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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-30457
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
December 12, 2017
Lyle W. Cayce
Clerk

D.C. Docket No. 3:15-CV-2851

MARK HANNA,

Plaintiff - Appellant

v.

JAMES M. LEBLANC, SECRETARY, DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS; LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS; LOUISIANA DEPARTMENT OF MOTOR VEHICLES,

Defendants - Appellees

Appeal from the United States District Court for the Western District of Louisiana

Before KING, ELROD, and HIGGINSON, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

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Defendants - Appellees

Appeal from the United States District Court
for the Western District of Louisiana
USDC 3:15-CV-2851

Before KING, ELROD, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Mark Hanna brought a pro se 42 U.S.C. § 1983 lawsuit, alleging violations of the First and Fourteenth Amendments, against two Louisiana state agencies and the Secretary of the Department of Public Safety and

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Corrections. The district court dismissed Hanna's claims against the two agencies for lack of subject matter jurisdiction and Hanna's claims against the Secretary for failure to state a claim. We AFFIRM.

I.

Mark Hanna's driver's license was suspended for failure to appear for or pay three traffic citations and for allowing his car insurance to lapse. In December 2015, Hanna sued the Louisiana Department of Public Safety and Corrections ("DPS&C"), the Louisiana Office of Motor Vehicles ("OMV"), and James LeBlanc, the Secretary of DPS&C, for violations of the First and Fourteenth Amendments under 42 U.S.C. § 1983. Hanna's second amended complaint alleged that the defendants violated the Equal Protection Clause, by singling him out and imposing a $100 reinstatement fee where only a $50 fee is authorized by law. *See* La. Rev. Stat. § 32:57.1. He also alleged that DPS&C violated his due process rights by failing to provide him with adequate notice and an opportunity to be heard before his license was suspended. Generously construing his pleadings and briefs, he argues that the notice given—sending first class mail to the last address furnished to the DPS&C under Louisiana Revised Statutes § 32:863(D)(1)—was not reasonably calculated to notify him because he was incarcerated at the time. He also argues that Louisiana Revised Statutes § 32:863(D) is unconstitutional to the extent that it allows monetary sanctions to be imposed on incarcerated persons for lapsed car insurance without prior notice or a hearing. Finally, Hanna alleged that sometime prior to December 2015, he filed a state-court lawsuit challenging the fees imposed on him. Before filing the lawsuit, Hanna claims that the OMV told him his license was suspended pending remittance of the fees. Hanna claims that he appeared at the OMV's office in Ruston, Louisiana, in December 2015 to pay the reinstatement fees, but the OMV refused to accept his payment

because he had filed the state lawsuit. Hanna alleges this retaliatory act violated his First Amendment rights.

The case was referred to a magistrate judge who recommended the district court dismiss the claims against the two state agencies for lack of subject matter jurisdiction based on state sovereign immunity and dismiss Hanna's claims against LeBlanc for failure to state a claim. The magistrate judge also denied Hanna leave to amend his claims to add various unidentified John and Jane Doe state employees to his complaint. The district court adopted the magistrate judge's report and recommendation, and accordingly dismissed Hanna's claims against the three defendants and denied leave to amend. Hanna filed a timely appeal.

II.

"We review a district court's dismissal of a complaint under Rules 12(b)(1) and (6) *de novo*, taking the allegations of the dismissed complaint to be true." *Johnson v. Hous. Auth. of Jefferson Par.*, 442 F.3d 356, 359 (5th Cir. 2006).

III.

The district court did not err when it dismissed Hanna's claims against DPS&C and OMV based on a lack of subject matter jurisdiction under the Eleventh Amendment. Absent consent, federal courts generally lack jurisdiction to hear lawsuits against a state by that state's own citizens or citizens of another state. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 97–98 (1984). There is no indication that Louisiana has consented to have this lawsuit heard in federal court, *see* La. Rev. Stat. § 13:5106(A), and § 1983 does not abrogate state sovereign immunity, *see Quern v. Jordan*, 440 U.S. 332, 345 (1979). DPS&C, as a Louisiana executive department, and OMV, as a division within that department, are entitled to the Eleventh Amendment's protection. *See Champagne v. Jefferson Par. Sheriff's Office*, 188

F.3d 312, 313–14 (5th Cir. 1999) (per curiam); *Neuwirth v. La. State Bd. of Dentistry*, 845 F.2d 553, 556 (5th Cir. 1988).

IV.

The district court did not err when it dismissed Hanna's claims against LeBlanc for failure to state a claim. Hanna's claim against LeBlanc in his individual capacity relies on a showing that LeBlanc participated in the alleged wrong or that his wrongful actions "were causally connected to the deprivation." *See James v. Tex. Collin County*, 535 F.3d 365, 373 (5th Cir. 2008). Hanna's complaint, even if construed generously, does not allege facts indicating that LeBlanc participated in or was connected to any of the alleged wrongs.

With respect to the allegedly unauthorized $100 fee and the decision not to reinstate Hanna's license when he appeared in Ruston, nothing in the Hanna's amended complaint or the attached documents indicates that LeBlanc participated in or was connected to those decisions. Hanna's due process claim fails for the same reason. The district court observed that due process in this circumstance may require fair notice and an opportunity to be heard. *See Mathews v. Eldridge*, 424 U.S. 319, 332–35 (1976). Hanna does not argue that the issuance of first-class mail to his last address furnished to the DPS&C pursuant to Louisiana Revised Statutes § 32:863(D)(1) would not, in "most circumstances," constitute fair notice. *See Armendariz-Mata v. U.S. Dep't of Justice*, 82 F.3d 679, 683 (1996). Rather, he argues that in light of his incarceration, sending first-class mail to his last address was not "reasonably calculated" to notify him of the sanctions and his opportunity to be heard. *See id.* at 682–83 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). However, whether LeBlanc can be deemed to have participated in failing to take actions reasonably calculated to give Hanna notice depends on LeBlanc's personal knowledge. *See Armendariz-Mata*, 82

F.3d at 683. Hanna pleads no facts that indicate LeBlanc knew Hanna was incarcerated. Without knowledge that Hanna was incarcerated, LeBlanc would have no reason to believe that the first-class mail would be inadequate.

The district court also properly denied Hanna leave to amend his complaint to add unidentified John and Jane Doe DPS&C and OMV employees as defendants. The magistrate judge correctly determined that such an amendment would be futile. The Johns and Janes Doe would eventually have to be replaced with real persons. At such a time, the one-year statute of limitations would have run: § 1983 borrows the state statute of limitations for general personal injury actions, *see Walker v. Epps*, 550 F.3d 407, 411 (5th Cir. 2008), and Louisiana's is one year, La. Civ. Code art. 3492; *see Elzy v. Roberson*, 868 F.2d 793, 794 (5th Cir. 1989). While Federal Rule of Civil Procedure 15(c) can save an otherwise untimely amendment from being time barred, that amendment must relate back to the original pleading. An amendment to replace a John or Jane Doe with a real defendant would not relate back under Rule 15(c). *Whitt v. Stephens County*, 529 F.3d 278, 282–83 (5th Cir. 2008). Rule 15(c) requires a "mistake concerning the identity of the proper party" and using John or Jane Doe is not a "mistake." *See id.* at 283 (quoting *Jacobson v. Osborne*, 133 F.3d 315, 320–21 (5th Cir. 1998)).

Finally, contrary to the arguments Hanna raises for the first time on appeal, we find no basis to conclude that either the magistrate judge or district court judge was partial or should otherwise be disqualified. *See* 28 U.S.C. § 455(a).

V.

For the foregoing reasons, the judgment of the district court is AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-30457

MARK HANNA,

Plaintiff - Appellant

v.

JAMES M. LEBLANC, SECRETARY, DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS; LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS; LOUISIANA DEPARTMENT OF MOTOR VEHICLES,

Defendants - Appellees

Appeal from the United States District Court
for the Western District of Louisiana

ON PETITION FOR REHEARING

Before KING, ELROD, and HIGGINSON, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is denied.

ENTERED FOR THE COURT:

Carolyn Dineen King

UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

MARK HANNA	*	CIVIL ACTION NO. 15-2851
VERSUS	*	JUDGE ELIZABETH E. FOOTE
JAMES LEBLANC ET AL.	*	MAG. JUDGE KAREN L. HAYES

JUDGMENT

The Report and Recommendation of the Magistrate Judge having been considered, together with the written objections thereto filed with this Court, and, after a de novo review of the record, finding that the Magistrate Judge's Report and Recommendation is correct,

IT IS ORDERED, ADJUDGED, AND DECREED that the motion to dismiss for lack of jurisdiction filed by the Louisiana Department of Public Safety and Corrections and the Office of Motor Vehicles [Record Document 20] is **GRANTED** and Plaintiff's claims against said Defendants are **DISMISSED WITHOUT PREJUDICE** as barred by the Eleventh Amendment.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the motion to dismiss for failure to state a claim filed by Secretary LeBlanc [Record Document 24] is **GRANTED** and Plaintiff's claims against him are **DISMISSED WITH PREJUDICE.**

IT IS FURTHER ORDERED that the Magistrate Judge's Memorandum Order granting in part and denying in part the Plaintiff's motion to amend and supplement the complaint [Record Document 44] be and is hereby **AFFIRMED.**

IT IS FURTHER ORDERED that Plaintiff's motion to supplement his objections and/or appeal the Magistrate Judge's decision [Record Document 74] is **GRANTED IN PART and**

DENIED IN PART. It is granted to the extent the Court has construed that filing as Plaintiff's objections; however, insofar as the filing is construed as a motion to strike, a motion for default judgment, or a motion to correct the record, it is denied.

THUS DONE AND SIGNED this 17th day of May, 2017.

ELIZABETH E. FOOTE
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

MARK HANNA	*	**CIVIL ACTION NO. 15-2851**
VERSUS	*	**JUDGE ELIZABETH E. FOOTE**
JAMES LEBLANC ET AL.	*	**MAG. JUDGE KAREN L. HAYES**

MEMORANDUM RULING AND REPORT AND RECOMMENDATION

Before the undersigned Magistrate Judge, on reference from the District Court, are two motions to dismiss for failure to state a claim upon which relief can be granted and for lack of jurisdiction, [docs. # 20, #24], filed by Defendants Louisiana Department of Public Safety and Corrections, the Office of Motor Vehicles, and Secretary of the Louisiana Department of Public Safety and Corrections, James LeBlanc. Also before the court are two motions filed by Plaintiff Mark Hanna: 1) a motion for leave to file a third amended complaint, [doc. #72]; and 2) a motion for recovery of service costs, [doc. #78].

For reasons explained below, it is recommended that the motion to dismiss filed by the Louisiana Department of Public Safety and Corrections and the Office of Motor Vehicles be **GRANTED** and that Plaintiff's claims against said Defendants be **DISMISSED WITHOUT PREJUDICE**. It is further recommended that the motion to dismiss filed by Secretary LeBlanc be **GRANTED** and that Plaintiff's claims against him be **DISMISSED WITH PREJUDICE**. Plaintiff's motion for leave to file a third amended complaint is **DENIED** as **MOOT**. Plaintiff's motion for recovery of service costs is **DENIED**.

Background

Pro se Plaintiff Mark Hanna filed the instant civil rights complaint pursuant to 42 U.S.C. § 1983 on December 18, 2015, against Defendants Secretary of the Louisiana Department of Public Safety and Corrections, James LeBlanc ("Secretary LeBlanc"), the Louisiana Department of Public Safety and Corrections ("LDPSC"), and the Louisiana Department of Motor Vehicles ("OMV") (collectively the "Defendants"). Hanna alleges that the Defendants refused to reinstate his Louisiana driver's license without due process and equal protection of law, in violation of the Fourteenth Amendment, and in retaliation for a state law petition that Hanna filed challenging his license reinstatement fees, in violation of the First Amendment. [doc. #6, ¶ 2].

Hanna's driver's license was suspended for failure to appear for or pay three traffic citations, and also for twice allowing his car insurance to lapse. Sometime prior to December 2015, Hanna filed a state court petition challenging the approximately $975.00 in fees imposed on him. Prior to filing a state court petition, Hanna claims that the OMV told him his license was suspended pending remittance of the fees. *Id.* ¶ 4. Hanna claims that he appeared at the Ruston, Louisiana, OMV in December 2015 to pay the reinstatement fees, but that the OMV refused to accept his payment because he had filed a lawsuit challenging the fees. *Id.* ¶ 5.

