

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LEONARD COLLINS,

Plaintiff,

v.

GARY McCAUGHTRY,
DICK POLINSKE, and
MOLLY OLSON,

Defendants.

ORDER

04-C-147-C

Plaintiff is proceeding in forma pauperis in this action on his retaliation claim against defendants Molly Olson and Dick Polinske and a First Amendment free speech claim against defendant Gary McCaughtry. Now plaintiff has filed documents titled “Motion,” “Defendant’s Agent Interference in Summary Judgment Reply” and “State Agent Retaliation Harassment and Interference in Plaintiff Forwarding Document to this Court.”

In his “Motion,” plaintiff complains that he was prejudiced in responding to defendants’ motion for summary judgment because defendants’ counsel filed an unsigned affidavit from Gary McCaughtry in support of the motion, and later substituted a signed and notarized copy of the affidavit. I construe plaintiff’s “Motion” as a motion to strike the

McCaughtry affidavit and will deny it.

Plaintiff does not explain how defendant's procedure prejudiced him. He appears simply to object to it on the ground that Fed. R. Civ. P. 56 requires affidavits to be signed to be valid. Although this is true, plaintiff was notified at the time defendants' motion was filed that a properly executed identical version of McCaughtry's affidavit would be filed with the court and served on him as soon as the original signed affidavit had been returned to the office of the Attorney General. Given the volume of affidavits that state corrections officials must prepare in response to prisoner litigation, this court has accepted the attorney general's practice of submitting facsimile signatures and unsigned affidavits from corrections officials on or near the deadline established for filing and briefing summary judgment motions, so long as the unsigned or facsimile signature pages are replaced with the original signatures and proper verification as soon as such originals are available. Plaintiff had defendants' proposed findings of fact and the unsigned affidavit on November 19, 2004, when defendants filed them with the court. The conforming signature page to the affidavit was filed and served on November 30, 2004. Although plaintiff was to have filed his opposition papers by December 19, 2004, he did not file his response to defendants' motion until December 28, 2004. Defendants did not object to this late filing and it has been accepted by the court. Thus, plaintiff had nearly a month to respond to defendants' motion *after* the affidavits were in compliance with Fed. R. Civ. P. 56. Therefore, even if plaintiff believed he was justified

in ignoring defendants' unsigned affidavit, which he was not, he received the signed and notarized version well in advance of the time his response was due. Indeed, plaintiff's response to defendants' proposed findings of fact reveals that he not only responded directly to facts proposed by the defendants that cite to the McCaughtry affidavit, but that he relied on the affidavit to support his own version of certain facts. Accordingly, plaintiff's motion to strike the McCaughtry affidavit will be denied.

In the document titled "Defendant's Agent Interference in Summary Judgment Reply," plaintiff complains that the prison librarian "acted as if he did not want to make copies" of plaintiff's exhibits to his affidavit in opposition to defendants' motion for summary judgment. In particular, it appears that plaintiff was told that he could not use legal loan money to obtain copies of full sections of the Wisconsin Administrative Code. According to the librarian, the court has the administrative code and can refer to it on its own. Although he does not say so expressly, I presume plaintiff wishes an order directing the librarian to provide him with copies of §§ DOC 302 and 310.

The librarian is correct. It is not necessary for plaintiff to file copies of sections of the administrative code with his opposition papers. The Wisconsin Administrative Code is state law. The full text of this law is available to this court in its law library and to defense counsel in the attorney general's law library. Therefore, plaintiff's motion for an order directing the librarian at the prison to give him copies of §§ DOC 302 and 310 will be

denied.

Finally, plaintiff asserts in the document titled “State Agent Retaliation, Harassment . . . “ that prison officials are interfering with his ability to prosecute this lawsuit because they temporarily withheld the delivery of mail to this court pending plaintiff’s completion of a new loan repayment agreement form (DOC-1290). Plaintiff does not explain why he cannot sign a new agreement. He simply asserts that about eight months ago, someone in the business office told him he would need to complete a new form. Clearly, it is entirely within the discretion of the prison to change its policies concerning the signing of repayment forms. There is no basis for an order holding that this requirement constitutes harassment or retaliation.

ORDER

IT IS ORDERED that

1. Plaintiff’s motion to strike the affidavit of Gary McCaughtry is DENIED;
2. Plaintiff’s motion for an order directing the librarian at the Waupun Correctional Institution to use legal loan funds to make copies of §§ DOC 302 and 310 for filing in connection with defendants’ motion for summary judgment is DENIED; and
3. Plaintiff’s motion for an order finding that defendants are retaliating against him or harassing him by requiring him to sign a new form agreeing to be responsible for

repayment of his legal loans is DENIED.

Entered this 24th day of January, 2005.

BY THE COURT:

STEPHEN L. CROCKER
Magistrate Judge