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October 24, 2024

BY FEDEX

Hon. Cathy M. Cosby, Clerk of Court
Halifax County Circuit Court
8 S. Main Street
Halifax, VA 24558-0729

Re: *Joshua Caleb Shiver v. Acadia Healthcare LLC, et al.*
Case No. CL24000490-00

Dear Ms. Cosby:

Enclosed please find a Brief in Support of Motion for Leave to File Late Answer for filing in the above referenced matter.

Should you have any questions, please do not hesitate to contact me at the direct dial telephone number listed above.

Sincerely,



Gregory S. Bean

Enclosures

cc: Joshua Caleb Shiver (by U.S. Mail)

STATE OF VIRGINIA: HALIFAX CIRCUIT COURT

JOSHUA CALEB SHIVER,

Plaintiff,

v.

**ACADIA HEALTHCARE, LLC, and
SOUTHSTONE BEHAVIORAL
HEALTH,**

Defendants.

Case No: CL24000490-00

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE LATE ANSWER

Defendant Southstone Behavioral Healthcare Center, LLC (improperly sued as “Southstone Behavioral Health”) (hereinafter “Southstone”) submits the following Brief in Support of its Motion for Leave to File Late Answer.

I. ARGUMENT

Pursuant to Rule 3:19 of the Rules of the Supreme Court of Virginia, “[p]rior to the entry of judgment, for good cause shown the court may grant leave to a defendant who is in default to file a late responsive pleading.” Va. Sup. Ct. R. 3:19. Rule 1:9 of the Rules of Supreme Court of Virginia similarly allows for the filing of late pleadings, providing that “[t]he time allowed for filing pleadings may be extended by the court in its discretion and such extension may be granted although the time fixed already has expired.” Va. Sup. Ct. R. 1:9. “[C]ircumstances that support the exercise of discretion to extend the time for filing include lack of prejudice to the opposing party, the good faith of the moving party, the promptness of the moving party in responding to the opposing parties’ decision to progress with the cause, the existence of a meritorious claim or substantial defense, [and] the existence of legitimate extenuating circumstances ...” *AME Fin. Corp. v. Kiritsis*, 281 Va. 384, 392, 707 S.E.2d 820, 824 (2011).

A. Plaintiff will not be substantially prejudiced by allowing Defendant to file its Answer six (6) business days late.

“Ordinarily, a trial court should grant a good faith request for an extension of time ... [and] [e]ven after the time limit has expired, courts generally exercise discretion in favor of late filing where there is a reasonable excuse for the delay and the other party will not be surprised or substantially prejudiced.” *Bull v. Gentry*, 15 Va. Cir. 473 (Spotsylvania 1989).

Here, there is a reasonable excuse for delay. According to the online docket, after the Court granted Southstone’s Motion to Quash and denied Plaintiff’s Motion for Default, Southstone was served with the Complaint via registered agent on or about September 11, 2024. However, Counsel for Southstone did not have knowledge of service of process until October 10, 2024 when Counsel checked the docket of the Court to monitor the status of the case. Counsel discovered that service had been made and promptly filed Southstone’s Motion. The notification of service was sent by Southstone to its counsel but mistakenly thought to be spam. As soon as counsel was aware that Southstone had been served immediate action was taken.

In his Opposition Brief, Plaintiff cited a non-binding Fifth Circuit opinion, which is readily distinguishable from this case. *See generally, Rollins v. Home Depot USA, Inc.*, 8 F.4th 393 (2021). The issue in that case was whether the court should have denied a Motion to Alter or Amend Judgment under Federal Rule of Civil Procedure Rule 59(e) based on granting a Motion for Summary Judgment after plaintiff’s counsel failed to file a responsive pleading based on a glitch in his email system. *Id.* at 396. This Court operates under the Rules of the Supreme Court of Virginia, and summary judgment is not at issue at present. Further, Mr. Shiver’s Motion for Default has not even been argued much less granted and a final judgment entered.

Additionally, Mr. Shiver will suffer no prejudice if Southstone’s Motion is granted. This case is in its most infantile stage and the proposed Answer was filed only six (6) business days

beyond the deadline. This case has not been set for trial, discovery has not begun and there is no scheduling order in place. Should Mr. Shiver have any additional costs or fees as a result of this delay, which does not appear to be the case, Southstone is agreeable to reimbursing Plaintiff. However, should its motion not be granted, Southstone will be substantially prejudiced.

B. Southstone has acted in good faith in filings its Answer.

While "good cause" is certainly a necessary component of the Court's analysis, the underlying principle of Rule 3:8(b) is to prevent "unconscionable delay," dilatoriness, or "neglect" by the litigants. *Nauman v. Samuels*, 73 Va. Cir. 411, 416 (Cir. Ct. 2007).

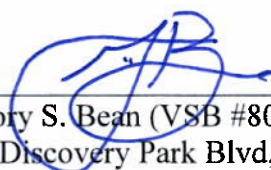
Southstone's counsel acted immediately to correct this error without delay, dilatoriness or neglect. Plaintiff has not shown, and is unable to show, any bad faith on part of Southstone. Prior to the filing of this Motion, Southstone has demonstrated consistent commitment to timely filings and attendance at hearings. *See e.g. Yang v. Kim*, 89 Va. Cir. 423 (Fairfax 2015) (allowing late filed pleadings based in part on the party's participation in prior pleadings). Southstone has been prompt in pursuing its defenses. Further, Southstone has meritorious defenses to Plaintiff's allegations, and a default would work a substantial injustice to Southstone. The nature of the delivery of the notice of service in this situation constitutes a legitimate extenuating circumstance and when Southstone's counsel became aware of this circumstance, they immediately sought to remedy the situation. Based on the totality of the circumstances, Southstone has demonstrated good cause to justify filing of its late Answer and Plaintiff will not be prejudiced by granting this Motion.

II. CONCLUSION

WHEREFORE, for the reasons set out above, Defendant Southstone Behavioral Healthcare Center, LLC (improperly sued as "Southstone Behavioral Health"), respectfully requests that this

Court grant it leave to file late responsive pleadings and deem its Answer, filed concurrently with its Motion, as timely filed.

**Respectfully submitted,
Defendant Southstone Behavioral Healthcare Center,
LLC (improperly sued as "Southstone Behavioral
Health")**

BY: 

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**Counsel for Defendant Southstone Behavioral
Healthcare Center, LLC (improperly sued as
"Southstone Behavioral Health")**

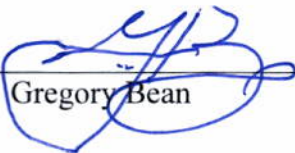
CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing in the above-entitled action upon all other parties to this cause by depositing a copy hereof, postage paid, in the United States mail, addressed to said parties as follows:

Joshua Caleb Shiver
3508 Bell Street
Norfolk, VA 23513
Pro se Plaintiff

This the 24th day of October, 2024.

GORDON REES SCULLY MANSUKHANI

BY:  _____
Gregory Bean