

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

JIM SISNEY, an individual,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 09-CV-253-TCK-PJC
)	
INDEPENDENT SCHOOL DISTRICT)	
NO. 3 OF TULSA COUNTY, a Political)	
Subdivision; and the BROKEN ARROW)	
SCHOOL BOARD,)	
)	
Defendants.)	

**OPENING BRIEF IN SUPPORT OF DEFENDANT’S MOTION TO
COMPEL PLAINTIFF TO PROVIDE WITNESS LIST AND PROPOSED
EXHIBITS AND TO COMPLY WITH WRITTEN DISCOVERY REQUESTS**

The Defendant, Independent School District No. 3 of Tulsa County, Oklahoma a/k/a Broken Arrow Public Schools (the “District”), respectfully submits this brief in support of its motion to compel the plaintiff, Jim Sisney, to provide a witness list and proposed exhibits and to comply with the District’s written discovery requests.

Background

Sisney is the former Superintendent of the District. He brought this action after the District’s Board of Education voted to dismiss him from that position. Sisney has asserted federal law claims against the District under 42 U.S.C. § 1983 for deprivation of property and liberty without due process of law and a state law claim for breach of contract.

The court entered a Scheduling Order in this matter on August 26, 2009 [Dkt. No. 14]. The Scheduling Order required the parties to exchange witness lists and proposed

exhibits by November 2, 2009. The Scheduling Order further requires that discovery be completed by December 31, 2009. (See Scheduling Order, Exhibit 1).

The District served its first written discovery requests on Sisney on October 5, 2009. On the same day, October 5, 2009, the District filed its motion to compel Sisney to comply with the disclosure requirements of Rule 26, FED. R. CIV. P. [Dkt. No. 15].¹

The following day, October 6, 2009, Sisney filed a motion requesting the Court to dismiss the instant action without prejudice pursuant to Rule 41(a)(2) [Dkt. No. 16].²

Sisney served his initial responses to the District's first written discovery requests on November 4, 2009. In so responding, plaintiff's counsel produced a total of 18 pages of documents, and rather than providing meaningful and proper answers to interrogatories plaintiff interjected a myriad of boilerplate and questionable objections which could only be viewed as an attempt to manipulate, delay, and unnecessarily hinder the District's effort to conduct meaningful and legitimate discovery regarding the plaintiff's claims and damages. (See Plaintiff's Initial Responses to School District's Discovery Requests, Exhibit 2).

Pursuant to LCvR 37.1, counsel for the District met with counsel for Sisney at Sisney's counsel's office on Friday, November 13, 2009, to attempt to resolve this dispute without filing a motion to compel. During this meeting, counsel for Sisney

¹ Sisney has not filed a response to this motion.

² The District filed a response in opposition to this motion on October 26, 2009 [Dkt. No. 17], and Sisney filed a reply on November 9, 2009 [Dkt. No. 18].

agreed to supplement his Sisney's discovery responses. (See Letters to Plaintiff's Counsel, Exhibit 3).

The District received Sisney's supplemental answers to its written discovery requests on November 20, 2009. (See Plaintiff's Supplement Responses to School District's Discovery Requests, Exhibit 4).³ Because a number of Sisney's supplemental discovery responses are inadequate, incomplete and/or assert baseless objections, the District has no alternative but to file this motion to compel.

Argument and Authorities

Proposition I

Sisney Has Not Complied with the Scheduling Order's Requirement for Exchanging Witness Lists and Proposed Exhibits

The Court's Scheduling Order required the parties to exchange witness lists and proposed exhibits by November 2, 2009. Pursuant to the Scheduling Order, the District timely provided Sisney a list of witnesses and proposed exhibits.

To date, Sisney has failed and refused to supply the District with a list of his witnesses and proposed exhibits, despite even having been reminded of his obligation by the District's counsel. (See Letter to Plaintiff's Counsel, Exhibit 5). Additionally, Sisney has provided no explanation for his disregard of this requirement of the Scheduling Order. Therefore, the court should enter an order compelling Sisney to comply with the Scheduling Order by immediately delivering to the District a copy of his witness lists and proposed exhibits.

³ Page 2 of the Supplemental Response was not provided when this document was forwarded by plaintiff's counsel; and although requested, it has not yet been received.

Proposition II

Sisney Has Not Complied with the District's Discovery Requests

A. Interrogatories Regarding Plaintiff's Liberty Interest Claim.

In his complaint, the plaintiff alleges that as a result of his termination from the School District, he was deprived of liberty without due process of law under circumstances which created "a significant stigma that forecloses his freedom to take advantage of other similar employment opportunities." Complaint, ¶ 27 [Dkt. No. 1]. Regarding this claim, the School District asked, in Interrogatories 1 and 4, for information regarding employment opportunities that Sisney had pursued since his termination by the District and which opportunities had been denied him because of his termination.

INTERROGATORY NO. 1: Identify all persons and companies to whom you have submitted any inquiry or application for employment since September 1, 2008.

ANSWER NO. 1: I have communicated with various districts, explored alternative career options, spoke to someone in Rockwell, Texas regarding an Assistant Superintendent position, received one offer for Interim appointment with Sperry Public Schools, which has since become permanent.

INTERROGATORY NO. 4: Identify all employment opportunities that you assert were not available to you as a result of your dismissal from the Broken Arrow School District on October 23, 2008.

ANSWER NO. 4: Plaintiff is unaware, at this time of any/all employment opportunities that were unavailable to him as a result of his dismissal from BASD.

Sisney's supplemental answer to Interrogatory 1 is evasive and nonresponsive. Although he asserts that he has made inquiry into job opportunities with numerous potential employers, the only one he actually identifies is the Sperry School District. Sisney should be required to provide a full and complete answer to Interrogatory 1 in which he properly identifies all prospective employers to whom he has made inquiry or submitted an application since September 1, 2008.

Similarly, Sisney's supplemental answer to Interrogatory 4 is evasive and nonresponsive. This interrogatory can be simply answered by identifying those job offers Sisney alleges he did not receive as a result of his dismissal from the School District – as plaintiff's counsel was informed during the LCvR 37 conference. Plaintiff, nevertheless, has not provided this information.

Accordingly, plaintiff should be compelled to provide full and complete answers to Interrogatories 1 and 4.

B. Interrogatories Regarding Plaintiff's Due Process Claim.

After being served with Sisney's complaint in this matter, the District timely filed a motion to dismiss in which it asked the Court to take judicial notice of the fact that Sisney was offered a pre-termination due process hearing and declined such a hearing. Opening Brief in Support of Defendant's Motion to Dismiss, pp. 2-4, 6-15 [Dkt. No. 9]. In his response, Sisney argued that he was never offered a fair hearing because the District's Board of Education was biased against him. Plaintiff's Response to Opening Brief in Support of Defendants' Motion to Dismiss, pp. 4-17 [Dkt. No. 10].

Regarding his claim of alleged bias, the School District in Interrogatories 9 and 13 sought information regarding Sisney's claim that he was not offered a fair hearing before an unbiased tribunal.

INTERROGATORY NO. 9: In paragraph 15 of your Complaint, you allege that three members of the Broken Arrow School District Board of Education "began a concerted pattern of retaliation against Sisney, ultimately leading to his dismissal." With respect to these three board members, identify the date, time and place of each act(s) that you assert constituted a concerted pattern of retaliation.

ANSWER NO. 9: Objection. This Interrogatory is premature as this case remains in the early stages of discovery. However, without waiving said objection, Plaintiff lists the meeting boycott on August 25, 2008, various communications with the PTA, Doug Mann's various directives to specific Board members and open records issues as a non-exhaustive list of acts. Dates further supplemented on documents attached hereto.

INTERROGATORY NO. 13: Identify all material facts that support your claim that you were "not afforded the opportunity, upon termination, to receive a 'meaningful' hearing to clear his name[,] as alleged in paragraph 27 of your Complaint.

ANSWER NO. 13: Objection. This Interrogatory is premature as this case remains in the early stages of discovery. However, without waiving said objection, attorney Douglas Mann was hired to represent the interests of the School Board, as a whole, however attorney Mann has failed to fulfill his legal obligations to the Board as a whole and consistently and overtly represented only the interests of three specific board members, Maryanne Flippo, Shari Wilkins and Sharon Whelpley. Throughout attorney Mann's "representation" he has advised Flippo, Wilkins and Whelpley to the detriment of the entire Board, the Broken Arrow School District and the Superintendent of Schools. A pattern of retaliatory behavior and pressure from the board ensued against Dr. Sisney. His refusal to dismiss the issues he discovered in relation to AA infuriated three (3) members of the School Board and they began a concerted pattern of retaliation against Sisney, ultimately leading to his dismissal. The "hearing" that was offered was set before a biased tribunal, to include the three ill-advised, retaliating board members. The three members of the Board and Mike Rampey wanted Dr. Sisney gone as part of a continuation of the criminal scheme.

Sisney's supplemental answers to Interrogatory 9 and 13 are evasive and nonresponsive. To both interrogatories, he had interjected a single meritless objection – that the interrogatories are premature because the case is in the early stages of discovery. These objections are without merit because (i) the mere fact that a case is in the “early stage of discovery” is not a proper objection to responding to interrogatories, and (ii) this action is far from being in the early stages of discovery, as discovery ends on December 31, 2009 under the court's Scheduling Order.

Additionally, Sisney has failed to give full and complete answers to Interrogatories 9 and 13. Sisney's answer to Interrogatory 9 contains – in plaintiff's own words - a “non-exhaustive list of acts.” Interrogatory 9 did not seek a “non-exhaustive list of acts.” Rather, it required the plaintiff to identify, with respect to the three board members, “the date, time and place of each act(s) that [Sisney] assert[s] constituted a concerted pattern of retaliation.” This plaintiff has failed to do. As for Sisney's supplemental answer to Interrogatory 13, he has not stated the material facts upon which he bases his claim that he was denied a meaningful hearing to clear his name. Rather than providing facts as sought by the interrogatory, Sisney merely parrots the conclusory allegations contained in his complaint.

Accordingly, plaintiff should be compelled to provide full, complete, and verified answers to Interrogatories 9 and 13.

C. Interrogatory Regarding Plaintiff's Breach of Contract Claim.

Interrogatory 14 sought information regarding Sisney's claim that the District breached his contract of employment:

INTERROGATORY NO. 14: Identify all the ways by which you assert the Broken Arrow District breached your employment contract.

ANSWER NO. 14: Objection. This Interrogatory is premature as this case remains in the early stages of discovery. Further, this interrogatory seeks legal analysis. However, without waiving said objection, Dr. Sisney was terminated from his position by way of a pattern of retaliatory behavior and pressure from the School Board that ensued against him, in violation of his employment contract, when he was made aware of possible violations of Oklahoma's Competitive Bidding Laws by AA. When he refused to discontinue investigation, his refusal infuriated three (3) members of the School Board and they began a concerned pattern of retaliation against Sisney, ultimately leading to his dismissal and breach of the employment contract to which he and the said Defendant are parties.

Sisney's supplemental answer to Interrogatory 10 is nonresponsive. His objections are without merit. The fact that this case is in the early stages of discovery does not entitle a litigant to refuse to cooperate in discovery. Furthermore, plaintiff's objection that the interrogatory seeks legal analysis is equally unfounded.

Accordingly, plaintiff should be compelled to provide a full, complete, and verified answer to Interrogatory 14.

D. Interrogatory Regarding Plaintiff's Assertion that the School District Violated the Oklahoma Competitive Bidding Act.

One of the central components of Sisney's lawsuit is his assertion that the contract between Air Assurance and the District was in violation of the Oklahoma Competitive Bidding Act (*see* Sisney's supplemental answers to Interrogatories 10, 13 and 14). By Interrogatory 15, the District sought to discover the basis for this assertion:

INTERROGATORY NO. 15: Identify all opinions (legal or otherwise) in your custody, possession or control that support your claim that – with regard to Air Assurance – the Broken Arrow School District violated Oklahoma’s Competitive Bidding Laws from 2005 to date.

ANSWER NO. 15: Objection. This Interrogatory is premature as this case is in the early stages of discovery. In addition, this Interrogatory calls for legal conclusions and is protected by the attorney-client privilege as well as considered attorney work product. Privilege log attached hereto.

Sisney’s supplemental answer is completely nonresponsive, and his objections are without merit. The fact that this case is in the early stages of discovery does not entitle a Sisney to refuse to cooperate in discovery. Further, the interrogatory does not seek to discover information protected by the attorney-client privilege or the attorney work product doctrine. Rather, the interrogatory seeks to discover the opinions – whether legal or otherwise – on which Sisney relied to support his allegation that Air Assurance and the District violated the Oklahoma Competitive Bidding Act.

Accordingly, plaintiff should be compelled to provide a full, complete, and verified answer to Interrogatory 15.

E. Discovery Requests Regarding Recordings and Communications Between Plaintiff Others Related to Plaintiff’s Claims.

In his initial disclosures submitted in this case, Sisney specifically disclosed the existence of “recordings of conversations between Defendants and Plaintiff.” (See Plaintiff’s Rule 26 Disclosures, paragraph B.2., Exhibit 6). In Interrogatories 17 and 18, and Requests for Production 24 and 25, the School District sought identification and production of these recordings, as well as other written communications and documents related to the claims asserted by Sisney in his complaint.

INTERROGATORY NO. 17: Identify all recorded communications, written communications and documents between you and any former or current employees and board members of the Broken Arrow School District that refer to or are related to any of your claims contained in your Complaint.

ANSWER NO. 17: Objection. This Interrogatory is overly broad, cumulative in nature and unduly burdensome. However, without waiving said objection, communications include memorandums from Superintendent Jim Sisney, e-mails between Jim-Sisney and board members, e-mails between Jim Sisney and other school employees and other inter-school and related documents, all of which are attached hereto. Plaintiff reserves the right to supplement this Answer as discovery progresses.

INTERROGATORY NO. 18: Identify all recorded communications, written communications and documents exchanged between you and any individual(s) that refer to or are related to any of your claims contained in your Complaint between the dates of April 1, 2008 and December 31, 2008.

ANSWER NO. 18: Objection. This Interrogatory is overly broad, cumulative and unduly burdensome. Further, this interrogatory is protected by the attorney-client privilege as well as attorney work product. Privilege log attached hereto.

REQUEST NO. 24: Produce all documents and recordings identified in your answer to Interrogatory No. 17.

RESPONSE NO. 24: Objection. This Request is overly broad, cumulative in nature and unduly burdensome. Without waiving such objection, documents attached hereto.

REQUEST NO. 25: Produce all documents and recordings identified in your answer to Interrogatory No. 18.

RESPONSE NO. 25 Objection. This Request is overly broad, cumulative in nature and unduly burdensome. Further, this Request is protected by the attorney-client privilege as well as attorney work product. Privilege log attached.

With his supplemental responses, the Sisney has not identified or produced any recordings, including those alluded to in his initial disclosures. The fact that Sisney disclosed the existence of these recordings in his initial disclosures precludes Sisney from

claiming that production of such recordings would be unduly burdensome. And Sisney's description of the recordings as "conversations between Defendants and Plaintiff" establishes that such recordings are not protected by either the attorney-client privilege or as attorney work product. Additionally, Sisney has interposed multiple boilerplate objections to the School District's discovery requests and has not identified and produced the requested documents – documents that are reasonably calculated to lead to the discovery of admissible evidence.

Accordingly, plaintiff should be compelled to provide full, complete, and verified answers to Interrogatories 17 and 18 and full and complete responses to Requests for Production 24 and 25.

WHEREFORE, premises considered, the School District requests that the court enter an appropriate order compelling the plaintiff to fully and completely respond to Interrogatories 1, 4, 9, 13, 14, 15, 17, 18 and Requests for Production 24 and 25, and award the School District such other relief as the court deems just and proper under the circumstances.

Respectfully submitted,

s/ Kent B. Rainey
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of December, 2009, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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