

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

**JYAN HARRIS,**

**Plaintiff,**

**v.**

**CITY OF KANSAS CITY, KANSAS FIRE  
DEPARTMENT, et al.,**

**Defendants.**

**Case No. 18-CV-02084-JAR**

**MEMORANDUM AND ORDER**

Plaintiff Jyan Harris brings this action alleging employment discrimination and retaliation under Title VII of the Civil Rights Act of 1964. In support of his opposition to Defendants' pending summary judgment motion, Plaintiff submitted the deposition of former Kansas City, Kansas Mayor Mark Holland. In the reply memorandum, Defendants object that this deposition is inadmissible hearsay. Before the Court is Plaintiff's Motion for Leave to File Supplemental Legal Memorandum (Doc. 162) addressing the hearsay objection. The motion also seeks leave to file two exhibits in support of the supplemental brief. Defendants have responded and opposed the motion.

Although Plaintiff seeks to file a "supplemental legal memorandum," his proposed filing addresses the hearsay objections raised in Defendants' summary judgment reply. "Under D. Kan. Rule 7.1(c), briefing on motions is limited to the motion (with memorandum in support), a response, and a reply. Surreplies are not typically allowed."<sup>1</sup> The Court finds that Plaintiff's proposed filing is a surreply and must meet the standard required for such filings. Surreplies

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<sup>1</sup> *COPE v. Kan. State Bd. of Educ.*, 71 F. Supp. 3d 1233, 1238 (D. Kan. 2014) (citation omitted).

require leave of court and are only granted under “rare circumstances.”<sup>2</sup> Nonetheless, the nonmoving party on summary judgment “should be given an opportunity to respond to new material raised for the first time in the movant’s reply.”<sup>3</sup> Alternatively, the Court can disregard new material raised in the reply when reaching its decision.<sup>4</sup> New “material” includes both evidence and legal arguments.<sup>5</sup>

Defendants’ reply raises a hearsay objection to the Holland deposition for the first time; therefore, Plaintiff is entitled respond to this objection if the Court is to consider it. The proposed surreply is a mere six pages, limited to addressing the hearsay objection, and the Court will be in a better position to rule on the hearsay objection if both parties’ arguments are heard. For these reasons, Plaintiff’s motion is granted.

**IT IS THEREFORE ORDERED BY THE COURT** that Plaintiff’s Motion for Leave to File Supplemental Legal Memorandum (Doc. 162) is granted. Plaintiff shall change the title of his filing to “Surreply,” and file it on the docket forthwith, with the proposed exhibits filed as attachments thereto.

**IT IS SO ORDERED.**

Dated: January 21, 2021

S/ Julie A. Robinson  
JULIE A. ROBINSON  
CHIEF UNITED STATES DISTRICT JUDGE

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<sup>2</sup> *Id.* (citation omitted).

<sup>3</sup> *Green v. New Mexico*, 420 F.3d 1189, 1196 (10th Cir. 2005) (citing *Beaird v. Seagate Tech., Inc.*, 145 F.3d 1159, 1164 (10th Cir. 1998)).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*