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PRECEDENTIAL VALUE	Nonprecedential memorandum and recommendation; effect of the proposed disposition depends on adoption by the district court.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)

OPINION

UNITED STATES DISTRICT COURT April 30, 2026 SOUTHERN DISTRICT OF TEXAS Nathan Ochsner, Clerk GALVESTON DIVISION ANDREW J MITCHELL, § § Plaintiff, § § V. § CIVIL ACTION NO. 3:26-cv-00123 § MARC WHYTE, ESQ., et al., § § Defendants. § MEMORANDUM AND RECOMMENDATION This case has been referred to me for all pretrial purposes. See Dkt. 7. I am sua sponte issuing this memorandum and recommendation to suggest that the court order the conditional dismissal of this lawsuit without prejudice unless Plaintiff Andrew Mitchell appears through licensed counsel within 30 days from the date this memorandum and recommendation is adopted.

On April 14, 2026, Mitchell, an incarcerated person proceeding pro se, instituted this lawsuit against Defendants. Mitchell was a licensed public adjuster. Mitchell provided his public adjusting services through Mitchell Adjusting International LLC ("MAI"), a Texas limited liability company. At all times, Mitchell has been the sole member of MAI. Mitchell claims that Defendants operated a "predatory scheme of wire fraud and conversion" and that Defendant Marc Whyte "collected insurance settlement proceeds containing MAI's earned contingency fees, and then systematically withheld those fees from [Mitchell] while exploiting [Mitchell]'s incarceration to avoid accountability." Dkt.

1 at 2. Mitchell asserts claims for civil RICO, civil RICO conspiracy, wire fraud, breach of oral/implied-in- fact contract, account stated, quantum meruit, unjust enrichment/money had and received, conversion, breach of fiduciary duty, declaratory judgment, and accounting and constructive trust. Mitchell purports to bring this lawsuit as "owner and sole member of Mitchell Adjusting International LLC." Id. Mitchell cannot do this. "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." 28 U.S.C. § 1654.

The right to conduct one's own cases personally is limited to one's own interests. "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." Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council, 506 U.S. 194, 201–02 (1993). This rule applies to all "[a]rtificial business entities—such as limited liability companies, corporations, and partnerships." Alt.

Materials, LLC v. TCH Constr. Grp., Inc., 339 F.R.D. 322, 324 (N.D. Fla. 2021). The Public Adjuster Contracts attached to the complaint were executed in MAI's name, not Mitchell's. See

Dkt. 1-1. The claims in this case belong to MAI. Mitchell cannot prosecute MAI's claims himself. "A district court may dismiss a claim on its own motion as long as the procedure employed is fair." Davoodi v. Austin Indep.

Sch. Dist., 755 F.3d 307, 310 (5th Cir. 2014) (cleaned up). Fairness "requires both notice of the court's intention and an opportunity to respond." Id. (quotation omitted). Here, Mitchell has both the opportunity to object to this memorandum and recommendation and, in the event it is adopted, 30 days to appear through counsel before this action is dismissed without prejudice.

That is fair. CONCLUSION For the reasons discussed above, I recommend that the court order the conditional dismissal of this lawsuit without prejudice unless Mitchell appears through licensed counsel within 30 days from the date this memorandum and recommendation is adopted.

The parties have 14 days from service of this Memorandum and Recommendation to file written objections. See 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2). Failure to file timely objections will preclude appellate review of factual findings and legal conclusions, except for plain error. SIGNED this ___ day of April 2026. ________________________________ ANDREW M. EDISON UNITED STATES MAGISTRATE JUDGE