

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-80316-CIV-PAINE

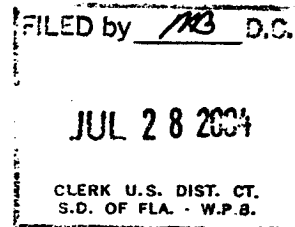
WILLIAM A. CABANA

Plaintiff, pro se

vs.

SHARON ANN MAYO, f/k/a,
SHARON ANN CABANA, former wife,
and Third Party Defendants

Defendants



**PLAINTIFF'S MOTION AND MEMORANDUM OF LAW
FOR JUDGMENT BY DEFAULT**

"...it is clear that among the decisions that an individual may make without unjustified government interference are personal decisions relating to marriage..."
Carey v. Population Serv. Int'l, 431 U.S. 678, 684-685 (1977)

Plaintiff moves this court for Entry of Default and Judgment by Default against the Defendants pursuant to Federal Rule of Civil Procedure Rule 55 for failure to comply with Federal Rules of Civil Procedure Rule 55 (a) and Rule 12 (1) (a), i.e. failure to timely file an answer or reply.

1. April 6, 2004 Plaintiff removed Florida Fifteenth Circuit Court case Number 71-C-4137-FD to this court based on federal question subject matter jurisdiction.
2. April 6, 2004 Plaintiff named third party defendants to the removed state

S/P

- action.
3. April 6, 2004 Plaintiff Filed a Notice of Removal and paid the appropriate fees to this court.
 4. April 6, 2004 Plaintiff delivered via U.S. Mail a Notice of Removal and a Notice of Filing Notice of Removal with accompanying copy of the complaint herein to
 - a. Renick and Kamber, Attorney for Defendant Sharon Ann Mayo,
 - b. to the Clerk of the Florida Fifteenth Circuit Court in West Palm Beach
 - c. and noticed the third party Defendants with the Notice of Removal and a copy of the complaint herein. (Exhibit A original return receipts U.S. Postal Service)
 - d. and The Florida Attorney General pursuant to Local Rule 24.1 and Fl. Statutes § 86.091.
 5. April 7, 2004 Plaintiff attended a hearing before the Fifteenth Circuit Court Magistrate Judge Judith Fanelli who acknowledged removal of this case to Federal court. Defendant Sharon Ann Mayo f/k/a/ Sharon Ann Cabana and her counsel Renick and Kamber were in attendance at that hearing. Defendant and her counsel acknowledged removal of the action to this court.
 6. May 4, 2004 Plaintiff renoticed Third Party defendants with a Notice of Removal and a copy of the complaint entered in this court. (Exhibits B and D)
 7. May 19, 2004 Plaintiff again Noticed Renick and Kamber, Attorney for

Defendant Sharon Ann Mayo, f/k/a Sharon Ann Cabana of the Notice of Removal with an accompanying copy of the complaint.

8. None of the defendants nor the Attorney General has answered or replied. None have challenged the unconstitutional claims of the Florida permanent alimony statute (§ 61.08).
9. This Court issued an Order July 9, 2004 requesting the Plaintiff address the inactivity in the case with risk of dismissal a consequence. The Order was postmarked July 16, 2004 and pursuant to Local Rules the Plaintiff files this timely response and motion to demonstrate the good faith nature of his litigation.

Respectfully submitted,

William A. Cabana

WILLIAM A. CABANA, pro se
1050 Capri Isles Blvd., Apt F-105
Venice, FL 34292
Telephone: 941-480-1395
Fax: None
Email: bcabana2@comcast.net

Dated: July 27, 2004

A memorandum of Law is not required for this motion pursuant to Local Rule

7.1. Nonetheless the Plaintiff briefly adds,

STATEMENT OF THE CASE

Plaintiff has been paying permanent alimony for over thirty years to a

healthy employed former spouse to whom he was married for only eleven years.

July 28, 1972 a Final Order of Dissolution of Marriage was entered by the Fifteenth Circuit Court of Florida and permanent alimony awarded to the former wife, the petitioner therein.

Plaintiff met his obligation until August 2003 when he no longer could.

February 4, 2004 the Fifteenth Circuit Court of Florida and the Honorable Sandra McSorley entertained contempt proceedings and sought to enforce Florida's permanent alimony statute which was the basis of the Court order of July 28, 1972 FINAL ORDER DATE.

April 6, 2004 the former husband, the Plaintiff here, removed the state court case to this court based on a 42 U.S.C. 1983 claim and 42 U.S.C. 1441 based on a federal question claim.

The attorney for the former wife, the clerk of the Fifteenth Circuit Court of Florida, and all third party defendants were twice notified, by fax and U.S. Mail return receipt requested with copies of the Notice of Removal, Notice of Filing Notice of Removal and a copy of the verified complaint filed in this case. (Exhibits A, B, C and D). Proper filing fees to this court were paid.

Plaintiff's complaint provides a basis for standing, subject matter and personal jurisdiction to hear his claims. All elements for cause of action for each federal and state claim were sufficiently pled. No party, nor this court, requested remand of proceedings pursuant to 28 U.S.C. 1447.

Plaintiff merely requested declaratory relief from this court. He merely

asked this court to determine whether Florida Statue § 61.08 (alimony) impermissibly infringes federal Liberty interest, Fourteenth Amendment Right to Privacy, Florida Constitutional Right to Privacy, impermissibly infringes the Florida Constitution Right to Privacy, and conflicts with Florida Supreme Court ruling in Connor v Southwest and the public policy effected therein.

MEMORANDUM OF LAW

Argument

The Defendants and the Attorney General have not complied with Rule 12(a)(1) and Rule 55 of the Federal Rules of Civil Procedure. The Defendants had ample notice and opportunity to answer the Plaintiff's properly served verified complaint. They were twice noticed. The Attorney General had received a notice and copy of the complaint on his own from the Plaintiff and had ample opportunity to answer.

The consequences of entry of default and Judgment by Default would be to merely force the Florida legislature to draft proper legislation relating to Dissolution of Marriage such that it does not infringe Liberty interest, federal and state Right to Privacy, and the Federal Thirteenth amendment conflicts as well as to make it compatible with the Florida Supreme Court ruling in Connor v. Southwest and the public policy established therein.

Prayer for Relief

WHEREFORE for the above stated reasons the Plaintiff requests this Court to enter a Judgment by Default.

Respectfully submitted,

William A. Cabana

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Venice, FL 34292
Telephone: 941-480-1395
Fax: None
Email: bcabana2@comcast.net

Dated: July 27, 2004

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of July, 2004, I caused a true and accurate copy of the foregoing to be sent by U.S. Mail to,

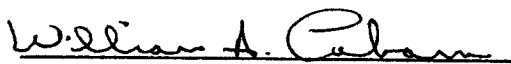
Attorney For Sharon Ann Mayo:
Attorney Name: Renick & Kamber
1530 N. Federal Highway
Lake Worth, FL 33460
Phone: (561) 582-6644
[FIRST CLASS MAIL]

The Honorable Edward Fine, Chief Judge
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