

FILED *lw*

DEC 07 2009
Dec 7 2009
MICHAEL W DOBBINS
CLERK, U.S. DISTRICT COURT

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Anthony Wheeler, pro se,)	MOTION FOR JUDGMENT BY DEFAULT:
plaintiff,)	Fed.R.Civ.P. #55(a)
)	Civil Action
)	Jury Trial Demanded
VS.)	case No.# 08 C 1637
)	
Roger E. Walker, et al.,)	Hon: Charles P. Kocoras
defendants.)	presiding judge

MOTION FOR JUDGMENT BY DEFAULT

Now comes, Anthony Wheeler, (plaintiff-pro se) and respectfully moves this Honorable court pursuant to Fed.R.CivP. #55(a) to hereby enter an order "instanter" allowing this Motion for Judgment by Default in the above entitled cause of action.

In support thereof, this plaintiff hereby states the following:

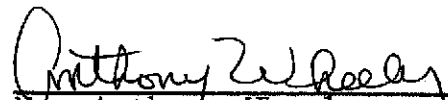
1. On October 15, 2009, this plaintiff had an occasion to file with the Clerk of this Honorable Court and serve upon the Defendant's Attorney, a "Revised Request for Written Depositions".
2. Subsequently, on November 5, 2009, this Honorable court had occasion to "grant" this plaintiff's motion and thereby ordered the Defendant's to provide this plaintiff with the written Depositions of the remaining

(9) questions, (see exhibits A & B) by December 1, 2009.

3. As to this date, the Defenanant's have thus far failed to answer or otherwise plead in compliance to the "Orders" of this Honorable court and has thus acted, with complete, utter and reckless disregard to said "order" which has "in effect" amounted to a complete abrogation to judiciary process and the rules of discovery.

4. Armed with this information and in keeping in mind with the well established rules of Federal Rules of Civil Procedures #55(a), this plaintiff hereby request that this Honorable court enters an order "instanter" holding said deliquent party in Default and/or what ever further relief that this Honorable Court deems just, equitable and proper.

Respectfully Submitted,


Mr. Anthony Wheeler, pro se
Reg. No.#A-81100
Pinckneyville Corr. Ctr.
P.O. Box 999
Pinckneyville, Ill. 62274

"A"

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Charles P. Kocoras	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	08 C 1637	DATE	November 5, 2009
CASE TITLE	Anthony Wheeler (A-81100) v. Roger E. Walker, et al.		

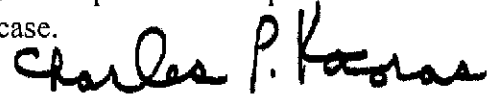
DOCKET ENTRY TEXT:

Plaintiff Anthony Wheeler has filed a document styled as a renewed motion for an order compelling discovery or disclosure (Doc [86]) as well as a renewed motion for deposition upon written questions (Doc [87]). The renewed motion for an order compelling discovery or disclosure is denied; the motion for deposition upon written questions is granted. Defendants are ordered to provide answers to Wheeler's written deposition questions by December 1, 2009. No further discovery will be permitted in this case.

Docketing to mail notices.

Plaintiff Anthony Wheeler has filed a renewed motion to compel discovery or disclosure [86]. According to the parties' filings, Wheeler has sent two sets of discovery to Defendants: one on April 8 (answered on April 30) and one on May 12 (answered on June 12). In his renewed motion, Wheeler claims the second set of requests to Defendants' counsel shows a good faith attempt to confer with counsel before he filed the first motion to compel and that his denied request is therefore meritorious. However, there is no indication that Wheeler contacted counsel to discuss why he perceived their responses to be "incomplete and evasive," and, as our previous order stated, not even the motion identified the shortcomings Wheeler wished to have rectified. A good faith effort to resolve discovery disputes requires much more than filing a second set of requests; a party must identify problems with particularity and work with the opponent to reach a mutually agreeable solution. Only when the parties have explored and exhausted joint activity is it permissible to involve the court. Despite his certification to the contrary, Wheeler has not demonstrated that he has made an effort that even approaches a good faith attempt to resolve discovery issues without court intervention. Accordingly, the renewed motion is denied.

Wheeler has also submitted revised written deposition questions that comply with our order of October 15, 2009 [84], in that they are stated in nonargumentative terms and seek discoverable information. Accordingly, the renewed motion for deposition by written questions is granted. However, the court notes that discovery closed in this case on September 22, 2009, and a motion for summary judgment is being briefed. Defendants are ordered to answer the questions set out in the renewed motion for deposition upon written questions no later than December 1, 2009. No further discovery will be permitted in this case.



U.S. District Judge

SCT

"B"

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Charles P. Kocoras	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	08 C 1637	DATE	October 15, 2009
CASE TITLE	Anthony Wheeler (A-81100) v. Roger E. Walker, et al.		

DOCKET ENTRY TEXT:

Plaintiff's motion for an order compelling discovery or disclosure [79] is denied. Defendants have timely responded to Plaintiff's requests and Plaintiff has failed to identify which of Defendants' responses were inadequate. Plaintiff also failed to demonstrate a good faith effort to confer with Defendants to address the discovery issues prior to filing his motion. *See* Fed. R. Civ. P. 37. Plaintiff's motion for deposition upon written questions [82] is granted in part and denied in part.

Docketing to mail notices.

Plaintiff Anthony Wheeler has moved to compel discovery [79] and for leave to depose Defendants Terry McCann, Kennan Young, Keith Lifter, Galen Moore, Troy Mayes, Michael McDowell, and Edmund Butkiewicz (collectively referred to as "Defendants") by written questions [82].

With respect to his motion to compel, Defendants have timely responded to Wheeler's requests and Wheeler has failed to identify which responses he claims were inadequate. He also failed to demonstrate a good faith effort to confer with Defendants to address the discovery issues prior to filing his motion. *See* Fed. R. Civ. P. 37. Accordingly, the motion to compel is denied.

Fed. R. Civ. P. 31 (2)(B) permits a person confined to prison to conduct depositions via written questions with leave of court. With his motion seeking leave of court, Wheeler has provided the 10 questions he wishes to pose to Defendants. Nine of the 10 questions contain argumentative or conclusory language, which is not directed toward obtaining discoverable information. The remaining question, Question #4, is stated in proper terms and asks "What is the protocol for maintenance of the cells in F-House punitive segregation unit when a resident submits a request and the staff has observed said conditions while taking their routine cell counts?" At the present time, we will grant the motion only as to Question #4. For present purposes, the motion is denied without prejudice as to the other nine questions. Wheeler is given 21 days from the date of this order to submit revised versions of the other nine questions, stated in nonargumentative terms, for renewed consideration.

Charles P. Kocoras

SCT

NOTICE, PROOF OF SERVICE

Notice is hereby given that I, Anthony Wheeler, #A-81100 have filed the attached Motion for Judgment By Default, Affidavit and Exhibits on this 2nd day of Dec. 2009. This by depositing same in the mail box at the Pinckneyville Correctional Center, P.O. Box 999, Pinckneyville, 62274.

To: Office of the Clerk
U.S. District court
219 S. Dearborn St.
Chicago, Ill. 60601

Camile J. Lindsay
Asst. Attorney General
100 W. Randolph St.
Chicago, Ill. 60601

Lisa Madigan
Illinois Attorney General
100 W. Randolph St.
Chicago, Ill. 60601

SUBSCRIBED AND SWORN TO BEFORE ME
ON THIS 2nd DAY OF Dec 2009

AFFIANT: Anthony Wheeler

NOTARY PUBLIC: Donna Heidemann

