

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

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JONATHON M. MARK,

Plaintiff,

v.

ORDER

05-C-279-C

Off. GUSTAFSON; Sgt. McARTHER; Lt. DOHMS;  
Unit Manager DOUGHERTY; Mr. BROWN (head  
of PRC); STEPHEN M. PUCKETT,

Defendants.

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Defendants have moved for an enlargement of time to August 3, 2006, in which to file a reply to plaintiff's response to defendants' motion for summary judgment. Alternatively, defendants ask that plaintiff's response be disregarded in its entirety because it was not postmarked on July 14, 2006, the deadline plaintiff was given in which to file his response. In particular, defendants say that although plaintiff's submission is dated Friday, July 14, 2006, it was not postmarked until Monday, July 17, 2006 and defendants did not receive it until Wednesday, July 19, 2006. Counsel for defendants explains that three working days is not enough time to reply to plaintiff's response so as to meet defendants' July 24 deadline. Making matters worse, counsel says, is the fact that her secretary is on

vacation this week, so she will need to type the reply herself.

Under Houston v. Lack, 487 U.S. 266 (1988), plaintiff met his July 14 deadline for filing his response if he delivered it to prison authorities for mailing on that day. Although I could require plaintiff to submit an affidavit in which he avers that he delivered his response to prison authorities for mailing on July 14, 2006, I am not inclined to waste everyone's time to do so. Even if plaintiff did not mail his response until Monday, July 17, I would not sanction his tardiness with complete disregard of his submission. The better resolution is to afford defendants additional time in which to serve and file a reply.

#### ORDER

IT IS ORDERED that defendants' motion to disregard plaintiff's response to defendants' motion for summary judgment is DENIED.

Further, IT IS ORDERED that defendants may have an enlargement of time to August 3, 2006, in which to serve and file a reply to plaintiff's response to defendants'

motion for summary judgment.

Entered this 24th day of July, 2006.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge