

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

CITY OF NORMAN, OKLAHOMA, a §
municipal corporation, §

Plaintiff/Appellant, §

vs. §

INTERNATIONAL ASSOCIATION OF §
FIREFIGHTERS, LOCAL 2067, §

Defendant/Appellee. §

No. 109447

FILED
SUPREME COURT
STATE OF OKLAHOMA
MAY 31 2011
MICHAEL S. RICHIE
CLERK

**MOTION TO STRIKE DESIGNATION OF RECORD AND
PROCEED WITH APPEAL UNDER SUPREME COURT RULE 1.36**

COMES NOW Defendant/Appellee International Association of Firefighters, Local 2067 (hereinafter “IAFF”), by and through the undersigned counsel, and moves this Court to strike the Designation of Record for Appeal from District Court filed by Plaintiff/Appellant City of Norman (“City”). IAFF also moves this Court to direct the City to proceed with this appeal under Supreme Court Rule 1.36. In support of this Motion, IAFF notes the following procedural steps in the case below:

1. On January 19, 2011, City filed a Petition in Cleveland County District Court for Declaratory and Equitable Relief. Thereafter, IAFF filed a Motion to Dismiss on February 8, 2011, for failure to state a claim. A week later on February 15, 2011, City filed a Motion for Summary Judgment. Both parties’ motions were heard on April 11, 2011. The District Court granted IAFF’s Motion to Dismiss and denied City’s Motion for Summary Judgment.

2. On May 9, 2011, City filed a Petition in Error with this Court. City also filed a Designation of Record for Appeal from District Court. Both filings are in conflict of Supreme Court Rule 1.36.

3. City filed this appeal as a regular appeal, not an appeal under the accelerated procedure for summary judgment and dismissals required by Supreme Court Rule 1.36. Rule 1.36 is non-discretionary. It states:

- (a) Cases Applied. The Rule 1.36 accelerated procedure will govern appeals from:
 - 1. summary judgments in cases in which the motions were filed under District Court Rule 13 after October 1, 1993; and
 - 2. final orders in case in which motions to dismiss for failure to state a claim or lack of jurisdiction (of a person or subject matter) under District Court Rule 4 were filed after October 1, 1993.

4. City has appealed from an order granting IAFF's Motion to Dismiss and denying City's Motion for Summary Judgment. Both motions were filed after October 1, 1993. The appeal should have proceeded under Supreme Court Rule 1.36. City's Designation of Record for Appeal from District Court filed herein on May 9, 2011, should be stricken and City should be directed to proceed with the appeal under Rule 1.36. IAFF requests leave to file a Supplement to Record on Accelerated Appeal within 20 days of City filing a proper record under Rule 1.36.

Respectfully submitted,



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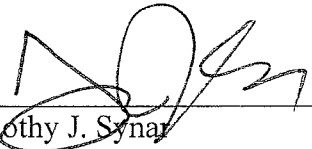
ATTORNEYS FOR APPELLEE IAFF

CERTIFICATE OF MAILING

I hereby certify that on the 31st day of May, 2011, a true and correct copy of the above and foregoing document was emailed and mailed to:

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