

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

SCOTT HARRIS KOBEL,

Plaintiff,

v.

Case No. 16-3227

**SERGEANT DON DUNKLE,
SHERIFF MCGOVERN,
DOUGLAS COUNTY SHERIFF'S OFFICE,
DOUGLAS COUNTY JAIL, et al.,**

Defendants.

MEMORANDUM & ORDER

This matter comes before the court upon defendants' Motion to Strike Plaintiff's Response to Defendants' Claim/Defense of Qualified Immunity (Doc. 38). Plaintiff Scott Harris Kobel, incarcerated and appearing pro se, did not respond. The court therefore treats the motion as unopposed.

Defendants argue that plaintiff's Response (Doc. 37) should be stricken as untimely and because it is not permitted or contemplated by the Federal Rules. The court agrees. Defendants filed their motion for summary judgment on July 3, 2017, plaintiff filed an untimely response on August 2, 2017, and defendants replied on August 16, 2017. Plaintiff then filed a second response on September 13, 2017.

Where a plaintiff proceeds pro se, the court construes his filings liberally and holds them to less stringent standards than pleadings filed by lawyers. *Barnett v. Corr. Corp of Am.*, 441 F. App'x 600, 601 (10th Cir. 2011). Pro se plaintiffs are nevertheless required to follow the Federal and Local Rules of practice and the court does not assume the role of advocating for plaintiff. *United States v. Porath*, 553 F. App'x 802, 803 (10th Cir. 2014).

The Local Rules provide that “[w]ithin the time provided in D. Kan. Rule 6.1(d), a party opposing a motion must file a responsive brief or memorandum. The moving party may file and serve a written reply brief or memorandum.” D. Kan. Rule 7.1(c). The rules do not contemplate any additional briefing, especially without leave of court. Plaintiff’s second response, filed after defendant’s reply, is therefore not contemplated by the rules.

The second response is also untimely. It was filed 28 days after defendants’ reply. Local Rule 6.1(d)(2) provides that “[r]esponses to motions to dismiss, motions for summary judgment, motions to remand, or motions for judgment on the pleadings must be filed and served within 21 days. Replies must be filed and served within 14 days of the service of the response.” Even if plaintiff had sought and been granted leave to file supplemental briefing, such briefing likely would have been due within 14 days.

The court finds that plaintiff’s second response (Doc. 37) should be stricken as untimely and un contemplated by the Federal and Local Rules, especially absent a response to this motion from plaintiff.

IT IS THEREFORE ORDERED that defendants’ Motion to Strike Plaintiff’s Response to Defendants’ Claim/Defense of Qualified Immunity (Doc. 38) is granted.

Dated October 12, 2017, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge