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Summary judgment motion practice in the Central and Southern districts

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Local court rules always matter, especially when preparing summary judgment motions and briefs. The Seventh Circuit enforces local U.S. District Court rules as part of a broad public policy to promote litigation efficiency. See *Steve v. Frasor*, 662 F.3d 880, 886-87 (7th Cir. 2011) (“Because of the high volume of summary judgment motions and the benefits of clear presentation of relevant evidence and law, we have repeatedly held that district judges are entitled to insist on strict compliance with local rules designed to promote the clarity of summary judgment filings.”); see also *Chelios v. Heavener*, 520 F.3d 678, 687 (7th Cir. 2008) (“[L]ocal rules streamline litigation and save litigants, lawyers and courts time and effort.”). Indeed, even pro se litigants may be required to comply with the local court rules. *Coleman v. Goodwill Indus. of Se. Wis., Inc.*, 423 Fed.Appx. 642, 643 (7th Cir. 2011) (“Though courts are solicitous of pro se litigants, they may nonetheless require strict compliance with local rules[.]”); *Bordelon v. Chicago Sch. Reform Bd. of Trustees*, 233 F.3d 524, 527 (7th Cir. 2000).

The case law and practice in the Central and Southern District suggest being mindful of all the local rules, including the following specific rules when preparing summary judgment motions and response briefs.

1. The failure of a nonmovant to respond to a FRCP 56 summary judgment motion. The Seventh Circuit enforces compliance with local rules that require a nonmovant to respond or risk admitting the motion. *Smith v. Lamz*, 321 F.3d 680, 683 (7th Cir. 2003).

A. SDIL-LR 7.1(c)(2) - a failure to timely respond to a dispositive motion “may, in the Court’s discretion, be considered an admission of the motion.”

Dorko v. Hodge, 2013 WL 4495668 *5 (S.D.Ill. Aug. 21, 2013) (“As discussed above, pursuant to local rule and Federal Rule of Civil Procedure 56(e), the undersigned considers Plaintiff’s failure to respond to Defendant Kimmel’s June summary judgment motion as an admission to the facts presented therein. SDIL-LR 7.1(c)).”.

B. CDIL-LR 7.1(D)(2) – “A failure to respond will be deemed an admission of the motion.”

Jackson v. Vaughan & Bushnell Mfg. Co., 2015 WL 4637386 *2 (C.D. Ill. Aug. 4, 2015) (“As indicated above, there is no response to the Motion for Summary Judgment. Therefore, Plaintiff is deemed to have admitted the contents of Defendant’s Motion for Summary Judgment, pursuant to Local Rule 7.1(D)(2).”); compare with *Hunter v. Rock Island Housing Authority*, 2015 WL 1850693 *3 (C.D.Ill. Apr. 21, 2015) (citing rule to explain that while motion is deemed admitted, the court will not “automatically” grant it); *Mintz v. Caterpillar, Inc.*, 2014 WL 1457826 *1 (Apr. 14, 2014), *aff’d*,

788 F.3d 673 (75th Cir. 2015)(citing rule but explaining that court would still consider the merits of the plaintiff's claims).

2. The Local Rules that flow from FRCP 56(e)(2)(“If a party fails to ...properly address another party’s assertion of fact... the court may consider the fact undisputed for purposes of the motion.”).

A. SDIL-LR 7.1(d)(“Allegations of fact not supported by citation may, in the Court’s discretion, not be considered.”); **7.1(e)**(requiring brief of movant and non-movant to contain “citation to relevant legal authority and to the record,...”).

Unlike the Central District, the Southern District does not impose specific pleading requirements for asserting or disputing material facts, or additional material facts, paragraph by paragraph.

B. CDIL-LR 7.1(D)(2)(b)(6)(“A failure [by nonmovant] to respond to any numbered fact will be deemed an admission of the fact.”); **7.1(D)(3)(a)(5)**(“A failure [by movant] to respond to any numbered [additional material facts raised by nonmovant] will be deemed an admission of that fact.”). Both movant and non-movant must cite documentary evidence in support of each numbered fact, and cite the supporting exhibit and page, and include the relevant documentary evidence as exhibits. **CDIL-LR 7.1(D)(1)(b); 7.1(D)(2)(b)(2),(3),(5).**

Kibler v. United States, 46 F.Supp.3d 844, 848-49 (C.D. Ill. 2014)(“Again, Plaintiffs do not cite to evidentiary documentation referenced by specific page to dispute Defendant’s material fact. Plaintiffs’ responses read more like an argument, or a flat denial that one would find in an answer or complaint. Plaintiffs have not contradicted Defendant’s asserted facts in the manner specified by local rule, and thus those facts must be deemed admitted.”); *Kremer v. City of Decatur*, 2014 WL 793465 *2 (C.D. Ill. Feb. 26, 2014)(explaining that defendant failed to meet initial burden of showing undisputed material facts by not citing evidence in support of each numbered fact); *Williams v. Smalls*, 2013 WL 5229999 *1 (C.D. Ill. 2013)(“Pursuant to Local Rule 7.1(D)(2)(b)(6), [a] failure to respond to any numbered fact will be deemed an admission of the fact.”); *Gilles v. Pleasant Hill Elementary School Dist. No. 69*, 2011 WL 5005995 *2 (C.D. Ill. Oct. 20, 2011)(striking material fact response of plaintiff which lacked any citation to the record); *Allen v. Potter*, 2009 WL 4048106 *4 (Nov. 17, 2009)(“Although Allen does go through each of Defendant’s statements and responds to each of them, she provides no citation whatsoever to the records for those statements she ‘disputes.’”); *Sokoya v. Downey*, 2009 WL 773523 *3 (C.D. Ill. March 20, 2009)(“[Plaintiff] does not respond particularly to each numbered paragraph nor does he identify each fact from Defendants’ statement and clarify whether it is conceded to be undisputed and material, disputed and material or immaterial.”).

