

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

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TITUS HENDERSON,

Plaintiff,

ORDER

v.

04-C-39-C

GERALD BERGE,  
MATTHEW FRANK,

Defendants.

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Plaintiff has moved to strike defendants' reply to the proposed findings of fact plaintiff filed in response to defendants' motion for summary judgment. I understand plaintiff to be arguing that the reply should be disallowed because it was filed one day after the deadline set by the court and because it is improper under the court's summary judgment procedures for defendants to submit additional affidavits with a reply. Plaintiff's motion will be denied.

In an order dated December 28, 2004, I granted plaintiff a four-day enlargement of time in which to oppose defendants' motion. In that same order, I set January 17, 2005, as the deadline in which defendants were to file and serve their reply. Defendants' reply was filed on January 18, 2005. Although I expect parties engaged in litigation before this court

to take seriously the deadlines imposed by the court, I will not disallow materials filed one day late, particularly where, as here, the opposing party received the benefit of a larger extension of time.

As for plaintiff's contention that additional affidavits are not allowed with a reply, he is mistaken. Procedure III.A.3. clearly condones the submission of evidentiary materials necessary to respond to factual statements made by the non-moving party in his response.

ORDER

IT IS ORDERED that plaintiff's motion to strike defendants' reply is DENIED.

Entered this 31st day of January, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge