

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Magistrate Judge Kathleen M. Tafoya**

**Civil Action No.** 04-cv-02414-LTB-KMT

FTR

**Date:** October 06, 2009

Debra Brown, Deputy Clerk

ORLANDO CORTEZ CLARK

Pro se

Plaintiff,

v.

DR. NWEKE, C.C.C.F., Medical,  
PHYSICIAN HEALTH PARTNERS,

Terry Cipoletti  
Andrew Ringel

DR. FALLHOUSE, C.C.C.F., Medical,

Defendants.

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**COURTROOM MINUTES / MINUTE ORDER**

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**MOTION HEARING**

**Court in Session: 9:31 a.m.**

Court calls case. Appearance by plaintiff, pro se and by counsel.

Opening statements by the Court. At issue, Plaintiff's "Default Judgment Under Rule 55(2)(B)" [Doc. No. 210] and Defendant Nweke's "Motion to Dismiss for Insufficient Service of Process, and to Vacate Clerk's Entry of Default, by Putative Defendant Dr. Nweke" [Doc. No. 214].

Statements by Mr. Ringel regarding service on dismissed defendant Physician Health Partners and delivery of the summons and complaint for Dr. Grace Nweke and Cynthia Fallhowe (incorrectly named in the caption as Dr. Fallhouse).to the PHP address.

Mr. Ringle states that the current address for Dr. Cynthia Fallhowe is Post Office Box 38986, Colorado Springs, Colorado 80937-8074, telephone (719) 527-6510.

**ORDERED:** The Court has determined that service of process was incomplete and therefore ineffective pursuant to Fed. R. Civ. P. 4 as to both defendants Nweke and Fallhouse a/k/a Fallhouse. That portion of Dr. Nweke's Motion seeking to vacate the entry of default [Doc. No. 214] is **granted**.

**ORDERED:** Pursuant to Fed. R.Civ. P 55(c) the Clerk's Entry of Default as to Dr. Nweke and Dr. Fallhouse/Fallhowe [204] is **SET ASIDE**.

**ORDERED:** Plaintiff's [210] MOTION for Default Judgment as to Dr. Nweke and Dr. Fallhouse by Plaintiff Orlando Cortez Clark is **denied as moot**.

Counsel for Dr. Nweke's withdraws that part of Nweke's Motion seeking dismissal for insufficient service of process and accepts service of the summons and complaint on behalf of Dr. Grace Nweke.

**ORDERED:** That portion of Dr. Nweke's Motion [214] seeking dismissal for insufficient process is **withdrawn**.

**ORDERED:** Mr. Cipoletti hereby accepts service of process of the Amended Complaint for Defendant, Dr. Nweke and a responsive pleading is due on or before **November 20, 2009**. Plaintiff shall have twenty (20) days to respond should Dr. Nweke file a motion pursuant to Fed. R. Civ. P. 12(b).

**ORDERED:** On or before **October 16, 2009** Mr. Cipollete will file a status report regarding his potential representation of Dr. Cynthia Fallhowe and whether or not service will be accepted on her behalf.

**Court in recess: 9:57 a.m.**

Total In-Court Time 0:26; hearing concluded

\*To obtain a transcript of this proceeding, please contact Avery Woods Reporting at (303) 825-6119.