

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.: 4:07-cv-40098 FDS

Memorandum in Support of Defendants' Proposed Order

A. Factual Background

The counsel identified below, together with defendant Gailon Arthur Joy, Pro Se, participated in the meeting required by Fed.R.Civ.P.26(f), on July 2, 2007. There was substantial disagreement relating to electronic discovery with the defendants proposing a transfer from hard disk to CD or DVD. Defendants have completed self discovery by providing a complete transfer of all hard copy documents, electronic documents and e-mails to the plaintiffs. Plaintiffs have not provided any electronic autodiscovery to defendants pursuant to 26(a).

At the pretrial conference in this matter 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 issue was transferred to Judge Hillman to determine the form of discovery. An evidentiary hearing was held before Judge Hillman August 9, 2007 and Defendant Joy submits the following Memorandum and Proposed Order regarding the proper exchange of electronically stored Information.

B. Discussion

The Plaintiffs argued for the need to do a forensic examination byte by byte of the Defendants hard-drives by having access to the original hard-drives. Plaintiffs expert claimed he was looking for so-called "Metadata" to determine if the actual date was the same as on the documents provided, to identify all bcc's of defendants e-mails, and to look for erasures. The expert admitted he had already received the Defendants transfer of

electronically stored documents and e-mails on two CD discs and one DVD disc. The Plaintiff's expert admitted he did not have a basis to assume that any data was missing or erased based upon the transfer format the defendants have already made available. Plaintiff's expert stated he was familiar with the Sedona Principles for the transfer of electronically stored information. The court recognizes the Sedona Principles adopted by the Supreme Court December 1, 2006. The Plaintiff's expert admitted he had served as expert opinion only in one civil case before a US District Court, but not regarding a forensic examination of the hard-drives, since the adoption of the Sedona Principles.

Defendants assert that the effort to gain access to hard-drives constitutes a fishing expedition when the Defendants as Respondants have already discovered, pursuant to FRCP 26(a) autodiscovery rule, via CD's the entire available library of electronically stored information.

Defendants further assert that all data relevant to the Plaintiffs case and the Defenses case has been discovered in auto-discovery and there is no motion pending from the Plaintiffs regarding either the form or scope of discovery. Therefore, the defendant Joy believes the following Sedona Principles apply and the Defendants form of discovery is sufficient pursuant to the Sedona Principles until the plaintiffs file further motions regarding electronic discovery with the honorable court. Defendant Joy recites the following excerpts from the Sedona

Principles in support of his Proposed Order:

6. Responding parties are best situated to evaluate the procedures, methodologies, and technologies appropriate for preserving and producing their own electronically stored information.

Comment 6.a. The producing party should determine the best and most reasonable way

to locate and produce relevant information in discovery;

7. The requesting party has the burden on a motion to compel to show that the responding party's steps to preserve and produce relevant electronically stored information were inadequate.

9. Absent a showing of special need and relevance, a responding party should not be required to preserve, review, or produce deleted, shadowed, fragmented, or residual electronically stored information.

11. A responding party may satisfy its good faith obligation to preserve and produce relevant electronically stored information by using electronic tools and processes, such as data sampling, searching, or the use of selection criteria, to identify data reasonably likely to contain relevant information.

12. Absent party agreement or court order specifying the form or forms of production, production should be made in the form or forms in which the information is ordinarily maintained or in a reasonably usable form, taking into account the need to produce reasonably accessible metadata that will enable the receiving party to have the same ability to access, search, and display the information as the producing party where appropriate or necessary in light of the nature of the information and the needs of the case.

Defendant Joy notes that in the subject case, all e-mails relevant to the subject case were segregated to Microsoft Outlook and all electronic documents held in specified folders for preservation and transfer. All documents were transferred to CD from their native format and should be preserved to CD in exactly the format they were preserved on the subject hard-drive.

Respectfully Submitted,

/s/ Gailon Arthur Joy

Pro se