

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BLAKE BEST,
Plaintiff,

v.

AT&T, INC., *et al.*,
Defendants.

Case No. 1:12-cv-564

Beckwith, J.
Litkovitz, M.J.

ORDER

This matter is before the Court on: (1) plaintiff's letter to District Judge Beckwith (Doc. 172) and defendant AT&T Mobility LLC's (AT&T) response thereto (Doc. 183); (2) AT&T's motion for a Court order requiring plaintiff to comply with Fed. R. Civ. P. 5(b)(1) (Doc. 181), plaintiff's joint response in opposition and motion to strike AT&T's motion for a court order (Doc. 184), plaintiff's amended joint response in opposition and motion to strike AT&T's motion for a court order (Doc. 185), AT&T's reply memorandum (Doc. 186), and plaintiff's sur-reply memorandum (Doc. 187); and (3) plaintiff's motion to strike his amended joint response in opposition and motion to strike and his sur-reply, Docs. 185 and 187, respectively (Doc. 189). The Court will first address AT&T's motion for a Court order.

AT&T moves for a Court order requiring plaintiff to comply with Fed. R. Civ. P. 5(b)(1) when serving his filings on defendants. Rule 5(b)(1) provides that "[i]f a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party." Fed. R. Civ. P. 5(b)(1). AT&T maintains that despite the appearance of attorneys on behalf of defendants, plaintiff continues to serve his filings in this matter on the registered

agent for defendants,¹ The Corporation Trust Co. Counsel for AT&T represents that he contacted plaintiff via email on April 17, 2014, to request that plaintiff no longer serve filings in this manner as filing through the Court's case management and electronic case filing (CM/ECF) system was sufficient. A copy of this email is attached to AT&T's motion. (Doc. 181, Ex. 1, April 17, 2014 email). AT&T asserts that despite this request, plaintiff continued to serve subsequent filings on defendants' registered agent in violation of Fed. R. Civ. P. 5(b)(1). (Doc. 181 at 2, citing Doc. 171 at 14, Doc. 172 at 3, Doc. 175 at 9, Doc. 176 at 4, Doc. 179 at 8, Doc. 180 at 4) (certificates of service from plaintiff's filings from April 18 to May 7, 2014, reflect that service of these filings was made on defendants' registered agent in Wilmington, Delaware). AT&T asks that the Court order plaintiff to comply with Fed. R. Civ. P. 5(b)(1) and to no longer serve his filings on defendants' registered agent as this creates unnecessary costs and annoyance. (Doc. 181 at 2).

Plaintiff has filed a "reply motion to strike [AT&T's Motion]" (Doc. 184); an amended "reply motion to strike [AT&T's Motion]" (Doc. 185); and a "surreply to [AT&T's] opposition motion amended plaintiffs' (sic) reply motion to strike [AT&T's motion]" (Doc. 187). In response to this Court's May 14, 2014 Order cautioning plaintiff that, among other things, his practice of filing amendments to motions without explaining the amendment may result in the imposition of sanctions due to its burden on the Court's limited resources, plaintiff filed a motion to strike his amended filing and sur-reply (Doc. 189). The Court construes this motion as plaintiff's motion to withdraw the designated filings.² Plaintiff's motion to withdraw (Doc. 189)

¹AT&T and AT&T, Inc. are both named as defendants in plaintiff's third amended complaint, *see* Doc. 140, but the instant motion is brought by AT&T only.

²A motion to withdraw filings is the proper mechanism where a party seeks to remove its own filings from the record.

is **GRANTED**. Accordingly, only plaintiff's initial response (Doc. 184) will be considered in ruling upon AT&T's motion for a Court order.

Plaintiff responds to AT&T's motion for a Court order by moving to strike the motion. Plaintiff asserts that he has not purposefully disregarded Fed. R. Civ. P. 5(b)(1) and that any failure to properly serve AT&T is the result of his status as a pro se litigant. Plaintiff further asserts that AT&T failed to provide him notice under Fed. R. Civ. P. 11 and disputes that he received the April 17, 2014 email attached to AT&T's motion containing defense counsel's request to plaintiff to alter his method of serving documents. Plaintiff maintains that AT&T's motion is therefore improper and moves for it to be stricken in its entirety. (Doc. 184 at 2-5).

Insofar as plaintiff contends that AT&T's motion should be stricken because AT&T did not comply with the notice requirements of Fed. R. Civ. P. 11, this argument misapprehends the basis of AT&T's motion. Rule 11 permits the imposition of sanctions, "after notice and a reasonable opportunity to respond," where the Court finds that a party has made incorrect or improper representations to the Court. Fed. R. Civ. P. 11(b), (c). Here, however, AT&T does not assert that plaintiff has violated Rule 11(b) and AT&T has unequivocally represented that it seeks no sanction against plaintiff at this time aside from a Court order requiring plaintiff to serve his filings on defense counsel. *See* Doc. 181 at 2. The Court therefore finds that AT&T's motion was not brought under Fed. R. Civ. P. 11 and its notice provisions are therefore inapplicable. Consequently, plaintiff's motion to strike AT&T's motion (Doc. 184) is **DENIED**.

Turning to the merits of AT&T's motion, the Court's review of the record establishes that counsel appeared on behalf of AT&T and AT&T, Inc. on April 9, 2014. (Doc. 164). Consequently, any filings made by plaintiff after April 9, 2014, should have been served on defense counsel. *See* Fed. R. Civ. P. 5(b)(1). Despite this requirement and plaintiff's access to

the CM/ECF system, plaintiff continued to serve paper copies of filings on defendants' registered agent in Delaware. *See* Doc. 171 at 14, Doc. 172 at 3, Doc. 175 at 9, Doc. 176 at 4, Doc. 179 at 8, Doc. 180 at 4. Plaintiff concedes that he has continued to serve defendants' registered agent with his filings, but asserts that he has not violated Fed. R. Civ. P. 5(b)(1) because his electronic filings through the CM/ECF system have properly been served on defense counsel. Taking into consideration his pro se status, the Court gives plaintiff the benefit of the doubt and finds that his failure to properly serve filings on defense counsel in compliance with Fed. R. Civ. P. 5(b)(1) was not purposeful. However, the undersigned also finds that AT&T's request for a Court order is reasonable as plaintiff's practice of serving paper copies on its registered agent likely imposes unnecessary costs on AT&T in, minimally, the time expended communicating with the registered agent. Consequently, AT&T's motion (Doc. 181) is **GRANTED**. Plaintiff is hereby **ORDERED** to comply with Fed. R. Civ. P. 5(b)(1). All future filings by plaintiff **SHALL** be served only on defense counsel – not on defendants' registered agent in Delaware – in a manner that complies with the Federal Rules of Civil Procedure. The Court will now address plaintiff's letter to the District Judge.

On April 24, 2014, plaintiff filed a letter in this matter addressed to the District Judge wherein he expresses concern about the propriety of Dan B. Miller serving as defense counsel. Plaintiff's concern is based on Mr. Miller's prior experience as a law clerk with the Honorable John D. Holschuh of the United States District Court for the Southern District of Ohio. Plaintiff asserts that while Mr. Miller's law firm website profile represents his clerkship experience, it fails to identify that Judge Holschuh passed away in 2011. According to plaintiff, this omission "gives the appearance [that defense counsel] may have some advantage with the Court. . . ." (Doc. 172 at 1). Plaintiff asserts that his "research" reveals that attorneys do not often mention

prior federal clerkships in their website profiles and he expresses discomfort with this purported appearance of impropriety. (Doc. 172).

Plaintiff's letter to the Court is not permitted by the Local Rules. Local Rule 7.2(c) provides:

Correspondence with the Court. Letters to the Court are not permitted unless (1) requested by the Court in a specific matter, or (2) advising the Court of the settlement of a pending matter. All other written communications must be by way of formal motion or memorandum submitted in compliance with these rules.

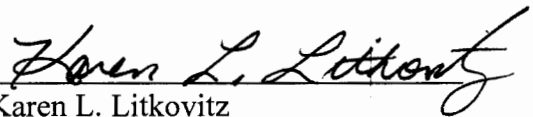
See S.D. Ohio Civ. R. 7.2(c). Plaintiff's letter was not requested by the Court nor does it pertain to settlement. Consequently, plaintiff's letter is not permitted under the Local Rules and it is hereby **STRICKEN** from the record.³

In conclusion:

- 1) Plaintiff's motion to withdraw Documents 185 and 187 (Doc. 189) is **GRANTED** and Documents 185 and 187 are **STRICKEN FROM THE RECORD**;
- 2) Plaintiff's motion to strike AT&T's motion for a Court order (Doc. 184) is **DENIED**;
- 3) AT&T's motion for a Court order (Doc. 181) is **GRANTED** and plaintiff is **ORDERED** to comply with Fed. R. Civ. P. 5(b)(1) in all future filings; and
- 4) Plaintiff's letter to the District Judge (Doc. 172) is **STRICKEN**.

IT IS SO ORDERED.

Date: 6/16/14


Karen L. Litkovitz
United States Magistrate Judge

³The Court declines to provide an advisory opinion as to the propriety of Mr. Miller's representation of defendants given his prior clerkship experience. However, the undersigned notes that Courts in this District view motions for attorney disqualification "with extreme caution for they can be misused as a technique of harassment." *Kitchen v. Aristech Chemical*, 769 F. Supp. 254, 257 (S.D. Ohio 1991) (quoting *Panduit Corp. v. All States Plastic Mfg. Co.*, 744 F.2d 1564, 1577 (Fed. Cir. 1984)) (internal quotations omitted).