

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CLARENCE JARRETT,

Plaintiff,

No. 14-10410

v.

District Judge Stephen J. Murphy  
Magistrate Judge R. Steven Whalen

MICHIGAN DEPT. OF CORRECTIONS,  
ET AL.,

Defendants.

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**ORDER VACATING ORDER TO SHOW CAUSE  
AND DENYING PLAINTIFF'S MOTION TO STRIKE [Doc. #53]**

On July 23, 2014, Plaintiff filed a Motion to Strike Defendant Stieve's Response to Plaintiff's Cross-Motion for Summary Judgment [Doc. #53], premised on Defendant Stieve having filed said response untimely. On September 24, 2014, I ordered Defendant Stieve to show cause why this Court should not strike his responsive pleading [Doc. #49] as untimely.

On October 8, 2014, Defendant Stieve filed a response to the show cause order [Doc. #72]. He concedes that his response to the Plaintiff's Cross-Motion for Summary Judgment was three days late, but, citing Fed.R.Civ.P. 6(b)(1)(B), asks that the time for filing be extended based on excusable neglect.

As Defendant Stieve correctly states, a finding of excusable neglect involves

balancing five factors: “(1) the danger of prejudice to the nonmoving party, (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for the delay, (4) whether the delay was within the reasonable control of the moving party, and (5) whether the late-filing party acted in good faith.” *Nafziger v. McDermott Int’l Inc.*, 467 F.3d 514, 522 (6<sup>th</sup> Cir. 2006)(citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993)). A district court has “broad discretion to grant or deny an extension.” Charles Alan Wright, Arthur R. Miller, et al., 4B Federal Practice and Procedure § 1165 (3d ed. 2011).

A balancing of these factors weighs in favor of granting Defendant Stieve an extension for filing his response. The length of the delay—three days—is short. Moreover, I have previously granted Plaintiff additional time, beyond the 21-days set forth in the Court Rules, to file responsive pleadings. Plaintiff received Defendant Stieve’s response, and there would be no discernable prejudice to him or to the judicial proceedings if a short extension were granted. I also find that Defendant Stieve has acted in good faith.

Therefore, I will grant the extension *nunc pro tunc*, and deny Plaintiff’s motion to strike Defendant Stieve’s response. I will also give Plaintiff 28 days from the date of this Order to file a reply brief.

IT IS THEREFORE ORDERED that Plaintiff’s Motion to Strike Defendant Stieve’s Response to Plaintiff’s Cross-Motion for Summary Judgment [Doc. #53] is DENIED.

IT IS FURTHER ORDERED that the previously entered Order to Show Cause [Doc. #69] is VACATED.

IT IS FURTHER ORDERED that Plaintiff may file a reply to Defendant Stieve's response to his cross-motion for summary judgment no later than 28 days from the date of this Order.

Dated: October 15, 2014

s/R. Steven Whalen  
HON. R. STEVEN WHALEN  
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent to parties of record on October 15, 2014, electronically and/or by U.S. mail.

s/Carolyn M. Ciesla  
Case Manager to the  
Honorable R. Steven Whalen