

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION

BLM OF THE SHENANDOAH VALLEY, )  
LLC, *et al.*, )  
Plaintiffs, )  
v. )  
DONALD L. SMITH, SHERIFF, )  
AUGUSTA COUNTY, *et al.* )  
Defendants. )

Civil Action No. 5:21-cv-60

By: Elizabeth K. Dillon  
United States District Judge

**ORDER DENYING MOTION FOR LEAVE TO FILE UNTIMELY OPPOSITION**

Plaintiffs moved for leave to file untimely oppositions (Dkt. Nos. 21, 22) to defendants’ motions to dismiss. (Dkt. Nos. 9, 11, 15.) The motions to dismiss were filed on September 29, 2021, October 1, 2021, and October 5, 2021, and the motions for leave were filed on November 30, 2021, and December 1, 2021. Incorporated within the motions for leave were the opposition briefs. Plaintiffs had to seek leave for a late filing because they did not comply with Local Rule 11, which requires an opposing party to file a responsive brief within 14 days of service of the moving party’s brief. This court’s chambers emailed counsel for both parties to check on the status of this matter on November 17, 2021, more than two weeks prior to the scheduled hearing on the motions to dismiss on December 6, 2021. Hearing nothing in response from plaintiffs’ counsel, on November 30, 2021, the court cancelled the hearing because it appeared that there was no opposition to the motions to dismiss.

Federal Rule of Civil Procedure 6 allows a court to extend the time to file “after the time has expired if the party failed to act because of excusable neglect.” Fed. R. Civ. P. 6(b)(1)(B). “Factors for a court to consider when evaluating whether a party has demonstrated excusable neglect for a delay include (1) ‘the danger of prejudice to the [other party]’; (2) ‘the length of the delay and its potential impact on judicial proceedings’; (3) ‘the reason for the delay, including whether it was

within the reasonable control of the movant’; and (4) ‘whether the movant acted in good faith.’” *In re Am. Nurses Ass’n*, 643 F. App’x 310, 313 (4th Cir. 2016) (quoting *Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. P’ship*, 507 U.S. 380, 395 (1993)). The Fourth Circuit has “stressed that the third *Pioneer* factor—the reason for the delay is the ‘most important.’” *Fernandes v. Craine*, 538 F. App’x 274, 276 (4th Cir. 2013) (quoting *Thompson v. E.I. DuPont de Nemours & Co.*, 76 F.3d 530, 534 (4th Cir. 1996)).

In plaintiffs’ motions for leave, plaintiffs explain in a one-sentence footnote that the filings were late “because Counsel was unfamiliar with the Court’s Local Rules pertaining to timely Opposition to a Motion (14 days from date of service), and with the press of other business in this and other Courts with the jurisdiction....” (Dkt. No. 21 at 1 n.1; Dkt. No. 22 at 1 n.1.) Counsel clearly did not further consult Local Rule 11, which requires motions to “be accompanied by a written brief setting forth a concise statement of the facts and supporting reasons, along with a citation of the authorities upon which the movant relies.” W.D. Va. Civ. R. 11(c)(1). Requesting leave to file an untimely opposition in the form of a footnote does not suffice. Even if it did, the justification given—unfamiliarity with local rules and a busy schedule—do not amount to excusable neglect. *See United States v. Chujoy*, F. Supp. 3d 660, 666 (W.D. Va. 2016). Plaintiffs’ counsel was admitted to practice in this district in November 2016, over five years ago, and he has served as counsel in several cases in this district since. Defendants oppose plaintiffs’ motions and note some, if not all, of these same deficiencies. Plaintiffs filed no reply, which reply may be filed but is not required to be filed.

If plaintiffs believed they needed more time to file opposition briefs to defendants’ motions to dismiss, they could have requested an extension prior to expiration of the deadline. Even after inquiry from this court more than two weeks in advance of the hearing on the motions, plaintiffs still did not file a motion for leave. It was only when the court cancelled the hearing that plaintiffs

sought leave—in the form of a single-sentence footnote with insufficient grounds. Excusable neglect does not take the form of ignorance of the local rules or the fact that counsel has other cases.

For these reasons, it is HEREBY ORDERED that plaintiffs' motions for leave to file untimely briefs in opposition (Dkt. Nos. 21, 22) are DENIED.

The clerk is directed to send a copy of this order to all counsel of record.

Entered: December 29, 2021.

*/s/ Elizabeth K. Dillon*

Elizabeth K. Dillon  
United States District Judge