

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

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WILLIE C. SIMPSON,

Plaintiff,

v.

JANEL NICKEL, TIMOTHY DOUMA,  
PHILIP KINGSTON, WILLIAM  
NOLAND, MATTHEW J. FRANK,

Defendants.  
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ORDER

05-C-232-C

Plaintiff is proceeding pro se and in forma pauperis in this action on his claim that defendants Janel Nickel, Timothy Douma, Philip Kingston, William Noland and Matthew Frank violated his First Amendment rights by retaliating against him for filing a complaint about a sexual assault against inmate McLaurin. On May 23, 2005, the Attorney General's office accepted service of plaintiff's complaint on behalf of all of the defendants except defendant William Noland, who is no longer employed by the Department of Corrections. On June 3, 2005, the United States Marshal located Noland and served him personally with plaintiff's complaint. Now plaintiff has filed a request for entry of default against defendants Nickel, Douma, Kingston and Frank and voluntary dismissal of defendant Noland.

Entry of default is appropriate where a defendant has failed to plead or otherwise defend an action. See Fed. R. Civ. P. 55(a). That is not a circumstance present here. Under an agreement entered into between the Wisconsin Department of Justice and the court allowing for informal service of process on Department of Corrections employees in cases filed by pro se prisoners, defendants have 40 days from the date the court mails copies of the pleadings to the Department of Justice in which to file a responsive pleading. In this case, the pleadings were mailed to the Department of Justice on May 18, 2005. Therefore, defendants Nickel, Douma, Kingston and Frank have until June 27, 2004, in which to serve an answer. Because the time for these defendants to respond to plaintiff's complaint has not yet expired, plaintiff has failed to show that he is entitled to entry of default.

Plaintiff bases his request for voluntary dismissal of defendant Noland on two erroneous presumptions: 1) that Noland has not yet been served with plaintiff's complaint and may not ever be found; and 2) that his request for entry of default against the other defendants will be granted. It appears that plaintiff believed when he wrote his notice of voluntary dismissal that Noland's presence in the case would simply delay final resolution in his favor.

Because I am denying plaintiff's request for entry of default and because defendant Noland has been located and served with plaintiff's complaint, I will allow plaintiff to withdraw his motion for voluntary dismissal of defendant Noland if he chooses to do so.

Otherwise, I will accept the notice of voluntary dismissal and dismiss defendant Noland from the case.

ORDER

IT IS ORDERED that plaintiff's request for entry of default pursuant to Fed. R. Civ. P. 55(a) against defendants Janel Nickel, Timothy Douma, Philip Kingston, William Noland and Matthew Frank is DENIED.

Further, IT IS ORDERED that plaintiff may have until July 5, 2005, in which to notify the court that he is withdrawing his request for voluntary dismissal of defendant William Noland. If, by July 5, 2005, plaintiff fails to withdraw his request, I will accept plaintiff's notice and dismiss defendant William Noland from this case.

Entered this 21st day of June, 2005.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge