

19-8603

IN THE SUPREME COURT OF THE UNITED STATES

MELVIN P. WHITE JR

PETITIONER

VS.

UNITED STATES

NOEL J. FRANCISCO

SOLICITOR GENERAL

RESPONDENT

PETITION FOR REHEARING

RECEIVED

JUL 15 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

GROUND'S FOR PETITION FOR REHEAR

F.R. CV. P. - 12 DEFENSES AND OBJECTIONS: WHEN AND HOW PRESENTED; WAIVING DEFENSES; PRETRIAL HEARING

A) TIME TO SERVE A RESPONSIVE PLEADING - UNLESS ANOTHER TIME IS SPECIFIED BY THIS RULE OR FEDERAL STATUTE, THE TIME FOR SERVING A RESPONSIVE PLEADING IS AS FOLLOWS:

2) UNITED STATES AND ITS AGENCIES, OFFICERS, OR EMPLOYEES' SUED IN AN OFFICIAL CAPACITY MUST SERVE AN ANSWER TO A COMPLAINT, COUNTERCLAIM, OR CROSSCLAIM WITHIN 60 DAYS AFTER SERVICE ON THE UNITED STATES ATTORNEY.

4) EFFECT OF A MOTION - IF THE COURT DENIES THE MOTION OR POSTPONES ITS DISPOSITION UNTIL TRIAL, THE RESPONSIVE PLEADING MUST BE SERVED WITHIN 14 DAYS AFTER NOTICE OF THE COURT'S ACTION.

B) HOW TO PRESENT DEFENSES - EVERY DEFENSE TO A CLAIM FOR RELIEF IN ANY PLEADING MUST BE ASSERTED IN THE RESPONSIVE PLEADING IF ONE IS REQUIRED.

SUPREME COURT RULE 12.5 REVIEW ON CERTIORARI: HOW SOUGHT; PARTIES. A RESPONSIVE PLEADING IS REQUIRED. CASE NO 19-8603

H) WAIVING AND PRESERVING CERTAIN DEFENSES - A PARTY WAIVES ANY DEFENSE LISTED IN F.R. CV. P. 12(B)(2)-(5)

2) LACK OF PERSONAL JURISDICTION, 3) IMPROPER VENUE.

4) INSUFFICIENT PROCESS, 5) INSUFFICIENT SERVICE OF PROCESS.

UNITED STATES DEPT. OF JUSTICE DOCUMENT NO 17783234.1

PAGE 6 THE U.S. DISTRICT COURT FAILED TO COMPLY WITH F.R. CV. P. - 4 SERVICE OF SUMMONS AND COMPLAINT BY U.S. MARSHALL. CASE NO 19-1747

F.R.C.V.P. - 12 LANGUAGE OF THE SUBDIVISIONS IS MADE CLEAR. THE PARTY IS PUT ON FAIR NOTICE OF THE EFFECT OF HIS ACTIONS AND OMISSIONS AND CAN GUARD HIMSELF AGAINST UNINTENDED WAIVER. IT IS NOTED THAT THE DEFENSES SPECIFIED ARE SUBJECT TO WAIVER AS THERE PROVIDED. THE MORE SUBSTANTIAL DEFENSES OF FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, FAILURE TO JOIN A PARTY INDISPENSABLE UNDER RULE 19 AND FAILURE TO STATE A LEGAL DEFENSE TO A CLAIM F.R.C.V.P. 12(B)(6), (7), (F), AS WELL AS THE DEFENSE OF LACK OF JURISDICTION OVER THE SUBJECT MATTER F.R.C.V.P. 12(B)(1), ARE EXPRESSLY PRESERVED AGAINST WAIVER BY AMENDED SUBDIVISION (H) (2) AND (3).

UNITED STATES DEPT. OF JUSTICE DOCUMENT NO. 17783934.1

PAGES 6-7 ARGUMENT - THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DISMISSING THIS ACTION UNDER 28 USC. 1915 BECAUSE THE COMPLAINT FAILED TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED. CASE NO. 19-1747

JUNE 08, 20 THE RESPONDENT D.O.J. SOLICITOR GENERAL NOEL J. FRANCISCO SUBMITTED A WAIVER ON BEHALF OF THE GOVERNMENT WHICH IS INADMISSIBLE TO THE SUPREME COURT.

CASE NO. 19-8603

THE 31 CFR. IRS. REG. GOVERNING THE PRACTICE OF ATTORNEY BEFORE THE IRS, IS CONSIDERED A PUBLISHED RULE ACCORDING TO F.R.C.V.P. 5.1
CONST. CHALLENGE TO A STATUTE - NOTICE, CERTIFICATION AND INTERVENTION
THE METHOD OF SERVING THE NOTICE OF CONST. QUESTION SET BY THE PUBLISHED RULE CALLED FOR SERVING THE U.S. ATTY. GEN. UNDER CIVIL RULE 4. THE PUBLISHED RULE WOULD HAVE REQUIRED NOTICE AND CERTIFICATION WHEN AN OFFICER OF THE UNITED STATES BRINGS SUIT IN AN OFFICIAL CAPACITY. THERE IS NO NEED FOR NOTICE IN SUCH

CIRCUMSTANCES. F.R.C.V.P. 12(H) SUBDIVISION DEFINES THE U.S. ATTY. GEN. AS AN INDISPENSABLE PARTY ONE OF NECESSITY. F.R.C.V.P. 56 ALSO DEFINES TIME 31 COFR. AS A PUBLISHED RULE. REQUIRING NOTICE AND A REASONABLE TIME FOR A PARTY TO RESPOND BEFORE A JUDGE CAN ENTER A DECISION IN THE PROCEEDING. CASE NO: 19-1747 THE U.S. DISTRICT COURT CLERK FAILED TO ENTER CASE NO 18 CVD 167 ORDER FOR MONEY OWED / MOTION FOR SUMMARY JUDGMENT IN THE U.S. DISTRICT COURT CIVIL DOCKET. THE EXPRESSED DIRECTION IN F.R.C.V.P. 58(a)(2) FOR PROMPT ACTION BY THE CLERK, AND BY THE COURT IF COURT ACTION IS REQUIRED, ADDRESSES THIS CONCERN. THE NEW PROVISION ALLOWING ANY PARTY TO MOVE FOR ENTRY OF JUDGMENT ON A SEPARATE DOCUMENT WILL PROTECT ALL NEEDS FOR PROMPT COMMENCEMENT OF THE PERIODS FOR MOTIONS, APPEALS, AND EXECUTION OR OTHER ENFORCEMENT. IT WILL ALSO BE OBSERVED THAT IF A MOTION UNDER RULE 12(B)(6) IS THUS CONVERTED INTO A SUMMARY JUDGMENT MOTION, THE AMENDMENT INSURES THAT BOTH PARTIES SHALL BE GIVEN A REASONABLE OPPORTUNITY TO SUBMIT AFFIDAVITS AND EXTRANEOUS PROOFS. THE MOTION PROVIDES FOR A MORE DEFINITE STATEMENT TO BE OBTAINED ONLY IN CASES WHERE THE MOVANT CANNOT REASONABLY BE REQUIRED TO FRAME AN ANSWER OR OTHER RESPONSIVE PLEADING TO THE PLEADING IN QUESTION. THE PARTY IS PROPERLY RELEGATED TO THE VARIOUS METHODS OF EXAMINATION AND DISCOVERY PROVIDED IN THE RULES FOR THAT PURPOSE. SUCH AS TITLE 31 COFR. IRS. REG. GOVERNING THE PRACTICE OF ATTORNEYS BEFORE THE IRS.

Melvin P. White Jr.

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RESPONDENT

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

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THE PETITIONER SOUGHT LEAVE TO PROCEED IN FORMA PAUPERIS
IN THE FOLLOWING COURTS: U.S. DISTRICT CT. FOR THE
NORTHERN DIVISION, N.C. ST. CT. BERTIE CO. FOURTH CIR.
CT. OF APPEALS RICHMOND, VA. AND THE U.S. SUPREME CT.
LEAVE TO PROCEED IN FORMA PAUPERIS WAS GRANTED.

Melvin P. White Jr.

THE PETITION FOR THE REHEARING IS LIMITED TO INTERVENING
CIRCUMSTANCES OF A SUBSTANTIAL OR CONTROLLING EFFECT, OR TO
OTHER SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED.

THE PETITION FOR THE REHEARING IS PRESENTED IN GOOD FAITH AND
NOT FOR DELAY.

Melvin P. White Jr.

I MELVIN P. WHITE JR., DO SWEAR OR DECARE THAT ON THIS
DATE 9TH JULY 2020 AS REQUIRED BY SUPREME COURT RULE
29 I HAVE SERVED THE ENCLOSED MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS AND PETITION FOR REHEARING ON EACH
PARTY TO THE ABOVE PROCEEDING OR THAT PARTY COUNSEL
AND ON EVERY OTHER PERSON REQUIRED TO BE SERVED, BY
DEPOSITING AN ENVELOPE CONTAINING THE ABOVE DOCUMENTS
IN THE UNITED STATES MAIL PROPERLY ADDRESSED TO EACH OF
THEM AND WITH FIRST-CLASS POSTAGE PREPAID, OR BY DELIVERY
TO A THIRD-PARTY COMMERCIAL CARRIER FOR DELIVERY WITHIN
3 CALENDAR DAYS. THE NAMES AND ADDRESSES OF THOSE
SERVED ARE AS FOLLOWS: NOEL J. FRANCISCO SOLICITOR
GENERAL OF THE U.S. DEPT. OF JUSTICE WASHINGTON, D.C.
20530

I DECARE UNDER PENALTY OF PERJURY THAT THE FOREGOING
IS TRUE AND CORRECT, EXECUTED ON 9TH JULY 2020

Melvin P. White Jr.