

STATE OF NORTH CAROLINA  
NEW HANOVER COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 21 CVS 003915

2021 DEC 21 P 2:25

DAVID A. PERRY,

PLAINTIFF,

vs.

NEW HANOVER COUNTY BOARD OF  
EDUCATION;

NEW HANOVER COUNTY SHERIFF'S  
OFFICE;

DEFENDANTS;

NEW HANOVER CO.,

C.S.C.

MOTION TO COMPEL THE CLERK TO  
MAKE AN ENTRY OF DEFAULT

HERE COMES THE PLAINTIFF, David A. Perry, Pro Se, who requests that this Court compel its Clerk to make an entry of default, pursuant to the NC Rules of Civil Procedure, G.S. 1A-1, Rule 55(a), for the Defendant the New Hanover County Sheriff's Office. To that end the Plaintiff swears to the following set of facts:

1. The Defendant, the New Hanover County Sheriff's Office, filed a Motion to Dismiss in this matter on October 27, 2021. This motion was heard before Judge Harrell on November 2, 2021. Counsel for the aforementioned Defendant appeared before this Court on that date, but their motion was denied.
2. Pursuant to the NC Rules of Civil Procedure, G.S. 1A-1, Rule 12(a)(1)(a), the Defendant had 20 days in which to serve the Plaintiff with an Answer in this case. This means that the Defendant should have filed such a responsive pleading by the end of business on November 22, 2021. They did not.
3. The Defendant, the New Hanover County Board of Education, did file a timely Motion for Extension of Time on November 16, 2021. However, the Defendant, the New

MOTION TO COMPEL THE CLERK TO MAKE AN ENTRY OF DEFAULT -

A TRUE COPY  
CLERK OF SUPERIOR COURT  
NEW HANOVER COUNTY  
BY: *Jeanne M. Heckart*  
Deputy Clerk of Superior Court


1 Hanover County Sheriff's Office, did not join in that motion, nor did they individually  
2 file any motion seeking a time extension.

- 3  
4 4. As a result of the Defendant's inaction, the Plaintiff filed a Motion for Entry of Default  
5 on November 29, 2021 against the New Hanover County Sheriff's Office. It requested  
6 that the Clerk make an entry of default, pursuant to the NC Rules of Civil Procedure, G.S.  
7 1A-1, Rule 55(a) for this Defendant.
- 8  
9 5. On December 7, 2021 the Plaintiff went to Clerk's office to inquire as to whether the  
10 entry of default had been ordered. The Assistant Clerk informed the Plaintiff that it had  
11 not, and that the reason for this was because they had been told not to make an entry of  
12 default for defendants who had appeared before the Court.
- 13  
14 6. Such inaction by the Clerk of this Court clearly violates NC Rules of Civil Procedure,  
15 G.S. 1A-1, Rule 55(a). The Clerk is required to make an entry of default when the record  
16 shows that a party has failed to timely submit a responsive pleading. It is well established  
17 in case law that submitting a motion to dismiss and making an appearance is not the  
18 equivalent to the timely submission of a responsive pleading.
- 19  
20 7. It seems likely to the Plaintiff that whatever instructions that have been given to the  
21 Clerk's Office regarding entries of default, have conflated the requirements of Clerk  
22 Entered Default Judgement (pursuant to NC Rules of Civil Procedure, G.S. 1A-1, Rule  
23 55(b)(1)) with the separate requirements of Clerk Entries of Default (pursuant to NC  
24 Rules of Civil Procedure, G.S. 1A-1, Rule 55(a)). The former requires a "failure to  
25 appear", while the latter only requires the lack of a timely submitted responsive pleading.
- 26  
27 8. The Defendant, the New Hanover County Board of Education, timely submitted its  
28 answer on December 16, 2021. As of this date, the Defendant, the New Hanover County

1 Sheriff's Office, has yet to submit an answer or any type of recognized responsive  
2 pleading. If this motion is granted, the case is ready to proceed with the one remaining  
3 non-defaulted defendant.  
4

5 THEREFORE, the Plaintiff humbly beseeches this Court to compel its Clerk to  
6 immediately make an entry of default for the defendant, the New Hanover County Sheriff's  
7 Office. Furthermore, it is requested that the Clerk's Office receive updated guidance on the  
8 proper handling of motions for entry of default.  
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10 Dated this 21st day of December 2021.  
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14 David A. Perry, Pro Se

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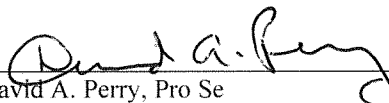
**CERTIFICATE OF SERVICE**

I certify that a copy of the attached **MOTION TO COMPEL THE CLERK TO MAKE AN ENTRY OF DEFAULT** was served upon all Defendants in this case on this date, via USPS Priority Mail and electronic mail addressed to:

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Dated this 21st day of December 2021.

  
\_\_\_\_\_  
David A. Perry, Pro Se