

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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

Plaintiffs,

Case No. 07-40098-RWZ

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION
TO ENLARGE TIME TO FILE DOCUMENT NO. 249**

Plaintiffs Three Angels Broadcasting Network, Inc. and Danny Lee Shelton ("3ABN") submit this memorandum of law in support of their motion to enlarge the time to file Document No. 249 entitled "Plaintiffs' Response to Defendants' Motion for Leave to File Two Supplemental Exhibits."

FACTS

It is a matter of record that on April 1, 2010 Defendants Gailon Arthur Joy and Robert Pickle ("Pickle and Joy") electronically filed Document No. 245, entitled "Defendants' Motion for Leave to File Two Supplemental Exhibits: (A) Warrants for the Arrest of Tommy Shelton, and (B) Press Release Issued by Fairfax County Policy Department." Defendants did not request a hearing on the motion.

Under Local Rule 7.1(b)(2), Plaintiffs' opposition memorandum was due fourteen days after filing of the motion. The opposition was therefore due on April 15, 2010. Local Rule 5.4(D) states that "all electronic transmissions of documents must be completed prior to 6:00 P.M. EDT to be considered timely filed that day."

The undersigned counsel for Plaintiffs Three Angels Broadcasting Network, Inc. and Danny Lee Shelton electronically filed and served a responsive memorandum to the motion (Document No. 249) on April 15, 2010 at 7:26 P.M. EDT. The undersigned was generally aware of the 6:00 P.M. local rule deadline for electronic filing, but was not mindful of it on April 15, 2010. (See Affidavit of M. Gregory Simpson, served and filed herewith). He was acting under the impression that the filing would be timely if completed before midnight, as would be the case under Minnesota federal court rules where the undersigned primarily practices. (*Id.*). The filing was therefore made one hour and twenty-six minutes after the 6:00 p.m. local rule deadline. (*Id.*).

Defendant Robert Pickle brought the issue of late filing to the undersigned counsel's attention and made demands including that the filing be withdrawn prior to noon on April 19, 2010. If the deadline was not met, Pickle indicated he would move to strike the filing. (See Simpson Affidavit).

The undersigned counsel for Plaintiffs requested that Pickle agree to extend the time for filing Document No. 249 by one hour and twenty-six minutes, such that it may be deemed timely filed. The undersigned asked Mr. Pickle to specify any prejudice that may have resulted, and offered to make any reasonable accommodation to cure such prejudice. Mr. Pickle responded that he would not stipulate to extend the time for filing,

and would bring a motion to strike. His response, which is attached to the Affidavit of M. Gregory Simpson, fails to identify any prejudice resulting from the fact that the filing was late. (See Simpson Affidavit).

ARGUMENT

The Federal Rules of Civil Procedure permit the Court to extend a deadline on motion made after the deadline has expired “if the party failed to act because of excusable neglect.” Fed. R. Civ. P. 6(b)(1)(B). Plaintiffs have shown that Doc. 249 was filed one hour and twenty-six minutes late due to an unintentional error by the undersigned. The local rule in Massachusetts differs from that in the undersigned’s home state in that electronic filings are due by 6:00 p.m. in Massachusetts federal court, but are due by midnight in Minnesota federal court. Counsel made a simple mistake which caused no prejudice to anybody, especially given that no reply brief is authorized and no hearing is scheduled on the motion.

CONCLUSION

For the reasons stated herein, Plaintiffs respectfully request that Document No. 249 be deemed as timely filed.

Respectfully submitted,

Dated: April 19, 2010

s/ M. Gregory Simpson
M. Gregory Simpson, Esq., MN # 204560
Meagher & Geer, P.L.L.P.
33 South Sixth Street, Suite 4400
Minneapolis, MN 55402
Telephone: (612) 338-0661

John P. Pucci, Esq., BBO #407560
J. Lizette Richards, Esq., BBO #649413
Fierst, Pucci & Kane, LLP
64 Gothic Street
Northampton, MA 01060
Telephone: (413) 584-8067
Facsimile: (413) 585-0787

Attorneys for Plaintiffs Three Angels
Broadcasting Network and Danny Lee Shelton

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