

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

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TITUS HENDERSON,

Petitioner,

v.

PETER HUIBREGSTE, MATTHEW  
FRANK, Secretary of the Wisconsin  
Department of Corrections, CITY OF  
BOSCOBEL,

Respondents.  
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ORDER

06-C-0407-C

In a letter to the court dated February 18, 2007, plaintiff requests “two blank subpoenas to serve on 3rd party non-defendants.” Plaintiff first requested these subpoena forms in December 2006, explaining that he wanted to obtain documents from a Boscobel newspaper related to his claim that the city violated his right to free speech by passing an ordinance prohibiting the distribution of the newspaper to prisoners at the Wisconsin Secure Program Facility. In an order dated December 22, 2006, Judge Crabb informed plaintiff that a subpoena might not be necessary and that plaintiff’s options to obtain the documents could be discussed at the preliminary pretrial conference.

At the conference, counsel for the city informed plaintiff that it might have at least

some of the documents plaintiff seeks. Nevertheless, plaintiff renews his request for subpoena forms.

The court cannot act as a gatekeeper in issuing subpoena forms, so I will direct the clerk of court to issue two blank subpoena forms to plaintiff. However, if one of the defendants has custody of the documents plaintiff seeks, he should consider requesting the production of documents pursuant to Fed. R. Civ. P. 34, a copy of which is attached to this order. If available, this method of obtaining the documents would likely be easier and possibly less expensive for plaintiff.

If plaintiff does intend on using a subpoena to obtain the documents, he should be aware that no person from whom the documents are sought need appear at the production and that he will need to pay the costs of copying the documents produced, even if he is proceeding in forma pauperis. If plaintiff does not demand a person's attendance, no witness and mileage fees need accompany the subpoena. Fed. R. Civ. P. 45(a)(1)(C), 45(b)(1) and 45(c)(2)(A). However, if plaintiff demands a person's attendance, he will need to tender to that person with the subpoena a check or money order in an amount sufficient to cover a daily witness fee and round trip mileage. Attached to this order is a copy of Fed. R. Civ. P. 45, which lays out the requirements for completing and serving a subpoena.

ORDER

IT IS ORDERED that the clerk of court furnish plaintiff with two blank subpoena forms.

Entered this 27<sup>th</sup> day of February, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge