
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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|--|---|------------------------|
| Three Angels Broadcasting Network, Inc., |) | |
| an Illinois non-profit corporation, and |) | |
| Danny Lee Shelton, individually, |) | Case No.: 07-40098-FDS |
| |) | |
| Plaintiffs, |) | |
| v. |) | |
| |) | |
| Gailon Arthur Joy and Robert Pickle, |) | |
| |) | |
| Defendants. |) | |

**AFFIDAVIT OF DEFENDANT ROBERT PICKLE IN SUPPORT OF DEFENDANT
ROBERT PICKLE’S MOTION TO COMPEL PLAINTIFFS TO PRODUCE RULE
26(a)(1) DOCUMENTS AND FOR SANCTIONS**

NOW COMES Robert Pickle of 1354 County Highway 21, Halstad, Norman County, Minnesota, who deposes and testifies to the following under pain and penalty of perjury:

1. The Plaintiffs made the initial disclosures required by Federal Rule 26(a)(1) on August 3, 2007. See Exhibit A. These disclosures included a listing of eleven general categories of Rule 26(a)(1) materials, six of which were located at an unspecified “Office of Plaintiff’s Counsel,” and five of which were located at “3ABN Offices.” See pages 4 and 5 of Exhibit A. Of the six located at “Office of Plaintiff’s Counsel,” three are identified as publicly accessible on the internet, a fourth is identified as at least partly accessible on the internet, and the remaining two are stated as being correspondence to or from the Defendants. Presumably, therefore, the remaining five categories held at “3ABN Offices” would consist of materials not already accessible,

authored, or received by the Defendants, and thus would be what is not already in the possession of the Defendants.

2. Not one of the eleven categories referred to above is stated as pertaining in any way to Plaintiff Shelton, individually. See pages 4 and 5 of Exhibit A.

3. On August 7, 2007, Attorney Heal asked Attorney Pucci “to specify a time for the inspection and copying” of Rule 26(a)(1) materials. See Exhibit B. When Attorney Hayes replied on August 8, 2007, not only did she refuse to specify such a time, but she also asserted that the “Plaintiffs have no documents to produce for inspection or copying at this time,” even though she acknowledged that the Plaintiffs had “chosen” “to describe the documents in their possession by category and location” in their initial disclosures. See Exhibit C. Her blanket statement that there were no documents to produce at that time would seem to also apply to unredacted copies of the exhibits to the Affidavit of Mollie Steenson filed by the Plaintiffs on May 9, 2007.

4. On November 10, 2007, Attorney Heal filed my notice of appearance *pro se* with the Court. On November 14 I commenced negotiating with Plaintiffs’ counsel Attorney Hayes regarding the inspecting and copying of the Plaintiffs’ Rule 26(a)(1) materials. See Exhibit D. I reminded Attorney Hayes that both Defendants had provided copious quantities of Rule 26(a)(1) materials, and that the second edition of my materials consisted of a DVD containing more than 3 gigabytes of data, including a single file containing more than 4500 emails. I went on to ask whether I needed to plan on traveling to “Minneapolis and/or Massachusetts, and Illinois” to inspect and copy the Plaintiffs’ Rule 26(a)(1) materials, and if so, how much notice I needed to give before traveling to the required locations.

5. In a reply dated November 14 and 15, 2007, Attorney Hayes responded, stating that I could “personally inspect” the Plaintiffs’ Rule 26(a)(1) materials if I gave 3ABN “a

minimum two-week notice of inspection,” and “a minimum one-week notice of any inspection” at her law office. See Exhibit E. No mention was made of the Plaintiffs not allowing inspection or production, and her offer to send copies if I would agree to pay an unspecified and unknown cost suggests otherwise.

6. On November 19, 2007, I gave Attorney Hayes her requested one- and two-weeks’ notice, setting a date of December 7, 2007, to come by her law office, and dates of December 5, 6, 10, and/or 11 for coming by the offices of 3ABN. See Exhibit F. I also enquired as to the quantity and form of documents, and whether the documents at the law offices in Minnesota and Massachusetts were duplicates.

7. On November 20, Attorney Hayes responded that all Rule 26(a)(1) materials were in “hard-copy, paper form,” that all materials not publicly accessible on web sites consisted of less than 500 pages, and that these materials included “extremely sensitive and confidential business information” and would not presently be disclosed by the Plaintiffs. See Exhibit G. While Attorney Hayes in this reply also stated that all materials held at her law office were duplicates of what is held by Plaintiffs and the law office in Massachusetts, she failed to state that all materials held by Plaintiffs were duplicates of what is held by either or both law offices. Thus I am uncertain whether her statement contradicts the impression given by the Plaintiffs’ initial disclosures that five categories of auto-discovery materials are held only at “3ABN Offices.”

8. A second reply from Attorney Hayes on November 28, 2007, stated that the Plaintiffs will not currently “authorize either the inspection or production” of their Rule 26(a)(1) materials, and, that “There is no need ... to discuss any details concerning copying of materials, unless this matter has been resolved.” See Exhibit H. But in the four months since the initial disclosures were made, the Plaintiffs have failed to file any motions for protective orders covering

any specific documents.

9. The rescinding on November 20 and 28, 2007, of the previous arrangement of dated November 14 and 15 appears to be an ongoing pattern of behavior on the part of the Plaintiffs. I refer to the agreement of 3ABN personality John Lomacang, an agreement rescinded long before the instant case was filed. I referred to this situation in my letter of November 14, 2007, which for some reason prompted Attorney Hayes to threaten me. See Exhibits D–E.

Regarding that agreement and situation:

a. John Lomacang enthusiastically assured me by phone on September 1, 2006 (mistakenly said to be September 8 in my letter to Attorney Hayes), that if I came to 3ABN, they would show me phone card phone records, records he had personally seen, documenting hundreds of hours of phone calls by Linda Shelton to “her boyfriend” in Norway. He indicated that such an arrangement was not his decision. On September 8, 2006, I wrote him and told him I possibly could take him up on his offer on October 23, 2006, and between September 8 and October 17, sent him seven emails, to which I received only one reply on October 2. See Exhibit I for the entire dialog. His one reply said that I needed to write Mollie Steenson who would decide whether or not the trip would take place, a clear change from his previous position.

b. Accordingly, I wrote Mollie Steenson four times from October 3 through October 17, to which the only reply I ever received came on October 17, stating that I could not see the phone card phone records, a definite reversal of the original arrangement made by John Lomacang. See Exhibit J for the entire dialog.

c. Additionally, I later called AT&T, the identified brand of these phone cards, and was told that they do not give out written phone records without a subpoena or court

order. This legitimately raised the question in my mind of whether I had been lied to about the existence of these phone records, or whether these phone records, if they really did exist, had been illegally or improperly obtained.

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 10th day of December, 2007.

/s/ Bob Pickle

Robert Pickle