BB. Any additional facts that the non-movant wishes to raise must appear in a separate subsection of the response. CDIL-LR 7.1(D)(2)(b); see *Moralis v. Flageole*, 2007 WL 2893652 *3 (C.D. Ill. Sept. 28, 2007) (“[A]additional facts beyond the movant’s statement must be submitted in a separate subsection”).

3. Page Limitations

A. SDIL-LR 7.1(d) limits briefs to “20 double-spaced typewritten pages in 12 point font.”

B. CDIL-LR 7.1(B)(4) and 7.1(D)(5) require the movant to use no more than 15 double-spaced pages, or volume type compliant pages for the argument sections of the motion for summary judgment, or the response to the motion for summary judgment. The page limitations do not apply to the sections asserting or disputing material facts.

Browning v. GCA Service Group, 2014 WL 65798 *3 (C.D. Ill. Jan. 8, 2014)(denying defendant’s motion for leave to file separate summary judgment motions for each plaintiff and denying motion for leave to file brief in excess of page limitations set forth in CDIL-LR 7.1(B)(4)).

4. Legal Argument Sections

A. SDIL-LR 7.1(e) requires summary judgment motion movants and non-movants to cite “relevant legal authority and to the record.”

B. CDIL-LR 7.1(D)(1)(c) requires the movant to use subheadings for each separate point of law raised, followed by explanations of each legal point, using cites to authorities with explanations of how the points of law, when applied to the undisputed material facts, support granting movant the requested relief. CDIL-LR 7.1(D)(2)(c) requires non-movant to respond to the movant's argument "by explaining any disagreement with the movant's explanation of each point of law, why a point of law does not apply to the undisputed material facts, why its application does not entitle movant to relief or why, for other reasons, summary judgment should not be granted."

Moralis v. Flageole, 2007 WL 2893652 *5 (C.D. Ill. Sept. 28, 2007)(citing rule and non-compliance by pro se plaintiff while striking several summary judgment motion filings).

5. Summary Judgment Motion Reply Briefs

A. SDIL-LR 7.1(c) stresses that reply briefs are not favored and should only be filed under exceptional circumstances. Moreover, if a party finds it is necessary to supplement its brief with new authority due to a change in the law arising after its original brief, leave of court must be obtained to file a supplemental brief. The format of any allowed supplemental brief must comply with Federal Rule of Appellate Procedure 28(j). Any reply brief must be filed within 14 days of a response.

Jackson v. Holten Meat, Inc., 2015 WL 3462894 *1-2 (S.D. Ill. May 29, 2015)(striking summary judgment reply brief where exceptional circumstances were not demonstrated); *Duncan v. Hagene*, 2015 WL 4978693 *2 (S.D. Ill. Aug. 20, 2015)(striking plaintiff's motion to dismiss summary judgment motion as prohibited sur-reply brief).

B. CDIL-LR 7.1(D)(3) and (5) specify that the time to file a summary judgment reply brief is 14 days after service of the response. If the non-movant lists additional material facts, the movant must reply to such asserted facts by conceding or denying their status of being disputed and material, or risk that such additional facts be admitted. The arguments section of the reply brief is limited to the new matters raised in the response, and the movant is prohibited from restating arguments raised in the original motion. The argument section of a summary judgment reply brief is limited to 5 double-spaced pages.

Commonwealth Ins. Co. v. Titan Tire Corp., 2005 WL 3299405 *1-2 (C.D. Ill. 2005)(denying motion to strike summary judgment reply brief where argument section exceeded 5 page limit by two lines and argument limitation violations were minor in nature).

6. Privacy

With exhibits often consisting of public records from other courts, or administrative agencies, you or your paralegal will still need to review such documents in order to file redacted public versions that exclude the following data categories in the respective districts:

A. Social Security Numbers, names of minor children, dates of birth, drivers' license numbers, financial account numbers, and home addresses, among other potential personal identifiers under SDIL-LR 5.1(d).

B. Addresses other than City and State; signatures to be replaced by s/name where possible or otherwise redacted; and drivers' license numbers amongst other possible items qualifying as personal identifiers. CDIL-LR 5.11(A).

7. Extensions

A. The Southern District does not have a local rule, which means that a good cause motion filed before the original due date expires would need to be prepared and filed in compliance with FRCP 6(b).

B. The Central District requires the movant for an extension do so in a timely fashion before the original deadline expires, and to inform the Court of the amount of additional time sought and whether opposing

counsel objects. CDIL-LR 6.1.

8. Oral Argument

A. A party may file a formal motion that asks for oral argument. The movant must explain the grounds for the request to be considered by the Court. SDIL-LR 7.1(h).

B. A party may file a request for oral argument when the summary judgment motion or the response is filed. CDIL-LR 7.1(D)(4).

Tracking your ongoing drafts of summary judgment motions and responses with the local rules will help you structure your filings. In addition, keeping your personal checklist handy will help you anticipate some of the challenges all counsel face on the days you file your summary judgment motions and responses with the U.S. District Courts in the Central and Southern Districts. □

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