

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-00918-LTB-MEH

EUGENE EDWARDS,

Plaintiff,

v.

ARISTEDES W. ZAVARAS, as Executive Director of DOC, in his individual and official capacities,

Defendant.

MINUTE ORDER

Entered by Michael E. Hegarty, United States Magistrate Judge, on October 26, 2011.

Before the Court is Plaintiff's Motion for Default Judgment against the Defendant and Request for "Injunctive Relief" Pursuant to 42 U.S.C. § 1983 [filed October 21, 2011; docket #33]. The motion seeks relief pursuant to "Fed. R. Civ. P. 54(a)," which simply defines the meaning of the term, "judgment." Construing the motion liberally, the Court finds the Plaintiff seeks relief in the form of entry of default pursuant to Fed. R. Civ. P. 55(a). Plaintiff contends that "defendant failed to respond to the Plaintiff's motion dated September 13, 2011. This motion request [sic] that the Court issue an injunction against the defendant pursuant to 42 U.S.C. § 1983. And that a jury trial be set to address the merits of the complaint."

Plaintiff's motion for entry of default is **denied**. First, the Court will not find default against a party simply for not responding to a motion. *See* Fed. R. Civ. P. 55(a); *see also* D.C. Colo. LCivR 7.1C (the court may rule on a motion at any time after it is filed). Second, the Plaintiff filed a document that he titled, "Motion in Response to Defendant" on September 13, 2011. Docket #30. The Court had previously granted Plaintiff an extension of time within which to file a response to the pending Motion to Dismiss to September 9, 2011. Docket #29. Although Plaintiff's self-styled "motion" was not dated, the content of the document clearly reveals Plaintiff's response to the motion to dismiss; therefore, the Court liberally construed the document as a response to the motion to dismiss pursuant to D.C. Colo. LCivR 7.1C and accepted it as filed in accordance with the Court's August 18, 2011 order. Thus, the document was not treated as a motion.¹ The Plaintiff was informed of this treatment by the docket entry on September 14, 2011 and in this Court's Recommendation filed October 19, 2011. *See* dockets #31 and #32. Under Local Rule 7.1C and this Court's August 18, 2011 order, the Defendant was not required to file a reply brief in support

¹Most of the "relief" sought in Plaintiff's response brief is similar to the declaratory and injunctive relief sought in the Complaint. *See* docket #30 at 12.

of the motion to dismiss. Therefore, there is no basis upon which to find Defendant in default.