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These “forever inviolate” rights are preserved and protected by the 9th and 10th Amendments to the United States Constitution.

APPENDIX A

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A-2 Fifth Circuit *per curiam* panel opinion AFFIRMED on its Summary Calendar on April 9, 2020.

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FILED

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY *8/10* DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CAROLYN BARNES AND CHILDREN, §
PLAINTIFFS, §
§
V. § CIVIL NO. A-18-CV-00952-LY
§
§
UNITED STATES OF AMERICA ET AL., §
DEFENDANTS. §

ORDER ON REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE, ORDER DENYING MOTION TO
RECUSE, AND ORDER BARRING PLAINTIFF CAROLYN BARNES FROM FILING
IN THE WESTERN DISTRICT OF TEXAS ABSENT LEAVE OF COURT

Before the court in the above styled and numbered cause is the Order on *In Forma Pauperis* Status and Report and Recommendation on the Merits of the Claims signed by the United States Magistrate Judge on July 30, 2019 (Clerk's Document No. 9). The magistrate judge granted Plaintiffs permission to proceed *in forma pauperis* and proceeded to review the merits of their claims. *See* 28 U.S.C. § 1915(e). Also pending in this action is Barnes's Motion to Recuse filed November 2, 2018 (Clerk's Document No. 3). Barnes "requests that all judges of this Court recuse themselves, and that upon recusal, that the Supreme Court of the United States appoint a fair and impartial, neutral and detached, judge or justice from outside the 5th Circuit, and assign him or her to hear this case." The court has reviewed the motion and finds that it is filed solely for the purpose of delay. The motion is frivolous in all respects. Having considered the motion and the applicable law, the motion is without merit and the court will deny the motion.

By report and recommendation, the magistrate judge recommends that the court dismiss with prejudice Plaintiffs' complaint. *See* 28 U.S.C. § 1915(e)(2)(B).¹ Additionally, the magistrate judge

¹ The court shall dismiss the case at any time if the court determines that the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

reviewed Plaintiff *pro se* Carolyn Barnes's lengthy history of filing frivolous lawsuits and suggests that the court find Barnes a vexatious litigant and bar her from filing any future complaints in the Western District of Texas absent prior approval of a district or magistrate judge. *See Potts v. Texas*, 354 F. App'x 70, 71 (5th Cir. 2009) (citing *Murphy v. Collins*, 26 F.3d 541, 544 (5th Cir. 1994)). Barnes received the report and recommendation on August 12, 2019 (Clerk's Document No. 11).²

A party may serve and file specific written objections to the proposed findings and recommendations of a magistrate judge within fourteen days after being served with a copy of the report and recommendation, thereby securing a *de novo* review by the district court. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b). Objections to the report and recommendation if any were due to be filed on August 26, 2019. Barnes filed objections to the report and recommendation on August 26, 2019 (Clerk's Document No. 12). In light of the objections, the court has undertaken a *de novo* review of the entire case file. *See* Fed. R. Civ. P. 72. Having considered the objections, the case file, and the applicable law, the court will overrule Barnes's objections and the court will accept and adopt the report and recommendation for substantially the reasons stated therein.

IT IS ORDERED that Barnes's Motion to Recuse filed November 2, 2018 (Clerk's Document No. 3) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff Carolyn Barnes's Objections to the Report and Recommendation of the United States Magistrate Judge filed August 26, 2019 (Clerk's Document No. 12) are **OVERRULED**.

² In light of the court's review of this action pursuant to Title 28 United States Code section 1915(e), Barnes was the only party noticed with the report and recommendation. Service of process upon all Defendants has been withheld pending the court's review of the report and recommendation.

IT IS FURTHER ORDERED that for substantially the reasons stated therein, the Report and Recommendation of the United States Magistrate Judge signed July 30, 2019 (Clerk's Document No. 9) is **ACCEPTED AND ADOPTED**.

IT IS FURTHER ORDERED that as the complaint raises only frivolous claims, the complaint is **DISMISSED WITH PREJUDICE**. *See* 28 U.S.C. § 1915(e)(2)(B).

IT IS FURTHER ORDERED that in light of the dismissal of the complaint, Plaintiffs' Emergency Motion for a Temporary Restraining Order and Temporary Injunction to Prevent Spoliation of Evidence and Interference with Homestead Rights filed December 20, 2018 (Clerk's Document No. 7) is **DISMISSED AS MOOT**.

