Ex. A

No. 08-2457; No. 09-2615

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

THREE ANGELS BROADCASTING NETWORK, INC.,
an Illinois Non-Profit Corporation;
DANNY LEE SHELTON,

Plaintiffs-Appellees,

v.

GAILON ARTHUR JOY; ROBERT PICKLE,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Massachusetts
Case No. 07-40098

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' STATUS REPORTS; DEFENDANTS' MOTION FOR SANCTIONS; AND DEFENDANTS' MOTION TO AMEND DOCUMENTS

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As a novel move, on April 7, 2010, Plaintiffs' filed a Motion to Strike Defendants' Status Reports ("PM"), without citing a single rule, statute, or case, yet requesting sanctions of $1,000. Plaintiffs reveal the true motive for their precipitous filing: "Appellees are concerned that someone at the Court of Appeals will read the Defendants' [status reports] and take them seriously." (PM p. 5).

Defendants hereby respond, and, particularly in light of Plaintiffs' material and intentional misrepresentations, Defendants move this Court for sanctions. Defendants also move to amend Defendants' Second and Third Status Reports.

RELEVANT FACTS

A. This Court's August 19 and September 25, 2009, Orders

On August 19, 2009, this Court ordered Defendants' first appeal held in abeyance until Defendants' motions to reconsider were ruled upon in the lower court. This Court ordered:

> Defendants shall file a status report every sixty days and promptly inform this court once the motion for reconsideration has been decided by the district court. Failure to file a status report may lead to dismissal of this appeal for lack of diligent prosecution.

However, apparently since the typical frequency for status reports is every thirty days, the following order was mistakenly issued on September 25, 2009:

> Appellants is presently in default for failure to file a status report. It is ordered that if a status report is not filed on or before October 9, 2009, this case will be dismissed for lack of diligent prosecution.

These two orders drove home to Defendants that Defendants **must** keep this Court informed as to developments in the district court when litigation here is in abeyance due to litigation there. Nothing in the record thus far explicitly vacates Defendants' duty to file status reports every sixty days.

B. Defendants' First Status Report

Defendants' First Status Report of October 5, 2009 ("1SR"), briefly summarized the litigation that had transpired in the lower court since November 13, 2008, the date Defendants filed their first notice of appeal. In the lower court case, these dates span docket entries # 130 to # 192. In summarizing that extensive litigation, 1SR briefly summarized the issues which the motions to reconsider, motion to amend findings, and motion for sanctions pertained to. It is Defendants' understanding that status reports commonly contain such summaries.

C. Whether Status Reports Are Still Required

The lower court ruled on the pending motions on October 26, 2009. (RA 193). Defendants served notice of that fact on October 29, as required by the order of August 19. Nothing in the record after October 29 relieves Defendants of their court-ordered obligation to periodically inform this Court as to the status of matters in the lower court that are impeding the progress of Defendants' appeals. Defendants' filings in this Court on December 9 and 24, 2009, and on February 5 and April 6, 2010, fulfilled that court-ordered obligation.

D. The December 9 and 24, 2009, Filings by Defendants

About the time this Court issued its December 4, 2009, ruling regarding documents produced by Remnant Publications, Inc. being part of the record on appeal for Defendants' second appeal, Defendants realized that documents produced by MidCountry Bank ("MidCountry") ("MidCountry records") were part of the record on appeal for both appeals. On December 9, Defendants moved this Court to hold in abeyance Defendants' appeals until the MidCountry records were received, attaching to that motion the motion they filed in the lower court, which motion requested the forwarding of those records to this Court. (RA 204).

On December 24, 2009, Defendants filed a reply in this Court,[1] attaching to it Defendants' motion in the lower court which requested (a) an order compelling Plaintiffs to return the unlawfully obtained MidCountry records,[2] and (b) a stay of the order requiring that those records be returned to MidCountry. (RA 210).

Besides being part of motion practice, Defendants' December 9 and 24, 2009, filings informed this Court of developments below that were directly relevant to the progress of Defendants' appeals here, like a status report would have done.

E. Defendants' Second Status Report

After the magistrate judge denied the above referenced motions in the lower

[1]Defendants' reply was to Plaintiffs' December 18 response here. Plaintiffs' response had attached as Exhibit G Plaintiffs' December 17 response below to Defendants' motion to forward the MidCountry records. Both of Plaintiffs' responses included as Exhibit A Jerrie Hayes' February 7, 2008, affidavit filed in Minnesota, which affidavit was not already part of the Massachusetts court record.

[2]The lower court had ordered that those records be returned to MidCountry, not surrendered to Plaintiffs. (Record on Appeal Docket Entry ("RA") 141 p. 13).

court, Defendants filed objections to those orders on February 3, 2010. (2SR Ex. A). Defendants then filed their Second Status Report ("2SR") on February 5 which (a) gave notice of the resolution of Defendants' motions in the lower court by the magistrate judge, and (b) informed this Court as to Defendants' filing of objections. Thus, Defendants fulfilled the common-sense obligation brought to Defendants' attention by the orders of August 19 and September 25, 2009. (*supra* 1–2).

2SR is clearly innocuous, and only about a page and a half in length, excluding the cover, signatures, and certificate of service. The developments in the lower court are presented matter of factly in that status report.

F. Defendants' Third Status Report

Defendants filed their Third Status Report ("3SR") sixty days later on April 6, since Defendants' objections had not yet been resolved. This status report is about two pages longer than the Second Status Report, part of the extra length being used to explain why Defendants would file a motion below pertaining to pedophilia charges, when the issue was the forwarding of the MidCountry records.

That explanation was based on one of Plaintiffs' three damaging, on-the-record admissions[3] in Plaintiffs' response to Defendants' objections. Defendants therefore briefly mentioned those admissions. (3SR pp. 1–2, Ex. A at pp. 5, 7).

G. Defendants' Erroneous Language: "Though Not Required to Do So, Defendants Hereby Voluntarily Present This Status Report ...." (2SR p. 1; 3SR p. 1)

[3]See *supra* 12 and 3SR p. 2 for the relevance of the other two admissions.

After the October 26, 2009, order in the lower court resolving Defendants' pending motions, Defendants were unsure whether the August 19 order requiring status reports every sixty days still applied. On February 5 and April 6, 2010, Defendants believed that the August 19 order probably was not still in effect. But since nothing in the record vacated the August 19 order, Defendants still filed status reports to avoid the risk of having their appeals dismissed for lack of diligent prosecution. 1st Cir.R. 3.0(b). (Affidavit of Robert Pickle ("Pickle Aff.") ¶¶ 1–2).

Upon reflection, the August 19 order is clear; there is no order vacating that order's requirement to file status reports every sixty days. (Pickle Aff. ¶ 3). Thus, Defendants' first sentence in 2SR and 3SR is erroneous, and must be amended.

H. Plaintiffs Motion to Strike Defendants' Status Reports

On April 7, 2010, just one day after Defendants filed 3SR, Plaintiffs moved to strike all three status reports, even though Plaintiffs admit that 1SR was filed pursuant to this Court's August 19 order! (PM pp. 5, 3). Plaintiffs' motion, in contradiction to this Court's order, seeks a blanket prohibition against filing any status reports (PM p. 6), buts fails to suggest any other method of informing this Court of the status of matters below that are impeding Defendants' appeals.

ARGUMENT

I. PLAINTIFFS CITE NOT ONE SINGLE AUTHORITY

In seeking to strike Defendants' three court-ordered status reports, Plaintiffs contemptuously try to subvert the August 19 order of this Court, without citing one

rule, statute, or precedent in support. At the very least, Plaintiffs should have cited authority showing that status reports may only be filed if ordered by the Court, and that status reports may never summarize issues under consideration in the lower court, but this they failed to do. Defendants object to Plaintiffs citing authority in their reply unless Defendants have an opportunity to respond to those citations.

II. PLAINTIFFS' MARCH 11, 2008, STATUS-LIKE REPORT: AN EXAMPLE FOR DEFENDANTS

On March 4, 2008, the Honorable Magistrate Judge Arthur Boylan ordered Plaintiffs' counsel "to supply me with the decision of the judge in Massachusetts who will be hearing the matter on Friday." (RA 214 p. 2). The counselor's subsequent, March 11 letter presented the issues solely from her perspective, using the 97-word third paragraph to argue for the granting of one of the requests for relief she had sought in her earlier motion. (RA 214-2). Defendants were never given an opportunity to rebut, and frankly, no opportunity was needed.

Thus, according to the example set by Plaintiffs themselves on March 11, 2008, status-like reports are permitted to contain persuasive, one-sided argument, even if the other side is never given an opportunity to rebut.

III. PLAINTIFFS NEVER OBJECTED TO DEFENDANTS' SEPTEMBER 15, 2008, STATUS REPORT

On July 15, 2008, the Honorable Judge Phil Gilbert ordered any party who wished to "file a status report describing the matters remaining in issue" after a ruling was made in Massachusetts. (RA 224-14). On September 15, 2008,

Defendant Pickle filed such a status report describing from his perspective the Massachusetts and Michigan rulings, and the issues that remained. (RA 224-15). The record contains no objections by Plaintiffs to that status report. If Plaintiffs truly believed that status reports cannot contain descriptions or summaries of issues from one side's perspective, they would have said so *18 months ago.*

IV. DEFENDANTS CAN FIND NO OTHER GUIDANCE

Defendants do not believe they erred in the filing of, or in the content of, their three status reports. However, if Defendants be mistaken, it must be noted that Defendants are unable to find controlling federal or local rules of civil or appellate procedure, or relevant case law concerning such questions. And, apparently, Plaintiffs cannot locate any such authority either. (*supra* 5–6).

V. PLAINTIFFS CREATED PRESENT NECESSITY OF STATUS REPORTS

The lower court ordered the MidCountry records to be returned to MidCountry, an order which has never yet been executed. (RA 141 p. 13, "records ... shall be returned to the party that produced those documents."). In violation of that order, Plaintiffs took the only copies of these records from the courthouse, and Plaintiffs have refused to return them. (RA 212-6). Plaintiffs now admit that the MidCountry records "were filed under seal." (3SR Ex. A at p. 7).

Plaintiffs' stubborn refusal to return the sole copy of part of the district court record created the current impasse, delaying the declaring of the record complete in

Defendants' second appeal, and necessitating the filing of periodic status reports. If a party is to be sanctioned, it should be Plaintiffs, not Defendants.

VI. THE THREE STATUS REPORTS SHOULD NOT BE STRICKEN

Defendants maintain that all three status reports were filed pursuant to this Court's August 19, 2009, order. Plaintiffs admit the same for 1SR, but still seek to have it stricken. (PM pp. 2–3, 5). Plaintiffs' request to strike 1SR, coming more than six months after 1SR was filed, is untimely.

2SR is indisputably short and innocuous, and gives notice to this Court (a) of the orders resolving the pending motions below (upon which Defendants' motion to hold in abeyance Defendants' appeals was based), and (b) that Defendants had filed objections to those orders. There is no legitimate reason to strike 2SR.

What if Plaintiffs argue that this Court's August 19 order did not require the filing of 3SR? Plaintiffs have not shown that parties are prohibited, absent a court order, from filing status reports, even when unresolved issues in the lower court are impeding an appeal's progress in this Court. The absence of a court order requiring the filing of a document is not an absolute prohibition against filing that document.

Plaintiffs assert that 3SR "is simply another attempt to enlarge the appellate court record to include extraneous and irrelevant information." (PM p. 5). Yet Plaintiffs, referring to the attachments of 2SR and 3SR, also state, "To the extent they are needed to resolve appellate issues, they will be forwarded as part of the District Court record." (*Id.*). Thus Plaintiffs admit that the attachments are already

part of the district court record, making their motion to strike frivolous. And Plaintiffs already admitted that the information is relevant. (*infra* 11–13).

On December 18, 2009, Plaintiffs themselves attached to a filing here their December 17, 2009, filings from the lower court, including as Exhibit A Jerrie Hayes' February 7, 2008, affidavit filed in Minnesota, which affidavit was not already part of the Massachusetts court record. (*supra* 3 n.1). Plaintiffs thus know that the record can be expanded while arguing the pending motions below.

VII. MATERIAL MISREPRESENTATIONS IN PLAINTIFFS' MOTION

Defendants believe the following statements by Plaintiffs in their motion to be intentional and material misrepresentations of the facts.

A. *"Appellees had opposed those arguments in the District Court (and prevailed in every respect) ...."* (PM p. 3)

By "arguments," Plaintiffs refer to the contents of 1SR, which was filed on October 5, 2009. Yet Plaintiffs had not "prevailed in every respect" by October 5, since most of 1SR concerned Defendants' motions to reconsider, to amend findings, and for sanctions, which were not ruled on until October 26. (RA 193).

B. *"[2SR] then quotes Judge Saylor as stating that 'his impartiality might reasonably be questioned,' omitting just enough context so that it appears as if Judge Saylor was admitting his prior rulings were issued due to partiality to the Plaintiffs."* (PM p. 4)

In reality, the only thing 2SR says about the matter[4] is:

[4]Plaintiffs ignore two paragraphs and 175 words when they falsely state that 2SR, after the opening sentence, "then quotes" the district judge.

> On January 15, 2010, the district judge recused himself, making public the fact that a complaint of judicial misconduct had been filed against him, and that his "impartiality might reasonably be questioned by an objective observer." (RA 226).

(2SR p. 1). Apparently, Plaintiffs' counsel recognizes the obvious implications of the recusal order, and, in his haste to prevent this Court from drawing the same conclusion, Plaintiffs' counsel has read into 2SR something that was never there.

C. ***"In context, Judge Saylor merely states that his partiality as to future rulings might be questioned because of the judicial misconduct complaint filed by these Defendants (which Appellees respectfully submit is frivolous)."*** (PM p. 4)

The Rules for Judicial-Conduct and Judicial-Disability Proceedings are clear that courts prefer that litigants keep confidential such complaints. Thus, it was the judge, not Defendants, that made public the fact that a complaint had been filed:

> Defendants Robert Pickle and Gailon Arthur Joy have filed a complaint of judicial misconduct against me .... [1] Under the circumstances, and [2] because my impartiality might reasonably be questioned by an objective observer, I hereby recuse myself from presiding over this matter.

(RA 226, numbering added to reasons given; 2SR Ex. B at p. 1).

The first reason given for recusal ("[u]nder the circumstances") clearly refers to the judge deciding to recuse himself because Defendants had filed a complaint. But the second reason more likely refers to something else.

At the time of the recusal order, no identifiable objective observer yet knew that Defendants had filed a complaint, other than the judges privy to it. But the facts listed in Defendants' December 24, 2009, filings were a matter of public court

record, and raised questions about the judge's impartiality. (RA 213 pp. 10–12). Therefore, in all likelihood, the judge's second reason was referring to those facts.

RA 213 p. 11 clearly refers to prior rulings. Thus, the judge's reference to questions about his impartiality must refer to prior rulings, not just future rulings.

Since Defendants have never published their complaint, Plaintiffs should not know what is in it, and therefore cannot know whether it is frivolous or not.

Plaintiffs intentionally impugn the judge by falsely accusing him of recusing himself over frivolous allegations, when recusal for such is impermissible. (3SR Ex. B p. 2). *In re American Ready Mix, Inc.*, 14 F.3d 1497, 1501 (10th Cir. 1994).

Defendants puzzle over why a Minnesota law firm chose a Northampton lawyer as local counsel for a case in Worcester. Did the judge and that lawyer being former colleagues have anything to do with it? (RA 212-4 p. 1; RA 214-6 p. 2; RA 214-8 p. 2; RA 214-9 p. 1). Such a question is by no means frivolous.

D. ***"... criminal charges recently filed against a non-party that Appellees respectfully submit are of no consequence to this appeal or to the motions pending below."*** (PM p. 5)

The pedophilia charges in Virginia against Tommy Shelton are relevant to the pending objections and motions below because Plaintiffs themselves made them relevant. (3SR Ex. A at p. 5, Ex B at pp. 7–8; Ex. C at pp. 1, 5–6).

Plaintiffs have finally, belatedly admitted that Defendants' reporting about the pedophilia allegations against Tommy Shelton in part "framed the original basis of Plaintiffs' lawsuit," when Plaintiffs had previously sought to prohibit discovery

of those allegations on the basis of relevancy. (3SR Ex. A at p. 5; RA 75 pp. 12–13; RA 91 p. 8). Defendants have put at issue in their appeals Plaintiffs' obstruction of discovery. (Brief of Defendants-Appellants pp. 17–23, 47–48, 50–51, 59).

Therefore, the five felony arrest warrants obtained by Fairfax County Police on February 25, 2010, are of consequence to both the pending objections below and Defendants' appeals here, and Plaintiffs very well know that.

E. ***"The Third Status report also includes out-of-context snippets taken from briefs filed by the undersigned, which Defendants characterize as 'damaging admissions.' In context, they are nothing of the sort."*** (PM p. 5)

Notably, the counselor makes no attempt to explain how his statements were taken out of context, an impossible task since Defendants provided this Court with *829 words of context* for the three statements in question. (3SR Ex. A at pp. 5–7).

The counselor also makes no attempt to show how all three damaging admissions were "nothing of the sort," a similarly impossible task: (a) Plaintiffs stated that the MidCountry records were "filed under seal," thus admitting that the MidCountry records were filed. (b) Plaintiffs stated that the magistrate judge "[n]ot surprisingly ... also recused himself after ruling on the motions" pertaining to the MidCountry records, thus raising the issue of whether the magistrate judge should have recused himself *before* ruling on those motions. (c) Plaintiffs admitted that Defendants' reporting about the pedophilia allegations against Tommy Shelton was part of what "framed the original basis for Plaintiffs' lawsuit against them," a clear,

tacit admission that Plaintiffs lied and obstructed discovery when they sought to prohibit discovery of those pedophilia allegations on the basis of relevancy. (3SR Ex. A at pp. 5, 7; RA 75 pp. 12–13; RA 91 p. 8).

F. ***"As there is no continuing need for these so-called status reports ...."*** (PM p. 5).

Plaintiffs know full well that Plaintiffs' refusal to return part of the district court record has created a continuing need for status reports. (*supra* 7–8).

VIII. SANCTIONS AGAINST DEFENDANTS ARE INAPPROPRIATE

Plaintiffs justify their request for sanctions of $1,000 on the fact that Defendants did not give them notice before filing the last two status reports. (PM p. 6). A notice of motion is not required when filing a motion. Fed.R.App.P. 27(a)(2)(C)(ii). Therefore, a notice of status report is likewise not required.

Plaintiffs never gave Defendants notice that Plaintiffs believed any of Defendants' three status reports to be improper. (Pickle Aff. ¶ 4). Therefore, Defendants should not be sanctioned $1,000 if a simple communication from Plaintiffs could have resolved the issue without Plaintiffs having to file a motion.

As outlined in this response, Plaintiffs filed their motion with unclean hands, and are therefore not entitled to an "award" of $1,000. Defendants, on the other hand, have proceeded in good faith. (*supra* 1–8).

Plaintiffs provide no evidentiary support for the stated sum, which is twice the $500 requested on June 24, 2008, which was never awarded. (RA 72 p. 6). In

that instance, Plaintiffs filed an 1815-word[5] response, an 848-word[5] affidavit, and four exhibits. (RA 72 to RA 73-5). In this instance Plaintiffs' motion is but 1122 words,[5] without an affidavit or exhibits. If the higher amount now requested reflects additional legal research, then Plaintiffs, who failed to cite a single legal authority, know that their motion is without a legal basis and is therefore frivolous.

IX. PLAINTIFFS' PURPOSE FOR MOTION TO STRIKE

A. Plaintiffs' Hollow Excuses for Filing Their Motion to Strike

"... there is no procedural mechanism by which Appellees may respond." (PM p. 5). But Plaintiffs fail to state that they confirmed this with the clerk's office. The ECF system allows the filing of responses to status reports. In some instances, upon inquiry, clerk's offices have informed litigants that responses to status reports can be filed. *Kerley v. Brown*, 47 F.3d 1185 n.* (Fed. Cir. 1995).

"Since Appellees have not had an opportunity to rebut them ...." (PM p. 6). But 3SR Ex. A is part of Plaintiffs' rebuttal to Defendants' objections below! Therefore, Plaintiffs do have ample opportunity to rebut Defendants' filings below, which then becomes part of the record on appeal here. Plaintiffs' difficulty is that they know not how to rebut, and in desperation must resort to other tactics.

