

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

JUL 27 2015

TIM RHODES  
COURT CLERK

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OKLAHOMA FARM BUREAU LEGAL )  
FOUNDATION, et al., )  
 )  
 Petitioners, )  
 )  
 v. )  
 )  
 OKLAHOMA WATER RESOURCES BOARD, )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
 TISHOMINGO NATIONAL FISH )  
 HATCHERY, et al., )  
 )  
 Other Parties of Record. )

Case No. CV-2013-2414

District Judge Barbara Swinton

**RESPONDENT OWRB'S COMBINED RESPONSE AND REQUEST FOR LEAVE OF COURT TO EXCEED BRIEFING PAGE LIMIT FOR ITS RESPONSE BRIEF**

Respondent Oklahoma Water Resources Board ("OWRB") hereby responds to CPASA's Motion to Strike Petitioners' Brief-In-Chief ("CPASA's Motion"), and further submits its own Request for Leave of Court to Exceed Briefing Page Limit as required by Local Rule 37(B). The OWRB agrees with CPASA's Motion that the page limit set forth in Local Rule 37(B) applies to Petitioners' Brief-in-Chief, and that Petitioners violated that rule when it filed a 57-page brief without prior permission of the assigned judge. As explained below, the OWRB asserts that the most appropriate remedy for Petitioners' violation of Rule 37(B) is for the Court to grant all Respondents leave to exceed the page limits of Rule 37(B) in their Response Briefs, and to prohibit Petitioners from filing a Reply Brief. In keeping with that assertion, the OWRB hereby submits its own request for leave of the Court to exceed Rule 37(B)'s 20-page limit for its Response Brief. In the interests of time, and given

the proximity of upcoming Scheduling Order deadlines, the OWRB requests the Court decide this matter without a hearing, as allowed by Rule 4(h) of the Rules for District Courts of Oklahoma.

### **BRIEF IN SUPPORT**

1. The OWRB adopts and incorporates the authority and argument contained in numbered paragraphs 1 through 11 in CPASA's Motion, and further states as follows:

2. Petitioners' reliance on Conoco, Inc. v. State Dept. of Health, 1982 OK 94, for the proposition that Local Rule 37(B)'s 20-page limit does not apply is misplaced. The Conoco decision merely held that aggrieved parties seeking to appeal a final administrative order must do so within 30 days after they are notified of the order. *Id.*, at ¶¶ 20-21. That decision says nothing else about District Court procedure, and does not address the applicability of local court rules.

3. On the contrary, Oklahoma's Administrative Procedures Act (OAPA) requires appellants to institute their appeals "by filing a petition, in the district court[.]" 75 O.S. § 318(B)(2), emphasis added. This is the exactly the same procedure for the commencement of a civil action under the Oklahoma Pleading Code. 12 O.S. §§ 2002 & 2003.

4. Petitioners themselves have, in the past few months, asserted the general civil nature of these proceedings by (1) contesting change of venue; (2) seeking discovery in the form of documents not included in the administrative record on appeal, and (3) filing their own motions, setting hearings, and serving hearing notices in accordance with local rules.

5. Petitioners' argument that Rule 37 does not apply because its Brief-in-Chief is not a Rule 4 Motion is contradicted by Local Rule 10, which requires that "all motions and briefs" in "all cases" comply with Rule 37.

6. Furthermore, the Petitioners' argument -- that Oklahoma County Local Rule 37 does not apply simply because the right to judicial review arises from the OAPA -- is contradicted by the Oklahoma Court of Civil Appeals opinion in Admire v. Capital West, 2012 OK CIV APP 72, 283 P.3d 335 (Released for Publication by Order of the COCA, Division No. 2), which found that Oklahoma County Local Rule 37's page limit for motions and briefs was applicable to a motion to vacate an arbitration award which was filed in the district court pursuant to the Uniform Arbitration Act (OUAA). The Capital West opinion found no conflict between Local Rule 37's page limitation and the applicable provisions of the OUAA, and further found no conflict between the Local Rule and the Rules for District Courts listed in Title 12 of the Oklahoma Statutes. Capital West, 2012 OK CIV APP 72, at ¶22. The Capital West court held that "it was not erroneous as a matter of law for the trial court to strike [Plaintiff's] brief for exceeding the Rule 37 page limit." *Id.*

7. Similar to the situation in Capital West, there is no conflict between Local Rule 37 and the provisions of the OAPA; therefore, this Court would be well within its discretion to strike Petitioners' oversized brief.

