

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MELYNDA HARBOUR,

Plaintiff,

v.

Case No. 06-2459-JWL

**THE CITY OF EDWARDSVILLE,
KANSAS, et al.,**

Defendants.

MEMORANDUM AND ORDER

This matter is before the court on Plaintiff Harbour's Motion to Strike Defendants' Reply on Partial Summary Judgment or for Leave to File Surreply (doc. #40). Therein, plaintiff correctly points out that numerous arguments raised by defendants in their reply brief (doc. #39) in support of their motion for partial summary judgment on plaintiff's FMLA claim should have been raised in their opening brief. Of course, the court understands that the presentation of the factual record on this motion may have been complicated somewhat by the fact that defendants filed their motion before the parties commenced discovery in this case. But, the court does not believe that striking defendants' reply brief would further the just, speedy, and inexpensive resolution of the issue presented in defendants' motion for partial summary judgment. Instead, because defendants' reply brief truly is more in the nature of an opening brief, the court will essentially treat it as such by granting plaintiff leave to file a surreply and granting defendants leave to file a sur-surreply. Defendants' sur-

surreply shall be strictly limited to responding to the arguments raised in plaintiff's surreply and not to presenting any new factual material or legal theories.

IT IS THEREFORE ORDERED THAT Plaintiff Harbour's Motion to Strike Defendants' Reply on Partial Summary Judgment or for Leave to File Surreply (doc. #40) is granted in part and denied in part. The court will not strike defendants' reply, but hereby grants plaintiff leave to file a surreply on or before **May 28, 2007**. Defendants may then file a sur-surreply on or before **June 8, 2007**.

IT IS SO ORDERED this 14th day of May, 2007.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge