

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

PATRICK SCOTT BLACK,)	
)	
vs.)	No. 1:08-cv-506-DFH-TAB
)	
BRENT LLOYD, et al.,)	
Defendants.)	

Entry Directing Further Proceedings

I.

The plaintiff's response to the defendants' motion for summary judgment does not contain a brief in opposition to the motion for summary judgment or a *statement of material facts in dispute* required by Local Rule 56.1(b).

The plaintiff is not *compelled* to respond to a motion for summary judgment, and if he responds he is not *compelled* to do so through the submission of additional evidentiary material. However, "[i]t is a well-settled rule that a party opposing a summary judgment motion must inform the trial judge of the reasons, legal or factual, why summary judgment should not be entered." *Liberles v. County of Cook*, 709 F.3d 1122, 1126 (7th Cir. 1983). The plaintiff must therefore be prepared to abide by his decision as to whether and how to respond to the motion for summary judgment. *Caisse Nationale de Credit Agricole v. CBI Industries, Inc.*, 90 F. 3d 1264, 1270 (7th Cir. 1996) ("A party seeking to defeat a motion for summary judgment is required to `wheel out all its artillery to defeat it.")(quoting *Employers Ins. of Wausau v. Bodi-Wachs Aviation Ins. Agency*, 846 F. Supp. 677, 685 (N.D.Ill. 1994), *aff'd*, 39 F. 3d 138 (7th Cir. 1994)). As to the plaintiff's noncompliance with the Local Rule 56.1(b), there are no circumstances in this case at this time which suggest that the court should or would excuse the requirement of that Rule.

Armed with this information, the plaintiff shall have an additional period of time, **through September 4, 2009**, in which to **further respond to the motion for summary judgment**. Whether he does so or not, however, the defendants shall have through September 18, 2009, in which to reply to the response and supplemental response, if any.

II.

To both emphasize and expand on the foregoing, the plaintiff is **reminded** of the following information, which he should consider in preparing a supplemental response to the defendants' motion for summary judgment:

1. To properly and successfully oppose the defendants' motion, he must establish either that (a) there is a genuine issue of material fact concerning the issues in the case or (b) that even without such a genuine issue of fact the defendants are not entitled to judgment as a matter of law.

2. In order to create a genuine issue of material fact, he may not rely simply on his complaint. He may present his own affidavit or the affidavits of others attesting to relevant facts, so long as the statements in such affidavits are based on the personal knowledge of the person making the affidavit.

3. In addition to affidavits, he may oppose the defendants' motion by presenting properly authenticated documents (records) and may rely on discovery materials provided either by himself or the defendants.

4. If the defendants prevail on their motion for summary judgment, the plaintiff may be foreclosed from proceeding further in this case. He should therefore view the defendants' motion in that way--a critical step in this case which he cannot ignore or overlook--unless he is willing to risk the consequences.

So ordered.



DAVID F. HAMILTON, CHIEF JUDGE
United States District Court
Southern District of Indiana

Date: July 28, 2009

Distribution:

Jean Marie Blanton
ZIEMER STAYMAN WEITZEL & SHOULDERS
jblanton@zsws.com

Thomas H. Bryan
FINE & HATFIELD
thb@fine-hatfield.com

David L. Jones
JONES WALLACE, LLC
djones@joneswallace.com

Robert W. Rock
JONES WALLACE LLC
rrock@joneswallace.com

William E. Statham
STATHAM ALLEGA & JESSEN, LLP
saj@statham-aj.com

Keith W. Vonderahe
ZIEMER STAYMAN WEITZEL & SHOULDERS
kvonderahe@zsws.com

PATRICK SCOTT BLACK
#136138
203 S. Harper Drive
Leitchfield, KY 42754