He further complains that the LDPSC has refused to provide him with an administrative hearing concerning his suspended license in connection with the lapse of his car insurance while he was incarcerated. *Id.* ¶ 8. Relatedly, he argues that LA. R.S. § 32:863(D) is unconstitutional where it allows monetary sanctions to be imposed on incarcerated persons for lapsed car insurance without prior notice or a hearing. [doc. #33, ¶ 29].

Lastly, Hanna contends that the Defendants arbitrarily, and in violation of the equal protection clause, imposed multiple $100.00 reinstatement fees on him for failing to appear for or pay tickets, where only a $50.00 reinstatement fee is allowed under LA. R.S. § 32:57.1. *Id.* ¶ 18.

APPENDIX E

On October 3, 2016, Defendants filed the instant motions to dismiss for lack of jurisdiction and for failure to state a claim upon which relief may be granted. [docs. #20, #24]. Hanna filed his response on November 4, 2016. [doc. #32]. Defendants filed a reply on January 5, 2017. [doc. #55]. Hanna has filed a sur-reply and a sur-sur-reply. [docs. #67, #85]. After many briefs, amendments, and filings, this matter is now ripe for decision.

I. Rule 12(b)(1) Standard

"A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998) (quoting *Nowak v. Ironworkers Local 6 Pension Fund*, 81 F.3d 1182, 1187 (2d Cir. 1996)). Motions filed under Federal Rule of Civil Procedure 12(b)(1) "allow a party to challenge the subject matter jurisdiction of the district court to hear the case." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). The burden of proof is on the party asserting jurisdiction. *Id.* "In examining a Rule 12(b)(1) motion, the district court is empowered to consider matters of fact which may be in dispute." *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981).

"When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider . . . the jurisdictional attack before addressing any attack on the merits." *Ramming*, 281 F.3d at 161.

II. Jurisdictional Analysis

Hanna has brought suit against James LeBlanc, Secretary of the Louisiana Department of Public Safety and Corrections, the Louisiana Department of Public Safety and Corrections, and Office of Motor Vehicles. All three Defendants assert that they are entitled to sovereign immunity pursuant to the Eleventh Amendment of the United States Constitution.

The Eleventh Amendment states:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. CONST. amend. XI. "Eleventh Amendment sovereign immunity deprives a federal court of jurisdiction to hear a suit against a state." *Warnock v. Pecos County, Tex.*, 88 F.3d 341, 343 (5th Cir. 1996). A State may not be sued in federal court by her own citizens or citizens of another state without its consent. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98 (1984). Sovereign immunity may be waived, but waiver must be unequivocally expressed. *Id.* at 99. Furthermore, Congress has the power to abrogate Eleventh Amendment immunity with respect to rights protected by the Fourteenth Amendment, but congressional intent to so abrogate must be unequivocal. *Id.* The section of the Civil Rights Act of 1871 which creates a cause of action for deprivation of civil rights under color of law (42 U.S.C. § 1983) did not abrogate the Eleventh Amendment immunity of the states. *Quern v. Jordan*, 440 U.S. 332, 338 (1979). "[T]he relief sought by a plaintiff suing a State is irrelevant to the question whether the suit is barred by the Eleventh Amendment." *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 58 (1996). "A dismissal for lack of jurisdiction will not be affirmed unless it appears certain that the plaintiff cannot prove any set of facts in support of her claim which would entitle her to relief." *Warnock*, 88 F.3d at 343.

1. The Louisiana Department of Public Safety and Corrections and the Office of Motor Vehicles

The Louisiana Department of Public Safety and Corrections and the Office of Motor Vehicles enjoy sovereign immunity under the Eleventh Amendment. "[A] state's Eleventh Amendment immunity extends to any state agency or entity deemed an alter ego or arm of the

state." *Perez v. Region 20 Educ. Serv. Ctr.*, 307 F.3d 318, 326 (5th Cir. 2002). "It is clear, of course, that in the absence of consent a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment." *Pennhurst*, 465 U.S. at 908.

Moreover, Louisiana has not waived its Eleventh Amendment immunity from federal court jurisdiction. LA. R. S. § 13:5106(A); *Champagne v. Jefferson Parish Sheriff's Office*, 188 F.3d 312, 314 (5th Cir. 1999); *Bernofsky v. Road Home Corp.*, 741 F.Supp.2d 773, 779-80 (W.D. La. 2010). The Fifth Circuit has already held that section 1983 actions against the LDPSC are barred. *Champagne*, 188 F.3d at 314 (suggesting that all Louisiana executive departments have Eleventh Amendment immunity).

As a division within the LDPSC, the Office of Motor Vehicles is entitled to the same immunity. LA. R. S. § 36:401(C)(b)(i); *See Neuwirth v. La. State Bd. of Dentistry*, 845 F.2d 553, 556 (5th Cir. 1988) (holding that the Board of Dentistry, as part of the Department of Health and Human Services, is entitled to immunity); *Darlak v. Bobear*, 814 F.2d 1055, 1059-60 (5th Cir. 1987) (finding that Charity Hospital, as part of the Department of Health and Human Resources, is immune from suit); *Voisin's Oyster House, Inc. v. Guidry*, 799 F.2d 183, 186-87 (5th Cir. 1986) (reasoning that the Louisiana Wildlife and Fisheries Commission, as part of the Department of Wildlife and Fisheries, was immune from a § 1983 suit).

Accordingly, it is recommended that the motion to dismiss filed by the LDPSC and the OMV be GRANTED and that Plaintiff's claims against said Defendants be DISMISSED WITHOUT PREJUDICE for lack of subject matter jurisdiction.

2. Secretary James LeBlanc

The Eleventh Amendment immunity bar extends to state officials when they are sued in

their official capacities for retrospective monetary relief. *Strong v. Grambling State U.*, 159 F.Supp.3d 697, 706 (W.D. La. 2015) (citing *Edelman v. Jordan*, 415 U.S. 651, 663 (1974)). On the other hand, the Eleventh Amendment does not bar monetary relief for past harms when the state official is sued in his individual capacity and will be personally liable for the judgment. *Henley v. Simpson*, 527 Fed. App'x 303, 305 (5th Cir. 2013). "That is, the Eleventh Amendment does not erect a barrier against suits to impose 'individual and personal liability' on state officials under § 1983." *Hafer v. Melo*, 502 U.S. 21, 30-31 (1991). Additionally, state officials may be prospectively enjoined by a federal court from committing unconstitutional acts. *Edelman*, 415 U.S. at 664; *Ex Parte Young*, 209 U.S. 123 (1908). To obtain declaratory and injunctive relief, a plaintiff must establish standing by showing: 1) injury in fact; 2) causation; and 3) redressability. *Gregory v. Texas Youth Comm'n*, 111 F. App'x 719, 721 (5th Cir. 2004). Thus, if the state official does not have authority at the time of suit to redress the plaintiff's complaints, then the exception is inapplicable. *Id.*

Secretary LeBlanc argues that he was sued only in his official capacity, and is thus immune from suit for monetary damages. [doc. #24, p. 4]. Hanna points out that he merely named Secretary LeBlanc in his complaint, but that he is suing Secretary LeBlanc in both his individual and official capacity. [doc. #32, p. 2]. Specifically, Hanna states that Secretary LeBlanc is sued in his individual capacity for the recovery of damages, and in his official capacity for the injunction. *Id.*

If it is not clear from the complaint whether a defendant has been sued in his official or individual capacity, the Fifth Circuit "look[s] to the substance of the claims, the relief sought, and the course of the proceedings to determine in which capacity the defendant is sued." *Hopkins v. Gusman*, No. 06-5022, 2007 WL 2407247, *4 (E.D. La. Aug. 17, 2007); *Hardesty v.*

Waterworks Dist. No. 4 of Ward Four, 954 F.Supp.2d 461, 470 (W.D. La. 2013).

Construing Hanna's complaint liberally, the Court finds that Hanna intended to sue Secretary LeBlanc in both his official and individual capacities. The relief sought by Hanna in his complaint is pertinent. Hanna is suing for both monetary and injunctive relief. Monetary relief is only available against Secretary LeBlanc individually, and therefore, the Court assumes Hanna intended to sue him in his individual capacity. *See Senu-Oke v. Jackson State U.*, 521 F.Supp.2d 551, 558 (S.D. Miss. 2007); *Simmons v. Trowbridge*, No.3:11-CV-440-CWR-LRA, 2013 WL 2458463, *4 (S.D. Miss. June 4, 2013); *Hardesty*, 954 F.Supp. 2d at 472-73 (noting that plaintiff requests compensatory and punitive damages, indicating a claim against the defendants in their individual capacities). Furthermore, reviewing the course of proceedings, Secretary LeBlanc has asserted a defense of qualified immunity indicating that perhaps he thought he had been sued in his individual capacity (since a government official sued in his official capacity cannot rely on qualified immunity). *See Simmons*, 2013 WL 2458463, *4; *Hardesty*, 954 F.Supp.2d at 472.

Accordingly, Secretary LeBlanc is not entitled to Eleventh Amendment immunity for Hanna's claims against him in his individual capacity for monetary damages or for prospective injunctive relief in his official capacity. Therefore, the Court will address Secretary LeBlanc's motion to dismiss for failure to state a claim upon which relief can be granted. [doc. #24].

III. Rule 12(b)(6) Standard

The Federal Rules of Civil Procedure sanction dismissal where the plaintiff fails "to state a claim upon which relief can be granted." FED. R. CIV. P. 12(b)(6). A pleading states a claim for relief when, *inter alia*, it contains a "short and plain statement . . . showing that the pleader is entitled to relief . . . ." FED. R. CIV. P. 8(a)(2). To withstand a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible

on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)). A claim is facially plausible when it contains sufficient factual content for the court "to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id. Plausibility* does not equate to *possibility* or *probability*; it lies somewhere in between. *See Iqbal*, 556 U.S. at 678. Plausibility simply calls for enough factual allegations to raise a reasonable expectation that discovery will reveal evidence to support the elements of the claim. *See Twombly*, 550 U.S. at 555-56.

Assessing whether a complaint states a plausible claim for relief is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679 (citation omitted). Furthermore, "[t]he notice pleading requirements of Federal Rule of Civil Procedure 8 and case law do not require an inordinate amount of detail or precision." *Gilbert v. Outback Steakhouse of Fla. Inc.*, 295 Fed. Appx. 710, 713 (5th Cir. Oct. 10, 2008) (unpubl.) (citations omitted). The complaint need not even "correctly specify the legal theory" giving rise to the claim for relief. *Id.*[1]

Although the court must accept as true all factual allegations set forth in the complaint, the same presumption does not extend to legal conclusions. *Iqbal*, 556 U.S. at 678. A pleading comprised of "labels and conclusions" or "a formulaic recitation of the elements of a cause of action" does not satisfy Rule 8. *Id.* "[P]laintiffs must allege facts that support the elements of the cause of action in order to make out a valid claim." *City of Clinton, Ark. v. Pilgrim's Pride Corp.*, 632 F.3d 148, 153-54 (5th Cir. 2010). A court is compelled to dismiss an otherwise well-pleaded claim if it is premised upon an invalid legal theory. *Neitzke v. Williams*, 490 U.S. 319,

[1] "Courts must focus on the substance of the relief sought and the allegations pleaded, not on the label used." *Gearlds v. Entergy Servs., Inc.*, 709 F.3d 448, 452 (5th Cir. 2013) (citations omitted).

327 (1989).

When considering a motion to dismiss, courts generally are limited to the complaint and its proper attachments. *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2008) (citation omitted). However, courts may rely upon "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Id.*; *Norris v. Hearst Trust*, 500 F.3d 454, 461 n. 9 (5th Cir. 2007) (citation omitted). Furthermore, "[d]ocuments that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to [its] claim." *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498-99 (5th Cir. 2000) (citations and internal quotation marks omitted).

IV. Analysis

1. Section 1983 Framework

"To state a claim under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." *Cornish v. Correctional Servs. Corp.*, 402 F.3d 545, 549 (5th Cir. 2005). Section 1983, however, does not create any substantive rights; it simply provides a remedy for the rights designated therein. *Harrington v. Harris*, 118 F.3d 359, 365 (5th Cir. 1997) (citing 42 U.S.C. § 1983)). "Thus, an underlying constitutional or statutory violation is a predicate to liability under § 1983." *Id.* (citation omitted). The first inquiry is whether Plaintiff has alleged a violation of a constitutional right at all. *Piotrowski v. City of Houston*, 51 F.3d 512, 515 (5th Cir. 1995).

Moreover, in order to plead a § 1983 cause of action against persons acting in their individual capacity, a plaintiff "must establish that the defendant was either personally involved in the deprivation or that his wrongful actions were causally connected to the deprivation." *James*

v. Tex. Collin County, 535 F.3d 365, 373 (5th Cir. 2008). Additionally, "officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of *respondeat superior*" or vicarious liability. *Iqbal*, 556 U.S. at 676. "A supervisory official may be held liable . . . only if (1) he affirmatively participates in the acts that cause the constitutional deprivation, or (2) he implements unconstitutional policies that causally result in the constitutional injury." *Porter v. Epps*, 659 F.3d 440, 446 (5th Cir. 2011). "To establish supervisor liability for constitutional violations committed by subordinate employees, the plaintiff must show that the supervisor acted or failed to act with deliberate indifference to the violation of others' constitutional rights committed by their subordinates." *Id.* Deliberate indifference requires "proof that a municipal actor disregarded a known or obvious consequence of his action." *Id.* at 447.

Additionally, "the doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 129 S.Ct. 808, 815 (2009) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Id.* "The protection of qualified immunity applies regardless of whether the government official's error is 'a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.'" *Id.* (citing *Groh v. Ramirez*, 540 U.S. 551, 567 (2004) (Kennedy, J., dissenting).

When, as here, a defendant invokes qualified immunity, the burden shifts to the plaintiff to demonstrate the inapplicability of the defense. *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 194 (5th Cir. 2009). To meet this burden, the plaintiff must (1) "claim that the defendants committed

a constitutional violation under current law," and (2) "claim that defendants' actions were objectively unreasonable in light of the law that was clearly established at the time of the actions complained of." *Atteberry v. Nocona Gen. Hosp.*, 430 F.3d 245, 253 (5th Cir. 2005). Courts are "permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances of the particular case at hand." *Collier v. Montgomery*, 569 F.3d 214, 217 (5th Cir. 2009) (citing *Pearson*, 808 U.S. at 181)).

2. Hanna's Claims

A. Equal Protection under the Fourteenth Amendment

Hanna alleges that his equal protection rights were violated when Secretary LeBlanc imposed on him $100.00 reinstatements fees for failing to appear for or pay traffic citations, where Louisiana law only permits $50.00 reinstatement fees.

The Equal Protection Clause of the Fourteenth Amendment protects individuals from state governmental action that works to treat similarly situated individuals differently. *John Corp. v. City of Houston*, 214 F.3d 573, 586 (5th Cir. 2000). To state a claim under the Equal Protection Clause, a plaintiff must demonstrate that he has been treated differently due to his membership in a protected class and that the unequal treatment stemmed from discriminatory intent. *Hampton Co. Nat. Sur., LLC v. Tunica County, Miss.*, 543 F.3d 221, 228 (5th Cir. 2008). However, the Supreme Court has "recognized successful equal protection claims brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Village of Willowbrook v. Olech*, 120 S.Ct. 1073, 1074 (2000). Hanna does not allege that he has been treated differently due to his membership in a protected class. Thus, the Court must

determine if he has sufficiently pleaded an equal protection claim under a "class of one" theory.

Louisiana Revised Statute § 32:57.1(A) provides,

> A. Whenever an arrested person who was released on his written promise to appear before a magistrate at the place and time specified in a summons described in R.S. 32:391(B) fails to honor his written promise to appear, the magistrate or judge of the court exercising jurisdiction shall immediately forward to the Department of Public Safety and Corrections notice of the failure to appear, with information necessary for identification of the arrested person. Thereupon, unless the original charges have been disposed of, the Department of Public Safety and Corrections shall immediately notify the arrested person of suspension of his operator's license and **the imposition of a fifty-dollar fee**, regardless of the disposition of the original charge. The Department of Public Safety and Corrections likewise shall inform the arrested person that his operator's license cannot be renewed or reissued until the forwarding court exercising jurisdiction certifies that he had honored the appearance promise or paid an appropriate fine for the offense as determined by the forwarding court exercising jurisdiction.

LA. R. S. § 32:57.1(A) (emphasis added).

Attached to Hanna's pleadings is a document titled "Louisiana Office of Motor Vehicles Driver Reinstatement Status" that he received when he visited the Shreveport and Ruston OMVs in September and December 2015. Both documents show three motor vehicle tickets for which Hanna failed to appear for or pay. [doc. #1, Exhs. B-1, C-1]. Each ticket entry states the following, "You must submit a paid receipt or documentation indicating a new court date was given and a reinstatement fee of $100.00 in order to reinstate this suspension." *Id.* Hanna argues that Secretary LeBlanc arbitrarily and without rational basis imposed a $100.00 fee on him when § 32:57.1 only authorizes a $50.00 fee.

A plain reading of subsection (B) of § 32:57.1 shows that a payment of an additional fifty dollars must be paid before a license can be reissued or renewed. Subsection B provides, in pertinent part,

> B. Whenever the arrested person makes an appearance as required by Subsection A

> hereof or pays an appropriate fine for the offense committed, as determined by the court, the prosecuting authority shall immediately notify the Department of Public Safety and Corrections thereof. Upon such notification **and payment of an additional fifty dollars to the department, the operator's license of the arrested person shall be renewed or reissued** for the purpose of this Section.

LA. R. S. § 32:57.1(B) (emphasis added). Thus, imposing a $100.00 reinstatement fee on Hanna for each of his citations was authorized by Louisiana law. Even assuming *arguendo* that Secretary LeBlanc was personally involved in imposing fees on Hanna, Hanna has failed to allege that he was intentionally treated differently from similarly situated individuals.[2]

Accordingly, Hanna's equal protection claim against Secretary LeBlanc should be DISMISSED WITH PREJUDICE.

B. Due Process under the Fourteenth Amendment

Hanna alleges that he was not provided notice and an administrative hearing before his driver's license was "blocked" and monetary sanctions were imposed on him for failing to maintain car insurance while incarcerated. [doc. #6, ¶ 8; doc. #33, ¶22]. Relatedly, Hanna argues that LA. R.S. § 32:863(D) is unconstitutional where it allows sanctions to be imposed on incarcerated persons for lapsed car insurance without prior notice or a hearing. [doc. #33, ¶ 29].

The Due Process Clause of the Fourteenth Amendment declares that no State shall "deprive any person of life, liberty, or property, without due process of law." U. S. CONST., amend. XIV. To state a § 1983 claim for a due process violation, "a plaintiff must first identify a

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[2] Every indication on the Louisiana Department of Public Safety, Office of Motor Vehicle's website establishes that a $100.00 reinstatement fee—not a $50.00 fee—is owed for reinstatement of a driver's license under § 32:57.1 for failure to appear for or pay tickets. LA. OFFICE OF MOTOR VEHICLES PUBLIC SAFETY SERVS., http://www.expresslane.org/Pages/faqs/fic_q10.aspx (last visited Dec. 19, 2016); LOUSIANA.GOV, OFFICE OF MOTOR VEHICLES, http://web01.dps.louisiana.gov/omv1.nsf/47c22a6b4cac67ec862570c90053bd7f/ce2ed556a3e46c6f862565920068d1b2 (last visited Dec. 19, 2016).

protected life, liberty or property interest and then prove that governmental action resulted in a deprivation of that interest." *Gentilello v. Rege*, 627 F.3d 540, 544 (5th Cir. 2010) (citation omitted). A driver's license is a protected property interest that cannot be taken away by the State without procedural due process. *Bell v. Burson*, 402 U.S. 525 (1971).

Procedural due process requires fair notice of impending state action and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). Notice and the hearing are two distinct features of due process, and are thus governed by different standards. *Dusenbery v. United States*, 534 U.S. 161, 168 (2002). Due process only requires notice that is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950). Due process does not require actual notice. *Jones v. Flowers*, 537 U.S. 220, 244 (2006). The failure of notice in a specific case does not establish the inadequacy of the attempted notice. *Id.* at 231. "Under most circumstances, notice sent by ordinary mail is sufficient to discharge the government's due process obligations." *Armendariz-Mata v. U.S. Dept. of Justice, Drug Enforcement Admin.*, 82 F.3d 679, 683 (5th Cir. 1996).

Prior to the imposition of sanctions for lapsed car insurance, Louisiana law states that the Secretary "shall send written notice to the owner, lessee, or other person against whom sanctions are intended at the last address furnished to the department." LA. R.S. § 32:863(D).(1). A hearing may then be requested within ten days from the date of notice. *Id.* "Sanctions shall not be imposed until all rights for appeal have expired or been exhausted." *Id.*[3]

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[3] It is settled that the violation of a state law does not, in and of itself, constitute a federal due process violation. *Ware v. Lafayette City-Parish Consolidated Gov't*, No. 08-0218, 2009 WL 5876275, *11 (W.D. La. Jan. 6, 2009) (citing *Indiana Land Co., LLC v. City of Greenwood*, 378 F.3d 705, 711 (7th Cir. 2004)).

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Hanna's driver's license restatement status indicates that his vehicle registration and driver's license was "blocked," and fines were imposed, because he failed to maintain car insurance while he was incarcerated. [doc. #1, Exhs. B-1, C-1].[4] While incarcerated the first time, Hanna wrote to the LDPSC on August 11, 2015, asking for a hearing on the issue of sanctions. [doc. #1, Exh. A-6]. His request was denied as untimely. *Id.* Exh. A-11. While incarcerated the second time, Hanna asserts that "within thirty days after the arrest [he] notified the department by certified mail that [he] was in jail unable to maintain [his] insurance on the vehicle or surrender vehicle plates at an OMV." [doc. #33, ¶ 22]. He alleges that he again asked for a hearing on the issue of sanctions, but that he never heard from the department and more sanctions were imposed. *Id.*

In *Armendariz-Mata*, the Fifth Circuit held that notice of forfeiture proceedings by certified mail to the Plaintiff's home was inadequate when the government knew the Plaintiff was incarcerated. 82 F.3d at 683. *See Robinson v. Hanrahan*, 409 U.S. 38, 40 (1972) (finding notice inadequate when "the State knew that [the owner] was not at the address to which the notice was mailed and, moreover, knew also that [the owner] could not get to that address since he was at that very time confined."); *DiPiero v. City of Macedonia*, 180 F.3d 770, 788 (6th Cir. 1999) (distinguishing *Armendariz-Mata* because Plaintiff "was not incarcerated and the City had no information about plaintiff's whereabouts that would give reason to suspect he would not actually receive notice mailed to his last known address.").

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[4] Under Louisiana law, when the LDPSC receives notification from an insurance company that the liability insurance has been cancelled on a vehicle, a "no insurance" block is set in the master driver's license and vehicle records if a revocation is in effect and fees are due. *See* LA. R.S. § 32:861. A "no insurance" block was set to Hanna's license because, at the time, his driver's license was suspended for failure to appear for or pay three traffic citations. *See* doc. #1 Exhs. B-1, C-1. A "no insurance" block prevents the renewal or issuance of a driver's license and vehicle registration. *Id.*

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In *Snider Intern. Corp. v. Town of Forest Heights, Md.*, Plaintiffs challenged speed cameras in Maryland that imposed civil penalties for speed violations and gave notice of the violation by mail. 739 F.3d 140, 146-47 (4th Cir. 2014). Finding no procedural due process violation, the Fourth Circuit noted that "[i]t is difficult to imagine a more reasonable attempt at effectuating actual notice of a driving infraction than the use of registration information collected by the state's transportation agency." 739 F.3d 140, 146-47 (4th Cir. 2014). However, the Court also held, "[s]o long as the agency did not have reason to believe that the citation recipient could not be reached at that address, the mailed notice would be sufficient." *Id.* at 147 (citing *Robinson*, 409 U.S. at 39-40).

Noticeably absent from Hanna's pleadings is any contention that he notified *Secretary LeBlanc* that he was incarcerated. Indeed, Hanna explicitly states that he wrote to the LDPSC, notifying it that he was incarcerated and requesting a hearing. Individual liability under § 1983 must rest on facts reflecting the defendant's personal participation or involvement in the alleged wrong. Secretary LeBlanc had no reason to believe that Hanna would not receive notice at his last furnished address. Accordingly, notice sent to Hanna's last known address satisfied due process and Hanna's procedural due process claim against Secretary LeBlanc should be DISMISSED WITH PREJUDICE.[5]

Hanna also asserts that § 32:863(D) is unconstitutional where it allows sanctions to be

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[5] Citing to no specific policies, Hanna alleges in his opposition that "a customary, historical traditional of deliberate indifference to the constitutionally-required due process needs of [incarcerated] persons (myself included) is implicitly-written (by omission) into Louisiana law." [doc. #32, p. 26]. For § 1983 liability to trigger, Hanna must allege that Secretary LeBlanc personally implemented specific, unconstitutional policies—which Hanna does not do. Furthermore, deliberate indifference is a stringent standard of fault under § 1983, requiring proof that a municipal actor disregarded a known or obvious consequence of his action. *Connick v. Thompson*, 563 U.S. 51, 61 (2011). Hanna's allegations fall far short of this stringent standard.

imposed on incarcerated persons without notice or a hearing. The constitutional adequacy of a law's procedures is assessed by balancing the private and governmental interests concerned. *Mathews,* 424 U.S. at 334-35. First, courts consider "the private interest that will be affected by the official action." *Id.* at 335. In this case, Hanna asserts that he was fined $500.00 each time his car insurance lapsed. This is a relatively minor fine amount. *See Bevis v. City of New Orleans*, 686 F.3d 277, 280 (5th Cir. 2012) (noting that a maximum fine of $380 for a traffic citation was "minor"). Next, we consider "the risk of an erroneous deprivation" under the procedures provided. *Mathews*, 424 U.S. at 335. The procedures set forth in § 32:863(D) are more than adequate and the risk of an erroneous deprivation of protected rights is minimal. As discussed above, sending notice of a motor vehicle infraction via mail to the recipient's last known address is almost always constitutionally sufficient. Furthermore, Louisiana law provides that recipients may request a hearing, and sanctions cannot be imposed until all rights for appeal have expired or been exhausted.

Finally, the private interest and risk of error are balanced against the "Government's interest, including the function involved and the fiscal and administrative burdens that . . . additional or substitute procedural requirement[s] would entail." *Id.* It is well known that a state has a strong interest in reducing the risk of road accidents and maintaining public health and safety. In *Kaltenbach v. Breaux*, the court held that

> the state's requirements that all persons who operate motor vehicles on state highways possess a valid driver's license, safety inspection tag, and vehicle registration are valid exercises of the state's police power. The regulations are rationally related to the state's purpose in safeguarding the health and safety of its citizens, and the means employed by the state are rationally related to the purpose of the statutes.

Kaltenbach v. Breaux, 690 F. Supp. 1551, 1554-55 (W.D. La. 1988). The foregoing authority

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compels a finding of constitutionality here. Whether § 32:863(D) *could* unconstitutionally impose fines on an incarcerated person would depend on the particular circumstances of that case. *See Armendariz-Mata*, 82 F.3d at 683. The court does not find that § 32:863(D)'s procedures render it unconstitutional as-applied to all incarcerated persons. Accordingly, Hanna's challenge to § 32:863(D), as-applied to all incarcerated persons, fails and should be DISMISSED WITH PREJUDICE.

C. First Amendment Claims

Hanna asserts that Secretary LeBlanc refused to reinstate his driver's license in retaliation for Hanna's filing of a state court petition challenging his license reinstatement fees. Sometime prior to December 2015, Hanna filed a state court petition, challenging his driver's license reinstatement fees. Hanna claims that he went to the Ruston and Shreveport, OMV locations in December 2015 to renew his driver's license, but was told that his license could not be renewed because of his state court lawsuit. [doc. #6, ¶ 5; doc. #33, ¶ 19]. Furthermore, Hanna points out that his driver's license reinstatement status document states: "Our records indicate there is a petition filed against tthe [sic] department on your behalf. You may need to contact your attorney prior to reinstatement." [doc. #1, Exh. C-2].

To state a claim of First Amendment retaliation, an ordinary citizen must show that: 1) he was engaged in constitutionally protected activity, 2) the defendant's actions caused him to suffer an injury that would chill a person of ordinary firmness from continuing to engage in that activity, and 3) the defendant's adverse actions were substantially motivated against the plaintiff's exercise of constitutionally protected conduct. *Keenan v. Tejeda*, 290 F.3d 252, 258 (5th Cir. 2002). A plaintiff may demonstrate that his protected conduct was a substantial or motivating factor behind a defendant's action by providing direct evidence of a retaliatory

motive, or by relying upon "a chronology of events from which retaliation may plausibly be inferred." *Brady v. Houston Indep. Sch. Dist.*, 113 F.3d 1419, 1425 (5th Cir. 1997) (citing *Woods v. Smith*, 60 F.3d 1161, 1166 (5th Cir. 1995)).

Hanna has satisfied the first prong, as the First Amendment provides a constitutional basis for the right of access to the courts. *Cal. Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972). Indeed, it is well established that access to the courts is protected by the First Amendment right to petition for redress of grievances. *Wilson v. Thompson*, 593 F.2d 1375, 1387 (5th Cir. 1979). As for the second prong, Hanna alleges that a person of ordinary firmness would not file a state court petition if he knew his driver's license would be revoked in response. Even assuming *arguendo* that Hanna has satisfied the second prong, Hanna has failed to establish the third prong—that Secretary LeBlanc's alleged actions were substantially motivated against Hanna's exercise of constitutionally protected conduct. Louisiana law provides that, following suspension of a driver's license for failure to appear, the "Department of Public Safety and Corrections . . . shall inform the arrested person that his operator's license cannot be renewed or reissued until the forwarding court exercising jurisdiction certifies that he had honored the appearance promise or paid an appropriate fine for the offense as determined by the forwarding court exercising jurisdiction." LA. R.S.§ 32:57.1. Hanna failed to appear for or pay three traffic citations in the Ruston City Court and Village of Fenton Mayors Court. [doc. #1, Exh. C-1]. Hanna has not alleged, or provided proof, that he followed the requirements of § 32:57.1, *i.e.*, he has failed to show that those courts have certified that he has honored the appearance or paid his fines. Thus, Secretary LeBlanc had a valid, legal reason for declining to reinstate Hanna's driver's license. *See Brady*, 113 F.3d at 1425 (denying First Amendment retaliation claim where appellants presented a believable, non-retaliatory reason for their actions).

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Even if Hanna could satisfy the third prong, he has failed to plead conduct on the part of Secretary LeBlanc that shows he was personally involved in the decision not to reinstate Hanna's license. Hanna's entire First Amendment claim is based on the actions of other unnamed OMV officers. It is undisputed that Secretary LeBlanc did not personally refuse to accept Hanna's payment when he appeared at the OMV. Instead, Hanna claims that Secretary LeBlanc is personally liable because "the decision to withhold [Hanna's] license was plausibly not made by local field officers or supervisors, but by someone with power to make statewide decisions to withhold licenses, even for reasons not explicitly provided for in State law." [doc. #32, p. 28]. The simple fact that Secretary LeBlanc is head of the LDPSC does not support an inference that he was personally involved in the refusal to reinstatement Hanna's driver's license.

Accordingly, Hanna has failed to allege a violation of the First Amendment and his First Amendment claim against Secretary LeBlanc should be DISMISSED WITH PREJUDICE.

In sum, the court finds that Hanna's complaint fails to allege facts to support a finding that Secretary LeBlanc violated any of his constitutional rights. Accordingly, Secretary LeBlanc is entitled to qualified immunity. The court need not consider the second prong of the qualified immunity defense.[6]

V. Motion for Recovery of Service Costs

Hanna prays that service costs be assessed against Secretary LeBlanc in the amount of $196.15. [doc. #78]. Rule 4(d) provides,

> (1) *Requesting a Waiver.* An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has

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[6] The qualified immunity defense only applies "as a protective shield once a plaintiff has made out a claim against an official acting in his individual capacity." *Goodman v. Harris County*, 571 F.3d 388, 396 (5th Cir. 2009).

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been commenced and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed:

(i) to the individual defendant; or

(ii) for a defendant subject to service under Rule 4(h), to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process;

(B) name the court where the complaint was filed;

(C) be accompanied by a copy of the complaint, 2 copies of the waiver form appended to this Rule 4, and a prepaid means for returning the form

(D) inform the defendant, using the form appended to this Rule 4, of the consequences of waiving and not waiving service;

(E) state the date when the request is sent;

(F) give the defendant a reasonable time of at least 30 days after the request was sent—or at least 60 days if sent to the defendant outside any judicial district of the United States—to return the waiver; and

(G) be sent by first-class mail or other reliable means.

FED. R. CIV. P. 4(d)(1).

Furthermore, if "a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant" "the expenses later incurred in making service" and "the reasonable expenses . . . or any motion required to collect those service expenses." *Id.* 4(d)(2).

Hanna mailed a proposed waiver of service to Secretary LeBlanc on March 18, 2016. [doc. #11, p. 2]. On April 8, 2016, he filed a motion for service of the complaint by U.S. Marshal ("USM") if Secretary LeBlanc failed to sign and return the waiver of service. *Id.* at 4. On April 21, 2016, the Court ordered the USM to provide Plaintiff with the cost of effecting service on

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Secretary LeBlanc, and, upon Hanna's receipt of same, Plaintiff was to remit that cost to the USM, along with addresses for any defendant he wished to serve. [doc. #13]. On May 2, 2016, Hanna responded that he wished Secretary LeBlanc to be served via USM at 504 Mayflower Street, Baton Rouge, LA 70802. [doc. #15]. Secretary LeBlanc was served by USM on August 8, 2016, and costs were assessed to Hanna. [doc. #18].

Secretary LeBlanc contends that, as a governmental entity, he is exempt from Rule 4's waiver requirement because service on state or local governments is governed by Rule 4(j). *See* FED. R. CIV. P. 4(j)(2); *see also Moore v. Hosemann*, 591 F.3d 741, 747 (affirming dismissal of plaintiff's motion for costs, and finding that "a state official sued in his official capacity is not subject to the mandatory waiver-of-service provisions of rule 4(d)."). However, the Court concludes that Secretary LeBlanc is subject to Rule 4(d)'s mandatory waiver-of-service provisions in his individual capacity. *See id.*

Secretary LeBlanc responds that, even if he is subject to Rule 4's mandatory waiver-of-service provisions, Hanna failed to comply with the requirements of Rule 4(d). Hanna has the burden to show entitlement to costs and fees under Rule 4. *See Flores v. Sch. Bd. of DeSoto Parish*, 116 Fed. App'x 504, 508 (5th Cir. 2004). Rule 4 may be satisfied "even if a plaintiff does not strictly comply with every formalistic requirement of the rule." *Id.*

Under the circumstances of this case, the court finds that Hanna has failed to carry his burden that he is entitled to costs. Hanna provides a handwritten copy of the document he purportedly sent to Secretary LeBlanc titled, "Notice and Waiver of Service in a Civil Action." He asserts that he mailed the notice to Secretary LeBlanc at P.O. Box 64886 Baton Rouge, Louisiana. It does not appear that the waiver-of-service document had a copy of the complaint attached, 2 copies of the waiver form, or a prepaid means for returning the form as required by

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Rule 4. While plaintiffs do not need to follow every formalistic requirement of Rule 4, failing to attach the complaint—the foremost document in any lawsuit to provide a defendant with notice of the claims against him or her—forecloses any award of costs. *See Suggs v. Central Oil of Baton Rouge, LLC*, No. 13-25-RLB, 2014 WL 3374719, *2 (M.D. La. July 9, 2014) (denying costs where plaintiff failed to comply with the specific requirements of Rule 4(d)(1)); *Chapman v. N.Y. State Div. for Youth*, 227 F.R.D. 175, 179 (N.D. N.Y. 2005) ("If the plaintiff complies with all of the notice requirements set forth in Rule 4(d), *which includes attaching a copy of the complaint*, then the defendant is compelled to execute the waiver of service or be confronted with bearing the cost of the personal service upon him) (emphasis added).

Hanna's request for recovery of service fees and costs is **DENIED.**

Conclusion

For the above assigned reasons,

Plaintiff's motion for leave to file a third amended complaint, [doc. #72], is **DENIED** as **MOOT.**

Plaintiff's motion for recovery of service costs, [doc. #78], is **DENIED.**

IT IS RECOMMENDED that the motion to dismiss for lack of jurisdiction, [doc. #20], filed by Defendants Louisiana Department of Public Safety and Corrections and the Office of Motor Vehicles be **GRANTED** and Plaintiff's claims against said Defendants be **DISMISSED WITHOUT PREJUDICE** as barred by the Eleventh Amendment.

IT IS FURTHER RECOMMENDED that the motion to dismiss for failure to state a claim, [doc. #24], filed by Secretary LeBlanc be **GRANTED** and that Plaintiff's claims against him be **DISMISSED WITH PREJUDICE**.

Under the provisions of 28 U.S.C. §636(b)(1)(C) and FRCP Rule 72(b), the parties have

fourteen (14) days from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within **fourteen (14) days** after being served with a copy thereof. A courtesy copy of any objection or response or request for extension of time shall be furnished to the District Judge at the time of filing. Timely objections will be considered by the District Judge before he makes a final ruling.

A PARTY'S FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN FOURTEEN (14) DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY, EXCEPT ON GROUNDS OF PLAIN ERROR, FROM ATTACKING ON APPEAL THE UNOBJECTED-TO PROPOSED FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE.

In Chambers, at Monroe, Louisiana, this 8th day of March 2017.

KAREN L. HAYES
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

MARK HANNA	*	**CIVIL ACTION NO. 15-2851**
VERSUS	*	**JUDGE ROBERT G. JAMES**
JAMES LEBLANC ET AL.	*	**MAG. JUDGE KAREN L. HAYES**

MEMORANDUM ORDER

Before the undersigned Magistrate Judge, on reference from the District Court, is a motion for leave of court to amend and supplement complaint, [doc. # 35], filed by *pro se* Plaintiff Mark Hanna. The motion is opposed.[1] Upon consideration, the motion is **GRANTED IN PART** and **DENIED IN PART**.

Law and Analysis

Rule 15(a) provides that a plaintiff may amend his complaint once as a matter of course within 21 days after service of 1) a responsive pleading or 2) a motion under Rule 12(b), (e), or (f) – whichever is earlier. FED.R.CIV.P. 15(a)(1)(B). Furthermore, "before dismissing a pro se complaint, a district court ordinarily should give the litigant an opportunity to amend." *Bruce v. Little*, 568 Fed. App'x. 283, 285 (5th Cir. 2014). Indeed, the district court should afford pro se plaintiffs "every reasonable opportunity to amend." *Cherry v. Mainous*, 608 Fed. App'x. 301, 302 (5th Cir. 2015) (citing *Pena v. U.S.*, 157 F.3d 984, 987 n.3 (5th Cir. 1998)).

Defendants oppose Plaintiff's proposed amendment on the grounds of futility, bad faith,

[1] As this motion is not excepted within 28 U.S.C. § 636(b)(1)(A), nor dispositive of any claim on the merits within the meaning of Rule 72 of the Federal Rules of Civil Procedure, this order is issued under the authority thereof, and in accordance with the standing order of this court. Any appeal must be made to the district judge in accordance with Rule 72(a) and L.R. 74.1(W).

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and dilatory motive. However, Rule 15(a) permits amendment once as a matter of course within 21 days after a Rule 12(b) motion. Upon consideration of same, the lack of cognizable prejudice to Defendants, as well as Plaintiff's *pro se* status, Hanna's motion to amend is **GRANTED** only to the extent he seeks to supplement his complaint with material facts supporting his § 1983 claim. *See Dark v. Potter*, 293 Fed. App'x. 254, 257 (5th Cir.2008) ("Rule 12(b)(6) dismissals of pro se complaints without opportunity to amend generally constitute error.").

However, Hanna's motion is **DENIED** to the extent he seeks to add various unidentified defendants (referenced in his proposed amended pleading as "Jane Doe," "Janet Doe," "Janice Doe," "Jenny Doe," and "Jason Doe"). [doc. #33, pp. 5-6]. Section 1983 actions are subject to state statutes of limitations for general personal injury actions. *Walker v. Epps*, 550 F.3d 407, 411 (5th Cir. 2008). Hanna is correct that Louisiana's one-year prescription period had not yet lapsed when he filed his motion for leave to amend on November 7, 2016, for actions allegedly committed by the "Doe defendants" on December 4 and 7, 2015. *See* LA. CIV. C. art. 3492.

As Defendants point out, though, allowing Hanna to add the various "Doe defendants" would be futile. *See Jones v. Robinson Property Grp. L.P.*, 427 F.3d 987, 994 (5th Cir. 2005) (noting that a district court may consider the futility of the proposed amendment in deciding whether to grant leave to amend). If the Court allowed Hanna to name fictitious defendants now, another amendment would be required in the future once those individuals' identities are discovered. The statute of limitations has now passed. In certain circumstances, Rule 15(c) can save an otherwise untimely amendment if the amendment relates back to the date of the original pleading. FED. R. CIV. P. 15(c). However, an amendment to substitute a named party for a "John Doe" defendant may not relate back under Rule 15(c). *Whitt v. Stephens County*, 529 F.3d

278, 282-83 (5th Cir. 2008). Rule 15(c) requires a mistake concerning the identity of the real party, and the use of a "John Doe moniker" does not constitute a mistake. *Id.* (citing *Jacobsen v. Osborne*, 133 F.3d 315, 320-21 (5th Cir. 1998). Accordingly, because an amendment in the future naming the identities of the "Doe defendants" would be time-barred, it would be futile for Hanna to amend. *See id.* at 283.

Conclusion

For the foregoing reasons,

IT IS ORDERED that Plaintiff's motion for leave of court to amend and supplement complaint, [doc. # 35], is **GRANTED IN PART** and **DENIED IN PART**. The Court will consider paragraphs 18-23, 28-29 of Hanna's proposed amendment. [doc. #33]. The Court will not consider paragraphs 24-27. *Id.* In an effort to ameliorate any undue prejudice to Defendants, the Court will construe Defendants' existing motions to dismiss as encompassing Plaintiff's second amended complaint. In addition, the Court will consider Defendants' arguments asserted in opposition to the motion for leave to amend as supplemental grounds in support of the motions to dismiss.

In Chambers, at Monroe, Louisiana, this 12th day of December 2016.

KAREN L. HAYES
UNITED STATES MAGISTRATE JUDGE

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§ 14:18. Justification; general provisions.

The fact that an offender's conduct is justifiable, although otherwise criminal, shall constitute a defense to prosecution for any crime based on that conduct. This defense of justification can be claimed under the following circumstances:

(1) When the offender's conduct is an apparently authorized and reasonable fulfillment of any duties of public office; or

(2) When the offender's conduct is a reasonable accomplishment of an arrest which is lawful under the Code of Criminal Procedure; or

(3) When for any reason the offender's conduct is authorized by law; or

(4) When the offender's conduct is reasonable discipline of minors by their parents, tutors or teachers; or

(5) When the crime consists of a failure to perform an affirmative duty and the failure to perform is caused by physical impossibility; or

(6) When any crime, except murder, is committed through the compulsion of threats by another of death or great bodily harm, and the offender reasonably believes the person making the threats is present and would immediately carry out the threats if the crime were not committed; or

(7) When the offender's conduct is in defense of persons or of property under any of the circumstances described in Articles 19 through 22.

§ 32:8. Final delinquent debt; office of motor vehicles.

A. For purposes of this Section, the following words shall have the following meanings unless the context clearly indicates otherwise:

(1) "Debt" means any legally collectible liquidated sum due and owed to the Department of Public Safety and Corrections, office of motor vehicles, pursuant to R.S. 32:57.1, R.S. 32:863, or R.S. 32:863.1.

(2) "Delinquent debt" means a debt that is sixty days or more past due.

(3) Final debt means the amount due is no longer negotiable and that the debtor has no further right of administrative and judicial review.

(4) "Office of motor vehicles" means the Department of Public Safety and Corrections, office of motor vehicles.

B. The office of motor vehicles shall refer a final delinquent debt for which a debtor has not entered into an installment agreement for payment to the office of debt recovery as provided in R.S. 47:1676. Final delinquent debt referrals shall include data and information in the required format necessary to institute collection procedures. All delinquent debts shall be authenticated by the office of motor vehicles prior to being referred to the office of debt recovery. Once the delinquent debt becomes final, and prior to referral to the office of debt recovery, the office of motor vehicles shall notify the debtor in writing that failure to pay the debt in full within sixty days shall subject the debt to the maximum amount owed together with the additional fee collected by the office of debt recovery provided for in R.S. 47:1676. Such notice shall also inform the debtor that he may qualify to pay sums due by installment agreement, if eligible, and shall include instructions on how to inquire with the office of motor vehicles to determine eligibility and terms.

C. The office of motor vehicles may promulgate rules and regulations in accordance with the Administrative Procedure Act necessary to implement the provisions of this Section, including rules for referring final delinquent debt.

HISTORY.

Acts 2015, No. 414, § 1, eff. Aug. 1, 2015; Acts 2016, No. 11, § 1, eff. March 9, 2016; Acts 2016, No. 397, § 1, eff. June 8, 2016.

§ 32:861. Security required.

A. (1) Every self-propelled motor vehicle registered in this state except those motor vehicles used as agricultural or forest vehicles during seasons when they are not used on the highway, those used primarily for exhibit or kept primarily for use in parades, exhibits, or shows, and lease-bound mobile rig haulers as defined in Subsection D of this Section, shall be covered by an automobile liability policy with liability limits as defined by R.S. 32:900(B)(2) or 900(M), or a binder for same, or by a motor vehicle liability bond as defined by Subsection B of this Section, or by a certificate of the state treasurer stating that cash or securities have been deposited or securitized with said treasurer as provided by Subsection C of this Section, or by a certificate of self-insurance as provided by R.S. 32:1042.

(2) (a) It shall be the duty of the registered owner of a motor vehicle to maintain the security hereinabove required. Failure to maintain said security shall subject the registered owner to the sanctions hereinafter provided in Sections 863, 864, and 865 of this Part.

(b) For the period August 15, 2006, through August 14, 2007, the provisions of this Part shall not apply to water-damaged vehicles as defined by R.S. 32:702, regardless of whether the vehicle is a total loss, if and only if, the registered owner of the water-damaged vehicle applies for a certificate of destruction in accordance with procedures established by the secretary. Such applications shall be processed in a manner similar to that outlined in R.S. 32:707.3.

(3) If the owner or lessee wishes to discontinue the use of a vehicle registered in his name, he shall surrender the vehicle's license plate to the secretary within ten calendar days of cancellation or, prior to the cancellation, he shall notify the secretary by written statement containing the date of cancellation of liability security on the vehicle, that the vehicle is no longer in use and the intended period of nonuse, and shall have the agent who previously issued the policy of insurance on the vehicle submit an affidavit that the insurance on the vehicle will be cancelled during the period of time that the vehicle will not be in use.

B. "Motor vehicle liability bond" means a bond conditioned:

(1) That the obligor shall, within thirty days after the rendition thereof, satisfy:

(a) (i) All judgments rendered against him or against any person responsible for the operation of the obligor's motor vehicle with his express or implied consent in actions to recover damages for property damage or for bodily injuries, including death at any time resulting therefrom, and

(ii) Judgments rendered as aforesaid for consequential damages consisting

of expenses incurred by a husband, wife, parent, or tutor for medical, nursing, hospital, or surgical services in connection with or on account of such bodily injuries or death sustained during the term of the bond by any person, and

(b) Arising out of the ownership, operation, maintenance, control, or use upon the highways and roads of the state of such motor vehicle,

(2) To the amount or limit of:

(a) Not less than twenty-five thousand dollars for damages to the property of others, and

(b) Not less than fifteen thousand dollars on account of injury to or death of any one person, and

(c) Subject to such limits as respects injury to or death of one person, of not less than thirty thousand dollars on account of any one accident resulting in injury to or death of more than one person.

C. (1) (a) The applicant for registration may, in lieu of procuring a motor vehicle liability bond or policy, deposit with the state treasurer cash in the amount of fifty-five thousand dollars, or otherwise pledge, assign, or securitize, to the satisfaction of the state treasurer on such forms and documents as he shall require, which shall constitute a lien thereon in favor of the treasurer for the liabilities set forth in this Section and authorize him to sell same pursuant to Subparagraph (c) of this Paragraph, bonds, stocks, securities, or other evidences of indebtedness satisfactory to said treasurer of a market value of not less than fifty-five thousand dollars as security for the payment by such applicant or by any person responsible for the operation of such applicant's motor vehicle with his express or implied consent of all judgments rendered against such applicant or against such person in actions to recover damages to property or for bodily injuries, including death at any time resulting therefrom, and judgments rendered as aforesaid for consequential damages consisting of expenses incurred by a husband, wife, parent, or tutor for medical, nursing, hospital, or surgical services in connection with or on account of such bodily injuries or death sustained during the term of registration by any person and arising out of the ownership, operation, maintenance, control, or use upon the highways and roads of the state of such motor vehicle to the amount or limit of at least twenty-five thousand dollars on account of any such judgment for damages to property or to the amount of fifteen thousand dollars for bodily injury or death to any one person or to the amount of thirty thousand dollars for bodily injury or death to more than one person.

(b) Upon presentation to the state treasurer by an officer qualified to serve civil process of an execution issued on any such judgment against the registrant or other person responsible as aforesaid, the treasurer shall pay, out of the cash deposited by the registrant as

herein provided, the amount of the execution, including costs and interest, up to but not in excess of twenty-five thousand dollars for damages to property or fifteen thousand dollars to any one person for damages for bodily injury or death or thirty thousand dollars for bodily injury or death to more than one person.

(c) If the registrant has deposited, or otherwise pledged, assigned, or securitized pursuant to Subparagraph (a) of this Paragraph, bonds, stocks, securities, or other evidences of indebtedness, the state treasurer shall, on presentation of an execution as aforesaid, cause the securities, or such part thereof as may be necessary to satisfy the judgment, to be sold at public auction giving the registrant three days' notice in writing of the time and place of the sale. From the proceeds of the sale the state treasurer shall, after paying the expenses thereof, satisfy the execution as hereinbefore provided when a cash deposit has been made.

(d) Any sale by or payment upon an execution by the state treasurer in accordance with the provisions of this Section shall discharge him from all official and personal liability whatever to the registrant to the extent of such payment.

(e) The state treasurer shall deposit any cash received under the provisions of this Section in a savings bank or savings department of a trust company or of a national bank within the state.

(f) The depositor shall be entitled to the interest accruing on his deposit and to the income payable on the securities deposited. He may from time to time change such securities with the approval of the state treasurer.

(g) The state treasurer, whenever for any reason the amount of such deposit falls below the amount required by this Section, shall require, at the option of the registrant, the deposit of additional cash or securities up to the amount required by this Section or a motor vehicle liability bond or policy as provided in this Chapter.

(h) Money or securities deposited with the state treasurer under the provisions of this Section shall not be subject to attachment or execution except as provided in this Section.

(2) The state treasurer shall give to the applicant for registration a receipt on a form prescribed by the treasurer for the amount of cash or securities deposited, or pledged, assigned, or securitized by him with the treasurer under this Chapter. The state treasurer shall retain such cash or securities deposited or securitized as aforesaid and shall not deliver or release the lien on the same or the balance thereof to the registrant on his order until the expiration of the time within which actions, the payment of judgments in which are secured by such deposit, may be brought against the registrant or the person responsible for the operation of the registrant's motor vehicle with his express or implied consent, nor in any case if a written notice is filed with the state treasurer stating that such an action has been brought against the registrant or other person

responsible as aforesaid, until payment is made as provided in this Subsection or satisfactory evidence is presented to the treasurer that final disposition of the action has been made.

D. "Lease-bound mobile rig hauler" as used in this Chapter means a winch or crew truck in excess of twenty-six thousand pounds which meets the following description:

(1) The hauler is operated on the highways of Louisiana only for the purpose of hauling mobile workover rigs or any accessories for a mobile workover rig within a ten-mile radius of the operator's oil and gas lease.

(2) The haulers are covered under a general liability policy, issued by an insurance company authorized to do business in the state, with liability coverage and limits equal to or greater than those defined in R.S. 32:900(B)(2), and such proof of the coverage is provided to the secretary as he may, by rule, require.

E. (1) The owners of motor vehicles registered in other states or jurisdictions that require liability security shall maintain the security and proof thereof as required by their respective state or jurisdiction while the vehicle is operated in this state.

(2) Failure to comply with the requirements of this Subsection shall subject the owner and the operator to the sanctions which are provided in R.S. 32:57 and limitations on recovery of damages provided for in this Part. Owners and operators of any motor vehicle in violation of this Subsection shall be subject to limitation of recovery as provided for in R.S. 32:866.

(3) The commissioner may adopt regulations to provide for the implementation of the provisions of this Subsection.

HISTORY:

Added by Acts 1977, No. 115, § 1, eff. July 1, 1978; Amended by Acts 1981, No. 926, § 1, eff. Jan. 1, 1982; Acts 1984, No. 237, § 1; Acts 1985, No. 229, § 1; Acts 1987, No. 616, § 1, eff. July 9, 1987; Acts 1992, No. 830, § 1, eff. July 8, 1992; Acts 1995, No. 301, § 1, eff. June 15, 1995; Acts 2001, No. 227, § 1, eff. Aug. 15, 2001; Acts 2001, No. 883, § 1, eff. Aug. 15, 2001; Acts 2001, No. 1032, § 12, eff. Aug. 15, 2001; Acts 2001, No. 1069, § 1, eff. Aug. 15, 2001; Acts 2006, No. 692, § 1, eff. Aug. 15, 2006; Acts 2008, No. 921, § 1, eff. Jan. 1, 2010; Acts 2011, No. 370, § 2, eff. Aug. 15, 2011.

§ 32:863. Sanctions for false declaration; reinstatement fees; revocation of registration; review.

A. (1) Except as provided in this Section, when the secretary determines that a vehicle is not covered by security as required by this Chapter or that the owner or lessee has allowed the required security to lapse, he shall revoke the registration of the vehicle, impound the vehicle,and cancel the vehicle's license plate.

(2) Should the secretary determine that any person, whether in his application for registration of a motor vehicle or in his application for a motor vehicle inspection or otherwise, has submitted false information that the motor vehicle was covered by the security required by Section **861** of this Part, the secretary shall impose upon the owner or owner's lessee the sanctions set forth in Subsection (A)(1), but for a longer minimum period, as set forth hereinafter.

(3) (a) Sanctions for a violation of Paragraph (1) of this Subsection shall be imposed until proof of required liability security is provided to the secretary and all reinstatement fees are paid. Sanctions for a violation of Paragraph (2) of this Subsection shall be imposed for a period of not less than twelve months nor more than eighteen months. However, in no event shall these sanctions be removed until such time as proof of the required security is provided to the secretary along with all appropriate fees required by law, including a reinstatement fee of one hundred dollars per violation of Paragraph (1) of this Subsection if the vehicle was not covered by the required security for a period of one to thirty days, two hundred fifty dollars if the vehicle was not covered by required security for a period of thirty-one to ninety days, and five hundred dollars if the vehicle was not covered by required security for a period in excess of ninety days. No reinstatement fee shall be imposed by the secretary if the vehicle was not covered by required security for a period of ten days or less and the insured surrenders the vehicle's license plate to the secretary within ten days. The reinstatement fees for violations of Paragraph (2) of this Subsection shall be as follows: two hundred fifty dollars for a first violation, five hundred dollars for a second violation, and one thousand dollars for a third or subsequent violation. The reinstatement fee shall not be owed for an alleged violation of Paragraph (2) of this Subsection when proof of the required security is provided to the secretary within sixty days of the date of the notice. If at the time of reinstatement, a person has multiple violations and is within sixty days of the notice, the total amount of fees to be paid shall not exceed eight hundred fifty dollars, for violations of Paragraph (1) of this Subsection, one thousand seventy-five dollars for violations of Paragraph (2) of this Subsection. At no time shall the total amount of fees, including administrative fees, exceed two hundred fifty dollars for persons sixty-five years or older. After sixty days of the date of the notice, all fees shall be considered final delinquent debt and therefore owed, and the eight hundred fifty dollar limit for persons under sixty-five years

shall no longer apply.

(b) Revenues from the reinstatement fees imposed by this Paragraph shall be used as follows:

(i) Notwithstanding any other provision of this Chapter to the contrary, except for R.S. 32:868, and after satisfying the requirements of the Bond Security and Redemption Fund, thirty-six percent of the revenues from the reinstatement fees shall be used as provided by law for the construction, maintenance, and operating expenses of new capital immovables and related movables.

(ii) In addition, fourteen percent of the revenues from the reinstatement fees shall be dedicated for obtaining equipment and related supplies to be used in connection with the issuance of validation stickers.

(iii) In addition, twenty-six percent of the revenues from reinstatement fees shall be dedicated to increase the salaries of all full-time employees of the Department of Public Safety and Corrections, office of motor vehicles. Specifically, such monies derived from the reinstatement fees shall be used exclusively to fund the salary increases associated with the job reclassification and pay study submitted by the office of motor vehicles to the State Civil Service Commission on October 19, 1998, and approved by the Department of Civil Service effective December 31, 1998. Any use of the fees allocated by this Item for salary purposes other than those specified herein, including the use for annual merit increases, is expressly prohibited.

(c) Upon completion of the construction of the new capital immovables and related movables described in this Paragraph, forty percent of the revenue from reinstatement fees imposed by this Paragraph shall be deposited in the state general fund. However, fifteen percent of such revenues shall be reserved for maintenance and operating expenses of the complex.

(4) Fees shall be paid to the secretary, who shall remit them to the state treasurer to be credited to the Bond Security and Redemption Fund as provided in R.S. 32:853(B)(2).

B. The sanctions of Paragraph (A)(1) of this Section shall not be imposed, and any fine, fee, or other monetary sanction which has been remitted to the secretary pursuant to the sanctions of this Section, specifically including any reinstatement fee paid pursuant to Paragraph (A)(3) of this Section and any fee paid pursuant to Paragraph (D)(5) of this Section, shall be promptly refunded by the secretary to the person who paid it, if the owner or lessee furnishes any of the following within sixty days of the notice:

(1) An original, a photocopy, or an image of the card that is displayed on a mobile electronic device of a Louisiana auto insurance identification card showing that the required security is in effect on the vehicle and has been continuous without lapse or an original or

photocopy of any written communication from an insurer either to the insured or to the secretary stating that the required security is in effect on the vehicle and has been continuous without lapse, any one of which shall constitute sufficient evidence that the required security on the vehicle has not lapsed.

(2) If such evidence is not furnished by the owner or lessee, any other evidence satisfactory to the secretary, that each of the following conditions are met:

(a) The vehicle was at the time in question in fact covered by the required security.

(b) The vehicle is currently covered by security as required by **R.S. 32:861** and that the required security has been continuous without lapse.

(c) The vehicle was not involved in an accident during the period when it was not covered by security as required by **R.S. 32:861**.

(3) Documentation satisfactory to the department that the vehicle was damaged as a result of a natural disaster which is the subject of a state of emergency declared by the governor and was treated as debris and removed, provided such natural disaster occurred prior to the reported cancellation of liability insurance.

C. If the person applies for a registration during the same period for which the surrendered plate would have been valid, credit shall be applied toward the purchase of a new plate. The credit shall be equal to the amount paid for the most recent registration of the motor vehicle multiplied by a fraction, the numerator of which is the unused months of said registration and the denominator of which is the number of months for which said registration was issued.

D. (1) When the secretary seeks to impose the sanctions required in this Section, he shall send written notice to the owner, lessee, or other person against whom sanctions are intended at the last address furnished to the department. Notwithstanding the provisions of **R.S. 32**:852(E), such notice may be sent by first class mail. A notice of noncompliance, issued by a law enforcement officer under the provisions of **R.S. 32**:863.1(C)(1), shall serve as notice to the owner, lessee, or other person. Prior to imposition of such sanctions, a hearing may be requested within ten days from the date of notice. Sanctions shall not be imposed until all rights for appeal have expired or been exhausted.

(2) At the hearing, the commissioner shall consider the correctness of his initial determination with regard to petitioner's violation of any provision of Subsection A or B of this Section. Should the commissioner find that his initial determination with regard to such a violation was correct, the revocation ordered by him shall be maintained and given effect. The commissioner shall rescind an ordered revocation only if he finds that petitioner violated no provision of Subsection A or B of this Section, and that the initial determination made by the

commissioner was incorrect.

