

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TERRY CATHERINE PETITIONER
(Your Name)

VS.

MDK 706, L.C. — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

USDC/EDLA

US FIFTH CIRCUIT

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____, or

☐ a copy of the order of appointment is appended.

J. Courtney Wilson
(Signature)
Attorney for Petitioner

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, TERRY CATHCIN am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$2700	\$ See N.12		
Self-employment				
Income from real property (such as rental income)				
Interest and dividends				
Gifts				
Alimony				
Child Support				
Retirement (such as social security, pensions, annuities, insurance)				
Disability (such as social security, insurance payments)				
Unemployment payments				
Public-assistance (such as welfare)				
Other (specify):				
Total monthly income:	\$ 2700 ⁰⁰			

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.) *SEE CONT' AT NEXT PAGE.*

Employer	Address	Dates of Employment	Gross monthly pay
① VARIOUS FRENCH QUARTER ESTABLISHMENTS WHICH PAY CASH.			\$ _____
			\$ _____
			\$ _____

② LAST "PAYCHECK" EMPLOYERS WERE RICHARD'S DISPOSAL, 11600 OLD GENTLY RD NOLA 70129

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N.A.			\$ _____
			\$ _____
			\$ _____

4. How much cash do you and your spouse have? \$ *N.A.* *Ø*
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
<i>Ø</i>	\$ _____	\$ _____
	\$ _____	\$ _____
	\$ _____	\$ _____

5. List the assets, and their values, which you own *N.A.* ~~or your spouse owns~~. Do not list clothing and ordinary household furnishings.

☐ Home	☐ Other real estate
Value <i>Ø</i>	Value <i>Ø</i>

☐ Motor Vehicle #1	☐ Motor Vehicle #2
Year, make & model <i>Ø</i>	Year, make & model <i>Ø</i>
Value _____	Value _____

☐ Other assets
Description *Ø*
Value _____

2, CON'T

(a) L DW of Richard's was sometime in mid 2024

(b) Gary's Guard & Protection Services
2112 Belle Chase Hwy
Ste 333

Gretna, LA
L DW - © 2/24.

(c) People's Protection, LLC
Internet address only
OCCASIONAL WORK

The above is to the best of
my RECOLLECTION.

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>Ø</u>	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
<u>Ø</u>	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

My ROOMMATE pays all bills; I contribute \$900/mo. SEE N. 12 ROOMMATE

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ _____	\$ <u>865⁰⁰</u>
Are real estate taxes included? ☐ Yes ☐ No	<i>N.A.</i>	
Is property insurance included? ☐ Yes ☒ No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ _____	\$ <u>200⁰⁰</u>
Home maintenance (repairs and upkeep)	<i>N.A.</i>	\$ <u>500</u>
Food	\$ _____	\$ <u>500⁰⁰</u>
Clothing	\$ _____	\$ <u>Ø</u>
Laundry and dry-cleaning	\$ _____	\$ <u>80</u>
Medical and dental expenses	\$ _____	\$ <u>Ø</u>

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ _____	\$ <u>100</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ _____	\$ <u>Ø</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ _____	\$ _____
Life	\$ _____	\$ <u>Ø</u>
Health	\$ _____	\$ <u>Ø</u>
Motor Vehicle	\$ _____	\$ <u>Ø</u>
Other: _____	\$ _____	\$ <u>Ø</u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ _____	\$ <u>Ø</u>
Installment payments		
Motor Vehicle	\$ _____	\$ <u>Ø</u>
Credit card(s)	\$ _____	\$ <u>Ø</u>
Department store(s)	\$ _____	\$ <u>Ø</u>
Other: _____	\$ _____	\$ <u>Ø</u>
Alimony, maintenance, and support paid to others	\$ _____	\$ <u>200⁰⁰</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ _____	\$ <u>Ø</u>
Other (specify): _____	\$ _____	\$ <u>Ø</u>
Total monthly expenses:	\$ <u>900⁰⁰*</u>	\$ <u>1955</u>

*PETHOWER'S SHARE.

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes

☒ No

If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? CONTINGENT FEE ONLY to MR. WILSON

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes

☒ No

If yes, how much? _____

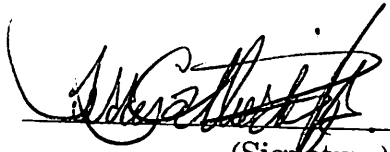
If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

My Roommate pays all expenses. I contribute \$900/mo. The discounted cost of THE S. Ct. PRINTER is \$2200. I CANNOT AFFORD THIS AMOUNT OVER \$900; ROOMMATE WILL NOT pay it.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 12/26/25, 20__


(Signature)

No.

In The
Supreme Court of the United States

Terry Catherine,

Petitioner,

v.

MDK 706, L.L.C.,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit**

PETITION FOR A WRIT OF CERTIORARI

Vol. 1

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QUESTIONS PRESENTED

Did the Fifth Circuit's denial of appellant's motion for reconsideration of dismissal of the appeal for failure to file record excerpts on October 6, 2025, effectively allow eight impermissible departures from the accepted and usual course of judicial proceedings by the Clerk, the District Court, and the Court of Appeals itself? That is, should the Fifth Circuit have exercised its inherent authority and addressed these allegations?

On October 6, 2025 the entire panel denied appellant's motion for reconsideration. App 1a (1) On September 29, 2025 the court granted appellant's motion for clarification. App 1a (2) On September 26, 2025 a single judge (a member of the panel) denied appellant's motion for reconsideration. App 1a (3) On September 18, 2025 the court denied appellant's motion to reinstate the case. App 1a (4) The appeal was dismissed as of September 16, 2025 for want of prosecution as "appellant failed to timely file Appellant's record excerpts." (App 2a)

The departures occurred in the below order:

1. By the *Pro Se* Unit of the EDLA Clerk of Court when it
 - a. allegedly **intentionally "disappeared"** (failed to file) a signed, timely, two-page complaint stamped "Tendered for filing August 11, 2023" and,
 - b, on August 22, **fraudulently filed** an *untimely*, "*signed*" *substitute* complaint causing the case to be dismissed?
- 2.* By District Court Judge Africk (in motion practice after the first dismissal), **nine months before an evidentiary proceeding**, when he **stated his belief on an ultimate issue** - why the above complaint was not filed - that it "was never accepted for filing." (App 92a)
- 3.* When on remand (after supplementation of the record with photograph) the Fifth Circuit itself *predeterminantly* instructed the district court:

...[I]n the interest of justice and to **vindicate any adverse reflection on the district court clerk's office**, we VACATE...and REMAND... to determine whether [plaintiff] tendered his complaint to the district court on August 11, 2023, and if so, *whether he should be permitted to proceed* with his suit. (Emph. added.)(App 87a)

4. When the Judge at Conference allegedly **admitted** he had had an *ex parte* conversation with the Clerk and coupled it with barring all discovery, but later allowing limited document production, though not depositions of the Clerk's personnel.
- 5.* When at Conference the Judge **added** his own issue to the remand: Whether Wilson had committed an ethical violation viz a viz the Clerk in attempting to file the complaint.(App 81a)
- 6.* When the Judge at the hearing **twice anticipated** Clerk testimony that -
 - a. the complaint was not signed (and therefore not accepted for filing)(App.113a:18-114a:7), and
 - b. it was stamped "tendered" by mistake. (App 118:13-18)

These fundamental departures - eight in all - are individually and collectively such severe departures from the accepted and usual course of proceedings as to call for the exercise of the Fifth Circuit's inherent power, and failing that, this Court's inherent, supervisory power.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PROCEEDINGS BELOW¹

US Fifth Circuit Court of Appeal

Nos. 24-30334, 24-30421

Terry Catherine v MDK 706, L.L.C.

October 6, 2025 (Order denying Motion for Reconsideration of dismissal for want of prosecution)

District Court EDLA

No.23-03986

Lance J Africk, Judge

Catherine v MDK 706, L.L.C.

May 5, 2025 (Judgment and Reasons for dismissal from Evidentiary Hearing)

US Fifth Circuit Court of Appeal

Nos. 24-30334, 24-30421

Terry Catherine v MDK 706, L.L.C.

January 27, 2025 (Remand after supplementing record with photograph of tendered complaint)

District Court EDLA

No, 23-03986

Lance J Africk, Judge

Catherine v MDK 706, L.L.C.

July 1,2024 (denial of motion to amend record)

District Court EDLA

No, 23-03986

Lance J Africk, Judge

Catherine v MDK 706, L.L.C.

May 16, 2024 (Denial of motion for reconsideration)

District Court EDLA

No.23-03986

Lance J Africk, Judge

Catherine v MDK 706, L.L.C.

April 16, 2024 (Dismissal for want of timely record complaint)

The basis for jurisdiction in the District Court was 28 USC 1343(3).

¹ As of this and the original writing, there are no F3d citations available in the attorney's legal research database, vLexFastcase, provided by the Louisiana State Bar Association.

JURISDICTION

The statement of jurisdiction is directed explicitly and only to the order of October 6, 2025 by which the entire panel denied appellant's motion for reconsideration. (App 1a(1) The District Court dismissed the complaint May 5, 2025. Petitioner refers the Court to Rule 13.3; [Memorandum, January 2023 #13](#); [Young v Harper, 520 U.S, 143 \(1997\)](#); [Patterson v US, 15 U.S. 221 \(1817\)](#); [Am Jur 2d sec. 344.](#)

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

Proceedings prior to panel denial of reconsideration

On September 29, 2025 the court granted appellant's motion for clarification. (App 1a(2) On September 26, 2025 a single judge (a member of the panel) denied appellant's motion for reconsideration. (App 1a(3) On September 18, 2025 the court denied appellant's motion to reinstate the case. (App 1a(4) The appeal was dismissed as of September 16, 2025 for want of prosecution as "appellant failed to timely file Appellant's record excerpts." (App 2a)

Fact Summary

The undersigned (Wilson) an attorney attempted to file a timely two-page, *pro se* employment discrimination complaint for Terry Catherine, signed by Catherine. Wilson was trying to retire so did not want to be of record. (App 144a:22-App 145a:1) The basis for jurisdiction of this complaint was 28 USC sec 1343(a)(4). He tried this on three occasions beginning once alone late on August 10, 2023 with a *Black* female clerk (Ms Simlin) (App 146a:19-25; App 147a:13-24) and twice on August 11, 2023 - once alone in the early afternoon, primarily with the *Pro Se* Unit Manager (Brad Newell)(ROA.148a-150a:25), and to a lesser

extent with a *white* female clerk. Later, accompanied by plaintiff, he tried again in the mid to late afternoon exclusively with the same *white* female clerk. (App..149a:17-20) The other *Pro se* clerk, Ms Johnson, also a Black female, was absent on August 11, 2023 from 2:30-5:00. (App.158a:10-17) The complaint was stamped tendered by the *white* female clerk and photographed by plaintiff with his iphone, but never filed. Instead, it was purportedly returned unfiled (and not in the record) because it was purportedly still not signed.

A complaint dated August 22 was filed in the record. It was untimely and dismissed. The Pro Se unit claimed plaintiff filed it; he denied filing it. In motion practice after the first dismissal, the District Judge opined the complaint was “never accepted for filing.” Plaintiff’s appeal was granted with instructions to “vindicate” the clerk and determine if plaintiff were “permitted to proceed.” At Conference the judge set an evidentiary hearing, admitted an *ex parte* conference with the Clerk, and added an issue whether Wilson had committed an ethics violation viz a viz the Clerk; the violation was not particularized.

At the hearing, the judge changed the ethics issue to one of candor - still without particularization - and twice anticipated Clerk testimony. He found Wilson lacked candor toward the Clerk and his client.

Wilson testified the complaint was signed by plaintiff beginning with the first attempt - that is, signed on all three attempts.(App.147a:13-24) (Plaintiff testified it was not signed until August 11.) Newell testified the complaint was not signed on all three occasions and that he told Wilson this such that it could not be filed. (App.38a:5-139a:19) The Clerk testified this is what Newell told her.(App.119a:18-120a:8) The judge ruled the complaint had been returned to Wilson because it was not signed such that plaintiff was not permitted to proceed.

The deadline for filing was August 13, 2023. (Appa 103a at 105a) The judge also found it was plaintiff who filed the August 22 complaint and dismissed it as untimely.

