

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
TEXAS, GALVESTON DIVISION

Andrew J. Mitchell v. Marc Whyte, Esq., et al.

Mitchell v. Whyte · No. 3:26-cv-00123 · Decided April 30, 2026

SUMMARY

The memorandum and recommendation addresses whether an incarcerated pro se plaintiff may prosecute claims belonging to a limited liability company without licensed counsel. It recommends conditional dismissal without prejudice unless the plaintiff appears through counsel within 30 days after adoption, and advises that objections must be filed within 14 days of service.

CASE DETAILS

COURT	United States District Court for the Southern District of Texas, Galveston Division
WRITING FOR THE COURT	Andrew M. Edison
JURISDICTION	United States District Court for the Southern District of Texas, Galveston Division
DECIDED	April 30, 2026
DOCKET	3:26-cv-00123
DISPOSITION	other
PROCEDURAL POSTURE	A pro se incarcerated plaintiff brought claims purportedly on behalf of a limited liability company. The magistrate judge issued a memorandum and recommendation proposing conditional dismissal without prejudice unless the plaintiff appeared through licensed counsel.
STANDARD OF REVIEW	A district court may dismiss a claim sua sponte when the procedure is fair, including notice of the court's intention and an opportunity to respond.
PRECEDENTIAL VALUE	Nonprecedential memorandum and recommendation; effect of the proposed disposition depends on adoption by the district court.

TOPICS

- civil procedure
- limited liability companies
- pleadings
- commercial litigation

PRACTICE AREAS

civil procedure

limited liability companies

commercial litigation

remedies

QUESTIONS PRESENTED

1. Whether a pro se individual who is the sole member of a limited liability company may prosecute claims belonging to that company in federal court.
2. Whether the court may sua sponte recommend conditional dismissal without prejudice while giving the plaintiff an opportunity to obtain licensed counsel.

HOLDINGS

1. A pro se individual may not prosecute claims belonging to a limited liability company because an artificial business entity must appear in federal court through licensed counsel.
2. A court may recommend sua sponte dismissal when the plaintiff receives notice of the proposed action and an opportunity to respond; the proposed 30-day opportunity to obtain counsel and the objection period satisfied that fairness requirement.

KEY QUOTATIONS

“It has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel.”

“A district court may dismiss a claim on its own motion as long as the procedure employed is fair.”

“Fairness “requires both notice of the court’s intention and an opportunity to respond.””

FACTUAL BACKGROUND

Andrew Mitchell, an incarcerated person proceeding pro se, sued Marc Whyte and others over alleged withholding of contingency fees connected with public-adjusting services. Mitchell provided those services through Mitchell Adjusting International LLC, of which he was the sole member. The contracts attached to the complaint were executed in MAI's name, and the magistrate judge concluded that the claims belonged to MAI rather than Mitchell individually.

PROCEDURAL HISTORY

Mitchell filed the action on April 14, 2026, asserting claims arising from public-adjusting contracts executed in the name of Mitchell Adjusting International LLC. The case was referred to the magistrate judge for pretrial purposes. The magistrate judge recommended conditional dismissal without prejudice unless Mitchell obtained licensed counsel within 30 days after adoption of the recommendation; the parties were given 14 days to object.

DISPOSITION

other

CASES CITED

- Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 201–02 (1993)
- Alt. Materials, LLC v. TCH Constr. Grp., Inc., 339 F.R.D. 322, 324 (N.D. Fla. 2021)
- Davoodi v. Austin Indep. Sch. Dist., 755 F.3d 307, 310 (5th Cir. 2014)

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