(3) Repealed by Acts 2001, No. 883, § 2, effective August 15, 2001.

(4) Within ten days after a person has exhausted his remedies with the commissioner, he shall have the right to file a petition in the district court in the parish of his domicile for a review of the final order of revocation. The court may exercise any action it deems appropriate.

(5) The department may promulgate rules and regulations necessary to offset the administrative cost of this Section not to exceed twenty-five dollars.

E. When a person's motor vehicle registration is suspended or revoked according to the provisions of this Section, it shall remain suspended or revoked and the person shall be prohibited from renewing his driver's license, obtaining a duplicate driver's license, renewing his motor vehicle registration, or obtaining reissuance of his motor vehicle registration until the reinstatement requirements of this Section are satisfied.

HISTORY:

Added by Acts 1977, No. 115, § 1, eff. July 1, 1978; Amended by Acts 1979, No. 538, § 1; Acts 1981, No. 743, § 1; Acts 1983, No. 282, § 1; Acts 1984, No. 212, § 1, eff. July 1, 1985; Acts 1985, No. 866, § 1; H.C.R. No. 186, 1986 R.S., eff. June 30, 1986; Acts 1987, No. 616, § 1, eff. July 9, 1987; Acts 1987, No. 553, § 1; Acts 1988, No. 269, § 1; Acts 1991, No. 391, § 1; Acts 1992, No. 984, § 18; Acts 1994, 3rd Ex. Sess., No. 119, § 1, eff. July 7, 1994; Acts 1998, 1st Ex. Sess., No. 159, § 1, eff. June 16, 1998; Acts 1999, No. 157, § 1, eff. June 30, 1999; Acts 2001, No. 371, § 1, eff. Aug. 15, 2001; Acts 2001, No. 883, §§ 1, 2, eff. Aug. 15, 2001; Acts 2001, No. 916, § 1, eff. Aug. 15, 2001; Acts 2001, No. 1109, § 1, eff. Aug. 15, 2001; Acts 2003, No. 405, § 1, eff. June 18, 2003; Acts 2003, No. 611, § 1, eff. Aug. 15, 2003; Acts 2006, No. 406, § 1, eff. Aug. 15, 2006; Acts 2011, No. 370, § 2, eff. Aug. 15, 2011; Acts 2012, No. 824, § 1, eff. Aug. 1, 2012; Acts 2014, No. 639, § 1, eff. Feb. 1, 2015; Repealed by Acts 2014, No. 641, § 2, effective February 1, 2015.; Acts 2015, No. 414, § 1, eff. Aug. 1, 2015.

§ 32:865. Criminal sanctions for operating motor vehicle not covered by security.

A. Any person knowingly operating a motor vehicle and any owner allowing a motor vehicle to be operated, when such motor vehicle is not covered by the security required under **R.S. 32:861** shall, upon conviction, be fined not less than five hundred dollars,nor more than one thousand dollars.

B. (1) If the vehicle is in any manner involved in an accident within this state, when such motor vehicle is not covered by the security required under **R.S. 32:861,** the owner thereof shall, upon conviction, be fined not less than five hundred dollars nor more than one thousand dollars, shall have the registration of the vehicle revoked for a period of one hundred eighty days, and shall have his driving privileges suspended for a period of one hundred eighty days.

(2) Notwithstanding Paragraph (1) of this Subsection and except as provided in Paragraph (3) of this Subsection, any person operating a motor vehicle when that person knows the vehicle is not covered by the security required under **R.S. 32:861,** and any owner allowing a motor vehicle to be operated which is in any way involved in an accident within this state in which any person is killed or injured or in which damage to the property of any one person in excess of five hundred dollars is sustained, when such motor vehicle is not covered by the security required under **R.S. 32:861**, the owner thereof knows or has been notified by the department of the absence of the required security, and at least thirty days has elapsed after such knowledge has been acquired or notification received by the owner, shall, upon conviction, be fined not less than one thousand dollars, nor more than ten thousand dollars, shall have the registration of his vehicle revoked for a period of twelve months, shall have his driving privileges suspended for a period of twelve months, and shall be required to perform not less than forty hours nor more than two hundred hours of community service. After deposit in the Bond Security and Redemption Fund, an amount equal to all fines collected under the provisions of this Paragraph shall be credited to the Crime Victims Reparations Fund, **R.S.** 46:1816.

(3) The criminal sanction provisions of Paragraph (2) of this Subsection shall not apply:

(a) To the operator or the owner of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property of any one other than such operator or owner or the immediate family members of such operator or owner.

(b) To the owner of a motor vehicle if at the time of the accident the vehicle was being operated without his permission, express or implied, or was parked by a person who had been operating such motor vehicle without such permission.

(c) To the operator or the owner of a motor vehicle involved in a collision with another vehicle, in which the operator of the other vehicle is found guilty of or pleads guilty to a

charge of operating a vehicle while intoxicated, negligent injuring, vehicular negligent injuring, vehicular homicide, or negligent homicide.

(4) Any such owner or operator described in Paragraph (1) or (2) of this Subsection shall be able to use the procedures described in **R.S. 32**:415.1 to obtain a temporary driver's license, registration, and plate, upon showing undue economic or personal hardship that would result from the suspension of his driving privileges.

HISTORY:

Acts 1985, No. 891, § 1; Acts 1992, No. 1060, § 1; Acts 2014, No. 639, § 1, eff. Feb. 1, 2015; Acts 2014, No. 641, § 1, eff. July 1, 2014.

Rule 12. Defenses and Objections: when and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(a) Time to Serve a Responsive Pleading.

(1) *In General.* Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint; or

(ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) *United States and Its Agencies, Officers, or Employees Sued in an Official Capacity.* The United States, a United States agency, or a United States officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney.

(3) *United States Officers or Employees Sued in an Individual Capacity.* A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

(4) *Effect of a Motion.* Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be

asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted; and

(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is

not allowed, within 21 days after being served with the pleading.

(g) Joining Motions.

(1) *Right to Join.* A motion under this rule may be joined with any other motion allowed by this rule.

(2) *Limitation on Further Motions.* Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) *When Some Are Waived.* A party waives any defense listed in Rule 12(b)(2)–(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) *When to Raise Others.* Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) *Lack of Subject-Matter Jurisdiction.* If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) Hearing Before Trial. If a party so moves, any defense listed in Rule 12(b)(1)–(7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

HISTORY: (Amended March 19, 1948; July 1, 1963; July 1, 1966; Aug. 1, 1987; Dec. 1, 1993; Dec. 1, 2000; As amended Dec. 1, 2007; Dec. 1, 2009.)

Rule 15. Amended and Supplemental Pleadings

(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.

(b) Amendments During and After Trial.

(1) *Based on an Objection at Trial.* If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) *For Issues Tried by Consent.* When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) Relation Back of Amendments.

(1) *When an Amendment Relates Back.* An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) *Notice to the United States.* When the United States or a United States officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was delivered or mailed to the United States attorney or the United States attorney's designee, to the Attorney General of the United States, or to the officer or agency.

(d) Supplemental Pleadings. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

HISTORY: (Amended July 1, 1963; July 1, 1966, Aug. 1, 1987; Dec. 1, 1991; Dec. 9, 1991, P. L. 102-198, § 11(a), 105 Stat. 1626; Dec. 1, 1993; Dec. 1, 2007; As amended Dec. 1, 2009.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Notes of Advisory Committee. See generally for the present federal practice, former Equity **Rules** 19 (Amendments Generally), 28 (Amendment of Bill as of Course), 32 (Answer to Amended Bill), 34 (Supplemental Pleading), and 35 (Bills of Revivor and Supplemental Bills—Form); U.S.C., Title 28, former § 399 (now § 1653) (Amendments to show diverse citizenship) and former § 777 (Defects of Form; amendments). See English **Rules** Under the Judicature Act (The Annual Practice, 1937) O. 28, rr 1–13; O. 20, r 4; O. 24, rr 1–3.

Note to Subdivision (a). The right to serve an amended pleading once as of course is common. 4 Mont. Rev. Codes Ann. (1935) § 9186; 1 Ore. Code Ann. (1930) § 1-904; 1 S.C. Code (Michie, 1932) § 493; English **Rules** Under the Judicature Act (The Annual Practice, 1937) O. 28, r 2. Provision for amendment of pleading before trial, by leave of court, is in almost every code. If there is no statute the power of the court to grant leave is said to be inherent. Clark, Code Pleading (1928) pp. 498, 509.

Note to Subdivision (b). Compare former Equity **Rule** 19 (Amendments Generally) and code provisions which allow an amendment "at any time in furtherance of justice" (e. g., Ark. Civ. Code (Crawford, 1934) § 155) and which allow an amendment of pleadings to conform to the evidence, where the adverse party has not been misled and prejudiced (e. g., N.M. Stat. Ann. (Courtright, 1929) §§ 105–601, 105–602).

Note to Subdivision (c). "Relation back" is a well recognized doctrine of recent and now more frequent application. Compare Ala Code Ann (Michie, 1928) § 9513; Ill. Rev. Stat. (1937) ch. 110, § 170(2); 2 Wash. Rev. Stat. Ann. (Remington, 1932) § 308-3(4). See U.S.C., Title 28, former § 399 (now § 1653) (Amendments to show diverse citizenship) for a provision for "relation back."

Note to Subdivision (d). This is an adaptation of Equity **Rule** 34 (Supplemental Pleading).

Notes of Advisory Committee on 1963 amendments. **Rule 15**(d) is intended to give the court broad discretion in allowing a supplemental pleading. However, some cases, opposed by other cases and criticized by the commentators, have taken the rigid and formalistic view that where the original complaint fails to state a claim upon which relief can be granted, leave to serve a supplemental complaint must be denied. See *Bonner v. Elizabeth Arden, Inc.,* 177 F.2d 703 (2d Cir. 1949); *Bowles v. Senderowitz,* 65 F. Supp. 548 (E.D. Pa.), revd on other grounds, 158 F.2d 435 (3d Cir. 1946), cert. denied, *Senderowitz v. Fleming,* 330 U.S. 848, 67 S. Ct. 1091, 91 L. Ed. 1292 (1947); cf. *LaSalle Nat. Bank v. 222 East Chestnut St. Corp.,* 267 F.2d 247 (7th Cir), cert. denied, 361 U.S. 836, 80 S. Ct. 88, 4 L. Ed. 2d 77 (1959). But see *Camilla Cotton Oil Co. v. Spencer Kellogg & Sons,* 257 F.2d 162 (5th Cir. 1958); *Genuth v. National Biscuit Co.,* 81 F. Supp. 213 (S.D.N.Y. 1948), app dism, 177 F.2d 962 (2d Cir. 1949); 3 Moore's Federal Practice **P** 15.01 [5] (Supp 1960); 1A Barron & Holtzoff, Federal Practice & Procedure 820–21 (Wright ed. 1960). Thus plaintiffs have sometimes been needlessly remitted to the difficulties of commencing a new action even though events occurring after the commencement of the original action have made clear the right to relief.

Under the amendment the court has discretion to permit a supplemental pleading despite the fact that the original pleading is defective. As in other situations where a supplemental pleading is offered, the court is to determine in the light of the particular circumstances whether filing should be permitted, and if so, upon what terms. The amendment does not attempt to deal with such questions as the relation of the statute of limitations to supplemental pleadings, the operation of the doctrine of laches, or the availability of other defenses. All these questions are for decision in accordance with the principles applicable to supplemental pleadings generally. Cf. *Blau v. Lamb,* 191 F. Supp. 906 (S.D.N.Y. 1961); *Lendonsol Amusement Corp. v. B. & Q. Assoc., Inc.,* 23 **Fed**. R. Serv. 15d.3, Case 1 (D. Mass. 1957).

Notes of Advisory Committee on 1966 amendments. **Rule 15**(c) is amplified to state more clearly when an amendment of a pleading changing the party against whom a claim is asserted (including an amendment to correct a misnomer or misdescription of a defendant) shall "relate back" to the date of the original pleading.