Wilson testified he advised the clerk he was not plaintiff's attorney and was filing the complaint as a friend. (App.121a:7-10) He advised plaintiff he would not sign the complaint as plaintiff's attorney, i.e., would not be his official attorney, but would otherwise be fully responsible. (App.115a:14-23) The court found Wilson lacked candor with the court and his client.

As to the issue whether a Black or white female clerk was involved the judge shut down all related discovery and made no finding.

Detailed statement

Allegation that *Pro se* Unit, under Brad Newell, intentionally “disappeared” a signed complaint timely stamped “tendered” on August 11

Wilson testified that on August 10, 2023 Ms Simlin refused to file the complaint because he had arrived too late, near closing. This was the only reason given for not filing the complaint. (App.146a:19-25, App.147a:13-24). He agreed to come back. (App.147a:13-763:13)

As to the next day, Wilson alleges Newell rejected the early afternoon filing because a number of complaints had been filed in Lake Charles by attorneys in connection with a hurricane without the plaintiffs' permission. Further, that Newell accordingly advised he would not allow Wilson to file a *pro se* complaint without the plaintiff's presence. (App.148a:23-764:4) Also present during this event was an unidentified white female clerk who appeared again on the third and last attempt to file the complaint. (App.149a:17-20) After the foregoing discussion on this second attempt, Wilson advised he would come back. He alleges he and plaintiff returned mid to late afternoon. (App.149a:11-13)

Plaintiff alleges the clerk to whom the complaint was handed mid to late afternoon on August 11 was the same **white** female who was present earlier that day. (App.149a:17-20) Newell testified that Ms Johnson, one of the Black clerks, did not assist Wilson on August 11; the clerk who purportedly assisted him was Ms Simlin, a Black female - she was the primary person who assisted him. (App.126a:1-9, App.126a:24-127a:6; App..127a:16-23; App.128a:1-9) Newell testified that both Black clerks were present at their work stations on August 11. (App.129a:22-130a:3) However, one Black clerk (Ms Johnson), purportedly on duty during the two afternoon filing attempts, was absent from 2:30-5:00. (App.158a:9-17)

At the hearing the Clerk **produced only two Black female clerks** and, despite Ms Johnson's absence, claimed no white clerk had or could have had anything to do with the filing. (App.129a:15-App.130a:3; App.158a:10-161a:17) At Conference the Judge had barred all written and deposition discovery (App.143a:16-23 -Wilson asserting lack of discovery and the judge not denying). He barred all discovery related to the white clerk by plaintiff during (App.142a:3-11) and after the hearing. (App. 48a at 52a) The production of a Black female clerk (Ms Simlin) instead of the expected white female was a complete surprise.(App.124a:9-125a:2) (Wilson later remembered her. App.148a:21-22) As a consequence of the judge's denying all relevant discovery, the name of the white female clerk remains unknown.

In mid to late afternoon of August 11 (the last filing attempt) when Wilson handed the white female clerk a first signed original she stated she would "still not file it," so Wilson replied, "Just stamp it tendered." She did so. He asked her for a copy which she declined to make, so he asked if his client could shoot a copy with his cell phone. She advised that was against regulations, so he asked if they (plaintiff and Wilson) could take the papers someplace to

make copies. Permission was granted, but once outside plaintiff and Wilson realized they could not walk to the copy facility and return before closing. So, plaintiff used his cell phone to photograph both pages of the complaint - the stamped first page and the second, signed page.(App.149a:15-151a:25 referring to Court Ex. 1. App.168a)

When they returned to the white clerk she accepted the signed, stamped complaint and asked if Wilson had another copy. Wilson did and handed a second *signed* unmarked and never stamped copy to her. (App.152a:20-154a:1) Wilson and plaintiff left with no papers, having left them all with the white female clerk. (App.156a:19-25) The Clerk's Office contended all papers were returned. (App.140a:23-141a:3.)

On August 21, 2023 Wilson called the clerk to follow up. Newell replied he could not advise Wilson about the status of the complaint because Wilson did not represent plaintiff. (App.155a:19-22) Newell's narratives recite that plaintiff called him on August 21, 2023 and then filed a complaint identical to the one at issue on August 22, 2023. (D-1 and D-2) After some confusion, plaintiff denied filing the complaint (App. 162a:8-9)(and may question his purported call). (A "litigation hold" letter for the related telephone records has been sent to the Clerk and Judge.)

A motion to dismiss was granted because the only complaint in the record was that of August 22; the tendered August 11 complaint had disappeared and was not in the record. (App.94a at 96a) Wilson, thinking the tendered complaint was in the record and not confirming its presence, had referred to it in his opposition, but had not attached the iphone photograph to the opposition.

According to the Clerk, the relevant "usual and accepted" practice is to file a signed

complaint. (App.117a:1-17) (The complaint should also have the filing fee or an IFP application. The judge made a finding only on the issue of a signed complaint, finding only it was not signed.)(App. 34a) Thus, plaintiff contends the clerk's failure to file a signed complaint is a departure calling for this Court's supervision.

Allegation that *Pro se* Unit of Clerk's Office fraudulently filed untimely substitute complaint purportedly signed by plaintiff

Continuing the above later August events, plaintiff testified he did not file the August 22 complaint and alleges that someone in the Pro Se Unit instead **fraudulently filed** an untimely substitute complaint. The late complaint did not "cure" the disappearance of the original timely "tendered" complaint and the matter was correctly dismissed on the record. Plaintiff alleges the substitute complaint of August 22 consisted of the unmarked first page of the extra complaint given the white female clerk at her request on August 11 (App.151a:20-769:1) *and* the signature page of the original August 11 complaint which had been stamped "tendered" by this clerk on August 11.

The above evidence of the fraudulent signature did not emerge until after the hearing. Wilson obtained an expert report opining that the signature page of the August 22 complaint exactly matched that of the August 11 tendered complaint. That is, the purported August 22 signature page had been recycled from the August 11 complaint and was, in fact, the same signature page. For the expert's report, including his photographic signature comparisons of the August 11 and 22 complaints, please see the Appendix 58a et seq.

The Clerk testified that if someone held a complaint for 11 days and then put the wrong date on it, even accidentally and she learned of it, she would terminate that employee and notify

the judge. (App.121aa:16-122a:7) Accordingly, a clerk's filing the complaint would be a departure from the "usual and accepted" practice. By implication, a clerk's filing a fraudulent complaint 11 days later that was untimely and caused the case to be dismissed would be a departure calling for this Court's supervision.

Judge's of-record *prejudgment* before discovery, nine months before hearing

When defendant moved to dismiss the matter as untimely, plaintiff, now represented by Wilson, opposed, claiming all the court had to was look in the record for the "tendered" complaint. However, he had not inspected the record; did not realize it was not there; and never attached the photograph to his opposition. (App.102a, para. A.1) The case was dismissed. (App. 103a) Wilson moved to supplement the record with the cell phone photograph (found post-denial and without meta-data). In denying the motion the court opined it "believes the complaint...plaintiff seeks to supplement the record with was *never accepted for filing.*" (Ital. added.) It did not at that time explain why it was not accepted. (App.88a at 92a)

The judge's expressing an opinion on the merits before any discovery and nine months before taking the first evidence at the hearing is a departure from the "usual and accepted" practice. The judge "...shall not investigate facts in a matter independently... " Rule 2.9 (C). *Id.* The judge departed from this practice by forming a fact-based belief that the complaint was never accepted for filing. The departure calls for supervision, especially when coupled with a discovery bar which meant the judge knew the clerk's facts but not the plaintiff.

The Fifth Circuit's of-record *pre-determinant* remand instructions

The Court of Appeal granted a motion to supplement the record with the photograph (not time stamped) and remanded with these instructions:

...[I]n the interest of justice and to **vindicate any adverse reflection on the district court clerk's office**, we VACATE...and REMAND... to determine whether [plaintiff] tendered his complaint to the district court on August 11, 2023, and if so, whether he should be permitted to proceed with his suit. (Emph. added.)

Signed: Davis, Smith, and Higginson (App. 85a at 87a)

A motion to clarify the “vindication” and “permission” instructions was denied by the Fifth Circuit. (Motion and Order at Orders, etc # 8) The judge also denied a similar motion. (App. 74a) A supplemental memorandum advised vindication, permission, and Wilson’s ethical issue were still not understood. (App. 107a).

