

but this contains more legal argument than factual assertion and it is not sworn under penalty of perjury.² These are serious deficiencies. On the other hand, the defendants have filed no reply whatsoever to Boucher's responsive pleadings so, in a sense, they have left her statement of uncontested/additional facts -- deficient as they may be under District of Maine Local Rule 56(c) -- uncontested.

While this court does not as a rule excuse pro se plaintiffs from complying with District of Maine Local Rule 56, it does in certain cases approach summary judgment disputes involving an incarcerated pro se party with some leniency. See; Clarke v. Blais, 473 F.Supp.2d 124, 128 - 30 (D. Me. 2007) (Hornby, J.); see also Demmons v. Tritch, 484 F.Supp.2d 177, 182 -83 (D. Me. 2007) (Woodcock, J.).

Because I do not feel that I can decide this motion for summary judgment fairly on the record before me, I am giving Boucher the opportunity to supplement her response to the limited extent of amending her "Statement of Disputed Material Facts" to provide cognizable record citations in support of her ten paragraphs. I note that not only does this court not have the exhibit cited by Boucher, the defendants have not filed the entire Boucher Deposition but they have filed the page cited in Paragraph 4 of Boucher's statement of facts.³ If Boucher seeks to rely on any other portion of her deposition in support of her facts she must file the cited portion(s) with the court. If Boucher seeks to rely on her own representations as to her experiences as record

² I also note that Boucher did not complete the portion of her form complaint that allows a plaintiff to affirm the complaint allegation under penalty of perjury.

³ The defendants did comply fully and completely with the Local Rule and I am not suggesting their procedure was remiss in any fashion. However, I want Boucher to understand the limited record evidence before the court.

support for her statement of fact she must file an affidavit sworn under penalty of perjury.⁴ In fairness to the defendants, Boucher is not permitted to file any summary judgment supplementation beyond this amendment to her additional statement of facts. Specifically, I am not permitting Boucher to file an opposing statement of materials facts that admits, denies or qualifies defendants' original statements. I am giving her an opportunity to get her own record evidence in a cognizable form in order to allow me to make the assessment Clarke v. Blais, would require.

I give Boucher until **August 10, 2009**, to provide this limited supplementation. If Boucher declines to do so I will issue a recommendation on the motion for summary judgment on the record as it now stands. If Boucher does file the supplementation the defendants will have ten days from the date the supplementation is filed to reply to Boucher's responsive pleadings.

So ordered.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

July 22, 2009.

⁴ I am not suggesting at this juncture that Boucher's affidavit statement would or would not be sufficient record evidence for the material facts; that determination will be made when the court sorts through the entire factual record.