

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
v.)
)
Bruce J. Scambler,)
)
Defendant.)

APR - 7 2015

TIM RHODES
COURT CLERK

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Case No. CJ-2014-1346

**PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S ADDITIONAL
RESPONSES TO MOTION FOR SUMMARY JUDGMENT**

Plaintiff moves to strike the Reply of Defendant to Motion for Summary Judgment and Motion of Defendant to Reconsider Previous Ruling Based on New Evidence ("MSJ Response") that was filed by Defendant in this matter on March 24, 2015, and the Supplement to Defendant's Reply to Plaintiff's Motion for Summary Judgment, Reply to Claim for Fees, Defendant's Motion to Strike and Supplement to Defendant's Motion to Reconsider Previous Ruling based on New Evidence ("Supplement") that was filed on April 2, 2015. The MSJ Response and Supplement should be stricken because they do not contain a concise written statement of the material facts as to which a genuine issue exists, with evidentiary materials referenced, as required by Rule 13(b) of the Rules for District Courts of Oklahoma, and they do not comply with Rule 37 of the Rules of the Seventh and Twenty-Sixth Judicial Districts.

The MSJ Response is Defendant's second written opposition to the motion for summary judgment filed by Plaintiff on December 31, 2014. The Court struck Defendant's first opposition on March 6, 2015, after finding that Defendant's supporting affidavit was filed in bad faith. If the MSJ Response and Supplement are stricken, Defendant should not be allowed another opportunity to respond to Plaintiff's motion for summary judgment. Instead, Plaintiff's motion for summary judgment should be granted.

ARGUMENT AND AUTHORITIES

Defendant's attorney of record has not sought, or obtained, leave of the Court as required to withdraw from this case. See Okla. Stat. tit. 12, § 2005.2(C) (2011). Yet, Defendant filed the MSJ Response and Supplement *pro se*. If Defendant represents himself in this action, he must be held to the same standards as an attorney. See, e.g., *Funnell v. Jones*, 1985 OK 73, ¶ 4, 737 P.2d 105, 107; *L'ggrke v. Sherman*, 2009 OK 80, ¶ 8, 223 P.3d 383, 385; *Fuchs v. Fleetwood Homes of Texas*, 2006 OK CIV APP 148, ¶ 15, 149 P.3d 1099, 1102. Because the MSJ Response and Supplement do not comply with the Rules for District Courts of Oklahoma or the local district court rules, they should be stricken and Plaintiff's motion for summary judgment should be granted.

I. The MSJ Response and Supplement do not comply with Rule 13(b) of the Rules for District Courts of Oklahoma.

Rule 13(b) of the Rules for District Courts of Oklahoma provides, in pertinent part:

Any party opposing summary judgment...shall file with the court clerk...a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion....In the

statement, the adverse party...shall set forth and number each specific material fact which is claimed to be in controversy and **reference shall be made to the pages and paragraphs or lines of the evidentiary materials.**

Okla. Dist. Ct. R. 13(b) (emphasis added).

Buried within the irrelevant and meaningless information in Defendant's MSJ Response is Section II that is entitled, "Response to Plaintiff's Statement of Material Facts for which Genuine Issue Exists." In Section II, Defendant sets forth and numbers each specific material fact that Defendant claims to be in controversy. However, Defendant failed to reference any evidentiary materials that support such claims of controversy. As a result, the MSJ Response does not comply with Rule 13(b) of the Rules for District Courts of Oklahoma. Neither Plaintiff nor the Court should be required to search through the 14 exhibits to the MSJ Response to determine what, if any, of the evidence supports Defendant's claims that there are material facts in dispute. The Supplement does not contain a concise written statement of the material facts as to which a genuine issue exists, with evidentiary materials referenced, either. Defendant's MSJ Response and Supplement should be stricken.

II. The MSJ Response and Supplement do not comply with Rule 37 of the local district court rules.

Rule 37(B) of the Rules of the Seventh and Twenty-Sixth Judicial Districts provides, in pertinent part:

All motions, applications and responses thereto, including briefs...shall not exceed **twenty (20) pages** in length, excluding exhibits, without prior permission of the assigned judge. Reply briefs shall be limited to five (5) pages in length. Page limitations herein exclude only the cover, index, appendix, signature line and accompany information identifying attorneys and parties, and

certificate of service. **No further briefs shall be filed without prior permission of the assigned judge.**

7th & 26th Jud. Dist. R. 37(B) (emphasis added; original emphasis removed). Further, Rule 37(A) requires that briefs be double-spaced. See 7th & 26th Jud. Dist. R. 37(A). Any motion or brief filed in violation of Rule 37 "**shall not** be considered by the assigned judge and **shall be** stricken from the record." 7th & 26th Jud. Dist. R. 37(E) (emphasis added).

The MSJ Response consists of 29 pages, excluding the verification page, certificate of mailing, and exhibits. The Supplement is an additional eight pages of opposition to summary judgment. The Supplement was filed without prior permission of the Court. The spacing in both briefs appears to be less than double which make a five page reply even more difficult. The MSJ Response and Supplement violate Rule 37 and must be stricken from the record.

CONCLUSION

Defendant's MSJ Response and Supplement should be stricken because they do not comply with Rule 13(b) of the Rules for District Courts of Oklahoma or Rule 37 of the local district court rules. If the MSJ Response and Supplement are stricken, Defendant should not be afforded another opportunity to respond to Plaintiff's motion for summary judgment—especially in light of the fact that his first opposition was determined to have been submitted to the Court in bad faith. Instead, Plaintiff's motion for summary judgment should be granted.

Plaintiff requests an order striking the MSJ Response and Supplement in their entirety and granting Plaintiff's motion for summary judgment.

Respectfully submitted,



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CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 7th day of April, 2015, a true and correct copy of the above and foregoing motion was mailed with postage prepaid thereon, addressed to:

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