

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

LANCE KENT BYRD, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	4:08-cv-58-DFH-WGH
	)	
GKN SINTER METALS,	)	
	)	
Defendant.	)	

**MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION**

This matter came before the Honorable William G. Hussmann, Jr., United States Magistrate Judge, in New Albany, Indiana, at 3:30 p.m., on April 10, 2009, for a show cause hearing. The pro se plaintiff failed to appear. The defendant was represented by counsel.

The plaintiff has not shown cause as to why the sanction of One Thousand Five Hundred Dollars (\$1,500.00) for attorney’s fees should not be entered in this case. Therefore, the Magistrate Judge **RECOMMENDS** to the District Court Judge that a final order to pay such fees be entered at this time.

With respect to the defendant’s request that the order be reduced to a judgment, the Magistrate Judge notes that Federal Rule of Civil Procedure 58(b) concerns final judgments and provides, in part:

**(b) Entering Judgment.**

**(1) Without the Court's Direction.** Subject to Rule 54(b) and unless the court orders otherwise, the clerk must, without awaiting the court's direction, promptly prepare, sign, and enter the judgment when:

- (A) the jury returns a general verdict;
- (B) the court awards only costs or a sum certain; or
- (C) the court denies all relief.

**(2) Court's Approval Required.** Subject to Rule 54(b), the court must promptly approve the form of the judgment, which the clerk must promptly enter, when:

- (A) the jury returns a special verdict or a general verdict with answers to written questions; or
- (B) the court grants other relief not described in this subdivision (b).

FED.R.CIV.P. 58(b).

The award of attorney's fees in this case arises out of the plaintiff's failure to comply with discovery requests and appear at a settlement conference, and are, therefore, sanctions awarded pursuant to Federal Rules of Civil Procedure 16(f), 30, and 37. In a case that dealt with sanctions under Federal Rule of Civil Procedure 16(f), the Seventh Circuit noted that "Rule 58 applies to orders granting monetary sanctions . . . ." *United States v. Bush*, 1995 WL 128304 (7th Cir. 1995).

In light of the fact that the court may enter a final judgment awarding sanctions, the Magistrate Judge **RECOMMENDS** that the defendant's request be granted, and that a final order from this court issue that the plaintiff pay the sum of One Thousand Five Hundred Dollars (\$1,500.00). The Magistrate Judge further **RECOMMENDS** that judgment be entered at this time.

Any objections to this Report and Recommendation should be filed with the court within ten (10) days of the date of receipt of this entry.

**SO RECOMMENDED.**

**Dated:** June 12, 2009



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WILLIAM G. HUSSMANN, JR.  
Magistrate Judge

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