Due to Plaintiff Carolyn Barnes's pattern of filing frivolous lawsuits in this court, as outlined in the report and recommendation, the court finds and concludes that Carolyn Barnes is a vexatious litigant. Therefore,

IT IS FURTHER ORDERED that Carolyn Barnes is **BARRED FROM FILING** any additional pleadings or motions in this action, with the exception of a notice of appeal, the appellate filing fee, or a request to proceed *in forma pauperis* on appeal, until and unless the Fifth Circuit remands this action to this court.

IT IS FURTHER ORDERED that Carolyn Barnes is **BARRED FROM FILING** any future complaints in the Western District of Texas absent leave of a district or magistrate judge.

SIGNED this 17th day of September, 2019.


LEE YEAKEL
UNITED STATES DISTRICT JUDGE

FILED

2019 SEP 17 PM 3:31

CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY *[Signature]* DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CAROLYN BARNES AND CHILDREN, §
PLAINTIFFS, §
§
V. § CIVIL NO. A-18-CV-00952-LY
§
§
UNITED STATES OF AMERICA ET AL., §
DEFENDANTS. §

FINAL JUDGMENT

Before the court is the above styled and numbered action. On this date, the court dismissed all claims alleged by Plaintiffs against all Defendants as frivolous and with prejudice. *See* 28 U.S.C. § 1915(e)(2)(B). Additionally, the court ordered that Carolyn Barnes is **BARRED FROM FILING** any additional pleadings or motions in this action, with the exception of a notice of appeal, the appellate filing fee, or a request to proceed *in forma pauperis* on appeal, until and unless the Fifth Circuit remands this action to this court. The court also ordered that Carolyn Barnes is **BARRED FROM FILING** any future complaints in the Western District of Texas absent leave of a district or magistrate judge.

As no disputes remain between the parties for resolution, the court renders this final judgment pursuant to Federal Rule of Civil Procedure 58.

IT IS ORDERED that this action is hereby **CLOSED**.

SIGNED this 17th day of September, 2019.

Lee Yeakel
LEE YEAKEL
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-50925
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 9, 2020

Lyle W. Cayce
Clerk

CAROLYN BARNES, and Children,

Plaintiff - Appellant

v.

UNITED STATES OF AMERICA; U.S. CENSUS BUREAU; FEDERAL BUREAU OF INVESTIGATION; U.S. DEPARTMENT OF COMMERCE, UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,

Defendants - Appellees

Appeals from the United States District Court
for the Western District of Texas
USDC No. 1:18-CV-952

Before WIENER, HAYNES, and COSTA, Circuit Judges.

PER CURIAM:*

Carolyn Barnes appeals the dismissal of her *in forma pauperis* complaint as frivolous, as well as the ban on her filing future suits in the Western District of Texas without court approval. We AFFIRM.

* 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.

I. Background

In November 2018, Barnes “and her children” filed a nearly 500-page complaint in the Western District of Texas, alleging claims against the United States, federal agencies, the state of Texas, state agencies, Texas counties and departments, federal courts of appeals, the Texas Supreme Court, more than seventy individuals, and others. Barnes alleged a general “deprivation of rights, privileges, protections, and immunities” under U.S. and Texas law by way of a “continuing conspiracy.” She included a laundry list of alleged nefarious schemes carried out by “the JOINT ENTERPRISE,” “the CARTEL,” “charlatans,” “sycophants,” “usurpers and interlopers,” “the black robe mafia,” and other bad actors. The allegations seem to center around Barnes’s disbarment several years ago and prior lawsuits involving Barnes.

According to Barnes’s brief on appeal, her complaint included eleven claims: (1) violations of the Violence Against Women Act;¹ (2) violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”);² (3) violations of 42 U.S.C. §§ 1983 and 1985; (4) violations of the Americans with Disabilities Act (“ADA”);³ (5) violations of the Religious Freedom Restoration Act (“RFRA”);⁴ (6) “[b]reaches of fiduciary duty, contract, oath, and Fraud”; (7) failure to prosecute; (8) “Stolen Claims” under Texas law and the Fifth Amendment to the U.S. Constitution; (9) “Continuing Conspiracy and Specific Performance”; (10) “Declaratory Judgment and Prospective Injunctive Relief”; and (11) attorney’s fees and costs. These claims were “based upon personal

¹ 34 U.S.C. §§ 12291–12512.

² 18 U.S.C. §§ 1961–1968.

³ 42 U.S.C. §§ 12101–12213.

⁴ *Id.* §§ 2000bb–2000bb-4.

knowledge or good faith information and belief.” Barnes further listed dozens of statutes on the face of her complaint and invoked other law throughout.

Barnes also moved, ostensibly, for the recusal of U.S. District Judges Yeakel and Pitman, U.S. Magistrate Judge Austin, all Fifth Circuit Judges, all Texas judges, and “all the judges of this Court” (presumably the district court), and she requested “the appointment of a district judge outside the political and social influence of this cabal of cronies.” She based this motion on similar allegations of conspiracy and collusion.

Barnes subsequently filed a “supplemental original complaint” that purported to add new defendants “who capitalized on the criminal conspiracy and outlawry of Barnes” by destroying and stealing her property—but she did not seek to amend or replace her original complaint. She concurrently filed an emergency motion for a temporary restraining order and temporary injunction to prevent the destruction of evidence related to an incident involving the police that allegedly occurred at Barnes’s home in November 2018.

The magistrate judge, after allowing Barnes to proceed *in forma pauperis*, issued a report recommending dismissal of her suit as frivolous under 28 U.S.C. § 1915(e) because it “lack[ed] any arguable basis in law or fact.” The report also detailed Barnes’s history of frivolous litigation in state and federal courts and therefore recommended that Barnes be prohibited from filing future complaints in the district without court approval. *See Murphy v. Collins*, 26 F.3d 541, 544 (5th Cir. 1994). The district court adopted the magistrate judge’s report and recommendation and thus dismissed the case with prejudice as frivolous, denied the recusal motion, dismissed the emergency motion as moot, and barred Barnes from filing future complaints in the Western District of Texas absent leave of court. Barnes timely appealed, then filed a considerably expanded amended notice of appeal.

II. Discussion

Under 28 U.S.C. § 1915(e), a district court may, in its discretion, dismiss an *in forma pauperis* complaint with prejudice “as frivolous if it lacks an arguable basis in law or fact.” *McCormick v. Stalder*, 105 F.3d 1059, 1061 (5th Cir. 1997). “A complaint lacks an arguable basis in law”—that is, it is legally frivolous—“if it is ‘based on an indisputably meritless legal theory,’ such as if the complaint alleges the violation of a legal interest which clearly does not exist.” *Id.* (quoting *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)). A factually frivolous complaint is made up of “allegations that are fanciful, fantastic, and delusional.” *Denton v. Hernandez*, 504 U.S. 25, 32–33 (1992) (citations and internal quotation marks omitted).

We review the district court’s decision to dismiss under this statute for abuse of discretion. *Id.* The same is true for recusal decisions, *Andrade v. Chojnacki*, 338 F.3d 448, 454 (5th Cir. 2003), and restrictions on filing privileges, *Potts v. Texas*, 354 F. App’x 70, 71 (5th Cir. 2009) (per curiam).

The district court did not abuse its discretion by dismissing Barnes’s complaint as frivolous. Her claims are untethered from both law and fact and are thus clearly meritless. The rest of the complaint is a list of general grievances unrelated to any legally cognizable right. For similar reasons, this appeal is frivolous as well.⁵ See *Buck v. United States*, 967 F.2d 1060, 1062 (5th Cir. 1992) (per curiam). We also agree with the district court that Barnes’s recusal motion was, like the complaint, “frivolous in all respects.” Lastly, the filing restriction was not an abuse of discretion: The magistrate judge’s report

⁵ We will not consider the arguments that Barnes makes for the first time on appeal, like her claims that 28 U.S.C. § 1915A and filing restrictions are unconstitutional. See *Marco L.P. v. Wellons, Inc.*, 588 F.3d 864, 877 (5th Cir. 2009).

No. 19-50925

recounts Barnes's history as a vexatious litigant, which more than adequately supports this measure.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-50925

CAROLYN BARNES, and Children,

Plaintiff - Appellant

v.

UNITED STATES OF AMERICA; U.S. CENSUS BUREAU; FEDERAL BUREAU OF INVESTIGATION; U.S. DEPARTMENT OF COMMERCE, UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,

Defendants - Appellees

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

ON PETITION FOR REHEARING EN BANC

(Opinion 04/09/2020, 5 Cir., _____, _____ F.3d _____)

Before WIENER, HAYNES, and COSTA, Circuit Judges.

PER CURIAM:

Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the

Petition for Rehearing En Banc is DENIED.

IT IS FURTHER ORDERED that Appellant's incorporated motion for appointment of counsel is DENIED.

