

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:09-CV-144-W**

ROBERT L. SWINNEY, II,)	
)	
Plaintiff,)	
)	
vs.)	
)	
CITY OF CHARLOTTE,)	
)	
Defendant.)	

NOTICE

THIS MATTER is before the Court *sua sponte* following the filing of Defendant City of Charlotte’s Motion for Summary Judgment (Doc. No. 12) pursuant to Rule 56 of the Federal Rules of Civil Procedure.

In accordance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the Court advises Plaintiff, who is proceeding *pro se*, of the heavy burden that he carries in responding to Defendant’s Motion for Summary Judgment.

Rule 56(e), Federal Rules of Civil Procedure, provides:

When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must— by affidavits or as otherwise provided in this rule— set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.

This language means that if Plaintiff has any evidence to offer to show that there is a genuine issue for trial, he must now present it to this Court in a form which would otherwise be admissible at trial, i.e., in the form of affidavits or unsworn declarations. An affidavit is a written statement under oath; that is, a statement prepared in writing and sworn before a notary public. An unsworn statement, made and signed under the penalty of perjury, may also be submitted. Affidavits or

statements must be presented by Plaintiff to this Court **no later than Monday, February 22, 2010**, and must be filed in duplicate. As stated by Rule 56(e), Plaintiff's failure to respond may result in Defendant being granted the relief it seeks by way of summary judgment.


NOW THEREFORE, IT IS ORDERED:

1. The *pro se* Plaintiff shall have until Monday, February 22, 2010, to file his response, including any evidence, to Defendant's Motion.

2. The Clerk is directed to send a copy of this notice to the *pro se* Plaintiff at his address of record, which is: 7245 Winery Ln, Charlotte, NC 28227.

IT IS SO ORDERED.

Signed: January 20, 2010



Frank D. Whitney
United States District Judge

