

**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

OPINION

ANDREW J MITCHELL v. MARC WHYTE, ESQ., et al.

PER CURIAM.

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