

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SHONNE SMITH,)	
)	
Plaintiff,)	
)	
v.)	Case No. 12 C 7173
)	
CITY OF CHICAGO, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

Defendant City of Chicago ("City") has filed its Answer and Affirmative Defenses ("ADs") to the pro se Complaint brought against it and unidentified police officers by Shonne Smith ("Smith"). This memorandum order is issued sua sponte to address some problematic aspects of that responsive pleading.

To begin with, this Court is appreciative of the efforts by City's counsel to address each of Smith's allegations, which are understandably not presented in the same organized form that a lawyer would submit. It appears that City's counsel has responded to each of Smith's allegations, and counsel's insertion of numbered paragraphs is very helpful for that purpose.

That said, the frequent attempted invocations of Fed. R. Civ. P. ("Rule") 8(b)(5) as a proposed disclaimer (Answer ¶¶ 1 through 6) inexplicably fail to track the claimed roadmap marked out by that rule -- see App'x ¶ 5 to State Farm Mut. Auto. Ins. Co. v. Riley, 199 F.R.D. 276, 279 (N.D. Ill. 2001). Because that error is all-pervasive, it makes most sense to strike the entire Answer with leave to replead.

That conclusion is fortified by the problems with City's purported ADs. Here they are:

1. ADs 1 and 4 have no business in this lawsuit, for Smith has not advanced any state law claims. Those ADs are also stricken, this time without leave to replead.
2. AD 3 appears to have no basis, given the nature of Smith's claim -- it does not seem that mitigation of damages could play any role here. Hence that AD is also stricken, but if City has anything specific to assert in that regard as a matter of notice pleading (which is incumbent on defendants as well as plaintiffs), that may be done in the amended responsive pleading provided for in the next paragraph.

Under the circumstances, City's entire pleading is stricken. Leave is granted to file a self-contained amended responsive pleading on or before January 21, 2013.



Milton I. Shadur
Senior United States District Judge

Date: January 8, 2013