

IN THE SUPREME COURT OF OHIO

PRASAD BIKKANI)
) CASE NO. 2006-2073
Plaintiff-Appellant,)
)
v.)
)
ROTAN E. LEE, ESQ., <u>et al.</u>)
)
Defendants-Appellees.)
)
)

MOTION OF DEFENDANTS-APPELLEES NORTHEAST OHIO NEIGHBORHOOD HEALTH SERVICES, INC. AND TOTAL HEALTH CARE PLAN, INC. TO STRIKE PRO SE APPELLANT'S UNTIMELY SERVED PAPERS FILED WITH THE COURT ON MARCH 30, 2007

Prasad Bikkani, Pro Se
3043 Forest Lake Drive
Westlake, Ohio 44145

Plaintiff-Appellant

Matthew T. Fitzsimmons (0013404)
R. Christopher Yingling (0066551)
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Counsel for Defendants-Appellees
NorthEast Ohio Neighborhood Health
Services, Inc. and Total Health
Care Plan, Inc.

<p>FILED</p> <p>APR 09 2007</p> <p>MARCIA J MENGEL, CLERK SUPREME COURT OF OHIO</p>
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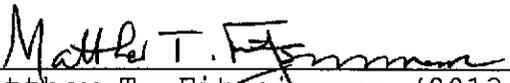
Pursuant to S.Ct.Prac.R.14,§2(D), defendants-appellees NorthEast Ohio Neighborhood Health Services, Inc. ("NEON") and Total Health Care Plan, Inc. ("THCP") move the Court for an Order striking pro se appellant's "Request leave to file MOTION Instanter to Oppose Bill/Sanctions as pleaded" ("Request for Leave") (filed March 30, 2007) and "MOTION to Oppose Bill/Sanctions as pleaded by Matthew Fitzsimmons cum Board of Trustee of NEON (included the leave of court request Instanter) with the sample 230 COUNTS of professional misconduct, 33 violations of Disciplinary Rules, and about 28 Parties of conflicts" ("Motion to Oppose") (filed March 30, 2007) on the grounds that pro se appellant failed to timely serve such papers on NEON's and THCP's counsel.

Notwithstanding the fact that pro se appellant filed these papers with the Supreme Court on March 30, 2007 and that the Certificates of Service represent that he served them by mail on counsel for NEON and THCP on March 29th and 30th respectively, pro se appellant did not actually serve counsel for NEON and THCP until April 2, 2007. See Affidavit of Matthew T. Fitzsimmons ("Fitzsimmons Aff.") ¶¶2-3 and Exhibit 1 (attached hereto as Exhibit A). Due to pro se appellant's gamesmanship, counsel for NEON and THCP did not receive these papers until April 5, 2007 - - one day after the five-day response period set forth in the Court's March 5, 2007 Entry expired. Id., ¶¶2; 4; Exhibit 2.

NEON and THCP would like to file a Reply to pro se appellant's "Objection" to the fee application but cannot do so because their response time expired before they received pro se appellant's papers. Accordingly, NEON and THCP urge the Court to strike pro se appellant's Motion for Leave and Motion to Oppose, pursuant to S.Ct.Prac.R.14,§2(D). Alternatively, NEON and THCP ask the Court to set another response date so that they may file their Reply Brief in support of their application for attorneys' fees, costs, and expenses incurred due to pro se appellant's vexatious, frivolous conduct.

Respectfully submitted,

NICOLA, GUDBRANSON & COOPER, LLC

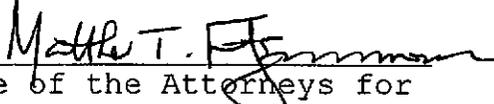

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Attorneys for Defendants-Appellees
NorthEast Ohio Neighborhood
Health Services, Inc. and Total
Health Care Plan, Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing Motion Of Defendants-Appellees NorthEast Ohio Neighborhood Health Services, Inc. and Total Health Care Plan, Inc. To Strike Pro Se Appellant's Untimely Served Papers Filed With The Court On March 30, 2007 was sent by regular U.S. mail, postage prepaid, this 9th day of April 2007 to the following:

Mr. Prasad Bikkani
3043 Forest Lake Drive
Westlake, Ohio 44145


One of the Attorneys for
Defendants-Appellees
NorthEast Ohio Neighborhood Health
Services, Inc. and
Total Health Care Plan, Inc.

IN THE SUPREME COURT OF OHIO

PRASAD BIKKANI)
)
 Plaintiff-Appellant,)
)
 v.)
) AFFIDAVIT OF
) MATTHEW T. FITZSIMMONS
 ROTAN E. LEE, ESQ., et al.)
)
 Defendants-Appellees.)
)
)

STATE OF OHIO)
) ss.:
 COUNTY OF CUYAHOGA)

Matthew T. Fitzsimmons, being first duly sworn, does hereby depose and say as follows:

1. I am lead counsel for defendants-appellees NorthEast Ohio Neighborhood Health Services, Inc. ("NEON") and Total Health Care Plan, Inc. ("THCP") in this action. Unless otherwise indicated, the information contained herein is based on my personal knowledge.

2. On April 5, 2007 I received by U.S.P.S. Parcel Post pro se appellant's "Request leave to file MOTION Instanter to Oppose Bill/Sanctions as pleaded" ("Request for Leave") and "MOTION to Oppose Bill/Sanctions as pleaded

by Attorney Matthew Fitzsimmons cum Board of Trustee of NEON (included the leave of court request Instanter) with the sample 230 COUNTS of professional misconduct, 33 violations of Disciplinary Rules, and about 28 Parties of conflicts" ("Motion to Oppose"). Pro se appellant represented in the Certificate of Service on the Request for Leave that he served me by ordinary U.S. mail on March 29, 2007. The Certificate of Service on the MOTION to Oppose represents that he served me by regular mail on March 30, 2007.

3. Each of the foregoing representations by pro se appellant regarding the Certificate of Service is false. As the postmark (attached hereto as Exhibit 1) demonstrates, pro se appellant sent these papers to me by U.S.P.S. Parcel Post on April 2, 2007. Since the Court's March 5, 2007 Entry invited NEON and THCP to file a Reply to pro se appellant's objections to our fee application within five days of the filing of the objections, I received these papers the day after that five-day response period expired. Since pro se appellant filed these papers with the Supreme Court on March 30, 2007, NEON's and THCP's five-day response period expired on April 4, 2007.

4. Attached as Exhibit 1 is a true, correct, and accurate copy of the postmark on the envelope in which pro

se appellant served his Request for Leave and MOTION to Oppose. The envelope reflects a mailing date of April 2, 2007, not March 29 or 30, 2007.

5. Attached as Exhibit 2 is a true, correct and accurate copy of the letter I sent to pro se appellant on April 5, 2007 notifying him that I received his papers on April 5, 2007, and further noting his misrepresentation of the service dates in the Certificates of Service.

FURTHER AFFIANT SAYETH NAUGHT.


Matthew T. Fitzsimmons

Sworn to and subscribed in my presence by Matthew T. Fitzsimmons this 6th day of April 2007.


Notary Public

RONALD C. YINGLING
Notary Public
State of Ohio
My Commission Has No Expiration



U.S. POSTAGE
\$2.96
 PARCEL POST
 44145
 Date of sale
 04/02/07
 02 1P00 APC
 02314929 PF0002700403378

USPS® PARCEL POST®

0 lb. 14.70 oz.

SHIP
 TO:

CLEVELAND OH 44115



ZIP



(420) 44115

RECEIVED
 APR 05 2007
 By _____

Matthew Fitzsimmons
 Nicola, Gudbranson & Cooper LLC
 25 West Prospect Ave #1400
 Cleveland, OH 44115

NICOLA, GUDBRANSON & COOPER, LLC

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BECKY M. SCHEIMAN
MARGARET B. TOMARO

VINCENT A. FEUDO
ANTHONY R. TROIA
JAMES D. ROSEMAN
OF COUNSEL

K. V. NICOLA
(1906-1994)

April 5, 2007

Direct email: fitzsimmons@nicola.com

Mr. Prasad Bikkani
3043 Forest Lake Drive
Westlake, OH 44145

Re: Prasad Bikkani v. Rotan E. Lee, Esq., et al.
The Supreme Court of Ohio Case No. 2006-2073

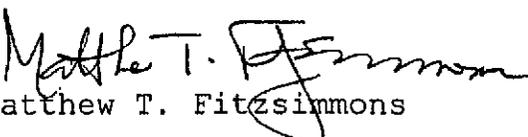
Dear Mr. Bikkani:

I received today, April 5, 2007, the Motions you filed with the Supreme Court on March 30, 2007 purporting to object to our fee application. Notwithstanding the fact that your Certificate of Service represents that you mailed these Motions to me on March 30th, the postmark reflects that you sent it by U.S.P.S. Parcel Post on April 2, 2007. Thus, because of your misrepresentation of the service date, I received your papers after my five-day response time set forth in the Court's March 5, 2007 Entry expired.

I have written to you many times about this problem before in this litigation. Many times you have failed to serve me, or did not mail the papers to me until long after the date identified in your Certificate of Service.

In the future, please be sure that if you represent to the Court that you have mailed a document to me on a date certain, that that is the date that you put such document in the mail.

Very truly yours,


Matthew T. Fitzsimmons

MTF/rgg