

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc.,  
an Illinois non-profit corporation, and  
Danny Lee Shelton, individually,

Case No.: 4:07-cv-40098 FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

---

**PLAINTIFFS' RULE 26(f) CONFERENCE REPORT**

---

The counsel identified below participated in the meeting required by Fed.R.Civ.P. 26(f), on July 2, 2007, and prepared the following report. The pretrial conference in this matter is scheduled for 3:30 p.m. on July 23, 2007 before United States District Judge F. Dennis Saylor at the United States Courthouse, 595 Main Street, Worcester, Massachusetts 01608. The parties do not request that the pretrial be held by telephone.

Having been unable to secure agreement as to the contents and information for a Joint 26(f) Report, the parties are filing separate Rule 26(f) reports. This report is submitted on behalf of Plaintiffs 3ABN and Danny Shelton.

**(a) Description of Case**

**(1) Concise Factual Summary of Plaintiff's Claims;**

By their Complaint, Plaintiffs allege that Defendants Gailon Joy and Robert Pickle, acting individually and in consort, have engaged in an affirmative campaign of defamation, slander and libel directed against Three Angels Broadcasting Network, Inc. ("3ABN") and its Founder and President, Mr. Danny Shelton. Joy and Pickle have published false statements of fact and have made

grievous misrepresentations—directly and by omission and innuendo—regarding 3ABN’s operation, administration, and financial management and regarding Shelton’s personal and professional conduct. Joy and Pickle purposefully and deliberately made these false statements and misrepresentations in order to destroy Plaintiffs’ reputations and goodwill, undermine public confidence in the ministry and its president, and financially cripple Plaintiffs so Plaintiffs would acquiesce to Defendants’ designs for the company and its administration. Joy and Pickle made their defamatory statements knowing yet willfully disregarding the falsity of the statements, or made the statements in brazen, wanton and reckless disregard for the truth or falsity of their statements.

Joy and Pickle have disseminated their statements to third persons and to the public at large orally, in print, and on the internet. Moreover, with regard to their internet offensive, Defendants have usurped and infringed upon Plaintiff Three Angel’s federally registered trademark “3ABN,” using it to identify and advertise their own world wide web site, “Save3ABN.com,” in violation of the Lanham Act.

Joy and Pickle’s efforts have been the direct cause of reputation, financial, and other harm and damages to 3ABN and its President. Defendants’ have brought about a diminishment of Plaintiffs’ reputations and goodwill, a lowering of Plaintiffs in the eyes of the public and 3ABN viewers, donors and supporters, a reduction in financial contributions to the ministry, and a confusion or likely confusion of the public and internet community as to the source, sponsorship, affiliation and origination of the “Save3ABN.com” website.

Despite the filing of the instant action, Pickle and Joy’s campaign of orchestrated disparagement continues. Plaintiffs anticipate the instant case will require considerable discovery, as Pickle and Joy’s defamation and trademark infringement are ongoing, and that there will be numerous, contentious discovery disputes. Defendants have already stated their intention to refuse Plaintiffs original-source access to electronically stored information, they have already challenged Plaintiffs’ right to discoverable information based on an alleged “reporter’s privilege,” and they have already raised an allegation that Plaintiffs have engaged in the destruction of evidence, yet refused to provide Plaintiffs with supporting information that Plaintiffs would need to investigate the charge.

Additionally, Plaintiffs’ concerns about Defendants using the pleadings in this matter, both as a forum to disparage Plaintiffs and as a source of material Defendants will mischaracterize, editorialize, sensationalize and publish to misinform the public, have come to fruition since the lifting of the impoundment order. In fact, since the Court’s denial of Plaintiffs’ Motion for Impoundment, Defendants have directed visitors to the infringing “Save3ABN” website to the Court’s PACER system, clearly evidencing their intent to use this Court’s own document repository and the pleadings and submissions contained therein, as a platform to continue publishing defamatory and derogatory statements about the

Plaintiffs. Thus, Plaintiffs' also anticipate the case will require substantial attention to the protection of various discovery materials and case submissions.

**(2) Concise Factual Summary of Defendant's claims/defenses;**

The Court is directed to the Factual Summary of Defendants' claims contained in Defendants' Rule 26(f) Report.

**(3) Statement of Jurisdiction (including statutory citations);**

Original subject matter jurisdiction exists pursuant to 15 U.S.C. §1121 (an action arising under the Federal Trademark Act).

Original subject matter jurisdiction exists pursuant to 28 U.S.C. §1388 (an action arising under an Act of Congress related to copyright and trademark).

Diversity jurisdiction exists pursuant to 28 U.S.C. §1332 (an action where the matter in controversy is between citizens of different states and the amount in controversy exceeds \$75,000 (exclusive of costs and interest)).

**(4) Summary of Factual Stipulations or Agreements;**

The parties have not successfully stipulated to any facts nor executed any agreements related to discovery, trial, or case management.

**(5) Statement of whether jury trial has been timely demanded by any party.**

To date, neither Party has demanded a trial by jury.

**(b) Pleadings**

**(1) Statement of whether all process has been served, all pleadings filed and any plan for any party to amend pleadings or add additional parties to the action;**

Defendants have been served with the Summons and Complaint. The Summons and Complaint have been filed. Defendants have both answered the Complaint. All motions pleadings to date have been filed. Defendant Joy has indicated he intends to move to amend the pleadings to include affirmative defenses and a counterclaim, but refuses to disclose the nature or basis of the proposed claim or defenses. Defendant Joy also intends to move to amend the pleadings to add additional parties as appropriate. Neither Defendant Pickle nor Plaintiffs currently plan to

move for amendment of the pleadings or for the addition of parties, but reserve their right to timely do so in the course of the litigation.

**(2) Proposed date by which all hearings on motions to amend and/or add parties to the action shall be heard:**

Plaintiffs' Proposed Date: August 15, 2007

Defendants' Proposed Date: August 15, 2008

**(c) Discovery Limitations**

**(1) The parties recommend that the Court limit the use and numbers of discovery procedures as follows:**

- |            |  |                                      |
|------------|--|--------------------------------------|
| <b>(A)</b> | All parties propose 25 for each party  | <b>interrogatories;</b>              |
| <b>(B)</b> | All parties propose No Limit   | <b>document requests;</b>            |
| <b>(C)</b> | Plaintiffs propose 20 for each party<br>Defendants propose No Limit  | <b>factual depositions;</b>          |
| <b>(D)</b> | All parties propose No Limit   | <b>requests for admissions;</b>      |
| <b>(E)</b> | N/A  | <b>Rule 35 medical examinations;</b> |
| <b>(F)</b> | Plaintiff proposes 2 expert depositions for each party;<br>Defendant proposes 6 expert depositions for each party. | <b>other.</b>                        |

Plaintiff proposes a Stipulated Protective Order (proposed Order attached hereto) to govern discovery

**(d) Discovery Schedule/Deadlines**

**(1) Plaintiffs recommend that the Court establish the following discovery deadlines:**

- (A) July 15, 2008 deadline for completion of non-expert discovery, including service and response to interrogatories, document requests, requests for admission and scheduling of factual depositions;**
- (B) N/A deadline for completion of all Rule 35 medical examinations;**
- (C) \_\_\_\_\_ other.**

**(e) Experts**

**The parties anticipate that they will require expert witnesses at time of trial.**

**(1) The plaintiff anticipates calling at least two experts in the field(s) of:**

Journalism – to testify as to the standards of care related to due diligence and fact corroboration in investigative reporting.

Computer forensics – to testify as to the storage, maintenance, transmission, receipt, and deletion of electronic information via electronic mail, website publication, internet chat room postings, and weblog activity.

Rebuttal experts as warranted.

**(2) The defendant anticipates calling \_\_\_ experts in the field(s) of:**

The Court is directed to Defendants' expert witness discussion contained in Defendants' Rule 26(f) Report.

**(3) The parties pursuant to Local Rules, recommend the disclosure and discovery option as follows:**

Plaintiff has no recommendation.

The Court is directed to Defendants' recommendation contained in Defendants' Rule 26(f) Report.

**(4) The parties recommend that the Court establish the following deadlines for disclosure of experts and experts' opinions consistent with Rule 26(a)(2):**

**(A) Deadlines for all parties' identification of expert witnesses (initial and rebuttal). (Fed.R.Civ.P. 26(a)(2)(A).)**

All parties recommend December 15, 2008

**(B) Deadlines for completion of disclosure or discovery of the substance of expert witness opinions.**

All parties recommend February 15, 2009

**(C) Deadlines for completion of experts witness depositions, if any.**

All parties recommend February 15, 2009

**(f) Motion Schedule**

**(1) The parties recommend that motions be filed and served on or before the following date:**

**(A)** Plaintiffs recommend August 15, 2008      **non-dispositive**  
Defendants recommend October 15, 2008      **motions;**

**(B)** Plaintiffs recommend August 15, 2008      **dispositive motions.**  
Defendants recommend October 15, 2008

**(g) Trial-Ready Date:**

**(1) All parties agree that the case will be ready for trial on or after**  
March 15, 2009.

**(2) All parties recommend the final pretrial conference should be held on**  
**or before**  
March 1, 2009.

**(h) Insurance Carriers/Indemnitors**

**List all insurance carriers/indemnitors, including limits of coverage of each defendant or statement that the defendant is self-insured.**

The Court is directed to Defendants' statement of insurance coverage contained in Defendants' Rule 26(f) Report.

**(i) Settlements**

**(1) The parties have agreed to discuss settlement before August 31, 2007, by the plaintiffs making a written demand for settlement and each defendant making a written response/offer to plaintiffs' demand.**

**(2) The Plaintiffs believe that a settlement conference is appropriate and should be scheduled by the Court before**

March 1, 2009

**(3) The parties have discussed whether alternative dispute resolution (ADR) will be helpful to the resolution of this case and recommend the following to the Court:**

During the 26(f) Conference, Defendant Joy stated that, because he believes his efforts to resolve the matter out of court prior to the filing of the instant suit were unsuccessful, he refuses to settle the instant matter. If Defendant Joy's position remains unchanged, ADR would likely prove a fruitless exercise and a waste of party and judicial resources. Nonetheless, Plaintiffs are willing to engage in ADR should such be ordered by the Court.

**(j) Trial by Magistrate Judge**

**(1) The parties have agreed they will not consent to jurisdiction by the Magistrate Judge pursuant to Title 28, United States Code, Section 636(c). (If the parties agree, the consent should be filed with the Rule 26(f) Report.)**

***RESPECTFULLY SUBMITTED BY:***

Date: July 20, 2007

**FIERST, PUCCI & KANE, LLC**

/s/ John P. Pucci, Esq.

---

John P. Pucci, Esq.  
Lizette Richards, Esq.  
64 Gothic Street  
Northampton, MA 01060  
Telephone: 413-584-8067

and

**SIEGEL, BRILL, GREUPNER,  
DUFFY & FOSTER, P.A.**

Gerald S. Duffy (MNReg. #24703)  
Wm Christopher Penwell (MNReg. #161847)  
Jerrie M. Hayes (MNReg. #282340)  
Kristin L. Kingsbury (MNReg. #346664)  
100 Washington Avenue South  
Suite 1300  
Minneapolis, MN 55401  
(612) 337-6100  
(612) 339-6591 – Facsimile

**COUNSEL FOR PLAINTIFFS 3ABN AND  
DANNY SHELTON**