

## Sanctions Against Libel Plaintiff, Counsel, for Hiding Criminal Record in Discovery

By Charles D. Tobin

Calling her explanations for failing to disclose discoverable information “borderline ridiculous” and her counsel’s investigation “laughable,” a federal district court in Hammond, Indiana has ordered a libel plaintiff and her lawyer to pay sanctions to a Lee Enterprises newspaper, finding that the plaintiff lied in her deposition. *Filippo v. Lee Publications, Inc.*, No. 2:05 CV 64 (N.D. Ind. September 12, 2007).

U.S. District Judge James T. Moody ordered the plaintiff and her lawyer to bear the expenses *The Times* newspaper incurred in uncovering the criminal record that the plaintiff hid during discovery.

The lawsuit arose out of a series of articles, editorials, and cartoons in *The Times*, Lee’s newspaper serving Northwest Indiana and suburban Chicago, about the 2003 drunken driving arrest of the plaintiff. At the time, Filippo was vice chair of the Partnership for a Drug-Free Lake County, a quasi-public agency that educates youth about the dangers of drugs and alcohol. Filippo was acquitted a year later after a jury trial.

In April 2007, Judge Moody entered a summary judgment order in favor of the newspaper, finding that Filippo had failed to establish actual malice, and the editorials and cartoon were protected opinion. The court has withheld final judgment pending its decision on the newspaper’s request for attorney’s fees under the state’s anti-SLAPP statute.

### ***Plaintiff Violated Discovery Obligations***

In the order this month, Judge Moody agreed with the newspaper that Filippo violated her discovery obligations in failing to disclose that she had previously been charged with DUI and other crimes. Throughout discovery, the newspaper repeatedly asked Filippo if she had a prior criminal record. She had responded to an interrogatory asking for her entire criminal history by saying: “None for the past 10 year[s].” When asked outright in the deposition if she has previously been accused or convicted of a crime, she said, “No.”

Following the deposition, *The Times* uncovered a handwritten notation in storage in the local state court, and a microfiche file in another court clerk’s office, reflecting that Filippo had been arrested twice in 1989 – once for DUI, and the second time for disorderly conduct, criminal trespass, public intoxication and intimidation after threatening a police officer in a bar. Filippo pleaded guilty to criminal trespass a year later and re-

ceived a suspended jail sentence, according to these records.

The records showed that in each of these prior arrests, Filippo had been represented by the same lawyer who represents her in the libel lawsuit.

Filippo had agreed to sit for a second deposition in the libel case on the issue of damages. After concluding that examination, the newspaper’s counsel confronted Filippo with the criminal records. She refused to answer any questions. When pressed, her lawyer said that he had forgotten about the incidents and that all of her old records had been left at his prior law firm.

In opposing the newspaper’s request for sanctions, Filippo and her counsel asserted that she had forgotten the previous arrests. Her lawyer argued that the newspaper had an obligation to disclose all of the records it uncovered before taking her second deposition, and claimed that he had forgotten the prior incidents and left her records at his previous law firm so that he could not have consulted them in responding to discovery.

Reviewing this record and upholding the magistrate’s recommendation of sanctions, Judge Moody, in a 20-page opinion, showed no tolerance for these excuses. He observed that: “Barring some medical evidence of incapacity or faulty memory,” her explanation that she had forgotten her criminal record was “borderline ridiculous.” Moreover, “Unless a person is a habitual criminal, and in and out of court so often that proceedings start to blur together, one does not forget something like this.”

Judge Moody also called her lawyer’s interrogatory responses “blatantly incomplete” and his purported efforts to investigate his client’s criminal record “laughable” and a violation of duty.

The court also held that plaintiff’s lawyer – not defense counsel – had a duty to supplement discovery regarding Filippo’s criminal past, and that the newspaper’s counsel had acted in good faith.

The court ordered Filippo to pay \$9,800 in sanctions and her lawyer to pay \$6,900.