

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE,  
AT CHATTANOOGA**

**FILED**  
2010 JAN 12 A 10:49

**ROY L. DENTON,**  
*Plaintiff*

v.

**STEVE RIEVLEY,**  
*in his individual capacity*  
*Defendant*

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U.S. DISTRICT COURT  
EASTERN DIST. TENN.  
Case No. **1:07-cv-211**  
BY \_\_\_\_\_ DEPT. CLERK  
Judge: **Collier/ Carter**

**JURY DEMAND**

**MOTION TO STRIKE DEFENDANT STEVE RIEVLEY'S RESPONSE TO  
PLAINTIFF'S MOTION TO EXCLUDE DISCOVERY**

Comes now, the Plaintiff Roy L. Denton, pursuant to Federal Rules of Civil Procedure Rule 12(f) and hereby respectfully states the following:

1. Plaintiff filed his Motion to Exclude Discovery Not Timely Disclosed on **September 14, 2009**. (See Court Doc. 62)
2. Pursuant to the Eastern District of Tennessee's Local Rule of Civil Procedure 7.1(a) and Federal Rules of Civil Procedure 6(a) and (e), Defendant Steve Rievley's response to the Motion was due to be filed no later than **October 7, 2009**.
3. Defendant did not file his Response to the Motion until **December 29, 2009**. (See Court Doc. No. 70)
4. Plaintiff failed to request an extension of time in which to respond to the Motion pursuant to F.R.C.P. 6(b) and Eastern District of Tennessee's Local Rule of Civil Procedure 12.1.
5. Defendant, who was represented at all material times by able counsel, chose to defend this action; as such he is required to abide by the rules of the Court.

6. While the Court may, in its discretion, consider an untimely response to a motion (see generally The Assisted Living Group, Inc. v. Upper Dublin Township, 1997 U.S. Dist. LEXIS 19554, No. CIV.A.97-3427, (E.D.Pa. Dec. 8, 1997)), in this matter Defendant has offered up to the court no request, explanation or even attempted to seek leave of this court to explain some sort of “excusable neglect” for his extremely late filing of his response of over three months past his required time to respond.

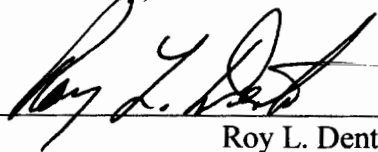
7. Eastern District of Tennessee’s Local Rule of Civil Procedure 7.2 states in pertinent part: “...*Failure to respond to a motion may be deemed a waiver of any opposition to the relief sought.*”

8. Defendant’s submission of his grossly untimely response to motions in this action is unjustified and should not be excused.

9. Defendant’s untimely filing of his Response to the Motion should not be considered by this Court.

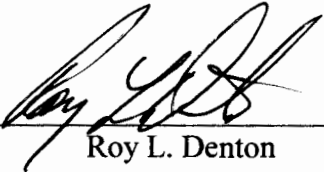
WHEREFORE, Plaintiff Roy L. Denton, in his *pro se* capacity, prays that this Honorable Court for the reasons stated herein, Grant this Motion and Strike from the record Defendant’s Steve Rievley’s untimely late Response to Plaintiff’s Motion to Exclude Discovery found at Court Doc. No. 70, as untimely.

Respectfully submitted, this 11<sup>th</sup> day of January, 2010.

BY:   
Roy L. Denton, *pro se*  
120 6<sup>th</sup> Ave.  
Dayton, TN 37321  
423-285-5581

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that an exact copy of this document has been served upon all parties of interest in this cause by placing an exact copy of same in the U.S. Mail addressed to such parties, with sufficient postage thereon to carry same to it's destination, on this 11<sup>th</sup> day of January, 2010.

  
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Roy L. Denton

Copy mailed to:

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