

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3872/May 26, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17210

In the Matter of

PAUL LEON WHITE, II

ORDER ON RESPONDENT'S
MOTIONS

Respondent Paul Leon White, II, moves (1) to be represented by a non-attorney; (2) to proceed *in forma pauperis*; and (3) for a more definite statement. His motions are denied.¹

The Commission's Rules of Practice permit a respondent to retain any counsel the respondent chooses, so long as counsel is admitted to practice before the Supreme Court or the highest court of any State or United States territory. 17 C.F.R. § 201.102(b); *see* 15 U.S.C. § 78c(a)(16). The rules do not contemplate representation of an individual by a non-attorney.

Contrary to White's assertion, the Sixth Amendment does not require that he be permitted to retain a non-attorney to represent him. The Sixth Amendment applies—by its terms—to criminal proceedings; it does not apply in administrative proceedings.² And even in criminal proceedings, the Sixth Amendment guarantees a right to “the Assistance of *Counsel*,” not to the

¹ White also expresses outrage, “[a]s an American citizen,” that the Division of Enforcement has served him via UPS rather than the postal service. He “would appreciate [it] if [I] would recommend to the” Commission that the Division serve him via the postal service. White's request is denied. *See* 17 C.F.R. § 201.150(c)(3) (permitting service of papers by parties “through a commercial courier service or express delivery service”).

² *Kevin Hall, CPA*, Securities Exchange Act of 1934 Release No. 61162, 2009 WL 4809215, at *21 n.90 (Dec. 14, 2009); *see Berrios v. New York City Hous. Auth.*, 564 F.3d 130, 134 (2d Cir. 2009) (“A party in a civil case has no constitutionally guaranteed right to the assistance of counsel.”); *United States v. Campos-Asencio*, 822 F.2d 506, 509 (5th Cir. 1987) (holding that parties in civil administrative proceedings “have no sixth amendment right to counsel”).

assistance of a non-attorney.³ White's request to be represented by a non-attorney is therefore denied.

With respect to White's request that he be permitted to litigate *in forma pauperis*, 28 U.S.C. § 1915 permits a party who shows an inability to pay to litigate in federal courts without paying applicable fees. That provision, however, does not apply to administrative proceedings.⁴ Moreover, there are no filing fees associated with this proceeding.

In making his request, White asserts that he has limited access to funds and cannot pay the costs associated with copying the investigative file maintained by the Division of Enforcement. *See* 17 C.F.R. § 201.230(f) (generally making respondents responsible for the copying costs of documents made available by the Division). The Division responds that its investigative file is maintained in electronic format and that producing the complete file in paper format would—depending on the contents of files White produced to the Division—take between four and eight weeks and cost between \$500,000 and \$3.8 million. *Opp.* at 5 n.5. The Division has thus offered to provide White with an electronic version of its file at no cost. *Id.* at 4-6. It explains that it is currently awaiting a response to its request that White tell it how he wishes to receive the electronic copy. *Id.* at 5. Because there is no authority or reason to grant White's request and the Division has complied with its obligation to produce its investigative file, *see* 17 C.F.R. § 201.230(a), White's motion to proceed *in forma pauperis* is denied.

As to White's motion for a more definite statement, the order instituting proceedings (OIP) complies with Rule of Practice 200(b), in that it explains the "nature of [the] hearing" and "the legal authority and jurisdiction under which the hearing is to be held," sets forth "the matters of fact and law to be considered and determined," and "state[s] the nature of any relief or action sought." 17 C.F.R. § 201.200(b). The OIP thus explains that this matter was instituted under Exchange Act section 15(b) and Investment Advisers Act of 1940 section 203(f), is based on White's conviction in New York state court, and will determine whether the public interest favors taking any remedial action against White. OIP at 1-2. White has thus received the notice to which he is entitled.

White nonetheless asks for (1) the authority that required him and his company to register as investment advisers; (2) the statutes he is accused of violating; (3) the reason the Commission thinks it is in the public interest to bar him from the securities industry; and (4) the authority the Commission relies on for instituting this proceeding. But the OIP explains the authority on which the Commission relied to institute this proceeding and the Division in its opposition has explained that Exchange Act section 15(b) and Advisers Act section 203(f) set forth the requirements that the Division must meet before White can be barred from the securities industry. *Opp.* at 8-9. And the Division will necessarily explain in its dispositive motion why it believes the public interest favors barring White. It will also explain why it believes the

³ U.S. Const. amend. VI (emphasis added); *United States v. Benson*, 592 F.2d 257, 258 (5th Cir. 1979) ("there is no sixth amendment right to be represented by a non-attorney").

⁴ *Cf. Froudi v. United States*, 23 Cl. Ct. 328, 330 (1991) (explaining that the authority in section 1915 applies to courts "created by Congress under Article III of the Constitution").

evidence shows that White acted in a relevant capacity and suffered a relevant conviction. *See* 15 U.S.C. §§ 78o(b)(4)(B), (6)(A)(ii), 80b-3(e)(2), (3), (f). White will then have the opportunity to respond. White's motion for a more definite statement is denied.⁵

James E. Grimes
Administrative Law Judge

⁵ White's other motions were addressed during a prehearing conference held on May 13, 2016. *See Paul Leon White, II*, Admin. Proc. Rulings Release No. 3841, 2016 SEC LEXIS 1732, at *2-3 (ALJ May 13, 2016); Prehearing Tr. 10.