

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NANCY PROCHASKA,

Petitioner,

ORDER

v.

04-C-644-C

JOANNE B. BARNHART,
Commissioner of Social Security,

Respondent.

On December 1, 2006, I denied plaintiff's motion for an extension of her deadline to file a reply in support of her application for an award of fees under the Equal Access to Justice Act. *See* dkt. 27. On December 8, 2006, plaintiff filed an 11 page motion for reconsideration along with the unbidden 22 page reply brief. *See* dkts. 28-29.

In support of plaintiff's motion to reconsider, her attorneys make four basic points:

- (1) They have no independent knowledge of receiving the court's October 23 scheduling order;
- (2) The court's deadlines, when deconstructed into "court days" and accounting for actual service of the commissioner's brief, were too tight and unfairly skewed in favor of the commissioner;
- (3) Plaintiff's attorneys were in Hawaii (on business), sick with influenza, and busy, only the third of which is the basis of this court's "No-more-extensions!" order against plaintiff's attorneys in a previous case; and
- (4) The commissioner's brief in opposition to the fee request is unusually long.

Counsel doesn't get it. As a starting point, this court has the discretion to decline to accept any late-filed document in any case. Most attorneys don't get a warning shot across the bow the way plaintiff's attorneys did; they are in a special position because they were such serial abusers of the court's deadlines that the court finally declared "enough." Plaintiff's attorneys now try to flip that order on its head and argue that, because just one of the reasons they were late is because they were busy, the court's order does not apply to this case. This is a breathtakingly tone-deaf song to sing. It takes a lot of moxie for an attorney to quibble with a court that has spelled out its exasperation with counsel in 20-point font.

Counsel's arithmetically fantastic interpretation of the briefing schedule does not merit discussion. The clerk of court set the usual 21/10 response/reply schedule that this court has used for decades and with which Attorney Daley is familiar from the myriad cases he has litigated in this court over the years, including other EAJA petitions in the recent past. There was no reason for him or his associates to believe the briefing schedule would be different this time. Counsel claim "no independent knowledge of receiving the scheduling order." The only logical and prudent response to filing a motion and not getting the usual and expected briefing schedule from the court is to *call the court*. Competent attorneys do not tread water while the clock is ticking, then guesstimate a submission deadline based on their own say-so.

True, the reply deadline fell on the Friday after Thanksgiving, an unpalatable end to the holiday week. Were counsel to have called before the deadline ran and requested a holiday accommodation, the court would have granted extra time, probably until November 28. This, however, is conjecture because counsel never called to ask what the schedule was or whether an

extension was available. Not until November 30 did plaintiff's attorneys first contact the court, and then to request an extension of a deadline about which they now claim to have been ignorant but which they asserted (incorrectly) at the time to be November 30.

Similarly, the length and complexity of the commissioner's brief would be a valid reason for an extension of the reply deadline if it had been timely requested. But it wasn't. Counsel did raise this topic (along with the flu problem and the Hawaii trip) in the first motion for an extension. But these were the secondary and tertiary reasons offered: the primary reasons were that Attorney Daley "has had numerous briefs due lately" and all of his associates "are currently involved in briefing or supervising other matters . . ." Dkt. 26 at ¶¶ 2-3.

It is understandable why an extension is important to plaintiff's attorneys, but they have approached this in exactly the wrong way. Their insouciance in the face of this court's palpable irritation and explicit warning is inexplicable and unforgivable. This does not mean that the court will deny plaintiff's EAJA petition; the court will perform its usual careful and thorough analysis without the benefit of plaintiff's reply brief. This actually makes the court's task more difficult, but that's not the point. The point is that attorneys ignore their obligations to this court at their own peril.

It is ORDERED that plaintiff's motion for reconsideration is DENIED.

Entered this 12th day of December, 2006.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge