

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

MARK A. SCHIEFELBEIN,)	
)	
Petitioner)	
v.)	No. 3:11-0066
)	Judge Sharp/Bryant
JIM MORROW,)	
)	
Respondent)	

O R D E R

Pending in this case is Respondent's Motion for Waiver of Local Rules 56.01(b) and (c) (Docket Entry No. 67). The Petitioner has filed a response (Docket Entry No. 68).

For the reasons stated below, Respondent's motion is **GRANTED**.

ANALYSIS

Local Rule 56.01 pertains to motions for summary judgment filed in civil cases. Subsection (b) requires that a party filing a motion for summary judgment also file a concise statement of the material facts as to which the moving party contends there is no genuine issue for trial. Each fact shall be set forth in a separate, numbered paragraph, and shall be supported by a specific citation to the record.

Subsection (c) requires that any party opposing a motion for summary judgment respond to each fact set forth by the movant by either (1) agreeing that the fact is undisputed, or (2)

demonstrating that the fact is disputed by means of a specific citation to the record.

Subsection (g) of this rule further provides that failure to respond to a moving party's statement of material facts shall indicate that the asserted facts are not disputed for purposes of summary judgment.

As grounds for its motion, Respondent asserts that the state court record has been filed with the Court, and that Respondent's response in opposition to Petitioner's motion for summary judgment contains specific citations to the portions relevant to disposition of Petitioner's motion for summary judgment. Respondent argues that therefore a separate statement of facts is not necessary.

Petitioner, in his response (Docket Entry No. 68), states that he has no objection if Respondent does not wish to respond to his statement of material facts, although he does object to Respondent's motion to the extent that it suggests that Petitioner's statement of facts be disregarded entirely.

Given the nature of a *habeas corpus* proceeding, the undersigned Magistrate Judge finds that a separate statement of undisputed facts is unnecessary. Accordingly, Respondent's motion to waive the requirements of Local Rules 56.01(b) and (c) is **GRANTED**. Respondent shall not be required to respond to Petitioner's statement of undisputed facts, nor to file his own

statement of undisputed facts. The Court may, however, use Petitioner's statement of undisputed facts as an index to assist locating matters in the state court record to the extent necessary for the determination of Petitioner's motion for summary judgment.

It is so **ORDERED**.

/s/ John S. Bryant
JOHN S. BRYANT
United States Magistrate Judge