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State of Ohio's Objections to Proposed Pretrial Order

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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ALAN J. DAVIS, Special
Administrator of the Estate
of Samuel H. Sheppard,

Plaintiff,

-vs-

STATE OF OHIO,


Defendant.

: CASE NO. 312322
:
: JUDGE RONALD SUSTER
:
: STATE OF OHIO'S OBJECTIONS
: TO PROPOSED PRETRIAL ORDER
:
:
:
:
:

Defendant, by and through counsel, hereby makes its objections to pretrial order proposed by plaintiff. Plaintiff's proposed pretrial order is contrary to both the Ohio Civil Rules and the Local Rules. The reasons for the objections are set forth more fully in the memorandum attached hereto and incorporated herein by reference.

Respectfully submitted,

STEPHANIE TUBBS JONES, Prosecuting
Attorney of Cuyahoga County, Ohio


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ATTORNEYS FOR DEFENDANT

MEMORANDUM IN SUPPORT OF OBJECTIONS

1. Defendant objects to paragraph one of plaintiff's proposed pretrial order. The basis for the objection is that there was no action lawfully pending before the court prior to July, 1996. Accordingly, any order by the court prior thereto is a legal nullity. Moreover, the question of the court's jurisdiction in February 1996 notwithstanding, The court can only order the prosecutor's office to produce documents and things in its custody and control.

2. For the reasons set forth in its brief in response to plaintiff's motion to limit discovery, the State of Ohio objects to the entire content of paragraph number two. Generally, the State will conduct discovery as provided by Rule 26, within reasonable time limits to be set by the court.

3. The State objects to August 4, 1997 as a discovery cut-off and respectfully requests a more reasonable date. It is noted that the plaintiff has submitted a Witness List containing some thirty (30) potential witnesses, all of whom are subject to pretrial deposition, and an Exhibit List of numerous documents.

4. The State of Ohio respectfully points out to plaintiff that Ohio Civil Rule 56 provides for a dispositive motion in the form of Motion for Summary Judgment:

(B) For defending party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may at any time, move with or without supporting affidavits for a summary judgment in his favor as

to all or any part thereof. If the action has been set for pretrial or trial, a motion for summary judgment may be made only with leave of court.

Additionally, Local Rule 21 sets forth the general litigation schedule including, but not limited to the following:

- a. Case to be categorized in terms of type, complexity of facts and legal issues presented; anticipated difficulty in obtaining and completing discovery;
- b. Definite date for exchange of expert witness reports to be determined pursuant to Rule 21.1;
- c. A definite date for the filing of all motions which date shall not be later than seven days before the final pretrial conference;

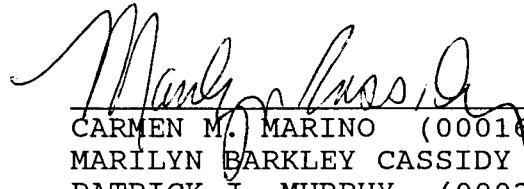
The state specifically objects to any elimination or alteration of its right to file a dispositive motion for summary judgment. This defendant has requested in the past, and will continue to assert that the Rules of Procedure must govern the course of these proceedings. The absence of a jury in this case has no bearing upon the propriety of a Rule 56 motion.

CONCLUSION

Plaintiff's proposed pretrial order is contrary to the Ohio Rules of Civil Procedure and the Local Rules of Practice. In light of the foregoing facts and principles of law, defendant respectfully requests that its objections be sustained.

Respectfully submitted,

STEPHANIE TUBBS JONES, Prosecuting
Attorney of Cuyahoga County, Ohio


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CERTIFICATE OF SERVICE

A copy of the foregoing was served upon Terry Gilbert, 1700 Standard Building, 1370 Ontario Street, Cleveland, Ohio 44113, this 30 day of May, 1997, by ordinary U.S. mail postage prepaid and via telecopier.



MARILYN BARKLEY CASSIDY
Assistant Prosecuting Attorney

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MARILYN BARKLEY CASSIDY
Assistant Prosecuting Attorney