

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

SEPHORA K. DAVIS,

Petitioner,

DECISION and ORDER

-vs-

12-CV-6135-CJS

ANDREA W. EVANS and BRIAN FISCHER,

Respondents

INTRODUCTION

Siragusa, J. On August 16, 2012, the Court issued a Decision and Order (ECF No. 24), granting Respondents' motion (ECF No. 10) to dismiss Petitioner's habeas corpus petition on the basis of untimeliness. This Decision and Order also denied Petitioner's motion for default judgment (ECF No. 8). On September 7, 2012, Petitioner filed a pleading docketed as a First Motion to Alter the Judgment (ECF No. 26) pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. Respondents filed a memorandum of law in opposition (ECF No. 29). Petitioner subsequently filed a second Motion to Alter the Judgment (ECF No. 35).

Since that time Petitioner has filed, without permission, numerous supplemental memoranda of law in further support of her motions for reconsideration, purporting to bring relevant caselaw to the Court's attention. See, e.g., ECF Nos. 42, 45, 48, 51, 52, 53 & 54. Respondent has filed motions (ECF Nos. 43, 46) to strike ECF Nos. 42 and 45 on the grounds that these supplemental memoranda were filed without leave of the Court, in violation of the Western District of New York's Local Rules of Civil Procedure. At this

juncture, Respondent has not moved to strike ECF Nos. 48, 51, 52, 53 and 54, which likewise were filed without permission. For the reasons discussed below, Respondent's motions to strike (ECF Nos. 43, 46) are granted. The Court will not consider the arguments asserted by Petitioner in ECF Nos. 42 and 45.

DISCUSSION

Rule 7 of the Local Rules of Civil Procedure for the Western District of New York governs motion practice. See W.D.N.Y. Local Rule ("L.R.") 7. Pursuant to L.R. 7(a)(2)(A), after the movant files a motion, the non-movant must file a response to the motion. If specifically requested in the notice of motion, the movant may file a reply. See L.R. 7(a)(1), (2)(A). L.R. 7 specifically prohibits the filing of a sur-reply without leave of the Court. See WD.N.Y. L.R. 7(a)(6) ("Absent permission of the Judge hearing the motion, sur-reply papers are not permitted.").

Motions to strike are subject to the sound discretion of the Court. *Navarrete De Pedrero v. Schweizer Aircraft Corp.*, 635 F. Supp.2d 251, 258-59 (citing *Morse v. Weingarten*, 777 F. Supp. 312, 319 (S.D.N.Y. 1991)). As the Court did not authorize Petitioner to file the supplemental memoranda of law (ECF Nos. 42, 45) referenced in Respondent's motions to strike, Respondent's motions to strike these memoranda are granted. The Court shall not consider the arguments raised by Petitioner in ECF Nos. 42 and 45.

CONCLUSION

For the reasons stated above, Respondent's motion to strike (ECF No. 43) Petitioner's memorandum of law dated February 18, 2014 (ECF No. 42) is **granted**; and

Respondent's motion to strike (ECF No. 46) Petitioner's memorandum of law dated March 4, 2014 (ECF No. 45) is **granted**. The Court will not consider any of the arguments asserted in ECF Nos. 42 and 45. The Clerk of the Court is requested to note on the docket of this case that ECF Nos. 42 and 45 have been stricken.

The parties are advised that as of the date of entry of this Decision and Order, briefing is **closed** in regard to Petitioner's motions to alter the judgment (ECF Nos. 26, 35). The Court **will not** accept for filing any additional memoranda of law in support of Petitioner's motions for reconsideration. Petitioner's counsel is directed to comply with the District's Local Rules and is cautioned that any future violations may result in sanctions.

IT IS SO ORDERED.

Dated: November 3, 2014
Rochester, New York

ENTER:

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge