

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

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JAMES G. DUDGEON,

Plaintiff,

v.

JOHN FIORELLO

Defendant.

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ORDER

06-C-563-C

On December 7, 2006, plaintiff James G. Dudgeon was granted leave to proceed in this action on his claim that defendant John Fiorello failed to conduct a preliminary hearing following plaintiff's detention for alleged violations of his parole. Defendant answered plaintiff's complaint on January 16, 2007. Nevertheless, on January 18, 2007, plaintiff filed a document titled "Plaintiff Motion for Summary Judgment," which I construe as a motion for entry of default pursuant to Fed. R. Civ. P. 55. In his motion, plaintiff argues that defendant failed to respond to his complaint within the twenty day time limit required under the Federal Rules of Civil Procedure and, therefore, he is entitled to entry of judgment in his favor.

Entry of default is appropriate where a defendant has failed to plead or otherwise defend an action. 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, plaintiff's complaint was mailed to the Department of Justice on December 7, 2006. Therefore, defendant Fiorello had until January 16, 2007, in which to serve an answer. He met that deadline exactly. Even if his answer had been late, however, it is clear that defendant is defending this action. Therefore, plaintiff has failed to show that he is entitled to entry of default.

#### ORDER

IT IS ORDERED that plaintiff's motion for summary judgment, construed as a request for entry of default pursuant to Fed. R. Civ. P. 55(a), is DENIED.

Entered this 24th day of January, 2007.

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