

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CYNTHIA MORIARITY,)	
)	
Plaintiff,)	
vs.)	NO. 1:06-cv-01413-DFH-TAB
)	
SUPERIOR COURT OF MARION COUNTY,)	
ROBERT L. BINGHAM,)	
)	
Defendants.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CYNTHIA MORIARITY,)
)
 Plaintiff,)
) CASE NO. 1:06-cv-1413-DFH-TAB
 v.)
)
 SUPERIOR COURT OF MARION COUNTY,)
)
 Defendant.)

ENTRY ON MOTION TO FILE BELATED PRETRIAL MATERIALS

What goes around comes around. Perhaps this is a teachable moment.

This employment discrimination suit is set for trial on March 17, 2008. Pursuant to the court's case management orders, the parties were required to file final witness and exhibit lists, deposition designations, motions in limine, and proposed jury instructions and voir dire questions no later than two weeks before the final pretrial conference. By order of February 11, 2008, the court advanced the time of the final pretrial conference by two days, from March 7th to March 5th, so that the pretrial filings were due on Wednesday, February 20, 2008.

Plaintiff submitted her filings on time. The defendant did not. On Monday, February 25, 2008, the defense filed its motion for leave to file belated trial preparation materials (Dkt. No. 52). The motion explains that the Office of

Corporation Counsel for the City of Indianapolis has recently experienced a large turnover in staff (presumably in the wake of the change of administrations) and that the deadlines for this case were placed on the calendar incorrectly. Defendant apologizes for the oversight and seeks leave to have the filings treated as timely. Defendant's motion reports that plaintiff's counsel objects to the motion because the late filings leave him so little time to respond.

The defendant's motion brought to the court's mind the case of *Fidler v. City of Indianapolis*, 428 F. Supp. 2d 857, 868 (S.D. Ind. 2006), in which the Office of Corporation Counsel moved to strike the plaintiff's materials opposing summary judgment because they had been filed one day late. The court denied the motion to strike, and the *Fidler* case was eventually tried to a defense verdict. In the course of denying the motion to strike, the court wrote:

With respect, the court also believes the defendants' counsel – the city's Office of Corporation Counsel – should be careful about what they wish for. The motion to strike calls to mind the proverbial reminders that the world is round and that “what goes around comes around.” If a diligent lawyer's apparently isolated one-day failure to miss a non-jurisdictional deadline triggered the litigation equivalent of the death penalty – a dismissal or default – the risk of injustice would be great. The lawyers of the Office of Corporation Counsel manage a substantial case load, including a large volume of civil rights cases in this court against Indianapolis police officers and Marion County Sheriff's deputies. *The court is confident that there are at least a few occasions when lawyers of the Office of Corporation Counsel miss deadlines or hearings.* The court and opposing counsel have a number of tools for dealing with such situations short of dismissal or default.

Id. at 868 (emphasis added).

That day has now come. The court trusts that it will not see from the Office of Corporation Counsel punitive motions to strike like that filed in *Fidler*. Consistent with the ruling in *Fidler*, the court grants the defendant's motion to file its pretrial submissions late. The court will accommodate, and will expect defense counsel to accommodate, any reasonable requests by plaintiff's counsel for flexibility on deadlines in the final trial preparation caused by the late defense filings. In addition, the court hereby **extends until March 3, 2008** both parties' deadlines for filing the documents identified in the pretrial scheduling order as needing to be filed one week before the final pretrial conference.

So ordered.

Date: February 27, 2008

DAVID F. HAMILTON, CHIEF JUDGE
United States District Court
Southern District of Indiana

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