

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

STANLEY STEPHENS,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:13-cv-01503-TWP-DML
)	
CITY OF LAWRENCE, MICHAEL)	
WALTON, ERIKA SCHNEIDER,)	
MICHAEL MCKENNA, JAMES PARISH,)	
and SCOTT EVANS,)	
)	
Defendants.)	

ORDER ON MOTION TO STRIKE

This matter is before the Court on a Motion to Strike filed by Plaintiff Stanley Stephens (“Mr. Stephens”) ([Filing No. 46](#)). Mr. Stephens asks the Court to strike the Cross Motion for Summary Judgment, Memorandum in Support and Response in Opposition to Plaintiff’s Motion for Partial Summary Judgment, and all designated evidence filed by Defendants City of Lawrence, Michael Walton, Erika Schneider, Michael McKenna, James Parish, and Scott Evans (collectively “Defendants”). Mr. Stephens correctly asserts that the Defendants filed their dispositive motion and response brief one day late. For the following reasons, the Court **DENIES** Mr. Stephens’s Motion to Strike.

Under the parties’ Case Management Plan, which was approved by the Court on December 31, 2013, any dispositive motions were to be filed no later than September 19, 2014. On September 4, 2014, the Defendants filed a motion for time to file dispositive motions no later than October 19, 2014, which the Court granted.

On September 12, 2014, Mr. Stephens filed his Motion for Partial Summary Judgment, making the Defendants’ response brief due on October 10, 2014. On September 24, 2014, the

Defendants filed a motion for additional time to respond to Mr. Stephens's motion. The Defendants specifically requested "up to and including October 19, 2014" to file their response brief so that it would correspond with the dispositive motions deadline ([Filing No. 44](#)). The Court granted the Defendants' motion for additional time, giving the Defendants until October 19, 2014, to file their response, and noted, "So as not to impact the current trial date, parties should anticipate no further extensions of time." ([Filing No. 45](#).)

October 19, 2014, fell on a Sunday, so the Defendants waited until Monday to file their response brief and their cross motion for summary judgment. On October 20, 2014, Mr. Stephens—hours before the Defendants had even filed their papers—moved to strike the Defendants' papers on the bases that they were untimely and that the Court had cautioned the parties to anticipate no further extensions. The Defendants responded that their filings were timely because the filing deadline fell on a Sunday, and, in any event, filing them one day later would not impact the trial date or prejudice the parties.

Counsel should note that when the Court orders the filing of a brief or pleading on a specific date, the Rule 6 time computation provisions are irrelevant and do not apply. "The language of Rule 6(a) does not address situations where litigants are required to file papers on a particular, stated, calendar date." *Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1018 (6th Cir. 2005). Accordingly, Defendants' filing was late. Counsel presumably is aware that because of electronic filing, one can file in federal court late at night, early in the morning, on weekends, or on legal holidays.

Because it appears that the Defendants' one-day-late filing was not made for purposes of delay and in fact has not affected the trial date, and further, because the Defendants do not have a history of disregarding deadlines or court rules and orders, the Court declines to strike the

Defendants' Cross Motion for Summary Judgment, Memorandum in Support and Response in Opposition to Plaintiff's Motion for Partial Summary Judgment, and designated evidence filed on October 20, 2014.

Therefore, the Court **DENIES** Mr. Stephens's Motion to Strike. Because the Court denies the Motion to Strike, the Defendants' Motion for Leave to File Summary Judgment Motion and Response Instanter ([Filing No. 52](#)) is moot, and therefore, Filing No. 52 is **DENIED AS MOOT**.

SO ORDERED.

Date: 4/2/2015



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

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