

On August 12, 2008, Attorney Douglas Mann and the law firm of Rosenstein, Fist & Ringold, were hired to represent the interests of the School Board, as a whole, for Defendant Independent School District No. 3. Throughout attorney Mann and Rosenstein's "representation", advice was given to three specific Board Members of Defendant School District, Maryanne Flippo, Shari Wilkins and Sharon Whelpley, to the detriment of the entire Board, the Broken Arrow School District and the Plaintiff, as Superintendent.

Plaintiff Jim Sisney filed a Petition in the Tulsa County District Court against Mike Rampey, Douglas J. Hudkins and School Board Members Maryanne Flippo, Shari Wilkins, Sharon Whelpley, based upon assertions of individual and collective actions and/or involvement of those Defendants in unlawful and or wrongful conduct, involving the Broken Arrow School System, its employees and vendors, and said conduct occurring to the detriment of the Plaintiff. Following the filing of that lawsuit, the School Board voted 3-2 to terminate Dr. Sisney's employment with the Broken Arrow School District on October 23, 2008. The Board Members voting in favor of Dr. Sisney's termination were Maryanne Flippo, Shari Wilkins and Sharon Whelpley.

The instant lawsuit was filed based upon the concerted pattern of behavior that surrounded Plaintiff's termination. A subsequent lawsuit was filed in the Northern District of Oklahoma, Case Number 09-CV-253-TCK-PJC. In that case, Plaintiff named Independent School District No. 3 as a Defendant and asserted claims for violations of due process and breach of contract. Counsel determined through case development that Plaintiff's claims and remedies were those best addressed by the laws sounding in state court. Accordingly, Plaintiff filed an Application for dismissal of his federal case without prejudice, which Application remained undecided until Plaintiff filed a Motion to Recuse Judge Terrence Kern on January 28, 2010, based upon a conflict of interest. Judge Kern

recused himself on February 2, 2010 and within twenty-four hours of that recusal, Judge Claire Egan granted Plaintiff's Application for Dismissal Without Prejudice on February 3, 2010.

ARGUMENTS AND AUTHORITIES

Pursuant to O.S. 12 § 2015, the Court may grant leave to amend as justice so requires. Pursuant to O.S. 12 § 2021, the Court may add or drop parties as justice requires. Parties may be added by order of the court on a motion by any party or on the Court's own initiative at any stage of the action. During the course of this litigation, Plaintiff has discovered that Independent School District No. 3 and Air Assurance Co. are Proper Party Defendants to this lawsuit. During the course of this litigation, Plaintiff has discovered that claims for breach of contract, constructive termination and breach of the implied covenant of good faith and fair dealing exist. Should leave to amend not be granted, Plaintiff could be forced to file a separate action that will result in duplicitous litigation over similar issues. Plaintiff should be allowed to amend his Petition in order to assert the requested proper claims against the proper parties.

I. BREACH OF CONTRACT

Oklahoma Courts have held that a school employee who alleges that a termination decision breached his employment contract must show either that the school district violated the employee's procedural due process rights or that it acted arbitrarily and capriciously in terminating him. A decision is arbitrary and capricious "if there is no support for it in the record and it is therefore a willful and unreasoning action, in disregard of facts and circumstances." *Patrick v. State ex. rel. Board of Education*, 1992 OK CIV APP 153, 842 P.2d 767. Jim Sisney's termination breached his employment contract because the school district, by way of Attorney Doug Mann of Rosenstein, Fist & Ringold, Shari Wilkins, Maryanne Flippo and Sharon Whelpley, acted arbitrarily and capriciously

in terminating him. *Childers*, 1992 OK CIV AP 50. In fact, Plaintiff asserts that the instant situation, is, in fact, the very definition of “arbitrary and capricious”. *See id.* Attorney Doug Mann, Shari Wilkins, Maryanne Flippo and Sharon Whelpley orchestrated the “five reasons” for termination as a conclusion to their scheme to oust Jim Sisney as Superintendent. In fact, Attorney Doug Mann has previously addressed the issue of a Superintendent’s termination and found none of the mentioned reasons sufficient for a vote of termination. *See* Correspondence of Attorney Doug Mann to Superintendent, Exhibit “A”.

Defendant offers only the Affidavits of the three Board Members at issue as evidence in support of Jim Sisney’s termination. *See* Special Appearance of the Broken Arrow School District and Objection to Plaintiff’s Motion to Amend Petition, Exhibits 2-4. The Affidavit of Mr. Stover attached by Defendant demonstrates, specifically, that based upon the “evidence” presented, or lack thereof, in a closed session meeting with the School Board, he voted *not* to terminate Jim Sisney. *See* Special Appearance of the Broken Arrow School District and Objection to Plaintiff’s Motion to Amend Petition, Exhibit 1. Further, evidence exists that demonstrates Terry Stover was pressured by Attorney Doug Mann, Shari Wilkins, Maryanne Flippo and Sharon Whelpley, which supports Plaintiff’s core contentions regarding orchestration by Attorney Doug Mann of Rosenstein, Fist & Ringold, Shari Wilkins, Maryanne Flippo and Sharon Whelpley as a conclusion to their scheme to oust Jim Sisney as Superintendent in an arbitrary and capricious manner. Therefore, Defendant can be held accountable for the damages that resulted from Plaintiff’s improper termination. *See id.*

II. TORT CLAIMS

The instant lawsuit was filed based upon the concerted pattern of behavior that surrounded Plaintiff's termination. A subsequent lawsuit was filed on April 30, 2009, in the Northern District of Oklahoma, Case Number 09-CV-253-TCK-PJC. In that case, Plaintiff named Independent School District No. 3 as a Defendant and asserted claims for violations of due process and breach of contract. Through discovery and case development, Counsel determined that Plaintiff's claims and remedies were not of a federal nature, but those that more appropriately sound in the laws governed by the state courts. Accordingly, in the interest of justice, Plaintiff sought dismissal of his federal case without prejudice, and Plaintiff's Application for Dismissal remained undecided until Plaintiff filed a Motion to Recuse Judge Terrence Kern on January 28, 2010, based upon a conflict of interest. Judge Kern recused himself on February 2, 2010 and within twenty-four hours of that recusal, Judge Claire Egan granted Plaintiff's Application for Dismissal Without Prejudice on February 3, 2010. Plaintiff thereafter timely filed his Motion to Amend to add the School District herein.

Sections 156 and 157 of the Governmental Tort Claims Act delineate that written notice of tort claim must be presented to the governmental entity within one year of the date of the loss, that the entity has ninety (90) days to admit or deny the claim(s) presented, and from that date the noticing party has 180 days to file suit thereon. OKLA. STAT. tit. 51 §§156,157. Typically speaking, the process by which cases progress in state court allow for the strict adherence to the requirements set forth above. Exception has occurred in the instant case, however, where the Plaintiff was pre-empted and held in abeyance by the substantial and unwarranted delay of the federal court. Plaintiff could not, *in good faith*, file the instant Motion while Case Number 09-CV-253-TCK-PJC was still pending in federal court. Plaintiff, did, in fact, announce his intention to add

the parties pending resolution of the Application for dismissal in federal court on October 5, 2009, as well as specifically to Bo Rainey of Rosenstein, Fist & Ringold, December 22, 2009, at the deposition of Jim Sisney in relation to federal Case Number 09-CV-253-TCK-PJC. See e-mail Correspondence, Exhibit "B"; See also Deposition Transcript of Jim Sisney, pg. 5, lns. 16-25; pg. 6, lns. 1-4, Exhibit "C". Plaintiff had no reason to believe or know that Judge Kern would fail to act on Plaintiff's Application for dismissal and subsequently require recusal. The issue of timing, as asserted by Defendant herein, was not created by Plaintiff, but rather, was promulgated by the failure or refusal to act by federal Judge Terrence Kern, who had a clear conflict of interest in the case and recused himself upon Plaintiff's motion.

Therefore, justice requires that any claims sounding in tort should herein be allowed, and Plaintiff not be denied amendment based upon the failure to act of Judge Kern, where Plaintiff continually attempted to proceed through the proper channels of justice.

III. STRIKE COUNSEL

Attorney Douglas Mann and Rosenstein, Fist & Ringold, the law firm seeking to enter Special Appearance herein, were hired to represent the interests of the School Board, as a whole, for Defendant Independent School District No. 3. Counsel for Plaintiff has discovered new and relevant information regarding the involvement of defense counsel with parties and potential witnesses in the lawsuit, to the extent that defense counsel is expected to be a witness, if not a party, to this litigation.

As stated below, there is ample support and justification for the Court to disallow special appearance and/or disqualify Rosenstein, Fist & Ringold, as a whole, as defense counsel in this case, as counsel has a clear conflict of interest in the lawsuit. In *Arkansas Valley State Bank v. Phillips*, 2007 OK 78, 171 P.3d 899, the Oklahoma Supreme Court held that the standard for granting a

motion to disqualify counsel is whether “real harm to the integrity of the judicial process is likely to result of counsel is not disqualified.” Considering the totality of circumstances in this case, Rosenstein, Fist & Ringold’s continued representation of Defendant is the type of representation that would harm the integrity of the judicial process. *See id.* Not only are Rosenstein, Fist & Ringold attorneys, members and staff potential witnesses in this lawsuit, they have the potential for personal liability as potential parties and are in possession of, and have been disseminating, confidential information for the intended purposes of use against the Plaintiff. Defendant is well-aware of the aforementioned activities, including defense counsel’s direct contact with parties and witnesses, distribution of relevant and confidential documents, and other inappropriate involvement concerning the causes of action giving rise to this lawsuit. Allowing defense counsel’s special appearance and/or any continued representation in this litigation causes unfair prejudice, wrongfully punishes the Plaintiff, and otherwise prevents the administration of justice as it pertains to Plaintiff.

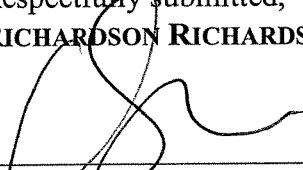
Pursuant to Rule 3.7 of the Rules of Professional Conduct, a lawyer shall not act as advocate at trial if the lawyer is likely to be a necessary witness. The comments to the Rule explain that a jury can be confused and misled if a lawyer acts as both an advocate and a witness at trial. Kent Rainey and Doug Mann are obviously key witnesses regarding the improper dissemination of information by Rosenstein, Fist & Ringold and also, the series of events leading up to the dismissal of Plaintiff as Superintendent of Schools, in violation of his contract. Doug Mann and Rosenstein Fist & Ringold were clearly and directly involved in those events. Indeed, Plaintiff intends to take Mr. Mann’s deposition in the near future. Rosenstein, Fist & Ringold cannot act as counsel for Defendant and at the same time offer evidence in this case. The law firm of Rosenstein, Fist & Ringold should be disqualified, as a whole, on this basis alone.

An attorney may be disqualified if he or she has “improper possession of confidential information.” *Arkansas Valley State Bank v. Phillips*, 2007 OK 78, 171 P.3d 899. Rosenstein, Fist & Ringold were legal counsel for Defendant while Plaintiff was Superintendent of Schools. Rosenstein, Fist & Ringold had access to all of Dr. Sisney’s files, documents and correspondence during that time and either overheard and/or participated in confidential conversations regarding the incidents at issue. In short, due to Mr. Mann, Mr. Rainey and Rosenstein, Fist & Ringold’s association with the Defendant during the relevant time period, Mr. Mann, Mr. Rainey and Rosenstein, Fist & Ringold know things relevant to this case that create a conflict of interest. Mr. Rainey and Rosenstein, Fist & Ringold should not be allowed to enter an appearance and/or continue representing the Defendant in this case. *See id.*

CONCLUSION

WHEREFORE, premises considered, Plaintiff Jim Sisney respectfully requests the Court allow him to Amend his Petition to add Proper Party Defendants Independent School District No. 3 and Air Assurance, as well as claims for breach of contract, constructive discharge and breach of the implied covenant of good faith and fair dealing, and enter an order disqualifying Bo Rainey and the law firm of Rosenstein, Fist & Ringold, as a whole, from representing Independent School District No. 3 in the instant case or, in the alternative, offer full hearing on the merits of the issues contained herein before rendering its decision.

Respectfully submitted,
RICHARDSON RICHARDSON BOUDREAU



Gary L. Richardson, OBA# 7547
Charles L. Richardson, OBA# 13388
David R. Keesling, OBA# 17881
Denise P. James, OBA# 20104
6450 S. Lewis, Suite 300
Tulsa, Oklahoma 74136
Tel: 918/492-7674
Fax: 918/493-1925
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of April, 2010, a true and correct copy of the foregoing instrument was mailed with proper postage prepaid thereon to:

Graydon Dean Luthey, Jr.
**HALL, STILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**
320 South Boston Avenue, Suite 200
Tulsa, Oklahoma 74103-3706

Mark B. Jennings
BREWSTER & DE ANGELIS, P.L.L.C.
2617 East 21st Street
Tulsa, Oklahoma 74114

Phyllis L. Walta
WALTA & WALTA
120 East Oklahoma
Hennessy, Oklahoma 73742

Mark W. Maguire
**ATKINSON, HASKINS, NELLIS, BRITTINGHAM,
GLADD & CARWILE**
1500 Parkcentre
525 South Main
Tulsa, Oklahoma 74103

Kent B. Rainey
ROSENSTEIN, FIST & RINGOLD
525 South Main, Suite 700
Tulsa, Oklahoma 74103



FOR THE FIRM

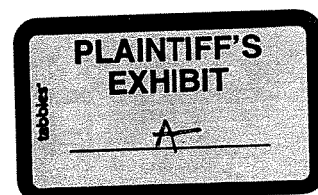
Dwight,

Attached in a Word format is the proposed contract between the District and Don Raleigh. As I understand it, you will present this contract to board members and Don for their review and you will contact me as to any needed changes.

Of particular note in this contract is the definition of "cause" as it relates to the possibility of Don's dismissal or nonrenewal as superintendent. As you know, under Oklahoma law any certified administrator, including the superintendent of schools, may be dismissed or his contract not renewed for "cause". Unfortunately, the statutes do not define what the term "cause" means. The statutes only say that the administrator must be given a "list of the reasons for effecting the action". That language is, to say the least, very unhelpful. Also, there are no Oklahoma appellate cases or opinions of the Oklahoma Attorney General addressing this point. As a result, boards of education often find it necessary to define in the superintendent's contract what the term "cause" means. In the attached contract I have provided the following definition:

"Cause" means:

- a. an intentional act of fraud, embezzlement, theft or any other material violation of law that occurs during the Superintendent's employment with the District;
- b. intentional damage to District assets;
- c. intentional disclosure of confidential information contrary to District policies or law;
- d. breach of obligations under this Contract;
- e. intentional breach of any District policies;



- f. the willful and continued failure to substantially perform Superintendent's duties;
- g. willful conduct that is demonstrably and materially injurious to the District, monetarily or otherwise; or
- h. commission of an act of moral turpitude.

It is my belief that the above definition is sufficiently comprehensive yet specific enough to meet the board's needs while advising the superintendent of the type of conduct or actions that might result in his termination. I would not suggest that language such as "disregard of policy" or "willful neglect of statutory duties" are sufficient to meet the needs of the board or to apprise Don of his contractual requirements.

This contract is sent to you in a Word format so that it can readily be amended by you in the negotiations process. I would suggest that if any substantive changes are to be made, that you and I discuss them prior to their initiation.

If you or any board members have any questions, please contact me.

With kind regards,

Doug Mann
Rosenstein, Fist & Ringold
525 S. Main Ste 700
Tulsa, OK 74103
(918) 585-9211
(918) 583-5617 Fax

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"The voyage of the best ship is a zigzag line of a hundred tacks."
--Ralph Waldo Emerson

Denise James

From: Denise James
Sent: October 05, 2009 1:59 PM
To: 'Mark Jennings'; Teresa Finders; Phyllis Walta
Cc: Dean Luthey; Clark Brewster; Marla Carter; Chuck Richardson; Gary Richardson; David Keesling
Subject: RE: Sisney v. Rampey, et.al.

