

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

GENE SWANER,	)	
Plaintiff,	)	
	)	
vs.	)	1:10-cv-928-RLY-DML
	)	
GEOFFREY W. BARBIERI, Individually	)	
and in his official capacity as a Police	)	
Officer of the Indianapolis Metropolitan	)	
Police Department,	)	
Defendant.	)	

**ENTRY ON DEFENDANT’S MOTION TO SET ASIDE DEFAULT JUDGMENT**

On May 6, 2010, the court held a hearing on Geoffrey W. Barbieri’s (“Officer Barbieri”) Motion to Set Aside Default Judgment. Officer Barbieri contends that Gene Swaner (“Plaintiff”) did not properly effectuate service, which resulted in Officer Barbieri not having knowledge of the instant suit until after default judgment was entered against him. However, the court need not reach the issue of whether service was proper because a procedural error exists, which justifies setting aside the Entry of Default Judgment.

On July 21, 2010, Plaintiff sent a copy of the Complaint and summons by certified mail to Officer Barbieri at his place of employment, the Indianapolis Metropolitan Police Department. On August 18, 2010, having received no response from Officer Barbieri,

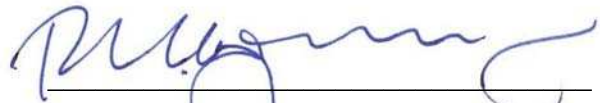
Plaintiff filed an Application for Default Judgment. On December 21, 2010, the court entered Default Judgment against Officer Barbieri, awarding Plaintiff damages totaling \$63,337.57.

However, Plaintiff's Application for Default Judgment failed to follow the explicit procedural requirements of Federal Rule of Civil Procedure 55. "Rule 55 sets forth a two-step process for a party seeking default judgment. A plaintiff must first obtain an entry of default from the clerk of the court, and then she may seek an entry of default judgment." *Peak v. District of Columbia*, 236 F.R.D. 13, 15 (D.D.C. 2006); FED. R. CIV. P. 55. By failing to first seek an entry of default, Plaintiff has failed to accomplish the necessary predicate to a grant of default judgment against Officer Barbieri. *See id.* Thus, the Clerk's issuance of Default Judgment against Officer Barbieri prior to issuing an entry of default was improper, and must now be remedied. Moreover, the Seventh Circuit maintains a strong policy of favoring trials on the merits over a default judgment. *Agstar Fin. Servs., PCA v. Union Go-Dairy, LLC*, 2011 WL 772754, at\*1 (S.D. Ind. Feb. 25, 2011) (citing *Security Ins. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995)).

Therefore, Officer Barbieri's Motion to Set Aside Default Judgment (Docket # 14) is **GRANTED**. The Clerk is directed to reopen this case forthwith. Furthermore, Officer

Barbieri is instructed to file an Answer to Plaintiff's Complaint within ten (10) days of the date of this entry.

**SO ORDERED** this 13th day of May 2011.



RICHARD L. YOUNG, CHIEF JUDGE  
United States District Court  
Southern District of Indiana

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