

2/5

FILED - GR
06 NOV -6 PM 1:29
CLERK
DISTRICT COURT
WESTERN DISTRICT MICH
BY _____

1 Donald Williams
44 1/2 S. Division Apt., 37
2 Grand Rapids, MI., 49503

Honorable Robert Holmes Bell
Chief United States District Judge

3
4 ***In The United States District Court***
5 ***For The Western District Of Michigan***
6

7 Donald Williams,) Case No.: 1-06-cv-635
8 Plaintiff,)
9 vs.) Appeal To Order Denying Motion
10 Grand Rapids Public Library,) For Default
11 Defendant)
12)

13 **Comes Now**, the Plaintiff Donald Williams, with his Appeal To Order Denying Motion
14 For Default Judgment.

15 **I. APPEAL TO ORDER DENYING MOTION FOR DEFAULT**
16 **JUDGMENT**

17 ***A. Brief***

18 1. On Friday November 3, 2006 I, Plaintiff, received an ORDER from Magistrate
19 Judge Joseph G. Scoville Denying "Motion For Default Judgment" dated
20 Thursday, November 2, 2006. Plaintiff asserts that Magistrate Judge Joseph G.
21 Scoville ORDER Denying "Motion For Default Judgment" dated Thursday,
22 November 2, 2006 is erroneous and contrary to law (Title 28 Sec. 636(b)(1)(A)).

23 ***B. Appeal***

24 1. Obviously, Magistrate Judge Joseph G. Scoville was correct in that Plaintiff must
25 seek the entry of default under FRCP Rule 55(a) as a prerequisite to obtaining a

1 default judgment under FRCP Rule 55(b). Whatever the problem was or is
2 Magistrate Judge Joseph G. Scoville ORDER Denying "Motion For Default
3 Judgment" (Plaintiff's motion for the entry of a default judgment is therefore out of
4 order, because he did not take the proper first step of seeking the entry of a
5 default from the Clerk of the Court) is erroneous. Because, Plaintiff filed both the
6 Request of the Clerk For Entry Of Default Judgment and the Motion For Default
7 Judgment on Friday, October 27, 2006. (See REQUEST CLERK FOR ENTRY
8 OF DEFAULT JUDGMENT and MOTION FOR DEFAULT JUDGMENT
9 previously submitted to this court).

10 2. On Thursday, October 19, 2006, I Plaintiff, received certification of receipt of the
11 United States Marshals Proof Of Service of the summons and complaint upon
12 the Defendant. The United States Marshals Service delivered the summons and
13 complaint by United States Mail, September 21, 2006. The Defendant received
14 the summons and complaint on September 22, 2006. A response was due 20
15 days thereafter excluding date of receipt, October 20, 2006. (See United States
16 Marshals PROOF OF SERVICE previously submitted to this court).

17 3. Plaintiff asserts Magistrate Judge Joseph G. Scoville ORDER Denying "Motion
18 For Default Judgment" because "The Court Records Reflects Defendant was
19 served on October 10, 2006. On October 26, 2006 Defendant requested an
20 extension of time in which to respond to the complaint (docket #9), which
21 extension was granted until November 20, 2006. Therefore, defendant is not in
22 default. According;" is contrary to law. (See ORDER Denying "Motion For
23 Default Judgment"). Plaintiff asserts, Defendant has 20 days to respond with an
24 answer from receipt (from the time Defendant is served with the summons and
25 complaint) of the summons and complaint. Not, 20 days from acknowledgement

1 of receipt of service of the summons and complaint. But, Defendants answer
2 must be timely 20 days from the date those documents were served exclusive
3 of the day Defendant was served. (See United States Marshals PROOF OF
4 SERVICE previously submitted to this court).

5 4. FRCP Rule 4(a) – The summons to Defendant stated the time within which the
6 Defendant must appear and defend and notified Defendant that failure to do so
7 will result in a judgment by default against the Defendant for the relief demanded
8 in the complaint.

9 5. FRCP Rule 12(a)(1)(A) - Unless a different time is prescribed in a statute of the
10 United States, a defendant shall serve an answer within 20 days after being
11 served with the summons and complaint. Defendant did not answer in a timely
12 manner, **within 20 days after being served with the summons and**
13 **complaint**¹, October 20, 2006. (See United States Marshals PROOF OF
14 SERVICE previously submitted to this court). FRCP Rule 55(a) When a party
15 against whom a judgment for affirmative relief is sought has failed to plead or
16 otherwise defend as provided by these rules and that fact is made to appear by
17 affidavit or otherwise, the clerk shall enter the party's default, Defendant Is In
18 Default. (See REQUEST CLERK FOR ENTRY OF DEFAULT JUDGMENT
19 previously submitted to this court).

20
21 6. Furthermore, the Defendants "Motion To Extend Time For Filing Responsive
22 Pleading Pursuant To FED.R.CIV.P. 6(b)" was unwarranted by existing law or

23 ¹ On October 19 2006 Defendant filed a frivolous unwarranted Motion To Extend Time
24 For Filing Responsive Pleading Pursuant To FED.R.CIV.P. 6(b) and not an answer to
25 the complaint.

1 statute and Defendants assertions, claims, defenses, and contentions where
2 perjuries and frivolous arguments (See Opposition Of Motion For Extended Time
3 For Filing Responsive Pleading previously submitted to this court).

4
5 **C. Conclusion**

- 6 1. Magistrate Judge Joseph G. Scoville ORDER dated Thursday, November 2,
7 2006 Denying "Motion For Default Judgment" is erroneous and contrary to law
8 (Title 28 Sec. 636(b)(1)(A)). This court should not unnecessarily delay and enter
9 default judgment against defendant because modification and extension of time
10 will increase the cost of litigation and waste this courts time where Defendant Is
11 In Default.

12
13 **WHEREFORE**, Plaintiff prays this Court, GRANT Plaintiffs Motion For Default
14 Judgment.

15
16 **II. EFFORT TO COMPLY WITH LCIVR 7.1(d)**

- 17 1. Plaintiff would show the Court that Magistrate Judge Joseph G. Scoville Entered
18 an ORDER DENYING Plaintiffs "Motion For Default Judgment" erroneously.
- 19 2. Plaintiff has, on October 27, 2006, shown this Court and the Defendant a
20 "Request Of The Clerk For Entry Of Default Judgment and Motion For Default
21 Judgment.
- 22 3. Plaintiff would show this Court, in good faith, that Plaintiff believes Defendant will
23 object to Plaintiffs Appeal To Order Denying "Motion For Default Judgment".
24

25 Dated This Monday, November 6, 2006

By: Donald Williams

**Donald V. Williams
44 ½ S. Division St., SE., Apt., 37
Grand Rapids, MI., 49503**

III. CERTIFICATION OF MAILING

I do hereby certify that on the 6 day of November 2006 I mailed a true and correct copy of the above and foregoing instrument to Daniel A. Ophoff, Assistant City Attorney, 620 City Hall, 300 Monroe Ave., NW, Grand Rapids, MI., 49503.

Dated This Monday, November 6, 2006

By: Donald Williams

**Donald V. Williams
44 ½ S. Division St., SE., Apt., 37
Grand Rapids, MI., 49503**