

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

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TITUS HENDERSON,

Plaintiff,

v.

PETER HUIBREGTSE, *et al.*

Defendants.

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ORDER

06-C-407-C

This is a prisoner civil rights lawsuit involving the First Amendment and plaintiff's right to obtain copies of the Boscobel Dial, a local newspaper. Before the court is plaintiff's motion for leave to file a surreply to defendants' reply brief in support of their motion for summary judgment. *See* dkt. 49. Although defendants oppose this court's consideration of plaintiff's surreply, both sides benefit if I grant plaintiff's request in part.

Defendants violated this court's written procedure governing summary judgment by proposing new material facts in their reply brief. Ordinarily, this court would not consider these facts, but in this case it will do so while allowing plaintiff the opportunity to respond by means of his surreply, which plaintiff has submitted (dkt. 51).

That said, I am not providing plaintiff with additional time to obtain discovery under rule 56(f). My interpretation of plaintiff's demand is that he is trying to establish the existence of a de facto or constructive institutional policy denying him access to the newspaper. To the extent that plaintiff wants the court to consider documents generated by the defendants or their

agents to determine if a de facto policy existed, the court will give due consideration to all of the evidence and arguments properly submitted by plaintiff. But I agree with defendants that they cannot be compelled essentially to admit to a de facto policy that they deny exists. The evidentiary record now before the court is sufficient for both parties to make their best presentations on the summary judgment motion.

In short, plaintiff's motion for leave to file a surreply (dkt. 49) is granted to the extent that the court will accept and consider plaintiff's written surreply, dkt. 51; this motion is denied to the extent that plaintiff is seeking further discovery on the issue of an institution policy.

Entered this 21<sup>st</sup> day of May, 2007.

BY THE COURT:  
/s/  
STEPHEN L. CROCKER  
Magistrate Judge