Administrative Order applies.