

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

Adams,

CASE NO. 4:01-cv-00295

Plaintiff(s)/Petitioner(s),

NOTICE TO PRO SE LITIGANTS
OF THE SUMMARY JUDGMENT
RULE REQUIREMENTS

v.

USA,

Defendant (s)/Respondent (s) .

The Defendant(s) or Respondent(s) has filed a motion to dismiss or a motion for summary judgment. This notice is given because the Ninth Circuit Court of Appeals has required that all pro se litigants be given fair notice of the requirements of the summary judgment rule when such a motion has been filed pursuant to Federal Rule of Civil Procedure 56. A motion to dismiss or motion for summary judgment will, if granted, end your case and there will be no trial or evidentiary hearing.

If the Defendant(s) or Respondent(s) file a motion to dismiss or motion for summary judgment, you must file a response opposing that motion within twenty-one (21) days after the Defendant(s) or Respondent(s) has served you with the motion. See Local Rule 7.1(c)(1). Your brief opposing a motion for summary judgment or motion to dismiss shall not exceed twenty (20) pages in length unless you get permission from the court. See Local Rule 7.1(a)(2). In addition to your brief you may file a statement of facts which are in dispute, not to exceed ten (10) pages. See Local Rule 7.1(c)(2).

Pursuant to the last sentence in Federal Rule of Civil Procedure 12(b) if evidence is submitted with a motion to dismiss and considered by the court, then the motion will be treated as a motion for summary judgment. This is to inform you that if the Defendant(s) or Respondent(s) have submitted evidence in support of a motion to dismiss, the court may treat the motion as a motion for summary judgment.

Federal Rule of Civil Procedure 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact, that is, if there is no real dispute about any fact that would affect the result of your case, and if the party who asked for summary judgment is entitled to judgment as a matter of law. If this occurs it will end your case. If the party you are suing meets its burden under Rule 56 by submitting declarations or other sworn testimony, you cannot rely on what your complaint says. Instead

you must set out specific facts and evidence in admissions, affidavits, declarations, depositions, or answers to interrogatories as provided in Federal Rule of Civil Procedure 56(e), which contradict or oppose the moving party's motion and supports your position that there are genuine issues of material fact remaining for trial or an evidentiary hearing if the action is a Petition for Writ of Habeas Corpus.


If you do not file your opposition to the motion within twenty-one (21) days, and if the motion to dismiss or motion for summary judgment has merit, your failure to file a response to this motion will constitute your consent to granting the motion. See Local Rule 7.1(f). If this occurs, the court would enter judgment against you and your case would be closed without the need for a trial or evidentiary hearing. Further, if you do submit a response to a motion to dismiss or motion for summary judgment and the court still grants the moving parties motion, once again there will be no trial or evidentiary hearing.

Therefore the pro se litigant has twenty-one (21) days in which to oppose the pending motion to dismiss or motion for summary judgment pursuant to the instructions contained within this notice, and Defendant(s) or Respondent(s) thereafter have ten (10) days to reply.

Dated: August 29, 2001

CAMERON S. BURKE, Clerk

By:


Wendy Messuri
Deputy Clerk

Barry E Adams
General Delivery
Stanley, ID 83278