

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
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 ROBERT PICKLE

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

1. As stated in my May 28, 2009, affidavit (Doc. 185 ¶ 15), I could not obtain a transcript at the rate set by the Judicial Conference for the March 4, 2008, hearing before Magistrate Judge Boylan in the District of Minnesota. I therefore filed the audio recording thereof as a CD identified as Ex. L of Doc. 185. (Doc. 186; Doc. 187). I transcribed a portion of that recording at ¶ 16 of Doc. 185, and I shall transcribe several more portions to the best of my skill and ability below.

2. At about 12:53 into the recording, the following interchange took place:

MS. HAYES: ... The first issue that I'd, I'd sort of like to dispel with I guess is the issue of standing which was raised, um, in the motion to dismiss our motion, um, and then sort of just repeated I guess if you will in the opposition to the motion to our --

THE COURT: Because you're not here representing the bank.

MS. HAYES: Correct, your Honor. I'm not. I'm here representing Danny Shelton.

THE COURT: So what under, under what provision of the rule are you proceeding? Isn't that the party to whom the subpoena was issued?

3. Attorney Jerrie Hayes' answer did not satisfy Magistrate Judge Boylan, and thus at about 15:44 into the recording, the following interchange took place:

THE COURT: What provision under Rule 45 are you, are you proceeding under?

MS. HAYES: Well, the motion to quash, your Honor, is based on Rule 26, um, that being that discovery cannot be had by, um, cannot be had for information that is burdensome, harassing, or, um --

THE COURT: How is it burdensome, harassing, or otherwise to you. I mean, the subpoena was served on the bank, and they're not even here.

MS. HAYES: Well, what's burdensome and harassing, your Honor, is that this is a search for Danny Lee Shelton's individual, personal private banking records which, as he's attested to in the affidavit, he has always maintained as confidential, which are private to him and which are extremely personal.

4. Attorney Jerrie Hayes' answer still did not satisfy Magistrate Judge Boylan, and thus at about 17:02 into the recording, the following interchange took place:

THE COURT: I'm not quite sure if we've gotten to the point beyond my question about under Rule 45, under what provision of Rule 45 you're, you're, you're proceeding on. Rule 45 is the rule that, um, talks about subpoenas, and it talks about parties to whom subpoenas have been issued, and the duties in responding to subpoenas. Um. I don't see where Rule 45 allows a different party to come in and complain about it, does it?

MS. HAYES: Your honor, [pause] Rule 45 including, which has been uh, the rules concerning, [??] rules concerning subpoena and the issue of subpoena enforcement have been interpreted by a variety of courts to include, um, that individuals may object to the subpoena for procedural improprieties within the ten days, and they also object to the subpoena and make a motion to quash the subpoena if the subpoena, um, is for what, you know, for a variety of reasons: it's overly broad, it's unduly burdensome, the same issues that go to discovery --

THE COURT: Sure, the party to whom the subpoena is issued. But you, you haven't had the subpoena issued to you.

MS. HAYES: Correct, your Honor, but we are a third party that has a right or privilege, right, privilege, or interest in the materials that are being sought, and if this Court, um, --

THE COURT: Where does it say that under Rule 45? Do you have yours handy?

MS. HAYES: Your, your Honor, I don't have the rules in front of me, and I don't believe that Rule 45 specifically permits that. However this court has allowed motions to quash to be made by interested and affected third parties.

THE COURT: Let me ask about what records they're looking at. They're looking for records of Mr. Danny Lee Shelton, correct?

MS. HAYES: Correct, his private banking records, his --

THE COURT: They're also looking for some records from a business, a sole proprietorship.

MS. HAYES: Correct.

THE COURT: They're also looking for some records from a corporation.

MS. HAYES: Correct, again a --

The very next portion of the hearing, about 18:40 into the recording, appears at ¶ 16 of Doc. 185.

5. Since Mr. Joy and I had been told by clerk(s) at the federal courthouse in Worcester, Massachusetts, that no one knew where the bank records we subpoenaed from MidCountry Bank ("MidCountry") ("MidCountry records") were, I took the docket text for Docket Entry #160 to mean that the Court had finally found the MidCountry records and was acknowledging their receipt.

6. When I originally opened up the actual receipt (Doc. 160), less than half of it was visible in my browser. When I read, "Received of the Clerk, U.S. District Court," I took that to mean that the MidCountry records had been received by the clerk, not received from the clerk. To my recollection, until recently, I never understood that receipt to mean anything else.

7. On December 4, 2009, the First Circuit Court of Appeals ruled on our motion to

include the documents produced by Remnant Publications, Inc. as part of the record on appeal. That order is attached hereto as **Exhibit A**.

8. The same week of December 4, 2009, I was looking at the receipt (Doc. 160) again while talking to Mr. Joy, and, scrolling down the page, for the first time that I can recall noticed the address under the signature of Christine Parizo (“Parizo”). That address was “Fierst, Pucci & Kane,” Plaintiffs’ counsel’s law firm. This alerted Mr. Joy and I to the fact that the receipt was not a receipt for the courthouse having received the MidCountry records.

9. Attached hereto as **Exhibit B** is the PDF version of a c. 2008 article which I downloaded from <http://www.lawcrossing.com/article/3894/Christine-Parizo-Author-of-A-Paralegal-s-Blog/>. Page 2 says that Parizo works at Fierst, Pucci, & Kane. Attached hereto as **Exhibit C** is Pucci’s resume, which I downloaded from <http://www.fierstpucci.com/cv/pucci.pdf>.

10. I have never consented to the return of the MidCountry records.

11. On December 10, 2009, I contacted a clerk at the federal courthouse in Worcester, Massachusetts, to see if anyone knew where the MidCountry records were. She told me that they were looking into it, and were trying to determine whether the subpoenaed records had already been forwarded to the Court of Appeals.

12. On December 15, 2009, I contacted the same clerk again to obtain an update. She told me that the MidCountry records had been “returned” to MidCountry or the Plaintiffs, whichever the receipt on the docket indicated, and that since the MidCountry records had not been entered in the docket prior to our first notice of appeal, the MidCountry records had not been forwarded to the Court of Appeals prior to their being “returned.”

13. On December 15, 2009, I wrote Attorney John P. Pucci (“Pucci”) to seek the return of the MidCountry records to this Court. That letter is attached hereto as **Exhibit D**. Pucci replied via email the same day, and his reply is attached hereto as **Exhibit E**.

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 17th day of December, 2009.

/s/ Bob Pickle

Bob Pickle
Halstad, MN 56548
Tel: (218) 456-2568

Subscribed and sworn to me
this 17th day of December, 2009.

/s/ Andrew Shae

Notary Public—Minnesota

My Commission Expires Jan. 31, 2010

United States Court of Appeals For the First Circuit

No. 08-2457

THREE ANGELS BROADCASTING NETWORK, INC.,
an Illinois Non-Profit Corporation, Et Al.,

Plaintiffs, Appellees,

v.

GAILON ARTHUR JOY, Et Al.,

Defendants, Appellants.

ORDER OF COURT

Entered: December 4, 2009

Appellants move to enlarge the record in this appeal (Appeal No. 08-2457) to include certain documents. As those documents were submitted to the district court after the filing of the notice of appeal, they are not properly considered as part of the record in this appeal and, accordingly, the motion to enlarge the record on appeal is denied.

We note that, in any event, appellants filed a subsequent notice of appeal from the district court's refusal to accept the proffered documents. This new appeal has been docketed in this court as Three Angels Broadcasting Network, Inc. v. Joy, No. 09-2615, and the documents in question are part of the record on appeal in this subsequent appeal. To the extent that appellants intend to argue that the district court erred in refusing to accept the documents in question, that issue may be raised in Appeal No. 09-2615.

By the Court:

/s/ Margaret Carter, Chief Deputy Clerk.

cc:

Gerald Duffy

Jerrie Hayes

Kristen L. Kingsbury

William Christopher Penwell

John P. Pucci

J. Lizette Richards

M. Gregory Simpson

Gailon Arthur Joy

Robert Pickle



Christine Parizo: Author of *A Paralegal's Blog*

[By Robin Salisian]

Christine Parizo learned how to blend her passions for writing and law to gain professional success. The result? A blogging paralegal.

In 1999 Parizo graduated with her bachelor's degree in journalism. She landed a job as a copy editor for a well-known technology news service, stinted as an assistant news editor for a technology media company, and acquired pertinent skills regarding writing, accuracy, and interviewing.

However, her post-college dreams began to fade, and reality crept in. Journalism had lost some of its magic.

"My undergraduate experiences had taught me that newspaper journalism, my first choice, was a thankless job with lousy pay — I had a professor who was also an editor at the *Boston Globe*, and he would show up for classes in shirts with holes in them," says Parizo.

And while she was using her degree by writing for technology publications, her professional appetite hungered for more. It was then that Parizo began considering law school. She perused catalogues, researched universities, studied for the LSAT. Most importantly, she realized her writing, debate, and research skills were strong characteristics needed in becoming a lawyer.

"I...love the law because it really isn't black and white. Case law is always changing something, and staying on top of that is a challenge that I welcome," she says.

"However, the more I researched becoming a lawyer, the more I felt it would conflict with my other goals in life," continues Parizo.

Money also was an issue since she worked as a journalist, and affording law school suddenly appeared daunting. Finally, a friend mentioned paralegal work to her, and after some research Parizo liked what she had found.

Q. What do you do for fun?

A. Spend time with my family, read voraciously, shoe-shop, do yoga and pilates, and study Italian language and culture.

Q. What CD is in your CD player right now, or what music is on your iPod?

A. I'm definitely in the iPod category — I love my nano, and it's a very eclectic mixture: Bowling for Soup's *High School Never Ends*; Imani Coppola's *Legend of a Cowgirl*; some Dr. Dre and Notorious B.I.G.; a smattering of blink-182, The All-American Rejects, and Simple Plan; and a bit of Sara Evans, Toby Keith, and Tim McGraw's *My Next 30 Years*.

Q. What is the last magazine you read?

A. *InStyle*. I love how they take a trend and make it appropriate for women of different ages, and I also get a lot of inspiration for my own wardrobe.

Q. What is your favorite TV show?

A. *Lost* and TLC's *What Not to Wear*.

Q. Who is your role model?

A. I don't really have one, but I admire any woman who can balance a career, a family, and still find time to look pulled-together.

"I would be able to research, write, draft pleadings, interact with clients — basically almost everything a lawyer does except represent clients in court, sign pleadings, and give legal advice — and I knew that not only would I be good at it, I would also have time to pursue my other life goals."

After the tragedy of September 11, Parizo looked hard at her career in technology journalism and knew something must change.

"That's when I started pursuing my paralegal career by researching paralegal programs," says Parizo. "I took a job as a legal secretary at a construction litigation firm, and I was gradually given assignments that were more paralegal work, such as drafting complaints and Shepardizing cases when the paralegals at the firm were too busy."

Next she enrolled in a paralegal certificate program at Middlesex Community College in Bedford, MA, graduating with her certification in 2004 as a member of its honor society, Phi Theta Kappa.

During her time there she thrived, enjoyed the coursework, and related well with the professors. She attended night classes while working full-time as a legal secretary ("which [she] felt would prepare [her] for being a paralegal"). Free time, therefore, was scarce. Nevertheless, Parizo became a member of the Massachusetts Paralegal Association, contributed articles to its newsletter, and attended its seminars.



LEGAL STAFF PROFILE

www.lawcrossing.com

1.800.973.1177

Then, in 2003, she received the NFPA/West Group First Place Scholarship, and a year later, she became a registered paralegal when she passed the Paralegal Advanced Competency Exam. After graduating, Parizo journeyed to Western Massachusetts to work as an estate administration paralegal. There, she joined the Western Massachusetts Paralegal Association.

"I gained a lot of practical experience dealing with deadlines, forms, and the courts at that job," says Parizo, "and through the WMPA I was able to network with other paralegals and learn about their specialties. The more I spoke with them, the more I wanted to be a litigation paralegal because I would get to use my research skills and critical thinking skills on a more regular basis."

Today, Parizo is living that dream. As a litigation paralegal, she works at Fierst, Pucci & Kane, LLP, in Northampton, MA, specializing in complex civil litigation and federal criminal defense work. Along with her paralegal work, however, Parizo continues to dabble in journalism. She began perusing the web for paralegal blogs but became disappointed in what she found. So she decided to start her own.

"I have to say that writing the posts is my favorite part of blogging, followed closely by knowing that I'm providing information that can be useful to fellow paralegals," admits Parizo. "Also, my sister-in-law told me that she wasn't entirely sure what paralegals do until she read my blog and that she was really impressed by it — and that my father, an aerospace engineer and part-time patent agent, was bragging about the blog to his friends — and I realized that I could also use my blog to raise the opinion of paralegals in

the eyes of not just paralegals but attorneys and the general public."

"I find topics by searching the Internet, email alerts, and things that happen in my own career," she continues. "For example, we started discussing e-discovery for one of my cases, and since I was delving into it, I thought I would share some of my findings with my readers."

But Parizo doesn't only enjoy blogging; she revels in all aspects of her career. From researching to working with one of the "100 Best Lawyers in Massachusetts" to being named one of Paralegal Gateway's 2008 "Paralegal Superstars" to website-design work to passing the PACE exam, Parizo finds rewards in everything she does. With such a positive mindset, it's no wonder she feels accomplished almost every day.

"I get to work on some very complex cases, and the intellectual stimulation is very rewarding," Parizo says.

"I also am the NFPA primary and technology coordinator for WMPA, and I really enjoyed my first convention as a delegate — it was great to be around so many people as enthusiastic about being a paralegal as I am," she adds.

Her enthusiasm is palpable, and she credits much of her success to the people in her life, specifically the WMPA president and a Middlesex professor.

"I've often felt like the WMPA president is an unofficial mentor. She's been a paralegal for over 20 years, and since moving to Western Massachusetts, she's been my go-to person for career questions and has given me a

lot of insight into being a paralegal in the Pioneer Valley," says Parizo.

And of the latter she says, "[M]y legal research and writing and real estate law professor was amazing as well — he really helped me understand how to research an issue, when to stop researching, and how to write up my findings. He also pushed me to do my best and wouldn't allow me to do anything halfway."

Having traveled from journalism to law, Parizo eagerly offers young professionals this advice:

"Network! Join the local paralegal association, get involved, join a committee, talk to other paralegals. Not only will you get moral support, you'll also hear about job openings, have the opportunity to learn new areas of law, and get to attend events. If you're part of an NFPA-affiliated association, you'll also receive the benefits of being an NFPA member as well."

"I would also strongly advise staying abreast of technology because it is constantly changing," she adds. "Technology can also save you time and make you more efficient, so the more you know, the better off you are. I personally love technology and am relatively fearless with it, and I definitely feel like that has helped me in my career."

ON THE NET

[Middlesex Community College](#)

[Fierst, Pucci & Kane, LLP](#)

[A Paralegal's Blog](#)

JOHN P. PUCCI
Fierst, Pucci & Kane LLP
64 Gothic Street
Northampton, MA 01060
Tel: (413) 584-8067
E-mail: Pucci@FierstPucci.com

Legal Experience:

- 1994-present **Fierst, Pucci & Kane LLP, Litigation Partner**
My practice encompasses complex litigation of all kinds in both federal and state court. Over the years I have acquired particular expertise in the areas of commercial and employment litigation, white-collar criminal practice and complicated tort actions. I have successfully represented clients in such matters in Massachusetts, Connecticut, Vermont, Wisconsin, Pennsylvania and Florida.
- 1990-1994 **Chief, Springfield Branch, United States Attorney's Office for the District of Massachusetts**
As Chief of this Office, I supervised all civil and criminal cases and managed its relationship with the IRS, FBI and other federal, state and local agencies. In addition, I carried a full caseload consisting primarily of investigations, trials and appeals of tax, health care and bank fraud matters. In this period, I tried to verdict a variety of cases, and argued before the First Circuit Court of Appeals on several occasions.
- 1984-1990 **Assistant United States Attorney, United States Attorney's Office, Philadelphia, Pennsylvania**
As an Assistant United States Attorney in Philadelphia, I prosecuted a multitude of criminal cases varying from the simplest of tax and drug matters to the largest fraud and public corruption cases litigated by the Office. I personally handled all aspects of these cases, including: supervision of grand jury investigations; complex motions practice; and jury trials. I also briefed and successfully argued numerous cases before the Third Circuit Court of Appeals.
- 1980-1984 **Ballard, Spahr, Andrews & Ingersoll, Associate, Litigation Department**
As an associate in the civil litigation department of this large Philadelphia law firm, I appeared frequently in the state and federal courts in Pennsylvania. Altogether I tried to verdict, alone or as part of a team, eleven civil cases.

Education:

- Boston College Law School, J.D., 1980**
Cum Laude
- University of Vermont, B.A., English, 1975**
Cum Laude
Phi Beta Kappa

Licenses:

Commonwealth of Massachusetts, United States Supreme Court, First Circuit Court of Appeals, Federal District Court for the District of Massachusetts, Federal District Court for the District of Connecticut

Honors/Awards: In 2002, I was inducted as a Fellow into the American College of Trial Lawyers. Fellowship in the College is extended by invitation only to experienced trial lawyers whose careers have been marked by the highest standards of ethical conduct and professionalism. Membership in the College is limited to one percent of the total lawyer population of any state. From 2004-2009, I served on the College's Massachusetts State Committee, which is responsible for investigating and proposing candidates for induction.

In 2005-2009, I was named by Boston Magazine as a Massachusetts Super Lawyer, an honor bestowed upon only five percent of Massachusetts lawyers. In 2007 and 2008, I was named one of the top 100 lawyers in Massachusetts by Boston Magazine.

In 2005-2009, I was selected by my peers for inclusion in The Best Lawyers in America.

Martindale-Hubbell Rating: AV[®] Peer Review Rated (1995-present).

In 1991, I received from Attorney General Richard Thornburgh the Distinguished Service Award of the Department of Justice, which is the Department's top award for trial work and is conferred on only a handful of federal prosecutors across the country each year.

In 1987, John Simpson, Director of the United States Secret Service, conferred upon me the Director's Commendation.

Memberships:

American College of Trial Lawyers
American Bar Association, Civil Litigation Section
Hampden and Hampshire County Bar Associations
Member, Criminal Justice Act Governing Board, Federal District Court for the District of Massachusetts (1997 to present)
Member, Senator Kennedy's Committee to Screen and Recommend Applicants for United States Attorney, United States Marshall and for a Federal Court Judgeship (2009)
Member, Federal Court Committee to Investigate Qualifications of Federal Magistrates for Reappointment (2006)
Board of Directors, Hampshire County Bar Advocates, Inc.

Teaching:

Over the years, I have taught a number of Massachusetts Continuing Legal Education seminars on various aspects of civil and criminal litigation, including:
Writing for the Courts: Techniques & Strategies, 2006
Challenging Evidentiary Issues, 2005
Writing for the Courts, 2005
Employment Law Basics, 2004
Handling Depositions with Confidence, 2003
Litigating Trade Secrets and Agreements Not to Compete, 1997

1354 County Highway 21
Halstad, MN 56548
(218) 456-2568
December 15, 2009

John P. Pucci
64 Gothic Street
Northampton, MA 01060

Counselor Pucci:

I just spoke with a clerk of court at the federal courthouse in Worcester, Massachusetts. She informed me that the court does not have a copy of the bank statements that MidCountry Bank produced in response to our subpoena, and that the receipt docketed as Doc. 160 in our case shows who those bank statements were given to.

That receipt, dated December 16, 2008, is signed as follows:

Christine Parizo
Fierst, Pucci & Kane LLP
64 Gothic St. Northampton MA 01060
(413) 584-8067

Thus, you received the only copy of MidCountry's records that the court had. Would you stipulate to the return of MidCountry's records to the court, accompanied by your certification that the returned records do not differ in quantity or content from that which you received?

If you do not so stipulate, we shall prepare a motion seeking an order commanding you to return MidCountry's records to the court. (Such return would need to be accompanied by the same certification.) This letter would then be, pursuant to L.R. 7.1(a)(2), Defendants' good faith attempt to narrow or resolve the issue before bringing such a motion. If you refuse to stipulate, would you oppose such a motion?

I would remind you that the district court is without authority to eliminate material from the record on appeal. 20 *Moore's Federal Practice* §310.40[2]; *Belt v. Holton*, 197 F.2d 579, 591 (D.C. Cir. 1952). Therefore, the bank statements must be returned.

Sincerely,



Bob Pickle, *pro se*

cc: Gailon Arthur Joy, Gerald Duffy, Jerrie Hayes,
Kristin Kingsbury, Christopher Penwell,
Lizette Richards, Gregory Simpson (all via email)

Ex. E

Subject: RE: the return of MidCountry's records to the court
From: "John Pucci"
Date: Tue, 15 Dec 2009 16:57:16 -0500
To: "Bob"
CC: "Gregory Simpson"

Dear Mr. Pickle:

In response to your letter of December 15, 2009, please recall that Judge Saylor ordered that the MidCountry Bank records be returned to us. See Electronic Clerk's Notes of hearing on 10/30/2008 ("Records in possession of Mag. Judge will be returned."). You did not obtain a stay of the October 30 order. Therefore, Judge Hillman obeyed it and delivered the records to counsel for 3ABN where they will remain unless and until we are ordered to do something else with them.

You have moved to have the records sent to the 1st Circuit Court of Appeals as part of the district court record. We will oppose your motion by filing an opposition memorandum. It is not appropriate to debate the legal issues raised by your motion informally because they will clearly need to be addressed in an orderly fashion by Judge Saylor and potentially reviewed by the First Circuit Court of Appeals.

In the meantime, you may be assured that the MidCountry records are in the custody of counsel for 3ABN, are in the same condition that they were in when Judge Hillman gave them to us, and will be maintained in that condition at least until the case is over and all rights of appeal are exhausted. Please consider this response as written assurance that the MidCountry Bank records will be preserved to that extent.

From: Bob [mailto:bob@]
Sent: Tuesday, December 15, 2009 1:29 PM
To: John Pucci
Cc: G. Arthur Joy; Gerald Duffy; Jerrie Hayes; Kristin L. Kingsbury; William Christopher Penwell; Lizette Richards; Greg Simpson
Subject: re: the return of MidCountry's records to the court

Counselor Pucci:

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