



**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA**

Robert S. Stewart, Jr.

(Petitioner)

v.

United States of America

(Respondent)

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Case No. 1:21CR-00005

**NOTICE OF STRIKING IN RE MOTION TO
TERMINATE SUPERVISED RELEASE AND
SUPPORTING MEMORANDUM INADVERTENTLY FILED 10 JULY 2023**

Mr. Robert S. Stewart, Jr. (Petitioner, herein), through PRO SE MOTION TO STRIKE, respectfully requesting to amend the inadvertent filing of the "Draft Motion" filed on 10 July 2023 (See Dkt. #26) in advertently by the Clerk of the Court in the Eastern District of Virginia.

The Petitioner moves this court to **GRANT** an amended date of filing of the Petitioned originally addressed to the United States Probation Office on 10 July 2023 and uploaded into PACER.

I. BACKGROUND

On 7 July 2023 the Petitioner sent a draft motion to the United States Probation Office located at 401 Courthouse Square STE 300, Alexandria Virginia 22314. This motion was addressed to United States Supervising Officer (USPO) Michelle Suileman. (See Dkt. #26)

The Petitioner had requested review of the motion prior to filing the exhibit in the Eastern District of Virginia on 24 July 2023 (See Exhibit '1.') To facilitate the review, the Petitioner

mailed the document to the address listed on the USPO's website for the E.D.V.A. This address is substantially similar to the Clerk of the Court's address minus the differences in the suite numbers.

On 25 July, the Petitioner communicated with the USPO and was told that the draft had not been received, however, upon looking into PACER noticed that a filing had been entered dated 10 July 2023. (See Exhibit '2')

After speaking with the Clerk's Office, it was noted that the mailroom routinely routes 'Motion's directly to the clerk's office, without regard to their intended recipient. Accordingly, the Petitioner request relief to **AMEND** the filing of the motion based on the date of the actual receipt by the clerk's office vice the motion entered in error within PACER.

II. STANDARD OF REVIEW

1. Motion to Strike "Once a document is submitted and becomes part of the case docket, the CM/ECF system will not permit the filing party to make changes to the document or docket entry filed in error since the transaction has been accepted. If an error is discovered by the Clerk's Office during the quality control process, the Clerk's Office will docket a 'Notice of Instructions to Filer' informing the filer of the error and how to proceed. The Clerk's Office will not modify, strike or delete attorney entries unless directed by the Court. To fix your mistake, you must first file a 'Notice of Striking.' The Notice of Striking must be linked and refer to the "wrong" document. After you file the Notice of Striking, then immediately re-file the correct document. You can also contact the Help Desk at 1-888-318-2260 for further assistance.¹"

¹ <https://www.smartrules.com/guides/va-ed-motion-strike/>

2. Fed. Rule 15 Civ. Procedure Amended and Supplemental Pleadings²

(a) Amendments Before Trial.

(1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) *Other Amendments.* In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) *Time to Respond.* Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

III. DISCUSSION

It is well settled that a pleading must have both a legal basis with stated purpose, (e.g., relief sought) and be filed in a manner that is consistent with local rules and Federal Rules of Civ. Procedure. The Petitioner contends that he is a pro se filer, who does not have access to PACER and relies on the United States Postal Service as well as Court personnel to accurately and timely file any motion to appear before the court. Conversely, a matter that comes before the court and

² https://www.law.cornell.edu/rules/frcp/rule_15

lacks merit or is not timely filed is ripe for summary judgement. **The intent of this motion is to preserve the filing by seeking an administrative amendment to the filing date to a minstrel error in filing of the motion prior to its intended date.**

Accordingly, the draft motion sent to the USPO was that “a Draft” and not intended to be filed by the court. The markings, on the envelope clearly read **“Michelle Suleiman United States Probation Office” 401 Courthouse Sq. STE 300.** This is evidenced by the signature on the document and the associated date of 23 July 2023, the anticipatory filing date for the motion of relief.

Upon speaking with E.D.V.A. court personnel, it is not possible to remove, alter or amend the filing in PACER once the document has been uploaded. The Petitioner seeks relief from this court to amend the filing date to the date upon which the Clerk of Court receives the addressed motion and not the Draft motion intended for the USPO. While the contents of both documents are identical, the pre-maturity of filing of the Draft motion would enable the respondent to request summary judgement as the document was prematurely filed.

The Petitioner moves this court to consider the evidence in light most favorable to the moving party, the ‘Draft Motion’ was intended for the USPO not the Clerk of the court and was done so in accordance with Fed. Rule 27 “Motion” in providing the USPO a courtesy ‘Draft Motion’ as notice of the anticipatory filing. The Petitioner contends that his actions in submission of the motion were consistent with both Local and Federal rules and as such; the error made should not render the current case at bar fatal based on the date of filing.

IV. CONCLUSION

The Petitioner pleads this court to exercise its discretion and amend the date of filing to the Petitioner’s intended date of filing in light most favorable to relief for the

Petitioner and **GRANT** the motion to terminate supervised release as stated in filing dated 23 July 2023 (See Dkt. 27).

WHEREFORE, it is respectfully requested that, in the interests of justice, the Honorable Court **GRANT** the Petitioner's motion for early termination of his supervised release pursuant to 18 U.S.C. § 3564(c), 3583(e), and Rule 32.1(b)

Respectfully submitted,


ROBERT S. STEWART, JR.
PRO SE PETITIONER

7/25/23

Enclosures

(As Stated,)

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Motion to Terminate Supervised Release and Supporting Memorandum has been served upon both the U.S. Department of Justice located at **2100 Jamieson Ave Alexandria, VA 22314** the United States Probation Office (Eastern District of Virginia) Located at **401 Courthouse Square STE 300, Alexandria, VA 22314**, this 25th Day of July, 2023.

Sincerely,

Handwritten signature of Robert S. Stewart, Jr. and the date 7/25/2023.

ROBERT S. STEWART, JR.

PRO SE PETITIONER