

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

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AARON A. KREILKAMP,

Plaintiff,

v.

ROUNDY'S, INC.,

Defendant.

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ORDER

05-C-425-C

In a preliminary pretrial conference order dated October 18, 2005, Magistrate Judge Stephen Crocker set January 20 as the deadline within which the parties are to file dispositive motions. Now plaintiff Aaron Kreilkamp has filed a motion for summary judgment. Unfortunately, however, the motion does not comply with this court's procedures to be followed on motions for summary judgment, a copy of which was sent to the parties with the Magistrate Judge's October 18 order. Therefore, it must be denied.

Plaintiff has submitted a single document in which he moves for summary judgment, makes factual statements, argues his legal position and describes documentary evidence. This is contrary to the Procedure I.B., which requires that the motion, brief (legal argument) and proposed findings of fact be submitted as separate documents. In addition, none of

plaintiff's proposed facts is followed by a citation to evidence in the record to support the proposition. This is contrary to Procedure I.D.2, which states, "At the close of each numbered paragraph, the movant must cite to references in the record supporting the fact proposed in the paragraph." Finally, plaintiff's documentary evidence is not admissible because none of his documents has been authenticated. Documentary exhibits on their own are not admissible in evidence. See Procedure I.E. Documents used as exhibits must be accompanied by an affidavit of the person who has custody of the documents stating what those documents are. For example, during the time of the incident at issue in this case, plaintiff may have filed a grievance with defendant's human resources department and he may have received a response to his grievance. If he were to use the grievance and the response he received as evidence on a motion for summary judgment, he would have to mark the documents as, say, exhibits "A" and "B," and attach to the exhibits an affidavit in which he declares or swears under penalty of perjury that the documents marked as exhibits "A" and "B" are true and correct copies of the grievance he filed on such and such a date and the response he received on such and such a date.

Moreover, plaintiff's "witness statements" are not admissible as evidence because the statements are not sworn or declared to be true under penalty of perjury and do not contain the original signatures of the witnesses. The written testimony of individuals who have personal knowledge of matters relating to the incident about which plaintiff is complaining

in this lawsuit should be submitted in the form of affidavits. The affidavit should contain a written statement of, for example, the witness's personal observations of an incident, make clear why the witness was in a position to observe the incident and conclude with a sworn statement or declaration "under penalty of perjury" from the witness that what the witness said in the affidavit is truthful.

Because plaintiff's motion for summary judgment and submissions in support are not in compliance with the court's procedures, they cannot be considered. Therefore, the motion will be denied without prejudice to plaintiff's refiling a motion that complies with the court's procedures by the January 20 deadline. If plaintiff is not able to prepare a proper motion for summary judgment by the January 20 deadline, he should not be concerned. If defendant moves for summary judgment, he will have a chance to submit his version of the facts and evidentiary materials in response to defendant's proposed facts.

#### ORDER

IT IS ORDERED that plaintiff's motion for summary judgment is DENIED without

prejudice to his refiling a motion that is in conformance with this court's procedures.

Entered this 12th day of January, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge