

1 STATE OF NORTH CAROLINA FILED IN THE GENERAL COURT OF JUSTICE
2 NEW HANOVER COUNTY SUPERIOR COURT DIVISION
3 FILE NO. 21 CVS 003915

2021 NOV 29 A 9:49

4 DAVID A. PERRY,

5 PLAINTIFF,

6 vs.

7
8 NEW HANOVER COUNTY BOARD OF
EDUCATION;

9
10 NEW HANOVER COUNTY SHERIFF'S
OFFICE;

11 DEFENDANTS;

NEW HANOVER CO., C.S.C.
BY _____
MOTION FOR ENTRY OF DEFAULT

12 HERE COMES THE PLAINTIFF, David A. Perry, Pro Se, who requests that the
13 Clerk of this Court make an entry of default, pursuant to the NC Rules of Civil Procedure, G.S.
14 1A-1, Rule 55(a), for the Defendant the New Hanover County Sheriff's Office. To that end the
15 Plaintiff swears to the following set of facts:
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- 17 1. The Plaintiff submitted this lawsuit on October 14, 2021 to the Clerk's office. As the
18 Plaintiff intended to serve the parties via USPS certified mail, copies of the summons,
19 cover letter, complaint, and Motion for a Preliminary Injunction were provided to the
20 Plaintiff by the Clerk's office.
21
22 2. On October 15, 2021 the Plaintiff sent the provided copies to all the parties via USPS
23 certified mail. Each defendant in this case was served with a copy of these filings via
24 USPS certified mail on October 18, 2021. Subsequently, the Plaintiff submitted an
25 Affidavit of Service for each Defendant with the Clerk's office.
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27 3. Under ordinary circumstances, the Defendants in this case would have had 30 days to
28 submit an answer to the complaint. However, on October 27, 2021 counsel for both

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CLERK OF SUPERIOR COURT
NEW HANOVER COUNTY
J. Kim Obinger
Clerk of Superior Court

1 defendants remaining in this case filed separate motions to dismiss. A Notice of Hearing
2 for these motions was simultaneously submitted for November 2, 2021, that coincided
3 with the same date/time that the Plaintiff had scheduled a hearing on its Motion for a
4 Preliminary Injunction.
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6 4. The hearing happened as scheduled, with Judge Harrell presiding. Although the
7 Plaintiff's Motion for a Preliminary Injunction was denied, both defendants' motions to
8 dismiss the case were also denied. Judge Harrell issued an Order with his rulings on
9 November 2, 2021 at 2:11 PM. All parties were personally served with a copy of the
10 Order at that time.
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12 5. Pursuant to the NC Rules of Civil Procedure, G.S. 1A-1, Rule 12(a)(1)(a), each of the
13 Defendants had 20 days from when Judge Harrell issued his Order to submit an answer to
14 the complaint itself. This would mean that the defendants should have filed such a
15 responsive pleading by the end of business on November 22, 2021. They did not.
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17 6. Since the defendants were personally served with a copy of Judge Harrell's Order, NC
18 Rules of Civil Procedure, G.S. 1A-1, Rule 6(e) is inapplicable. But even if it was
19 applicable, and even if November 25, 2021 (Thanksgiving Day) was exempted for being
20 a holiday, the defendants would still have needed to submit a responsive pleading to the
21 complaint by the end of business on November 26, 2021. They did not.
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23 7. On November 16, 2021, the Defendant, the New Hanover County Board of Education,
24 did file a timely Motion for Extension of Time. The Assistant Clerk of this Court granted
25 this motion on or about November 17, 2021, and that Defendant now has additional 30
26 days to submit an answer to the complaint. However, the Defendant, the New Hanover
27
28

1 County Sheriff's Office, has filed no motion for an extension of time, and they should not
2 be allowed to "piggyback" on top of another defendant's time extension.
3

4
5 THEREFORE, since the Defendant, the New Hanover County Sheriff's Office,
6 has still not submitted an answer or responsive pleading to the Plaintiff's complaint, the Plaintiff
7 humbly beseeches the Clerk of this Court to immediately make an entry of default for the
8 defendant, the New Hanover County Sheriff's Office.
9

10 Dated this 29th day of November 2021.
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13 
14 David A. Perry, Pro Se