The problem has arisen most acutely in certain actions by private parties against officers or agencies of the United States. Thus an individual denied social security benefits by the Secretary of Health, Education, and Welfare may secure review of the decision by bringing a civil action against that officer within sixty days. 42 U.S.C. § 405(g) (Supp III, 1962). In several recent cases the claimants instituted timely action but mistakenly named as defendant the United States, the Department of HEW, the "Federal Security Administration" (a nonexistent agency), and a Secretary who had retired from the office nineteen days before. Discovering their mistakes, the claimants moved to amend their complaints to name the proper defendant; by this time the statutory sixty-day period had expired. The motions were denied on the

ground that the amendment "would amount to the commencement of a new proceeding and would not relate back in time so as to avoid the statutory provisions . . . that suit be brought within sixty days . . . ." *Cohn v. Federal Security Adm.,* 199 F. Supp. 884, 885 (W.D.N.Y. 1961); see also *Cunningham v. United States,* 199 F. Supp. 541 (W.D. Mo. 1958); *Hall v. Department of HEW,* 199 F. Supp. 833 (S.D. Tex. 1960); *Sandridge v. Folsom, Secretary of HEW,* 200 F. Supp. 25 (M.D. Tenn. 1959). [The Secretary of Health, Education, and Welfare has approved certain ameliorative regulations under 42 U.S.C. § 405(g). See 29 **Fed**. Reg. 8209 (June 30, 1964); Jacoby, The Effect of Recent Changes in the Law of "Nonstatutory" Judicial Review, 53 Geo. L.J. 19, 42–43 (1964); see also *Simmons v. United States Dept. HEW,* 328 F.2d 86 (3d Cir. 1964).]

Analysis in terms of "new proceeding" is traceable to *Davis v. L. L. Cohen & Co.,* 268 U.S. 638 [69 L. Ed. 1129] (1925), and *Mellon v. Arkansas Land & Lumber Co.,* 275 U.S. 460 [72 L. Ed. 372] (1928), but those cases antedate the adoption of the **Rules** which import different criteria for determining when an amendment is to "relate back". As lower courts have continued to rely on the *Davis* and *Mellon* cases despite the contrary intent of the **Rules**, clarification of **Rule 15(c)** is considered advisable.

Relation back is intimately connected with the policy of the statute of limitations. The policy of the statute limiting the time for suit against the Secretary of HEW would not have been offended by allowing relation back in the situations described above. For the government was put on notice of the claim within the stated period—in the particular instances, by means of the initial delivery of process to a responsible government official (see **Rule** 4(d)(4) and (5)). In these circumstances, characterization of the amendment as a new proceeding is not responsive to the reality, but is merely question-begging; and to deny relation back is to defeat unjustly the claimant's opportunity to prove his case. See the full discussion by Byse, Suing the "Wrong" Defendant in Judicial Review of Federal Administrative Action: Proposals for Reform, 77 Harv. L. Rev. 40 (1963); see also Ill. Civ. **P**. Act § 46(4).

Much the same question arises in other types of actions against the government (see Byse, supra, at 45 n **15**). In actions between private parties, the problem of relation back of amendments changing defendants has generally been better handled by the courts, but incorrect criteria have sometimes been applied, leading sporadically to doubtful results. See 1A Barron & Holtzoff, Federal Practice & Procedure § 451 (Wright ed. 1960); 1 id. § 186 (1960); 2 id. § 543 (1961); 3 Moore's Federal Practice, par. 15.15 (Cum. Supp. 1962); Annot, Change in Party After Statute of Limitations Has Run, 8 A.L.R.2d 6 (1949). **Rule 15(c)** has been amplified to provide a general solution. An amendment changing the party against whom a claim is asserted relates back if the amendment satisfies the usual condition of **Rule 15(c)** of "arising out of the conduct . . . set forth . . . in the original pleading," and if, within the applicable limitations period, the party brought in by amendment, first, received such notice of the institution of the action—the notice need not be formal—that he would not be prejudiced in defending the action, and second, knew or should have known that the action would have been brought against him initially had there not been a mistake concerning the identity of the proper party. Revised **Rule 15(c)** goes on to provide specifically in the government cases that the first and second requirements are satisfied when the government has been notified in the manner there described (see **Rule** 4(d)(4) and (5)). As applied to the government cases, revised **Rule 15(c)** further advances the objectives of the 1961 amendment of **Rule** 25(d) (substitution of public officers).

The relation back of amendments changing plaintiffs is not expressly treated in revised **Rule 15(c)** since the problem is generally easier. Again the chief consideration of policy is that of the statute of limitations, and the attitude taken in revised **Rule 15(c)** toward change of defendants extends by analogy to amendments changing plaintiffs. Also relevant is the amendment of **Rule** 17(a) (real party in interest). To avoid forfeitures of just claims, revised **Rule** 17(a) would provide that no action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has

been allowed for correction of the defect in the manner there stated.

Notes of Advisory Committee on 1987 amendments. The amendments are technical. No substantive change is intended.

Notes of Advisory Committee on 1991 amendments. The **rule** has been revised to prevent parties against whom claims are made from taking unjust advantage of otherwise inconsequential pleading errors to sustain a limitations defense.

Paragraph (**c**)(1). This provision is new. It is intended to make it clear that the **rule** does not apply to preclude any relation back that may be permitted under the applicable limitations law. Generally, the applicable limitations law will be state law. If federal jurisdiction is based on the citizenship of the parties, the primary reference is the law of the state in which the district court sits. *Walker v. Armco Steel Corp.,* 446 U.S. 740 [64 L. Ed. 2d 659] (1980). If federal jurisdiction is based on a federal question, the reference may be to the law of the state governing relations between the parties. E.g., *Board of Regents v. Tomanio,* 446 U.S. 478 [64 L. Ed. 2d 440] (1980). In some circumstances, the controlling limitations law may be federal law. E.g., *West v. Conrail, Inc.,* 481 U.S. 35, 107 S. Ct. 1538 [95 L. Ed. 2d 32] (1987). Cf. *Burlington Northern R. Co. v. Woods,* 480 U.S. 1 [94 L. Ed. 2d 1] (1987); *Stewart Organization v. Ricoh,* 487 U.S. 22, 108 S. Ct. 2239 [101 L. Ed. 2d 22] (1988). Whatever may be the controlling body of limitations law, if that law affords a more forgiving principle of relation back than the one provided in this **rule**, it should be available to save the claim. Accord, *Marshall v. Mulrenin,* 508 F.2d 39 (1st Cir. 1974). If *Schiavone v. Fortune,* 477 U.S. 21, 106 S. Ct. 2379 [91 L. Ed. 2d 18] (1986) implies the contrary, this paragraph is intended to make a material change in the **rule**.

Paragraph (**c**)(3). This paragraph has been revised to change the result in *Schiavone v. Fortune,* supra, with respect to the problem of a misnamed defendant. An intended defendant who is notified of an action within the period allowed by **Rule** 4(m) for service of a summons and complaint may not under the revised **rule** defeat the action on account of a defect in the pleading with respect to the defendant's name, provided that the requirements of clauses (A) and (B) have been met. If the notice requirement is met within the **Rule** 4(m) period, a complaint may be amended at any time to correct a formal defect such as a misnomer or misidentification. On the basis of the text of the former **rule**, the Court reached a result in Schiavone v. Fortune that was inconsistent with the liberal pleading practices secured by **Rule** 8. See Bauer, Schiavone: An Un-Fortune-ate Illustration of the Supreme Court's Role as Interpreter of the Federal **Rules** of Civil Procedure, 63 Notre Dame L. Rev. 720 (1988); Brussack, Outrageous Fortune: The Case for Amending **Rule 15**(**c**) Again, 61 S. Cal. L. Rev. 671 (1988); Lewis, The Excessive History of Federal **Rule 15**(**c**) and Its Lessons for Civil **Rules** Revision, 86 Mich. L. Rev. 1507 (1987).

In allowing a name-correcting amendment within the time allowed by **Rule** 4(m), this **rule** allows not only the 120 days specified in that **rule**, but also any additional time resulting from any extension ordered by the court pursuant to that **rule**, as may be granted, for example, if the defendant is a fugitive from service of the summons.

This revision, together with the revision of **Rule** 4(i) with respect to the failure of a plaintiff in an action against the United States to effect timely service on all the appropriate officials, is intended to produce results contrary to those reached in *Gardner v. Gartman,* 880 F.2d 797 (4th Cir. 1989), *Rys v. U. S. Postal Service,* 886 F.2d 443 (1st Cir. 1989), *Martin's Food & Liquor, Inc. v. U. S. Dept. of Agriculture,* 14 **Fed**. R. Serv. 3d 86 (N.D. Ill. 1988). But cf. *Montgomery v. United States Postal Service,* 867 F.2d 900 (5th Cir. 1989), *Warren v. Department of the Army,* 867 F.2d 1156 (8th Cir. 1989); *Miles v. Department of the Army,* 881 F.2d 777 (9th Cir. 1989), *Barsten v. Department of the Interior,* 896 F.2d 422 (9th Cir. 1990); *Brown v. Georgia Dept. of Revenue,* 881 F.2d 1018 (11th Cir. 1989).

Notes of Advisory Committee on 1993 amendments. The amendment conforms the cross reference to Rule 4 to the revision of that rule.

Notes of Advisory Committee on 2007 amendments. The language of Rule 15 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 15(c)(3)(A) called for notice of the "institution" of the action. Rule 15(c)(1)(C)(i) omits the reference to "institution" as potentially confusing. What counts is that the party to be brought in have notice of the existence of the action, whether or not the notice includes details as to its "institution."

Notes of Advisory Committee on 2009 amendments. Rule 15(a)(1) is amended to make three changes in the time allowed to make one amendment as a matter of course.

Former Rule 15(a) addressed amendment of a pleading to which a responsive pleading is required by distinguishing between the means used to challenge the pleading. Serving a responsive pleading terminated the right to amend. Serving a motion attacking the pleading did not terminate the right to amend, because a motion is not a "pleading" as defined in Rule 7. The right to amend survived beyond decision of the motion unless the decision expressly cut off the right to amend.

The distinction drawn in former Rule 15(a) is changed in two ways. First, the right to amend once as a matter of course terminates 21 days after service of a motion under Rule 12(b), (e), or (f). This provision will force the pleader to consider carefully and promptly the wisdom of amending to meet the arguments in the motion. A responsive amendment may avoid the need to decide the motion or reduce the number of issues to be decided, and will expedite determination of issues that otherwise might be raised seriatim. It also should advance other pretrial proceedings.

Second, the right to amend once as a matter of course is no longer terminated by service of a responsive pleading. The responsive pleading may point out issues that the original pleader had not considered and persuade the pleader that amendment is wise. Just as amendment was permitted by former Rule 15(a) in response to a motion, so the amended rule permits one amendment as a matter of course in response to a responsive pleading. The right is subject to the same 21-day limit as the right to amend in response to a motion.

The 21-day periods to amend once as a matter of course after service of a responsive pleading or after service of a designated motion are not cumulative. If a responsive pleading is served after one of the designated motions is served, for example, there is no new 21-day period.

Finally, amended Rule 15(a)(1) extends from 20 to 21 days the period to amend a pleading to which no responsive pleading is allowed and omits the provision that cuts off the right if the action is on the trial calendar. Rule 40 no longer refers to a trial calendar, and many courts have abandoned formal trial calendars. It is more effective to rely on scheduling orders or other pretrial directions to establish time limits for amendment in the few situations that otherwise might allow one amendment as a matter of course at a time that would disrupt trial preparations. Leave to amend still can be sought under Rule 15(a)(2), or at and after trial under Rule 15(b).

Abrogation of Rule 13(f) establishes Rule 15 as the sole rule governing amendment of a pleading to add a counterclaim. Amended Rule 15(a)(3) extends from 10 to 14 days the period to respond to an amended pleading.

The times set in the former **rule** at 10 or 20 days have been revised to 14 or 21 days. See the Note to **Rule** 6.

Amendments:

1991.

Act Dec. 9, 1991, in subsec. (**c**)(3), substituted "**Rule** 4(j)" for "**Rule** 4(m)".

AMENDMENT 1

Religious and political freedom.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT 14

Section 1. [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. [Representatives-Power to reduce apportionment.]

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. [Disqualification to hold office.]

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. [Public debt not to be questioned-Debts of the Confederacy and claims not to be paid.]

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held

illegal and void.

Section 5. [Power to enforce amendment.]

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(R. S. § 1979; Dec. 29, 1979, P. L. 96-170, § 1, 93 Stat. 1284; Oct. 19, 1996, P. L. 104-317, Title III, § 309(c), 110 Stat. 3853 .)