B. Plaintiffs' Outrageous Requests in Their Motion

To prevent "someone at the Court of Appeals" from reading Defendants' status reports and "tak[ing] them seriously" (PM p. 5), Plaintiffs don't just ask that

[5]The word count excludes captions, signatures, and certificates of service.

the status reports be stricken. Plaintiffs also outrageously ask that the status reports, with attachments taken from the district court record, be "physically destroyed"! (PM p. 5). Plaintiffs resort to this outrageous, on-the-record request since their counsel can find no way to send Christine Parizo into the Court of Appeals to secretly remove the sole copy of these filings as Plaintiffs did before. (RA 160; RA 212-3). But granting such a request to destroy these filings makes subsequent review or appeal impossible, and violates Defendants' due process rights.

In the alternative, Plaintiffs request that this Court prohibit Court staff from reviewing and considering the status reports and their attachments. (PM pp. 5–6). Yet to prohibit review and consideration when ruling on the motion to strike also violates due process rights, for the Court cannot accept as valid Plaintiffs' arguments about the contents of Defendants' status reports without reviewing the contents of those status reports to see if Plaintiffs are being truthful.

C. Why Plaintiffs Filed Their Motion to Strike

So what is the real purpose behind Plaintiffs' motion to strike?

A new judge has been assigned to the case below. Plaintiffs' apparently unauthorized response to Defendants' objections below intentionally misrepresented the record in order to prejudice that judge against Defendants. (3SR Ex. A at pp. 5–7, Ex. B at pp. 5–11). Plaintiffs' counsel seeks to hide from this Court his blatant, egregious violation of Mass.R.P.C. 3.3(a)(1), which prohibits the making of "a false statement of material fact or law to a tribunal."

Plaintiffs' counsel previously sought to prohibit discovery of the pedophilia allegations against Tommy Shelton on the basis of relevancy, but now admits that Defendants' reporting on those allegations in part "framed the original basis of Plaintiffs' lawsuit." (3SR Ex. A at p. 5; RA 75 pp. 12–13). The counselor seeks to hide the fact that he habitually and routinely violates R.P.C. 3.3(a)(1).

Further, the counselor maintains his principal office in Minnesota. Minn. R.P.C. 3.3(a)(1) creates an additional duty: "A lawyer shall not knowingly ... fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." The counselor's motion to strike attempts to avoid correction of his false statement regarding the relevancy of the pedophilia allegations against Tommy Shelton, and thus violates Minn.R.P.C. 3.3(a)(1).

The counselor is likely ill at ease over these matters since the denial of Defendants' motion for sanctions against him is one of the matters under appeal.

Fraud upon the court and frivolous motions should not be tolerated, and Plaintiffs should be sanctioned pursuant to 1st Cir.R. 38 and the court's inherent powers in order to safeguard the integrity of the American judicial system.

X. ADDITIONAL REASONS TO SANCTION PLAINTIFFS' COUNSEL

Did Plaintiffs' counsel make his three damaging admissions on February 18, 2010, because of a sudden desire to comply with R.P.C. 3.3(a)(1)? Not at all, for if that were the case, he would not have denied in his motion to strike that he made any such admissions. (PM p. 5). There is therefore only one possible conclusion as

to why the counselor made those three damaging admissions: He thereby violated R.P.C. 1.1, which requires "competent representation to a client." The counselor may now be trying to lessen his risk of being sued by his clients on that basis.

Plaintiffs' counsel's *pro hac vice* status should be revoked, and competent Massachusetts counsel should take the lead. Plaintiffs have seven different attorneys named on the appeals here and on the main case below, two being from Massachusetts. Attorney John Pucci of Northampton has had a long, distinguished career. (RA 212-4). Defendants believe that his colleague, Attorney Lizette Richards, has exhibited a high degree of competence, which should put Defendants at a considerable disadvantage.

In response to this motion for sanctions, Plaintiffs must show how all three of the damaging admissions were taken out of context, and how all three are not damaging admissions of any sort. A failure to make this showing will prove that Plaintiffs' counsel lied in his motion to strike. (*supra* 12–13).

