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.

ORDER

05-C-232-C

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Plaintiff has been allowed to proceed 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. However, before plaintiff realized that defendant Noland had been served, he moved to dismiss Noland voluntarily. In an order dated June 21, 2005, I told plaintiff that

Noland had been served and gave him until July 5, 2005, to notify the court whether he wished to withdraw his request for voluntary dismissal of Noland. Now plaintiff has filed a "Motion to Withdraw Motion for Voluntary Dismissal of Defendant Noland." That motion will be granted.

In addition, plaintiff has filed documents titled "Motion to Strike the State Answer on Behalf of Defendant William Noland," "Plaintiff Objection to the Courts Withholding Information that Defendant Noland Had Been Served Summons and Complaint as Unfair and Prejudicial," "Plaintiff Motion for Documents from the Court and Other Information," "Plaintiff Motion for the Court to Enter Default Judgment Against Defendant William Noland," "Plaintiff Motion for Reconsideration" and "Plaintiff Brief in Support of his Motion for Reconsideration." All of these motions will be denied.

Plaintiff appears to believe that if the Attorney General's office refused to accept service of process under the informal service agreement for defendant Noland, it cannot represent defendant Noland. That is simply not the case. The Attorney General's practice is to decline to accept informal service of process for persons who are not actively in state service at the time they are sued. Nevertheless, it has agreed to represent the former state employees once they have been served formally. Thus, there is no reasonable basis for striking the state's answer on behalf of defendant Noland.

In his ". . . Objection to the Court's Withholding Information . . . , plaintiff faults the

court for failing to advise him that the United States Marshal had served defendant Noland before he moved to dismiss him voluntarily. However, the United States Marshal, not the court, is responsible for sending plaintiff a copy of the service return. In any event, plaintiff was not prejudiced by the delay in learning about the fact that Noland had been served. Noland remains a party to this action.

In his "Motion for Documents from the Court and Other Information," plaintiff asks for defendant Noland's address and a copy of the Marshals Service form so that he can send documents related to this case directly to him. In plaintiff's view, because the Attorney General cannot serve as Noland's counsel, he needs Noland's address so that he may serve pleadings on him directly. Now that the Attorney General will be representing Noland, it is not necessary for plaintiff to have Noland's address. Although I am enclosing a copy of the Marshals Service form to plaintiff with a copy of this order, defendant Noland's address is not listed on the form and will not be provided to plaintiff. As I told plaintiff in this court's order of May 26, 2005, explaining that a copy of his complaint was being sent to the Marshal for service on Noland, security concerns arise when prisoners have access to the personal addresses of former or current prison employees. Sellers v. United States, 902 F.2d 598, 602 (7th Cir. 1990).

In his motion for entry of default against defendant Noland, plaintiff suggests that Noland has failed to appear or defend against the complaint. Once again, this assumption

is premised on plaintiff's mistaken belief that the Attorney General cannot represent Noland. The Attorney General filed an answer on behalf of Noland on June 27, 2005. He has not failed to appear or defend against plaintiff's complaint.

Finally, plaintiff asks for reconsideration of that portion of the June 21, 2005 order, in which I denied an earlier motion plaintiff had filed for entry of default against defendants Nickel, Douma, Kingston and Frank. According to plaintiff, this court had no authority to allow these defendants 40 days from the date of the court's original mailing of plaintiff's complaint to the Department of Justice in which to file an answer. This is not true. The court is completely within its authority to enter into an informal service agreement with the Department of Justice to streamline the service procedures in litigation in which the plaintiff is proceeding pro se and in forma pauperis. The alternative is far more costly to the plaintiff, requiring that he incur substantial expenses for the marshal's service of complaints on each defendant. In most instances, the alternative also results in delay, because the plaintiff is responsible for providing copies of his complaint for service on the defendants and mailing those copies to the court together with completed Marshals Service and summons forms. Under the informal service agreement, the court prepares the copies of plaintiff's complaint and absorbs those costs as well as the costs of mailing the complaints to the Attorney General. In sum, plaintiff's request for reconsideration of this court's order denying entry of default against defendants Nickel, Douma, Kingston and Frank is meritless.

ORDER

IT IS ORDERED that plaintiff's request for leave to withdraw his request for voluntary dismissal against defendant William Noland is GRANTED.

Further, IT IS ORDERED that plaintiff's motions ". . . to Strike the State Answer on Behalf of Defendant William Noland," ". . .Objecti[ng] to the Courts Withholding Information that Defendant Noland Had Been Served Summons and Complaint as Unfair and Prejudicial," ". . . for Documents from the Court and Other Information," ". . . for the Court to Enter Default Judgment Against Defendant William Noland" and ". . . for Reconsideration" are DENIED, except that I am sending plaintiff a copy of the Marshals Service form showing that defendant Noland was served with his complaint.

Entered this 6th day of July, 2005.

BY THE COURT:

Barbara B. Crabb

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BARBARA B. CRABB
District Judge