Appendices A and B
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Appendix A (No. 21-40158)

Rule 14.1(i)(i)—Appellate Order

Clerical Dismissal (Apr. 20, 2021).

Case:21-40158 Document: 0051582867 4 Page:1
DateFiled:04120120

United States Court of Appeals
for the Fifth Circuit

No. 21-40158 [5th Cir. Seal]

A True Copy
Certified order issued Apr 20, 2021
/s/ Lyle W. Cayce
Clerk, U.S. Court of Appeals Fifth Circuit

HARMON L. TAYLOR,

Plaintiff—Appellant

v.

City of Sherman; Brandon Shelby; Cody Shook; FNU LNU, also known as Alex Aviles, Assisting Officer; Zachary Flores, Chief of Police; Bob Utter Towing; Driver; Driver's Assistant; Midway Storage Facility; T. Scott Smith, Judge, Municipal Court, Sherman; Susan Morris, Clerk, Municipal Court, Sherman; Janie Fletcher, Clerk, Municipal Court, Sherman; Municipal Court Assistant Prosecutor; Grayson County, Texas; Carol M. Siebman, Judge, County Court at Law No. 2; Michael Sissney, Prosecutor, Muni, and CCL2; Matt Ralston, Assistant Prosecutor, CCL2; Whitney Brewster, Executive Director Texas Department of Motor Vehicles; State of Texas; Ron Clark, Chief Judge (at the time), Eastern District of Texas; Amos L. Mazzant, III,

Assigned Section 451 judge, Eastern District Texas; Magistrate Judge Christine A. Nowak; Carl E. Stewart, Chief Justice (at the time), USCA5,
Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:20-CV-114

CLERK'S OFFICE: [⊥ 2]

Under 5TH CIR. R. 42.3, the appeal is dismissed as of April 20, 2021, for want of prosecution. The appellant failed to timely comply with the court's notice dated March17, 2021.

LYLE W. CAYCE
Clerk of the United States Court
of Appeals for the Fifth Circuit

By: */s/ Rebecca L. Leto*
Rebecca L. Leto, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

Rule 14.1(i)(ii)—Additional Orders

E.D.Tex. (Feb. 1, 2021) – Dismissal without Prejudice.

Case 4:20-cv-00114-RWS-KPJ Document 13 Filed 02/01/21 Page1 of 3 PageID #: 691

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS SHERMAN DIVISION

HARMON L. TAYLOR,	§
	§
Plaintiff,	§
v.	§
	§
CITY OF SHERMAN, *et al.*	§
	§
Defendants.	§

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§
§ CIVIL ACTION NO. 4:20-CV-00114-RWS
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ORDER

On February18, 2020, Plaintiff Harmon L. Taylor ("Plaintiff"), acting *pro se*, filed his Original

Complaint (the "Complaint") (Docket No. 1) against the following Defendants: (1) City of Sherman, (2) Brandon Shelby, (3) Cody Shook,(4) FNU LNU a/k/a/ Alex Aviles, (5) Zachary Flores, (6) Bob Utter Towing, (7) Driver, (8) Driver's Assistant, (9) Midway Storage Facility, (10) T. Scott Smith, (11) Susan Morris, (12) Janie Fletcher, (13) Municipal Court Assistant Prosecutor, (14) Grayson County, Texas, (15) Carol M. Siebman, (16) Michael Sissney, (17) Matt Ralston, (18) Whitney Brewster, (19) State of Texas, (20) Ron Clark, (21) Amos L. Mazzant III, (22) Christine A. Nowak and (23) Carl E. Stewart (collectively, "Defendants"). *See* Docket No. 1. On May 15, 2020, Plaintiff filed an Amended Complaint, alleging claims against the same Defendants. *See* Docket No. 7. This Court referred the case to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On November 12, 2020, the Magistrate Judge entered proposed findings of fact and recommendations (the "Report") (Docket No. 11) that this matter be dismissed without prejudice pursuant to Federal Rules of Civil Procedure 4(m) and 41(b).

Plaintiff has not perfected service on any named Defendant. Federal Rule of Civil Procedure 4(m) states: [⊥ 2]

> 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.

Fed. R. Civ. P. 4(m). "Good cause under Rule 4(m) requires at least as much as would be required to show excusable neglect, as to which simple inadvertence or mistake of counsel or ignorance of the rules usually does not suffice." *Coleman v. Carrington Mortgage Services, LLC*, Case No. 4:19-CV-0231-ALM-CAN, 2019 WL 7195392, at *3 (E.D.Tex. Dec. 3, 2019). "Importantly, *pro se* litigations [litigants?] are not absolved from compliance with the requirements of Rule 4." *Id.* (citing *System Sign Supplies v. U.S. Dept. [sic] of Justice*, 903 F.2d 1011, 1013 (5th Cir.1990)).

As more than 250 days have elapsed since this case was filed, the Court finds Plaintiff has had substantial time to properly serve [sic] Defendants and has not shown good cause for an extension to serve.

Plaintiff has also failed to diligently prosecute [sic] this case pursuant to Rule 41(b), choosing, as noted in the Report, not to comply with the Court's Opinion and Order to file a request for an extension to serve setting forth good cause for failure of service. *See* Docket Nos. 8, 11; Fed. R. Civ. P.41(b), *Larson v. Scott*,157 F.3d 1030, 1031 (5th Cir. 1998) ("A district court *sua sponte* may dismiss an action for failure to prosecute or to comply with any court order."); *see also Comstock v. NexBank SSB*, 3:17-CV-1044-N-BN, 2018 WL 3979860, at 83 (N.D. Tex. July 19, 2018), *report and recommendation adopted*, 3:17-CV-1044-N, 2018 WL 3974712 (N.D. Tex. Aug. 20, 2018) ("By failing to comply with the Court's orders regarding service of process, [plaintiff] has prevented this action from proceeding. He has therefore failed to prosecute this lawsuit and obey the Court's orders. A Rule 41(b) dismissal of this action without prejudice

is warranted under these circumstances.").

The Report was mailed to Plaintiff but was returned to sender as undeliverable. *See* Docket [⊥ 3] No. 12. Pursuant to the Eastern District of Texas' local rules (the "Local Rules"), a "'pro se litigant must provide the court with a physical address (i.e., a post office box is not acceptable) and is responsible for keeping the clerk advised in writing of his or her current physical address." Local Rule CV-11(d).

Because no objections to the Magistrate Judge's Report have been filed, Plaintiff is not entitled to *de novo* review by the District Judge of those findings, conclusions and recommendations, and except on grounds of plain error, they are barred from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the District Court. *Douglass v. United Servs. Auto. Assoc.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending time to file objections from ten to fourteen days). Nonetheless, the Court has reviewed the relevant documents and the Magistrate Judge's Report (Docket No. 11) and agrees with the Report. *See United States v. Raddatz*, 447 U.S. 667, 683 (1980) ("[T]he statute permits the district court to give the magistrate's proposed findings of fact and recommendations 'such weight as [their] merit commands and the sound discretion of the judge warrants.' ") (quoting *Mathews v. Weber*, 423 U.S. 261, 275 (1976)).

The Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge as the findings and conclusions of this Court. Accordingly, it is

ORDERED that the above-titled action be **DISMISSED WITHOUT PREJUDICE** for failure to comply with Federal Rules of Civil Procedure 4(m) and 41(b). Each party shall bear its own costs.

SIGNED this 1st day of February 2021.

/s/ Robert W. Shroeder, III
ROBERT W. SCHROEDER, III
UNITED STATES DISTRICT JUDGE

E.D.Tex. (Feb. 1, 2021) – Judgment.

Case 4:20-cv-00114-RWS-KPJ Document 14 Filed 02/01/21 Page1 of 1 PageID #: 694

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS SHERMAN DIVISION

HARMON L. TAYLOR,	§
	§
Plaintiff,	§
v.	§
	§
CITY OF SHERMAN, *et al.*	§
	§
Defendants.	§

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§ CIVIL ACTION NO. 4:20-CV-00114-RWS
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ORDER

Pursuant to the Court's order dismissing this case, the court hereby enters Final Judgment. Accordingly, it is

ORDERED that the above-captioned case is **DISMISSED WITHOUT PREJUDICE**. Each party shall bear its own costs.

All other claims for relief are **DENIED-AS-MOOT**.

The Clerk of the Court is directed to close this case.

SIGNED this 1st day of February, 2021.

/s/ Robert W. Shroeder, III
ROBERT W. SCHROEDER, III
UNITED STATES DISTRICT JUDGE

E.D.Tex. (Feb. 18, 2020) – Clerical Notice of Standing, "at filing," not-just-admin-appeal-but-also-all-civil-*pro-se*-cases, referral "order."

Case 4:20-cv-00114-RWS-KPJ Document 2-1 Filed 02/18/20 Page1 of 1 PageID #: 222

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

MAGISTRATE REFERRAL

CIVIL ACTION NO. 4:20cv114

Taylor
v.
City of Sherman, et al.

Pursuant to a Standing Order, certain civil suits are referred at the time of filing equally among magistrate judges. Therefore, the above-entitled action has been referred to:

Magistrate Judge Priest-Johnson

E.D.Tex. (Aug. 5, 2020) – 1st participation by Un-consented-to arbiter d/b/a "magistrate."

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS SHERMAN DIVISION

HARMON L. TAYLOR,	§
	§
Plaintiff,	§
	§
v.	§
	§
CITY OF SHERMAN, *et al.*,	§
	§
Defendants.	§
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Case No.: 4:20-cv-114-RWS-KPJ	§
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MEMORANDUM OPINION AND ORDER

Pending before the Court is Plaintiff Harmon L. Taylor's ("Plaintiff") Motion for Extension of Time

Regarding Service of Process (the "Motion") (Dkt. 3), wherein Plaintiff requests an extension of time to complete service of process. Upon consideration, the Court finds that the Motion (Dkt. 3) is **DENIED**.

Plaintiff filed this suit on February 18, 2020, alleging claims against twenty-three (23) Defendants. *See* Dkt. 1. Plaintiff filed the Motion on the same day, arguing that Plaintiff expects service to take longer than the ninety (90) days proscribed under the Federal Rules of Civil Procedure because one defendant has moved out of state and another defendant had already twice returned Plaintiff's demand letter. *See* Dkt. 3 at 3–4. To date, no summons have been filed with the Court.

> Federal Rule of Civil Procedure 4(m) states:
>
> 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. [⊥ 2]

FED. R. CIV. P. 4(m). "Good cause under Rule 4(m) requires at least as much as would be required to show excusable neglect, as to which simple inadvertence or mistake of counsel or ignorance of the rules usually does not suffice." *Coleman v. Carrington Mortgage Services, LLC*, Case No. 4:19-CV-0231-ALM-CAN, 2019 WL 7195392, at *3 (E.D. Tex. Dec. 3, 2019). "Importantly, *pro se* litigations [litigants?] are not absolved from compliance with the requirements of Rule 4." *Id.* (citing *System Sign Supplies v. U.S. Dept. [sic] of Justice*, 903 F.2d 1011, 1013 (5th Cir. 1990)).

At this time, Plaintiff has not shown good cause for the ninety-day service period to be extended. In the Motion, Plaintiff only explains reasons for service to take longer than the ninetyday period for two of the twenty-three Defendants. Plaintiff filed the Motion simultaneously with filing this suit before ever even attempting to serve any Defendant. *See* Dkts. 1, 3. Further, while the Motion has been pending, Plaintiff has not attempted to serve any Defendant. Therefore, the Court finds that the Plaintiff has not demonstrated good cause for the deadline to serve Defendants to be extended, and the Motion is **DENIED**. However, because of Plaintiff's *pro se* status, the Court finds that Plaintiff should be given an additional opportunity to demonstrate good cause.

As the Court is mindful of Plaintiff's *pro se* status, the Court cautions Plaintiff that his asserted claims against many of Defendants are likely barred by judicial and official immunity, as Plaintiff is suing multiple federal and state officials. *See Ballard v. Wall*, 413 F.3d 510 (5th Cir. (discussing judicial immunity); *Oden v. Reader*, 935 S.W.2d 470 (Tex.App.—Tyler 1996, no pet.) (discussing official immunity under Texas law). The Supreme Court has stated that "the essence of absolute immunity is its possessor's entitlement not to have to answer for his conduct in a civil damages action." Mitchell v. Forsyth, 472 U.S. 511, 525 (1985). Thus, the Supreme Court has described immunity as a threshold question, to be resolved as early in the proceedings as possible. *See Siegert v. Gilley*, 500 U.S. 226, 231–33 (1991) ("One of the purposes of immunity, [⊥ 3] absolute or qualified, is to spare a defendant not only unwarranted liability, but

unwarranted demands customarily imposed upon those defending a long drawn out lawsuit,"). Thus, even if Plaintiff is able to serve Defendants, many of the Defendants in this matter are immune from suit.

IT IS THEREFORE ORDERED that Plaintiff shall file a new Motion for Extension of Time Regarding Service of Process, if any, **within fourteen (14) days** of receipt of this Order.

So ORDERED and SIGNED this 5th day of August, 2020.

/s/ K Johnson
KIMBERLY C. PRIEST JOHNSON
UNITED STATES MAGISTRATE JUDGE

E.D.Tex. (Nov. 12, 2020) – 2d participation by Un-consented-to arbiter d/b/a "magistrate."

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

HARMON L. TAYLOR,	§
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Plaintiff,	§
	§
v.	§
	§
CITY OF SHERMAN, *et al.*,	§

Defendants. §
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§ **Case No.: 4:20-cv-114-RWS-KPJ**
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REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

On February 18, 2020, Plaintiff Harmon L. Taylor ("Plaintiff"), proceeding *pro se*, filed the Original Complaint (the "Complaint") (Dkt. 1) against the following Defendants: (1) City of Sherman; (2) Brandon Shelby; (3) Cody Shook; (4) FNU LNU a/k/a/ Alex Aviles; (5) Zachary Flores; (6) Bob Utter Towing; (7) Driver; (8) Driver's Assistant; (9) Midway Storage Facility; (10) T. Scott Smith; (11) Susan Morris; (12) Janie Fletcher; (13) Municipal Court Assistant Prosecutor; (14) Grayson County, Texas; (15) Carol M. Siebman; (16) Michael Sissney; (17) Matt Ralston; (18) Whitney Brewster; (19) State of Texas; (20) Ron Clark; (21) Amos L. Mazzant III; (22) Christine A. Nowak; and (23) Carl E. Stewart (collectively, "Defendants"). *See* Dkt. 1. On May 15, 2020, Plaintiff filed an Amended Complaint, alleging claims against the same Defendants. *See* Dkt. 7.

To date, Plaintiff has not served any Defendant with this lawsuit. Plaintiff has, instead, filed several baseless motions including, Taylor's Motion to Strike Standing Orders and Local Rules (Dkt. 5), Motion to Transfer District Due to Disqualification of the Entire Eastern District (Dkt. 6), and Taylor's Motion to Strike [8-1] (Dkt. 10). None of these motions address Plaintiff's [⊥ 2] failure to serve Defendants.

On August 5, 2020, the Court issued a Memorandum Opinion and Order (the "Opinion and Order") (Dkt. 8), denying Plaintiff's Motion for Extension of Time Regarding Service of Process (the "Motion for Extension") (Dkt. 3). Therein, the Court stated, "Plaintiff has not shown good cause for the ninety-day service period to be extended. In the [Motion for Extension], Plaintiff only explains reasons for service to take longer than the ninety-day period for two of the twenty-three Defendants." Dkt. 8 at 2. The Court also warned Plaintiff that "many of the Defendants in this matter are immune from suit." *Id.* at 3.

The Court noted the need to demonstrate good cause for regard to all of the Defendants, but, due to Plaintiff's *pro se* status, the Court gave Plaintiff an additional opportunity to demonstrate good cause. *See id.* The Court ordered Plaintiff to file a new motion for extension of time regarding service of process, if any, within fourteen (14) days of receipt of the Court's Opinion and Order. *See* Dkt. 8 at 3. Plaintiff received the Court's Opinion and Order on August 10, 2020. *See* Dkt. 9. Plaintiff's Motion to Strike [8-1], filed on August 13, 2020, references a nonexistent "Doc. [8-1]." *See* Dkt. 10 at 1–4. While Docket Number 8, the Court's Opinion and Order, does not include an Exhibit 8-1, the Court interprets Plaintiff's Motion to Strike [8-1] as a request to

strike the Court's Opinion and Order, which confirms Plaintiff's receipt of the Court's Opinion and Order. *See* Dkts. 8, 10. The Motion to Strike [8-1], however, does not address the substance of the Court's Opinion and Order. *See* Dkt. 10. Plaintiff did not file a new motion for extension of time regarding service of process.

Federal Rule of Civil Procedure 4(m) states:

> 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 [⊥ 3] specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

FED. R. CIV. P. 4(m). "Good cause under Rule 4(m) requires at least as much as would be required to show excusable neglect, as to which simple inadvertence or mistake of counsel or ignorance of the rules usually does not suffice." *Coleman v. Carrington Mortg. Servs., LLC*, No. 4:19-CV-0231-ALM-CAN, 2019 WL 7195392, at *3 (E.D. Tex. Dec. 3, 2019). "Importantly, *pro se* litigations [litigants?] are not absolved from compliance with the requirements of Rule 4." *Id.* (citing *Sys. Sign Supplies v. U.S. Dep't. [sic] of Justice*, 903 F.2d 1011, 1013 (5th Cir. 1990)).

Two hundred sixty-six (266) days have elapsed since this case was filed—well beyond the ninety-day deadline. *See* FED. R. CIV. P. 4(m). Plaintiff has had time to properly serve [sic] Defendants and has not shown good cause for an extension in any filing before the Court. Because Plaintiff has failed to show good cause, it is within the Court's discretion to dismiss the case or extend time for service. *See*

Thompson v. Brown, 91 F.3d 20, 21 (5th Cir. 2019).

Additionally, the Court may also dismiss the case pursuant to Rule 41(b) for failure to prosecute this case and comply with the Court's Opinion and Order. *See* Dkt. 8; FED. R. CIV. P. 41(b); *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998) ("A district court *sua sponte* may dismiss an action for failure to prosecute or to comply with any court order."); *see also Comstock v. NexBank SSB*, 3:17-CV-1044-N-BN, 2018 WL 3979860, at *3 (N.D. Tex. July 19, 2018), *report and recommendation adopted*, 3:17-CV-1044-N, 2018 WL 3974712 (N.D. Tex. Aug. 20, 2018) ("By failing to comply with the Court's orders regarding service of process, [the plaintiff] has prevented this action from proceeding. He has therefore failed to prosecute this lawsuit and obey the Court's orders. A Rule 41(b) dismissal of this action without prejudice is warranted under these circumstances."). [⊥ 4]

As previously stated, the Court ordered Plaintiff to file a new motion for extension of time regarding service of process to demonstrate good cause for all Defendants, if any, within fourteen (14) days of receipt of the Court's Opinion and Order. *See* Dkt. 8 at 3. More than two (2) months have passed since Plaintiff received the Opinion and Order, and Plaintiff has failed to file a request for extension. Therefore, Plaintiff has failed to prosecute this case and comply with the Court's Opinion and Order regarding service of process.

For the reasons set forth above, the Court recommends that this matter be **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rules of Civil Procedure 4(m) and 41(b).

Within fourteen (14) days after service of the magistrate judge's report, any party may serve and

file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C). The parties are directed to Local Rule CV-72(c) for page limitations on objections.

A party is entitled to a *de novo* review by the district court of the findings and conclusions contained in this report only if specific objections are made, and failure to timely file written objections to any proposed findings, conclusions, and recommendations contained in this report shall bar an aggrieved party from appellate review of those factual findings and legal conclusions accepted by the district court, except on grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *Id.*; *Thomas v. Arn*, 474 U.S. 140 (1985); *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). [⊥ 5]

So ORDERED and SIGNED this 12th day of November, 2020.

/s/ K Johnson
KIMBERLY C. PRIEST JOHNSON
UNITED STATES MAGISTRATE JUDGE

Rule 14.1(i)(iii)—Rehearing

None.

Rule 14.1(i)(iv)—Judgment of Different Date

None.

Rule 14.1(i)(v)—Statutes

TEX. TRANSP. CODE § 502.001(45) ("vehicle").

"**Vehicle**" means a device in or by which a person or property is or may be transported or drawn [i.e., towed] on a public highway ....

28 U.S.C.A. § 636(b)(1)(A).

(b)(1) Notwithstanding any provision of law to the contrary,

(A) a judge may designate a magistrate 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 involuntary dismiss an action. ... .

Pub. L. No. 94-577, 90 Stat. 2729 (Oct. 21, 1976) (*emphasis* added).

28 U.S.C.A. § 636(c) (in relevant part).

§ 636(c)(1) "Upon the consent of the parties." ... "Upon the consent of the parties."

§ 636(c)(2) If a magistrate judge is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of the court shall, at the time the action is filed, notify the parties **of the availability of a magistrate judge** to exercise such jurisdiction. **The decision of the parties shall be communicated to the clerk of the court.** Thereafter, either the district court judge or the magistrate judge may again advise the parties **of the availability of the magistrate judge**, but in so doing, **shall also advise the parties that they are free to withhold consent without adverse substantive consequences.** ***Rules of court for the reference of civil matters to magistrate judges shall include procedures to protect the voluntariness of the parties' consent.***

28 U.S.C.A. § 636(c)(1), (c)(2) (all emphasis added).

About E.D.Tex.'s Local Rules.

The general part of the Local Rules that detailed the E.D.Tex. compelled consent / commerce / arbitration programme no longer exists. That's now Patent-related Rules.

Those 39 Exhibits (Doc. [5]) document the historical basis of the *continuing practice* that is no longer directly announced via their Local Rules.

The timing is such that Taylor may very well have contributed to that contraction of and ultimate elimination of the abuse-self-justifying Local Rules. But, with the Standing Orders, the ***decades***-long practice still remains in very full force, as self-proved in this Record.

Rule 14.1(i)(vi)—Additional materials

Regarding the trial Record.

Reference to the trial Record will suffice.

§ 1746 Declaration – HARMON L. TAYLOR

Per 28 U.S.C. § 1746, and under the laws of perjury of the United States, I, HARMON L. TAYLOR, depose and declare (or certify, verify or state), that I am at least 21 years of age, that I am competent to make this Affidavit / Declaration, that I have personal knowledge of these facts, and that these facts are true and correct.

Since USCA5 has derailed the normal appellate process, addressing the mail delivery issue is left to this circumstance and opportunity. As the City staff (Howe) can confirm, there has been a recent (two, three weeks ago?) significant non-delivery issue. A great many water bill payments, normally delivered (quite) timely, didn't show up. The City staff was as surprised and concerned as everyone affected.

Keeping in mind that as rare as they are around here, delivery issues do arise, my address for Service, especially with *every* litigation matter in courts sitting in Grayson County, hasn't changed since I got here, end of Oct., 2014. For example, given the plethora of issues I have with USCA5, mail to/from is not one of them. I haven't seen a USCA5 Docket Sheet for any of these cases, but, other than the several-times objected-to 7-10 delay that used to exist in mail from USCA5, I just flat don't recall there *ever* being a mail issue in either direction. This intends to date from that very first appeal (for the client) in 1990 (91?). Given ***all*** the prior correspondence with E.D.Tex., in which *not one item* was returned undelivered, until this *one*, for *that* all of a sudden to be an issue generates a rather foul aroma.

Doc. [8] is the first act of participation of the non-consented-to arbiter. *That* item was delivered. The round-trip time of sending out, picking up, and filing confirmation of delivery, was one week. Doc. [9] (*filed* one week after the arbiter filed her unconsented-to participation). I moved to strike, as always, Doc. [10] (filestamped that very next day).

Since this very issue is at the heart of this initial phase of this case, why on earth would *I*, of all people in this entire *nation*, want/try to *avoid* the opportunity to *continue* to object to compelled consent, further proving E.D.Tex's insatiable addiction to compelling consent, commerce, denial of access, etc., thus their "at filing" addiction to Disqualification??

For other round-trip time periods, the Docket Sheet on the prior (2017) matter *should* be replete with confirmation of receipt of E.D.Tex. mailings. And, in the prior case, they'd send *two*: Certified *and* First Class. I told the Clerk (Sherman) that it'd save

someone's cost if they'd include a postcard I could sign and return confirming receipt. There are at least a few of those in that prior Record. This Docket Sheet doesn't note either way whether that's still the practice (Plano).

As I'm drafting this Affidavit / Declaration, I can put my hands on the un-consented-to arbiter's contributions from the 2017 case. Regarding that participation, I have both Certified *and* First Class items. All else came First Class. (Filestamped copies of various documents were returned Priority, per the envelope and postage I provided.)

Likewise, as I'm drafting this Affidavit / Declaration, I can put my hands on the mailings regarding this case. I *have* First Class items, including (A) that initial Docket Sheet (at the beginning), through the Feb. 19, 2020 entry of the filing fee (such that the Docket Sheet serves as a receipt as well as Notice regarding § 636-relevant "consent" issue to "any or all proceedings"), and (Z) the Dismissal order and the Order serving as Final Judgment (at the end).

I have the un-consented-to arbiter's *first* Certified Mail item (to which I objected immediately). There is no accompanying First Class item with that. I'm also not finding a First Class item for this allegedly undeliverable "Report," Doc. [11]. The absolute proof there's no First Class item is the absence of any prompt, responsive Motion to Strike.

Three months after my immediate objection to that *first* act of un-consented-to arbiter participation, Docs. [9, 10], I was still here. As the 3d generation HLT in residence on the family farm, I haven't the slightest intent to relocate. I need to supply E.D.Tex. the address?? They *have* the address. So does SBoT, Muni. (Sherman), CCL2 (Grayson

County), 15th Dist. Ct. (Grayson County), USCA5, and this Court.

E.D.Tex. was/is facing the first ~40-Exhibit-supported challenge to their ***decades***-long abuse of *pro se* litigants, thus, is sick of my non-consent to their programme. While the envelope showing up in the Record, Doc. [12], shows an unexplained five-day delay between entrance of Doc. [11] (Nov. 12) and the metered postage (Nov. 17) (excusable neglect or scienter?), it doesn't allow by mere visual inspection determination of what that almost imperceptible magnetic strip, sometimes visible as extremely light pink printing, "says." That's mentioned because the info at USPS.com shows an effective *two-month* round-trip period in which that item remained "out there," somewhere. Items with *proper* mag strips get routed efficiently.

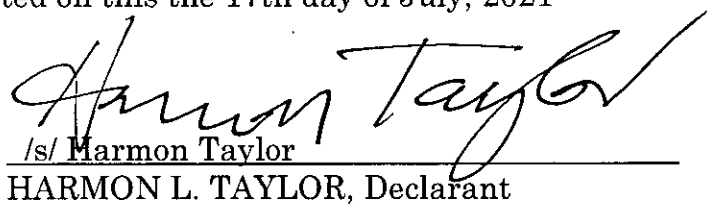
I never got Notice, as proved by the existing regularly kept business Records in this case and in the prior case showing that I pick up those items promptly. With some consideration toward trying to solve the mystery, an early question that comes to mind, incorporating all the ususal handling of mail, is whether new/more mail was added to the box (mounted sturdily on a metal post right next to the road) in such a way as accidentally to rake (draw) out that orange Notice (presuming it was delivered, as they always have been in the past)?

Beyond the prior activity on this exact issue, it's difficult trying to prove a negative. Therefore, in addition to the normal course of conduct, I confidently stand on my objections to any and all arbitration, generally, starting "at filing," to include my initial Motion to Strike and the *Roell* Notice. That arbiter, d/b/a "magistrate," never had signature authority,

which is at the heart of this case in its threshold stage. On top of the mail issue, why would anyone *need* to object to, and how can anyone *fail* to obey, an order that doesn't exist?

Further, Declarant sayeth not.

Executed on this the 17th day of July, 2021



/s/ Harmon Taylor
HARMON L. TAYLOR, Declarant

Correspondence from USCA5.

MAR. 17, 2021.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

March 17, 2021

Mr. Harmon L. Taylor
225 Old Patterson Road
Howe, TX 75459

No. 21-40158 Taylor v. City of Sherman
USDC No. 4:20-CV-114

Dear Mr. Taylor, [sic – :]

We have docketed the appeal as shown above, and ask you to use this case number above in future inquiries.

Filings in this court are governed strictly by the Federal Rules of **Appellate** Procedure. We cannot accept motions submitted under the Federal Rules of **Civil** Procedure. We can address only those documents the court directs you to file, or proper motions filed in support of the appeal. See **FED. R. APP. P.** and **5TH CIR. R.** 27 for guidance. We will not acknowledge or act upon documents not authorized by these rules.

All counsel who desire to appear in this case must electronically file a "Form for Appearance of Counsel" naming all parties represented within 14 days from ths date[. S]ee **FED. R. APP. P.** 12(b) and **5TH CIR. R.** 12. This form is available on our website www.ca5.uscourts.gov. Failure to electronically file [sic] this form will result in removing your name from our docket. Pro se parties are not required to file appearance forms.

Your appeal cannot proceed until you establish whether you have satisfied a previous sanction imposed against you in case number 18-40272, Taylor v. City of Sherman, et al. Within 30 days from this date, you must either submit payment to satisfy this sanction, or advise us in writing whether

you have paid the costs taxed against you in that case. Attach any documentation you may have. Because the sanction also barred you from filing any pro se appeals without the court's advance permission, you must also submit a motion for permission to proceed as a sanctioned litigant. If you fail to comply **fully**, we will dismiss your appeal without further notice. We will not address or acknowledge submissions which do no provide proof of payment and request permission to proceed. [⊥ 2]

[The remainder is of Record and not relevant, even including the clerically "set" case style.]

Sincerely,

LYLE W. CAYCE, Clerk

/s/ *Jann Wynne*
By: _____
Jann M. Wynne, Deputy Clerk
504-310-7688

cc: Mr. David O'Toole, Clerk

APR. 26, 2021.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

April 26, 2021

Mr. Harmon L. Taylor
225 Old Patterson Road
Howe, TX 75459

No. 21-40158 Taylor v. City of Sherman
USDC No. 4:20-CV-114

Dear Mr. Taylor, [sic – :]

We received and filed your letter referencing the order entered on April 20, 2021, advising that you did not receive a copy of that order.

We apologize for that error and include a copy of the April 20, 2021 order herein.

Sincerely,

LYLE W. CAYCE, Clerk

/s/ Rebecca L. Leto
By: _____
Rebecca L. Leto, Deputy Clerk
504-310-7703

Appendix B (from No. 18-40272)

Rule 14.1(i)(ii)—Additional Orders

Fifth Cir. (July 8, 2019) – Aff'd with Sanctions.

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18-40272
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
July 8, 2019
Lyle W. Cayce
Clerk

HARMON L. TAYLOR,

Plaintiff-Appellant

v.

CITY OF SHERMAN, a Municipal Corporation; BRANDON SHELBY, City Attorney, officially and individually; CODY SHOOK, Police Officer, officially and individually; ASSISTING OFFICER, FNU LNU, Police Officer, officially and individually; ZACHARY FLORES, Chief of Police, officially; BOB UTTER TOWING, Driver; BOB UTTER TOWING, Driver's Assistant; MIDWAY STORAGE FACILITY; WHITNEY BREWSTER, Executive Director, Texas Department of Motor Vehicles, officially and individually,

Defendants-Appellees

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:17-CV-488

Before DENNIS, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Harmon L. Taylor, proceeding pro se, appeals the district court's sua sponte dismissal without prejudice of his federal civil rights suit pursuant to [⊥ 2] Federal Rule of Civil Procedure 41(b) for want of prosecution and failure to obey the court's orders. We review for abuse of discretion. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 633 (1962).

Despite receiving notice of his obligations under court orders, Taylor failed to participate in an ordered Federal Rule of Civil Procedure 26(f) attorney conference, failed to appear at the January 19, 2018 Federal Rule of Civil Procedure 16 management conference, and failed to appear at the subsequent February 1, 2018 show cause hearing as ordered. Taylor's refusal to participate in the case was based on his incorrect belief that the referral to the magistrate judge (MJ) for pretrial proceedings was unlawful without his consent. We have held that a litigant's consent is not required prior to referral before a MJ where, as here, "the ultimate decision-making authority [is] retained by the district court."

* 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.

Jackson v. Cain, 864 F.2d 1235, 1242 (5th Cir. 1989). Dismissal for failure to prosecute and comply with court orders under these facts was not an abuse of discretion. *See* FED. R. CIV. P. 41(b); *McCullough*, 835 F.2d at 1127.

Appellees City of Sherman, Bob Utter Towing, and Midway Storage Facility contend that they are entitled to recover costs and attorney's fees against Taylor in light of our previous sanction warning against Taylor in Taylor v. Hyde [Hale], 396 F. App'x [Fed. Appx.] 116, 117 (5th Cir. 2010). These appellees fail to show entitlement to compensatory sanctions. *Fleming & Assocs. v. Newby & Tittle*, 529 F.3d 631, 639 (5th Cir. 2008).

However, Taylor's brief does contain numerous instances of inflammatory and derogatory language directed toward law enforcement in general and the United States District Court for the Eastern District of Texas and its judges in particular, in violation of our prior order. While a pro se litigant's pleadings are entitled to liberal construction, we "simply will not [⊥ 3] allow liberal pleading rules and pro se practice to be a vehicle for abusive documents." *Theriault v. Silber*, 579 F.2d 302, 303 (5th Cir, 1978).

Accordingly, sanctions are imposed against Taylor in the amount of $500, payable to the Clerk of this court. *See Coghian v. Starkey*, 852 F.2d 806, 808 (5th Cir. 1988). Taylor is barred from filing any pro se civil appeal in this court or any pro se initial civil pleading in any court which is subject to this court's jurisdiction, without the advance written permission of a judge of the forum court or of this court, until the sanction is paid in full. *See id.* Taylor is also cautioned that any future filings containing abusive, disparaging and contemptuous language may result

in the imposition of further sanctions, including further restrictions on his ability to file appeals or pleadings in this court or in any court which is subject to this court's jurisdiction.

AFFIRMED; SANCTIONS IMPOSED.

Rule 14.1(i)(vi)—Additional materials

Correspondence from USCA5.

FEB. 28, 2020.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

February 28, 2020

Mr. Harmon L. Taylor
225 Old Patterson Road
Howe, TX 75459

No. 18-40272 Harmon Taylor v. City of Sherman, et al.
USDC No. 4:17-CV-488

Dear Mr. Taylor, [sic – :]

We received your demand letter dated February 11,

2020, and we are taking no action on this document nor are we returning the document as requested.

Please be advised that this document does NOT satisfy the sanction imposed against you on July 8, 2019.

Sincerely,

LYLE W. CAYCE, Clerk

/s/ Angelique B. Tardie
By: _____
Angelique B. Tardie, Deputy Clerk
504-310-7715

cc:
Mr. Demetri Anastasiadis
Mrs. Alyssa Marie Barreneche
Mr. David Randall Montgomery
Mr. Wade Anthony O'Hanlon