Counsel,

At this time, we are planning to file a Motion to Amend the Petition in the above-styled matter to add Defendant Independent School District No. 3 ("ISD#3"), as well as claims against ISD# 3 for breach of contract, constructive termination and breach of implied covenant of good faith and fair dealing.

Please respond with objections if they should be noted in our Motion.

Thanks,
D. James

Denise P. James
Richardson Richardson Boudreaux
6450 South Lewis Avenue, Suite 300
Tulsa, Oklahoma 74136
Telephone: (918) 492-7674
Facsimile: (918) 493-1925

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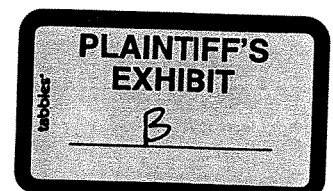
From: Mark Jennings [mailto:Mjennings@BrewsterLaw.com]
Sent: September 30, 2009 8:26 AM
To: Denise James; Teresa Finders; Phyllis Walta
Cc: Dean Luthey; Clark Brewster; Marla Carter; Chuck Richardson; Gary Richardson
Subject: RE: Sisney v. Rampey, et.al.

Signature page attached.

MBJ

From: Denise James [mailto:DPJ@RRBLAWOK.COM]
Sent: Tuesday, September 29, 2009 4:55 PM
To: Teresa Finders; Phyllis Walta
Cc: Dean Luthey; Clark Brewster; Marla Carter; Chuck Richardson; Gary Richardson; Mark Jennings
Subject: RE: Sisney v. Rampey, et.al.

Think I got them all.



1 enter your appearances just in turn.

2 MR. RAINEY: Okay.

3 JOAN: Case number 09-CV-253-TCK-PJC Sisney
4 versus Independent School District No. 3 of Tulsa
5 County. And will you, please, enter your appearances
6 for the record?

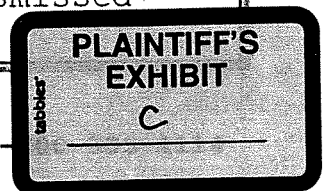
7 MR. KEESLING: On behalf of the plaintiff,
8 David Keesling.

9 MR. RAINEY: On behalf of the defendants, Bo
10 Rainey.

11 THE COURT: All right. This is Judge
12 Cleary, and I've now had an opportunity to look at the
13 emergency motion to stay deposition. Mr. Keesling, is
14 there anything you want to add to what is in that
15 pleading?

16 MR. KEESLING: Just to point out, your
17 Honor, if I could, that we are going to supplement
18 with an additional filing that is referenced in the
19 pleading and, additionally, noting that we have had a
20 motion pending to dismiss this claim without prejudice
21 that's been sitting for some time, which there's also
22 some authority, I believe, included that would provide
23 that basis also for a stay pending the motion to
24 dismiss.

25 THE COURT: And if this case is dismissed



1 without prejudice, what happens to us then? Does this
2 get consolidated with the state court action, or where
3 do you go from there?

4 MR. KEESLING: It does, your Honor.

5 THE COURT: Okay. And where are you in the
6 state court action?

7 MR. KEESLING: Preliminarily, we're at the
8 very beginning with discovery having just been
9 initiated in the state court action. We had --
10 previously had some discovery or depositions
11 scheduled. There was a death on the part of one of
12 the lawyer's legal secretaries that caused that to
13 postpone. Then we played with some dates, and there
14 have been recently counterclaims filed in the state
15 court action by three of the named defendants.

16 THE COURT: All right. Are you representing
17 Dr. Sisney in the state court action?

18 MR. KEESLING: Yes, sir, I am.

19 THE COURT: Is Mr. Rainey or his law firm
20 representing the defendants in that action?

21 MR. RAINEY: No, sir. We're not
22 representing any of the current parties in the state
23 court action. The Broken Arrow School District is not
24 a party to the state court action at this time.

25 THE COURT: All right. Okay. All right.