ENTERED FOR THE COURT: 6-22-2020

 /s/ Catharina Haynes
CATHARINA HAYNES
UNITED STATES CIRCUIT JUDGE

APPENDIX B

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B-1 U.S. Const. Art. I, §1, § 9, and Bill of Rights U.S. Const. Amends. 1, 4, 5, 7, 8, 9, and 10

B-2 28 U.S.C. § 1915 and 28 U.S.C. § 1915A

B-3 Relevant excerpts from 28 U.S.C. § 631, *et seq.*

B-4 Fed. R. Proc. Rule 1, 3, 4, and 8

B-5 Standing Order of the District Courts

U.S. Const. Art. I, § 1

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

U.S. Const. Art. I, § 9

No bill of attainder or ex post facto Law shall be passed.

Amendment I

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 IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

28 U.S. Code § 1915. Proceedings in forma pauperis

(a)

(1)

Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2)

A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3)

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)

(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A)

the average monthly deposits to the prisoner's account; or

(B)

the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2)

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

(3)

In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4)

In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c)

Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d)

The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)

(1)

The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A)

the allegation of poverty is untrue; or

(B) the action or appeal—

(i)

is frivolous or malicious;

(ii)

fails to state a claim on which relief may be granted; or

(iii)

seeks monetary relief against a defendant who is immune from such relief.

(f)

(1)

Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)

(A)

If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B)

The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C)

In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g)

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h)

As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

(June 25, 1948, ch. 646, 62 Stat. 954; May 24, 1949, ch. 139, § 98, 63 Stat. 104; Oct. 31, 1951, ch. 655, § 51(b), (c), 65 Stat. 727; Pub. L. 86-320, Sept. 21, 1959, 73 Stat. 590; Pub. L. 96-82, § 6, Oct. 10, 1979, 93 Stat. 645; Pub. L. 101-650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 104-134, title I, § 101[(a)] [title VIII, § 804(a), (c)-(e)], Apr. 26, 1996, 110 Stat. 1321, 1321-73 to 1321-75; renumbered title I, Pub. L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327.)

28 U.S. Code § 1915A.Screening

(a)SCREENING.—

The court shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

(b)GROUNDS FOR DISMISSAL.—On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

(1)

is frivolous, malicious, or fails to state a claim upon which relief may be granted; or

(2)

seeks monetary relief from a defendant who is immune from such relief.

(c)DEFINITION.—

As used in this section, the term “prisoner” means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program. (Added Pub. L. 104-134, title I, § 1011(a) [title VIII, § 805(a)], Apr. 26, 1996, 110 Stat. 1321, 1321-75; renumbered title I, Pub. L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327.)

FEDERAL MAGISTRATES ACT

28 U.S.C. § 636(b)(1)(A) prohibits magistrates from exercising authority in eight pretrial dispositive areas. Three of these prohibited areas are motions:

- for **injunctive relief** (ML granted *sua sponte* when he enjoined the clerk from issuing or serving summons on the defendants; and kept this injunction in place).
- for **judgment on the pleadings** (ML orchestrated a dismissal with prejudice on the pleadings).
- to **involuntarily dismiss an action** (ML accomplished this with inflammatory *ad hominem* attacks and innuendos of “frivolousness”).

See full language below, where magistrates must conduct “hearings, including evidentiary hearings” and “findings of fact” must be based on those “hearings.” See also, that Article III judge must make a “*de novo* determination.” However, without a “hearing,” there is no record from which to conduct a “*de novo* determination.”

28 U.S.C. § (b)

(1) Notwithstanding any provision of law to the contrary—

(A)

a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge’s order is clearly erroneous or contrary to law.

(B)

a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial [1] relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C)

the magistrate judge shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

(2)

A judge may designate a magistrate judge to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts. A judge may designate a magistrate judge to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of rule 53(b) of the Federal Rules of Civil Procedure for the United States district courts.

(3)

A magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

(4)

Each district court shall establish rules pursuant to which the magistrate judges shall discharge their duties.

FRCP Rule 1. Rule 5. Scope and Purpose

These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

FRCP Rule 3. Commencing an Action

A civil action is commenced by filing a complaint with the court.

FRCP Rule 4. Summons

(a) CONTENTS; AMENDMENTS.

- (1) *Contents.*** A summons must:
 - (A) name the court and the parties;
 - (B) be directed to the defendant;
 - (C) state the name and address of the plaintiff's attorney or—if unrepresented—of the plaintiff;
 - (D) state the time within which the defendant must appear and defend;
 - (E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;
 - (F) be signed by the clerk; and
 - (G) bear the court's seal.

- (2) *Amendments.*** The court may permit a summons to be amended.

(b) ISSUANCE. On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons—or a copy of a summons that is addressed to multiple defendants—must be issued for each defendant to be served.

(c) SERVICE.

- (1) *In General.*** A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

(2) *By Whom.* Any person who is at least 18 years old and not a party may serve a summons and complaint.

(3) *By a Marshal or Someone Specially Appointed.* At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. §1915 or as a seaman under 28 U.S.C. §1916.

(m) **TIME LIMIT FOR SERVICE.** If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

FRCP Rule 8. General Rules of Pleading

(a) **CLAIM FOR RELIEF.** A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

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STANDING ORDER

Before the Court are *in forma pauperis* cases which have been assigned to the docket of this Court. Pursuant to Section 1915(d) of Title 28 of the United States Code, "The officers of this court shall issue and serve all process, and perform all duties in such cases."

IT IS THEREFORE ORDERED that in all cases, except petitions of writ of habeas corpus or motions filed pursuant to Section 2255 of Title 28 of the United States Code, in which the plaintiff has been granted leave to proceed *in forma pauperis*, the Clerk's Office, upon the entry of the order granting leave to proceed *in forma pauperis*, immediately shall issue a summons, and the United States Marshal's Service shall attempt service of the summons without prepayment of a service fee, unless otherwise ordered by the Court.

This order applied to cases on the docket of the undersigned.

SIGNED this 2nd day of December, 2003.

Sam Sparks
SAM SPARKS
UNITED STATES DISTRICT JUDGE

Lee Yeakel
LEE YEAKEL
UNITED STATES DISTRICT JUDGE

APPENDIX C

APPENDIX C

Appendix C

Texas Bill of Rights, TEX. CONST. ART. I, §§ 1-29.

Separation of Powers, TEX. CONST. ART. II, § 1.

APPENDIX C
TEXAS LAW

TEXAS CONSTITUTIONAL PROVISIONS INVOLVED

Texas Constitution, Art. 1

ARTICLE 1. BILL OF RIGHTS

That the general, great and essential principles of liberty and free government may be recognized and established, we declare:

Sec. 1. FREEDOM AND SOVEREIGNTY OF STATE. Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States.

Sec. 2. INHERENT POLITICAL POWER; REPUBLICAN FORM OF GOVERNMENT. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

Sec. 3. EQUAL RIGHTS. All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

Sec. 3a. EQUALITY UNDER THE LAW. Equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin. This amendment is self-operative.

Sec. 6. FREEDOM OF WORSHIP. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Sec. 8. FREEDOM OF SPEECH AND PRESS; LIBEL. Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Sec. 9. SEARCHES AND SEIZURES. The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

Sec. 10. RIGHTS OF ACCUSED IN CRIMINAL PROSECUTIONS. In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and *shall have the right of being heard by himself or counsel, or both*, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger. (emphasis added).

Sec. 11. BAIL. All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

Sec. 12. HABEAS CORPUS. The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

Sec. 13. EXCESSIVE BAIL OR FINES; CRUEL AND UNUSUAL PUNISHMENT; REMEDY BY DUE COURSE OF LAW. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Sec. 14. DOUBLE JEOPARDY. No person, for the same offense, shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense after a verdict of not guilty in a court of competent jurisdiction.

Sec. 15. RIGHT OF TRIAL BY JURY. The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury.

Sec. 15-a. COMMITMENT OF PERSONS OF UNSOUND MIND. No person shall be committed as a person of unsound mind except on competent medical or psychiatric testimony. The Legislature may enact all laws necessary to provide for the trial, adjudication of insanity and commitment of persons of unsound mind and to provide for a method of appeal from judgments rendered in such cases. Such laws may provide for a waiver of trial by jury, in cases where the person under inquiry has not been charged with the commission of a criminal offense, by the concurrence of the person under inquiry, or his next of kin, and an attorney ad litem appointed by a judge of either the County or Probate Court of the county where the trial is being held, and shall provide for a method of service of notice of such trial upon the person under inquiry and of his right to demand a trial by jury.

Sec. 16. BILLS OF ATTAINER; EX POST FACTO OR RETROACTIVE LAWS; IMPAIRING OBLIGATION OF CONTRACTS. No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

Sec. 19. DEPRIVATION OF LIFE, LIBERTY, ETC.; DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

**Additional material
from this filing is
available in the
Clerk's Office.**