

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

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CLAYTON HARDY MELLENDER,

Plaintiff,

v.

DANE COUNTY and DR. YOUNG KIM,

Defendants.  
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ORDER

06-C-298-C

Plaintiff has filed a motion for summary judgment in this action, which is within the February 2, 2007 deadline established by Magistrate Judge Stephen Crocker in his order of November 14, 2006. However, plaintiff's evidentiary submissions are not in compliance with this court's summary judgment procedures, so I will require him to refile the documents with appropriate identification and authentication and rewrite his proposed findings of fact to correct the citations before I will require defendants to respond to it.

First, some of plaintiff's proposed findings of fact refer to specific paragraphs in an affidavit, but the affidavit is not identified by the name of the affiant, the date of the affidavit and the paragraph number. Instead, plaintiff refers to the affidavit as "Aff.1," followed by a paragraph number. Because there are four affidavits in the court's record of this case, it is impossible to know which one plaintiff is calling "Aff. 1." Plaintiff should refer

to this court's summary judgment procedure I.B.2. for an example of the proper way to cite to an affidavit to support a proposed fact.

Second, plaintiff has submitted three sets of papers he calls "packet 1," "packet2" and "packet 3." Each packet contains a number of photocopied documents that plaintiff identifies generally as "discovery items." However, the appropriate way to cite documentary evidence is set out in the court's procedures at I.C.1.f. Each document should be marked with a separate exhibit number and each must be authenticated. For example, if plaintiff received copies of his medical records from defendants in response to a request for production of documents, plaintiff would authenticate the medical record first by assigning the record an Exhibit number, say Exhibit No. 1, and then attaching the exhibit to an affidavit in which he avers that "Exhibit No. 1 is a true and correct copy of my medical records produced by defendants in response to my request for production of documents dated so and so." Then, assuming he wishes to point to an entry in the record to support a proposed finding of fact, his citation would read, "Mellender Affidavit, (date), Exhibit 1, page so and so."

Because it is clear that plaintiff did not understand the requirements for submitting evidence and proposed findings of fact, I will allow him an opportunity to resubmit proposed findings of fact and documentary evidence in support of his motion. I have prepared a copy of plaintiff's submissions for record purposes only and am returning the copies he submitted with his motion, together with a copy of his proposed findings of fact, so that he can make

the necessary corrections. A set of exhibit stickers is also enclosed to plaintiff with a copy of this order, although for future reference, hand-written exhibit identification is equally acceptable.

#### ORDER

IT IS ORDERED that briefing on plaintiff's motion for summary judgment is STAYED pending plaintiff's submission of revised proposed findings of fact and documentary evidence that conforms to this court's summary judgment procedures. If, by February 2, 2007, plaintiff fails to submit proposed findings of fact and documentary evidence that complies with the court's procedures, his motion for summary judgment will be denied. Otherwise, a briefing schedule will be sent to the parties to confirm that the court has accepted the revised submissions and that the parties are to continue briefing the motion in accordance with the magistrate judge's preliminary pretrial conference order.

Entered this 12th day of January, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge