

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

SHAWNA SPRINGER,)	
)	
Plaintiff,)	
v.)	NO. CIV-16-1207-HE
)	
RICK WALLACE, ALFALFA COUNTY)	
SHERIFF, in his official capacity, and)	
)	
BOARD OF COUNTY COMMISSIONERS)	
OF ALFALFA COUNTY)	
)	
Defendants.)	

ORDER

The parties have jointly moved to stay all pretrial deadlines, including the trial setting, pending the court’s ruling on the pending motions for summary judgment. The court does not ordinarily suspend pretrial preparation requirements in such circumstances, but concludes it is appropriate here albeit for reasons other than those identified by the parties.

In this case, plaintiff asserts gender discrimination and disability discrimination claims based on federal law. Nominally, the claims are asserted against two defendants: the Sheriff of Alfalfa County “in his official capacity” and the Board of County Commissioners of Alfalfa County. However, both defendants are, in substance, the same defendant—Alfalfa County. A suit brought against a county official in his official capacity is, in substance, a suit against the county. *See Myers v. Okla. Cnty. Bd. of Cnty. Comm’rs*, 151 F.3d 131, 1316 n.2 (10th Cir. 1998). A suit brought nominally against the board of county commissioners is, in these circumstances, a suit against the county. The Board of

County Commissioners is named as the defendant because that is the way, based on Oklahoma law, a county is sued. 19 OKLA. STAT. § 4; *see also* Fed.R.Civ.P. 17(b)(3) (capacity to sue or be sued for parties that are not individuals or corporations is determined by state law).

The failure of the nominal defendants to recognize that there is, in substance, a single defendant in this case—the County—results in pointless arguments over whether the Board is the plaintiff’s “employer.” It also creates at least the potential for inconsistent legal positions being asserted for the same defendant.¹ Further, in the circumstances existing here, it results in violation of the rules of this court. Alfalfa County has filed two summary judgment motions and briefs without leave of court, contrary to L.Cr.R. 56.1(a). It has also violated, in substance, the rules as to page limits. L.Cv.R. 7.1(e).

Based on the foregoing, the parties’ motion to stay [Doc. #40] is **GRANTED** as follows: (a) the current scheduling order is **STRICKEN**; this case will be reset on the court’s November 2017 trial docket with other deadlines as established by separate scheduling order; and (b) the two summary judgment motions filed by the County are **STRICKEN**, with leave granted for the County to file a single further summary judgment motion per the scheduling order.

IT IS SO ORDERED.

¹ *The Sheriff is the county official most likely to qualify as the pertinent decision-maker in cases of this sort, and his actions may determine the substantive liability of the county. But that does not mean the Sheriff is authorized to control the county’s litigating position, or that the County can litigate on two fronts through different agents. See 19 Okla. Stat. § 1(1) and § 3; Bd. of Cnty. Comm’rs v. Morgan, 324 P.2d 268, 270 (Okla. 1958) (the board of county commissioners of each county has control of litigation where the county’s interests are involved).*

Dated this 26th day of July, 2017.



JOE HEATON
CHIEF U.S. DISTRICT JUDGE