

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7551
Summary Calendar

LE ROY CHESTER KING, JR.,

Plaintiff-Appellant,

VERSUS

MICHAEL P.W. STONE,
Secretary, Department of the Army Agency,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
(CA-W91-0061(B))

(February 3, 1993)

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

JERRY E. SMITH, Circuit Judge:*

The plaintiff, Le Roy King, filed this title VII complaint on June 19, 1991, against the Secretary of the Army, asserting that his five-day suspension was occasioned by racial discrimination. On December 30, 1991, having failed to effect service of process, he was granted until January 10, 1992, to serve process. Returns of service were filed on January 13, 1992, stating that process had been sent by certified mail to the

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

Attorney General of the United States, an Army Corps of Engineers attorney, and the Secretary of the Army in care of the United States Attorney. On January 16, 1992, returns were filed stating that process had been sent by certified mail to the United States Attorney and the Secretary of the Army.

The district court granted the defendant's motion to dismiss for failure to effect proper service of process as required by FED. R. CIV. P. 4(d)(4), i.e., failure to obtain personal service upon the United States Attorney or an Assistant United States Attorney or a clerical employee designated by the United States Attorney to receive service of process. King does not claim that he complied with rule 4(d)(4) but asserts, instead, that it is unconstitutionally vague.

Even assuming, arguendo, that the vagueness doctrine applies to this rule, the rule is easily understandable. As the defendant states, "Rule 4 itself should be clear to anyone who takes the trouble to read the entire rule. ... Clearly the United States and its officers are covered by [rule] 4(d)(4) and (5) and not by 4(d)(1) or (3). Thus the rule is clear that the United States and its officers are not covered by the provision which allows mail service."

King also argues that it is unfair to dismiss his complaint because it is now barred by limitations. This is the scheme that Congress has devised, however, and a party's failure to comply with the express requirements of the applicable rules can result in substantial prejudice. The judgment of dismissal is AFFIRMED.