8. The OWRB is concerned that Petitioners' newfound rejection of well-established procedure and the Local Rules is a prelude to more violations to come; specifically, Petitioners appear intent on supplementing their grossly oversized Brief-In-Chief by filing another grossly oversized Reply Brief. The OWRB further has reason to believe that Petitioners actually intend to use their Reply Brief to raise entirely new arguments which were omitted in their oversized Brief-In-Chief. In this respect, the OWRB would remind the Court that points of error which are not raised or are only given superficial treatment in an appellant's Brief-In-Chief are waived and are to be disregarded by the

reviewing court. *Southwestern Bell v. State ex rel. Corp Com'n*, 2007 OK 55, ¶ 33, 164 P.3d 150, 162-63.

9. The OWRB is further concerned that allowing the Petitioner's to re-file their Brief would only serve to unnecessarily delay these appeal proceedings, which are well into their second year, and would result in an additional unnecessary and unreasonable burden in terms of time spent and litigation costs on the part of the Respondents.

10. The OWRB suggests that a more appropriate remedy in this case would be to prohibit the Petitioners from filing a Reply Brief; or, alternatively, limiting Petitioners Reply Brief to five pages or less. Not only would these remedies be within the court's discretion to modify its own Scheduling Order, but it would prevent further delays and abusive conduct by the Petitioners by forcing them to comply with Local Rule 37. The Supreme Court of Oklahoma has, in the past, employed a similar remedy when dealing with a party who filed unauthorized and oversized briefs. See *State ex rel. Oklahoma Bar Ass'n v. Minter*, 2001 OK 69, ¶ 46 and fn. 66-67, 37 P.3d 763, 779 (Court held that Respondent's 52-page brief in violation of page limit rule, coupled with filing of an unauthorized reply brief, warranted enhanced discipline against the Respondent and the striking of his reply brief).

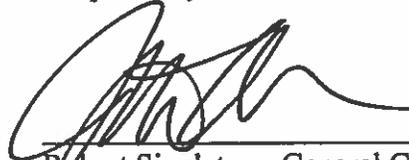
11. Finally, the OWRB would point out that the Petitioners, in their Objection and Response to CPASA's Motion, stated no objection to the Court granting leave for the Respondents to file 50-page Briefs, nor stated any objection to the Court's deciding CPASA's Motion without a hearing.

### CONCLUSION

Wherefore, in light of the foregoing argument and authority, Respondent Oklahoma Water Resources Board urges this Court to (1) grant Respondents leave to file Response

Briefs not to exceed fifty (50) pages in length, with pages counted in the manner set forth by Local Rule 37; (2) Prohibit Petitioners from filing a Reply Brief; or, alternatively, limiting the Petitioners' Reply Brief to 5 pages in accordance with the provisions of Local Rule 37; (3) determine its ruling on CPASA's Motion to Strike without a hearing and without further delay; and (4) any and all other relief which the Court sees fit to grant the parties in this case.

Respectfully submitted,



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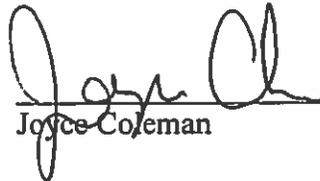
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**CERTIFICATE OF SERVICE**

This is to certify that on July 27, 2015, a true and correct copy of the above and foregoing instrument was mailed by US mail, postage prepaid, to all persons listed below and on the following pages.

  
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