

DJW/sr

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

RODERICK F. FIELDS,

Plaintiff,

CIVIL ACTION

v.

No. 07-3310-CM-DJW

AIMEE HUFFMAN, et al.,

Defendants.

ORDER

This matter is before the Court on *pro se* Plaintiff's Motion Pursuant to FRCP Rule 11 (doc. 21). In his Motion, Plaintiff alleges that Defendants and their attorney have filed false, frivolous, fictitious paperwork and fraudulent statements in the Report of Aaron v. Martinez Investigation (doc. 20) and the attachments thereto. Defendants have not filed a response to the Motion. The Court has considered the Motion and, for the reasons set forth below, the Motion is denied without prejudice.

Fed. R. Civ. P. 11(c) provides for the imposition of sanctions on an attorney, law firm, or party for Rule violations. Fed. R. Civ. P. 11 sets forth certain procedural requirements for a party seeking sanctions. Specifically, Fed. R. Civ. P. 11(c)(2) contains a 21-day safe harbor period of time for the offending party to withdraw the challenged document or conduct.¹ If the offending party does not withdraw the challenged document or conduct after 21 days, then the moving party may

¹ See Fed. R. Civ. P. 11(c)(2) (2008).

file its motion for sanctions with the court. The plain language of Fed. R. Civ. P. 11 indicates that this notice and opportunity prior to filing is mandatory.²

The Court notes that the Report of Aaron v. Martinez Investigation was not filed by any of the Defendants or counsel for any of the Defendants. The report was filed on behalf of interested party Kansas Department of Corrections. In addition, Plaintiff fails to allege that he provided the Kansas Department of Corrections or its attorney with 21 days to withdraw the Report of Aaron v. Martinez Investigation and the attachments thereto. Thus, it appears that Plaintiff has failed to comply with the procedural requirements of Fed. R. Civ. P. 11.

IT IS THEREFORE ORDERED that Plaintiff's Motion Pursuant to FRCP 11 (doc. 21) is denied without prejudice for failure to comply with the procedural requirements of Fed. R. Civ. P. 11.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this 1st day of August 2008.

s/ David J. Waxse
David J. Waxse
U.S. Magistrate Judge

cc: All counsel and *pro se* parties

² See *Zhu v. Fed. Hous. Fin. Bd.*, No. 04-2539-KHV, 2007 WL 675646, at *4 (D. Kan. Mar. 1, 2007) (citation omitted).