Siegel Brill's web page advertised the services of Attorney Gregory Simpson ("Simpson") by stating that he had obtained the "highest possible distinction" in ratings for "legal ability and ethical standards," and that he was a member of the Hennepin County Bar Association Ethics Committee. (RA 185-2). Thus, Simpson's repeated violations of the R.P.C. are without excuse.

The Rules of Attorney Disciplinary Enforcement for this Court define misconduct and grounds for discipline as being acts or omissions which violate the

R.P.C. of Massachusetts or of the state where Simpson maintains his principal office. Rule IV(B). Since "misconduct or allegations of misconduct on the part of an attorney admitted to practice before this Court [have] come to the attention of a Judge or officer of this Court, whether by complaint or otherwise," appropriate disciplinary proceedings should be initiated. Rule V(A). Simpson's *pro hac vice* status should be revoked.

Plaintiffs' frivolous motion to strike portions of the district court record that were to be forwarded anyway to this Court highlights the irreconcilable conflict of Simpson's representing both Plaintiffs at the same time. Three Angels Broadcasting Network, Inc. ("3ABN") has substantial claims against Danny Lee Shelton ("Shelton"). Not only did Shelton engage in significant private inurement at 3ABN's expense, he also covered up the pedophilia allegations against Tommy Shelton, allowed Tommy Shelton to work with children at 3ABN, and instigated a malicious lawsuit against Defendants in retaliation for their investigative reports about the pedophilia allegations against Tommy Shelton.

Simpson has known about this irreconcilable conflict for a very long time, and thus has violated Mass.R.P.C. 1.7 which prohibits such conflicts.

XI. 2SR AND 3SR SHOULD BE AMENDED

The opening paragraph of Defendants' 2SR and 3SR is erroneous. (*supra* 4–5). Also, inadvertently omitted from the end of 2SR and 3SR is a clear notice stating that Defendants still wish Defendants' appeals to be held in abeyance until

the MidCountry records are forwarded to this Court. Defendants therefore seek to amend 2SR and 3SR to correct the erroneous opening paragraph, and to give clear notice that Defendants still want their appeals to be held in abeyance. Attached hereto as **Exhibits A–B** are Defendants' proposed amended 2SR and 3SR.

CONCLUSION

1. Whether Plaintiffs like it or not, Defendants have an ongoing duty to keep this Court informed of developments below that are impeding progress of Defendants' appeals. Plaintiffs' request for a blanket order prohibiting Defendants from filing periodic status reports cannot therefore be granted.

2. Plaintiffs admit that 1SR was filed pursuant to this Court's order. 2SR is indisputably innocuous. The information in 3SR is of consequence to the pending objections below and to Defendants' appeals. All three status reports were filed pursuant to this Court's order. None of them should be stricken.

3. Plaintiffs want the exhibits to the status reports destroyed, even though Plaintiffs admit that these exhibits are already part of the district court record. Since these exhibits are therefore already part of the record on appeal pertaining to the forwarding of the MidCountry records, and will be forwarded by the lower court anyway, there is no reason to strike them.

4. The opening paragraph of 2SR and 3SR is erroneous, and therefore should be amended, along with the addition of a statement at the end of each status report making clear that Defendants still want their appeals held in abeyance until

the MidCountry records are forwarded as part of the record on appeal.

5. Plaintiffs and their counsel have intentionally sought to deceive this Court, destroy part of the court record, and prohibit review and appeal, without a valid legal basis for doing so. They should therefore be appropriately sanctioned.

6. Plaintiffs' counsel's *pro hac vice* status should be revoked, and competent Massachusetts counsel should then take the lead.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray the Court to DENY Plaintiffs' motion to strike, GRANT Defendants' motion to amend 2SR and 3SR, GRANT Defendants' motion for sanctions, INITIATE disciplinary proceedings against Plaintiffs' counsel, and GRANT whatever further relief this Court deems equitable and just.

Respectfully submitted,

Dated: April 18, 2010

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CERTIFICATE OF SERVICE

I, Bob Pickle, hereby certify that by April 18, 2010, I served copies of this response with accompanying affidavit and proposed documents on the following registered parties via the ECF system:

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Dated: April 18, 2010

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Bob Pickle