

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc., an Illinois non-profit corporation, and Danny Lee Shelton, individually,)	
)	
Plaintiffs,)	
v.)	
)	
Gailon Arthur Joy and Robert Pickle,)	
)	
Defendants.)	
)	

Case No.: 07-40098-FDS

**DEFENDANT ROBERT PICKLE’S MEMORANDUM IN SUPPORT OF HIS MOTION
FOR LEAVE FROM THE COURT TO FILE A SUPPLEMENTAL MEMORANDUM IN
OPPOSITION TO PLAINTIFFS’ MOTION FOR PROTECTIVE ORDER**

INTRODUCTION

Defendant Pickle asks leave of the Court to file a Supplemental Memorandum in opposition to Plaintiffs’ Motion for a Protective Court, since his initial response was filed on January 2, 2008, prior to Plaintiffs’ responses to his Requests to Produce, and prior to Plaintiff Shelton’s recent filings in the District of Minnesota.

Defendant Pickle prays the Court to overlook his misunderstanding of Local Rule 7.1(b), and to consider the instant motion to have been filed before his Supplemental Memorandum rather than after.

STATEMENT OF FACTS

Plaintiffs filed their Motion for a Protective Order on December 18, 2007, requesting oral arguments.

Plaintiff Three Angels Broadcasting Network, Inc. (“3ABN”) served its responses to Defendant Pickle’s Requests to Produce on January 9, 2008, 41 days after being served on November 29, 2007. Plaintiff Shelton served his responses the same day.

On February 6 or 7, 2008, Plaintiff Shelton filed a motion to quash Defendant Pickle’s third-party subpoena *duces tecum* in U.S. District Court in the District of Minnesota. Plaintiff Shelton simultaneously filed a motion to stay enforcement of the subpoena until the pending Motion for a Protective Order could be heard in this Court. Defendant Pickle was unaware of these motions until February 11, and did not file his opposition to them until February 25, 2008.

The Plaintiffs had never requested a date for a hearing on their Motion for a Protective Order, and yet asked the District of Minnesota to stay the subpoena in question until that motion could be heard. And the request for such a stay was in contempt of Judge Saylor’s order given during the status conference of December 14, 2007, that there would be no such stay.

Because of this halting of discovery, Defendant Gailon Arthur Joy contacted this Court and requested a hearing on the Motion for a Protective Order, which was immediately scheduled on February 28, 2008, for March 7.

A hearing on Plaintiff Shelton’s motions was held in the District of Minnesota on March 4, 2008. Magistrate Judge Boylan took the matter under advisement, requesting Plaintiff’s counsel to report within 5 days of the hearing in this Court regarding the Motion for a Protective Order. Magistrate Judge Boylan specifically stated that he expected the March 7 hearing in Massachusetts to cover the matter in Minnesota.

Upon receiving a decision from the District of Minnesota, it will still take six weeks for the subpoenaed entity to produce the requested documents. After that a narrowly tailored subpoena will need to be issued to obtain further documents, making the present schedule for discovery untenable due to these efforts by the Plaintiffs to hinder discovery.

ARGUMENT

The Plaintiffs requested oral arguments when they filed their Motion for a Protective Order. Given their failure to schedule a hearing for their motion, given the 11½ week delay between their motion and its hearing, given their conduct since the filing of that motion, it is obvious that the oral arguments to be heard on March 7, 2008, for the Motion for a Protective Order would include something not found in Plaintiffs' motion or Defendants' response.

Of the six parts to Defendant Pickle's argument in his Supplemental Memorandum, the basic conclusions of II, V, and VI are not new, III and IV are brief, and I is not at all complex. Thus, Plaintiffs' counsel, with their much greater expertise and experience than Defendant Pickle, *pro se*, are not at all disadvantaged. By far the bulk of the material in Defendant Pickle's supplemental filings consists of his exhibits, of which there is nothing that hasn't been entirely authored and/or filed by the Plaintiffs or their counsel, in their possession since January 24, 2008, or filed by Defendant Pickle on February 25, 2008, in the District of Minnesota. Thus, Plaintiffs' counsel has already seen these exhibits and has had adequate time to study them.

The District of Minnesota anticipates that the points found in the filings brought before it will be considered in the hearing in this Court on March 7, 2008. Defendant Pickle's supplemental filings are an efficient way of enabling that to take place.

In light of the fact that Plaintiffs' counsel filed their motion to strike without a certification that they had first conferred with Defendant Pickle, and in light of the fact that no such conferring took place, a clear violation of Local Rule 7.1(a)(2), this Court should allow the filing of this Motion for Leave to be considered as being filed before the Supplemental Memorandum rather than after.

CONCLUSION

To make these filings in Minnesota part of the court record in Massachusetts, to inform

this Court of the attempts of the Plaintiffs to impede discovery, and to make available to this Court for the oral arguments set for March 7 Plaintiffs' responses to his Requests to Produce and Plaintiff Shelton's recent filings, Defendant Pickle seeks leave of the Court to file his Supplemental Memorandum. He will not be able to appear in person to bring these documents to the hearing, and he seeks an end to further delays in discovery.

Respectfully submitted,

Dated: March 5, 2008

/s/ Robert Pickle, *pro se*

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AFFIDAVIT OF SERVICE

Under penalty of perjury, I, Bob Pickle, hereby certify that this document, with accompanying affidavit and exhibits, filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and by email to Gailon Arthur Joy on March 5, 2008.

Dated: March 5, 2008

/s/ Bob Pickle

Bob Pickle