

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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GREGORY R. McGEE,

Plaintiff,

v.

SBC/AMERITECH OF WISCONSIN, INC.;

Defendant.  
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ORDER

03-C-745-C

This is a civil action in which plaintiff is suing defendant for alleged violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e. Presently before the court are defendant's motions to correct the case caption and to strike plaintiff's untimely response to its motion for summary judgment or, alternatively, allow it 10 days from the date of this court's ruling on its motion in which to file a reply. Defendant's motion to correct the case caption will be granted, but the motion to strike or for an extension of the summary judgment deadline for filing a reply will be denied.

In support of the motion to correct the case caption, defendant notes that SBC Ameritech of Wisconsin, Inc. is not a legal entity, and that plaintiff's former employer is Wisconsin Bell, Inc. As I explained to plaintiff in this court's order of January 5, 2004, the

only proper defendant in a Title VII action is the plaintiff's employer or former employer. Therefore, I will grant defendant's motion to correct the caption in this case. All future orders filed by the court and all future submissions made by the parties should reflect this change.

In support of its motion to strike, defendant points out that it filed its motion for summary judgment in this case on September 16, 2004. According to the magistrate judge's preliminary pretrial conference order of March 16, 2004, the parties were advised that the party opposing a motion for summary judgment would have 30 calendar days from the date of filing of the motion for summary judgment in which to oppose it. The magistrate judge explained to both parties that the court would start counting the 30-day response deadline on the day that it received the motion for summary judgment. He advised the parties as well that any reply was to be filed and served not later than 10 calendar days after service of the response.

Inadvertently, the magistrate judge's order was not properly implemented when the office of the clerk of court generated a briefing schedule letter following the filing of defendant's motion. Instead, the deputy clerk issuing the schedule advised plaintiff that his deadline to oppose the motion would be October 12, 2004, and that defendant would have until October 22, 2004 in which to serve and file a reply. If the clerk's letter had accurately listed plaintiff's response date, it would have been October 15, 2004, a Friday. Plaintiff did

not file his response until Monday, October 18, 2004.

Although this court expects the parties to take seriously the deadlines it imposes, I am unwilling to sanction plaintiff's failure to meet his deadline by one working day with the serious penalty of striking his submission. Defendant does not explain why, despite the conflicting deadlines, it could not surmise that the deadlines set by the magistrate judge in his order would take precedence over the deadlines set out in a letter from a deputy clerk. Defendant had 10 working days from the date plaintiff filed his response in which to file a reply. That means the reply was due yesterday. No reply has been filed. Nevertheless, in the spirit of fairness, I will extend defendant's deadline five working days to November 4, 2004.

#### ORDER

IT IS ORDERED that defendant's motion to correct the case caption to reflect that the defendant is Wisconsin Bell, Inc. is GRANTED.

Further, IT IS ORDERED that defendant's motion to strike plaintiff's untimely response to its motion for summary judgment or, alternatively, allow it 10 days from the date of this court's ruling on its motion in which to file a reply is DENIED. Defendant may

have until Thursday, November 4, 2004, in which to serve and file its reply.

Entered this 29<sup>th</sup> day of October, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge