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Assigned Judge: Coughenour

BILL WALKER
PRO SE

UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BILL WALKER,

PLAINTIFF,

v.

THE UNITED STATES OF AMERICA,

Defendant

BRIEF IN SUPPORT OF MOTION FOR
DEFAULT JUDGEMENT

C. A. No. C00-2125C

1 On December 18, 2000 plaintiff filed the Clerk of the United
2 States District Court, Western District of Washington at Seattle, a
3 complaint cited by the Clerk as C00-2125C and issued a summons to the
4 plaintiff for the purposes of service upon the defendant United States
5 of America. Pursuant to CR 4(i)(1) a copy of this summons together with
6 a copy of his complaint were duly served on the office of the United
7 States Attorney, 601 Union, Suite 5100, Seattle, Washington 98101 on
8 December 18, 2000.

9 Also on December 18, 2000, as required under CR 4(i)(2)
10 plaintiff, served through certified mail, a copy of the summons and
11 complaint to the Attorney General of the United States, Department of
12 Justice, 950 Pennsylvania Ave., Washington D.C. 20530-001. Under CR 5
13 (b) service on the United States was therefore "complete upon mailing."

14 CR 12(a)(3) is clear on the matter. "The United States or an
15 officer or agency thereof shall serve *an answer* to the complaint or to
16 a cross-claim, or a reply to a counterclaim, *within 60 days* after the
17 service upon *the United States attorney* of the pleading in which the
18 claim is asserted." (emphasis added)

19 Further CR 7(a) mandates that "There shall be a complaint and an
20 answer." A motion to dismiss for lack of standing or other reasons is
21 not considered a pleading. Therefore such a motion does not qualify
22 under Rule 7(a) as satisfying the requirement that a defendant shall
23 answer a complaint filed against them.

24 Under the terms of the summons issued on the defendant December
25 18, 2000, the United States of America is "required to serve... an answer

1 to the complaint which is herewith served upon you, within 60 days
2 after service of this summons upon you, exclusive of the day of the
3 service. If you fail to do so, judgment by default will be taken
4 against you for the relief demanded in the complaint. You must also
5 file your answer with the clerk of this Court within a reasonable
6 period of time after service."

7 Under the terms of the summons and cited civil rules in this
8 brief therefore, the United States of America through the United States
9 attorney is required to answer plaintiff's complaint within 60 days
10 (excluding the day of service) after the complaint and summons were
11 served on the defendant. Thus, the 60 day period for answer by the
12 defendant commenced on December 19, 2000 and ends as of February
13 16,2001.

14 In all of these cited rules and stipulations, no option nor
15 discretion is implied or expressed which grants the defendant the
16 ability to refuse to answer the complaint within the specified 60 day
17 period. The rules are clear: either answer the complaint within the
18 specified period or a default judgment will be rendered against you.

19 The defendant cannot claim ignorance in this matter. On January
20 4, 2001, plaintiff filed a motion with the Court to change the calendar
21 date for his motion of declaratory and injunctive relief from January
22 5, 2001 to March 9, 2001 as the former date did not satisfy the 60 day
23 answering period required under CR 12(a)(3). In the brief accompanying
24 the motion, plaintiff noted, "The United States has yet [to] respond to
25 the plaintiff's complaint and summons and is not required to do so

1 until 2/16/01." Service of this motion to change calendar date was duly
2 served on the U.S. Attorney and the Attorney General of the United
3 States.

4 On January 10, 2001, the defendant acknowledged the fact of
5 timing regarding its answer when it filed a concurrence to plaintiff's
6 motion to change the calendar date.

7 Further, on January 22, 2001 the defendant filed a Stipulation
8 and Agreed Order again resetting the calendar date to consider
9 plaintiff's motion for declaratory and injunctive relief to February
10 16, 2001. In defendant's motion filed January 22, 2001, defendant only
11 noted its intent to file a Cross-Motion to Dismiss not an Answer to
12 plaintiff's complaint. As noted earlier in this brief, a motion to
13 dismiss does not satisfy the requirements of CR 7(a).

14 Finally, as defendant has not answered plaintiff's complaint, it
15 is assumed under CR 8(d) that as no averments are made by the defendant
16 all issues raised by the plaintiff in his complaint are admitted by the
17 defendant. A cross-motion to dismiss by defendant does not effect CR
18 8(d).

19 Therefore, plaintiff respectfully requests the Court enter a
20 default judgment against defendant United States of America in this
21 matter and grant the relief sought by the plaintiff in his complaint
22 and proposed order.

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