

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

FILED  
DISTRICT COURT  
MARYLAND  
2008 JUN 25 A 9:50

BRIAN CHARLES VAETH

:

Plaintiff

:

vs.

:

Civil Action No. RDB-08-708

BOARD of TRUSTEES, FIRE & POLICE  
EMPLOYEES RETIREMENT SYSTEMS of  
BALTIMORE CITY

:

:

Defendants

:

oOo

**MEMORANDUM OF LAW IN SUPPORT**  
**OF PLAINTIFF'S AMENDED MOTION FOR DEFAULT JUDGMENT**

I, Brian Charles Vaeth, plaintiff in proper person, hereby files this Memorandum of Law in support of my Amended Motion for Default Final Judgment against the defendants, Board of Trustees, Fire & Police Employees' Retirement Systems of Baltimore City, Mayor & City Council of Baltimore City, Mr. William J. Goodwin, Jr., Chief of Fire Department for Baltimore City, and Mr. Frederick McGrath, of the Panel of Hearing Examiners for the Fire & Police Employees' Retirement Systems of Baltimore City. This is in accordance with Federal Rule of Civil Procedure, Rule 15. Amended and Supplemental Pleadings

**(a) Amendments Before Trial.**

(1) Amending as a Matter of Course.

A party may amend its pleading once as a matter of course:

(A) before being served with a responsive pleading; or

(B) within 20 days after serving the pleading if a responsive pleading is not allowed and the action is not yet on the trial calendar.

On August 2, 1996, I was injured in the Line of Duty, without willful negligence on my part during my employment as a firefighter for the City of Baltimore. Subsequent to this injury, I was ruled to be ineligible to return to my full duties as a firefighter and was forced into retirement by the Medical Director of the Public Safety Infirmary, Dr. James Levy and Dr. Paula Lyons, medical representatives of the City of Baltimore. Pursuant to Article 22 of the Baltimore City Code, I filed proper applications for Special Disability (Line of Duty) Retirement Benefits to the Board of Trustees for the Fire and Police Employees Retirement Systems of Baltimore City, in relation to this forcible retirement, however I was denied my benefit through the alleged illegal actions of the defendants.

I filed a Complaint against the defendants on March 17, 2008 in the United States District Court for the District of Maryland, Baltimore Division. The Court issued a Summons in a Civil Action which, in part, notified defendant that it must, within twenty days after service of the Summons, file with the Clerk of Court, and serve upon me, an Answer to the Complaint. Defendants, through their Attorney, Baltimore City Solicitor, Mr. George Nilson, received service of the Complaint and Summons when United States Marshals Service personally served the Complaint and Summons upon Mr. Nilson at his place of business on April 4, 2008. By the expiration of the twenty-day period specified on the Summons, reflected as being due before April 24, 2008, the defendant had not filed an Answer to the Complaint with the Clerk of this Court, nor had it served a copy of the Answer upon the United States. The defendants have not complied with the court's order in filing a responsive pleading on time. A motion to dismiss is not a responsive pleading. Under the federal rules, the determination of "what's a pleading" is covered by Fed. Rule of Civil Procedure 7(a). According to Fed. R. Civ. Pro. 7(a), it is not a

"pleading" technically. Although a Motion to Dismiss can be used prior to an answer, it does not enlarge the time in which to answer a suit. The Complaint alleges, in 4 separate counts, actions demonstrated by the defendants in violation of my Constitutional Rights to Due Process and Equal Protection, among others.

Rule 12(a)(1)(A) of the Federal Rules of Civil Procedure provides that a defendant shall serve its answer to a complaint within twenty days of service of the latter. As noted above, the Complaint in this case was filed on March 17, 2008, and personally served upon the defendants on April 4, 2008. The Summons, issued by the Court on April 2 and served upon the defendant together with the Complaint, notified the defendant of its obligation to file an answer with the Clerk of Court, and to serve a copy of the Answer upon me, within twenty days from the date of service. Twenty days from the April 4, 2008 service date was April 24, 2008. As of June 25, 2008, defendants have not filed an answer with the Clerk, nor have they served an answer upon me.

I understand that an entry of a default judgment against the defendants is a severe remedy. See, e.g., E.F. Hutton & Co., Inc. v. Moffatt, 460 F.2d 284, 285 (5th Cir. 1972). Where, as here, however, a party does not respond to a properly served Complaint and ignores a duly issued and properly served Summons of a Court, a default judgment, though drastic, is the appropriate and, indeed, only recourse. See In re Knight, 833 F.2d 1515, 1516 (11th Cir. 1987)(where party offers no good reason for late filing of answer, entry of default judgment appropriate); First City Nat'l Bank of Fort Worth v. Cook, 117 F.R.D. 390 (N.D. Tex. 1987)(default judgment appropriate where party served has failed to answer). If I cannot succeed in this motion, this case will be decided upon its merits and I have confidence I will prevail at a trial.

## CONCLUSION

I believe that a Default Final Judgment will effectively prevent future violations of the Constitutional rights of Police & Firefighters upon suffering an injury while in the performance of their duties, without willful negligence on their part, and being denied their rightful benefit through illegal acts as demonstrated by the defendants in this matter. The defendants actions are calculated to deny me of my deserved benefit and have caused irreparable economic injury to me as a result. For the foregoing reasons, I respectfully request that the Court enter a judgment by default against defendants.



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