

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

ROY L. DENTON)	
)	
Plaintiff)	Case No. 1:07-cv-211
)	
v.)	JURY DEMAND
)	
STEVE RIEVLEY)	Collier/Carter
)	
Defendant)	

**DEFENDANT’S RESPONSE TO
PLAINTIFF ROY L. DENTON’S MOTION TO STRIKE DEFENDANT STEVE
RIEVLEY’S RESPONSE TO PLAINTIFF’S MOTION TO EXCLUDE DISCOVERY**

Comes the Defendant, Steve Rievley, in his individual capacity, (herein “Officer Rievley”), and hereby responds to the Plaintiff’s Motion to Strike Officer Rievley’s Response. For cause, Officer Rievley would show this Court as follows.

In the present case, the Plaintiff filed his Motion to Exclude Discovery Not Timely Disclosed on September 14, 2009. (*Court Doc. 62*). Officer Rievley filed his Response to the Motion on December 29, 2009. (*Court Doc. 70*).

Although Local Rule 7.1(a) does set forth a brief scheduling for filing a response to a motion, it is not a strict requirement such that it mandates that this honorable Court strike Officer Rievley’s Response. In *Seay v. Tennessee Valley Authority*, 339 F.3d 454, 480 (6th Cir. 2003), the decision to deny grant or deny a motion to strike is reviewed under the abuse of discretion standard. *Id.* (*Collazos-Cruz v. United States*, 117 F.3d 1420 (Table), 1997 WL 377037, at *2 (6th Cir. July 3,

1997) (*per curiam*) (citing *Whitted v. Gen. Motors Corp.*, 58 F.3d 1200, 1203 (7th Cir.1995)); *see also Beaird v. Seagate Tech., Inc.*, 145 F.3d 1159, 1164 (10th Cir.1998) (applying an abuse of discretion standard to the district court's ruling allowing the defendant to file a reply brief but denying the plaintiffs' motion to file a surreply brief). In the *Seay* case, the defendant filed four Motion for Summary Judgments followed by the plaintiff's responses. *Seay*, 339 F.3d at 461. The defendant then filed late reply briefs to the plaintiff's responses. *Id.* The Plaintiff filed a Motion to Strike the defendant's reply briefs and supplemental evidentiary submissions because such filings were not in compliance with Local Rule 7.1. *Id.* The District Court denied the Motion to Strike and accepted the late filings but refused to allow the Plaintiff to file a surreply brief. *Id.* at 480-81. Ultimately, the defendant prevailed on the Motion for Summary Judgment, and the plaintiff appealed. *Id.* The Sixth Circuit upheld the district court's decision to allow the late filings, stating

[a]lthough the second and third reply briefs were not timely filed in accordance with Local Rule 7.1, we do not agree with Plaintiff that it would always be appropriate, barring extreme circumstances, for us to preclude a submission to the district court for failure to comply with the requirements of a local rule. Enforcing timely filing, on these facts, does not constitute an extreme circumstance. We therefore are not inclined to reverse based on the district court's decision not to strictly enforce Local Rule 7.1.

Id. at 481. (internal citations omitted); (see also *Salehpour v. Univ. of Tenn.*, 159 F.3d 199, 205 (6th Cir.1998) (stating that a claim or motion should only be dismissed for failure to follow a local rule in extreme circumstances) (citing *Stough v. Mayville Comm'ty Schs.*, 138 F.3d 612, 614-15 (6th Cir.1998))).

In the case at bar, the Plaintiff can show no such extreme circumstance that would justify striking this Defendant's Response for failure to follow a local rule. The Plaintiff has an opportunity to file a Reply to Officer Rievley's Response but as of yet has chosen not to do so. This Court has

not yet entered an Order on the instant Motion. At the time Officer Rievley filed his Response, no trial date had been set. (See *Court Doc. 72*). The Plaintiff cannot show that he has been prejudiced in any way whatsoever by the timeliness of the filing of the Defendant's Response to his Motion. Accordingly, Officer Rievley respectfully requests that this Court use its discretion and deny the Plaintiff's Motion to Strike.

Respectfully submitted,

ROBINSON, SMITH & WELLS
Suite 700, Republic Centre
633 Chestnut Street
Chattanooga, TN 37450
Telephone: (423) 756-5051
Facsimile: (423) 266-0474

By: s /B. Elizabeth Dickson
Ronald D. Wells, BPR# 011185
B. Elizabeth Dickson, BPR # 022762
Attorney for Defendant, Steve Rievley

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of February, 2010 a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

This the 5th day of February, 2010

Robinson, Smith & Wells

By: s/B. Elizabeth Dickson

cc: Roy L. Denton
120 6th Avenue
Dayton, TN 37321

/020510/BED/daytontenton.respmotstrikedisc.wpd