Such instructions depart from the “usual and accepted” practice because they impair the independence of the District Court Judge. “A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary... ABA Model Code Canon 1. “A judge shall act all times in a manner that promotes public confidence in the independence of the judiciary...” ABA Code, Rule 1.2.

Canon 2 states “A judge shall perform the duties of judicial office impartially,,,” Rule 2.4 (B) states” A judge shall not permit...interests...to influence the judge’s...judgment.”

The panel’s “vindication” instruction does not uphold the “independence, integrity, and impartiality” of its proceeding, nor of the District Judge who might feel compelled to follow it by finding in favor of the Clerk, and is such a “departure” as to call for this Court’s supervision.

The Fifth Circuit’s non-particularized “permission” instructions

The panel also remanded with instructions for the District Judge to determine if plaintiff proved tender “*whether he should be permitted to proceed with his suit.*” (the “permission” issue) The “permission” instruction gave no hint that it was raising a factual issue. Because the

tender issue was proved by the bare photograph, “permission” appeared to a legal issue - filing is retroactive to the tender date. *Martin v Demma*, 831F2d 69. 71 (5th Cir 1987). This issue was never expressly stated at the hearing, but the purported lack of plaintiff’s signature on the complaint emerged as the fact underlying the “permission” instruction - permission to proceed (file) was denied purportedly because there was no signature. It is suggested this instruction is if not a departure, then is so vague and prejudicial the Court should “factor it in” while considering whether to exercise its supervisory power.

Allegation of Judge’s *ex parte* conversation with Clerk

A Status Conference was held February 5, 2025. (App. 79a) Petitioner alleges the judge admitted he had discussed the matter with the Clerk. He did not disclose the substance of the conversation(s), the date, nor the fact she had clerked for him some 13 or more years earlier. This conversation can be inferred from the judge’s prejudgment (above); his addition of an ethics inquiry into Wilson’s interaction with the Clerk (when there had been no complaint by the clerk); and his twice anticipating the Clerk’s testimony at the hearing. (As to these matters, please see below.)

The inference also arises from a Preliminary Memorandum in which Wilson stated he had no objection to the judge’s “*again* discussing the matter with the clerk’s office...in the hope it might avoid further briefing.”(Emph. added.) The judge did not correct, nor otherwise respond to, this reference to a previous *ex parte* conversation between the Clerk and him.(App. 82a at84a)

At the hearing another investigation by the judge emerged when he advised the Marshall had no surveillance film. (App. 116a)) (This investigation also tends to corroborate the judge’s *ex parte* conversation.)

The “usual and accepted” practice does not permit *ex parte* discussion with a witness if for no other reason than such a discussion suggests at the minimum the appearance of impropriety. “A judge shall not initiate...ex parte communications...outside the presence of the parties or their lawyers concerning a pending or impending matter....” A two-part exception follows, the second part of which requires the judge to “promptly notify all...parties of the substance of the ex parte communication and gives the parties an opportunity to respond.”

There is nothing in the record bringing that communication within the exception. Rule 2.9 (A), ABA Model Code of Judicial Conduct (2011).

Further, the judge “...shall not investigate facts in a matter independently... “ Rule 2.9 (C). *Id.* The judge twice departed from this practice in contacting the Clerk and the Marshall. These departures calls for this Court’s supervision. (Admittedly, there were not adverse results from the judge’s contact with the Marshall; it corroborates the judge’s contact with the Clerk.)

The ABA Model Code’s test for appearance of impropriety is “whether the conduct would create in reasonable minds a perception that the judge’s ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.” *Id.*, Comment (5) on Rule 1.2.

At Conference, the judge barred all discovery without explanation (App.143a:16-17) , but later on the eve of the hearing, ordered document production of the Clerk’s rules, related documents, and the identity of the pertinent clerks (but not their racial identities). (App. 105a) Depositions were still barred.

Production yielded a *first* narrative of events (D)(also referred to as D-1)(App. 163a) prepared by Brad Newell on August 19, 2024 in anticipation of a request by the Fifth Circuit.

(App.170a at # 7). A second, differing narrative, D-2, was produced at the hearing. (App. 165a) The first made no mention of the tender event. The second, “cleaned up” from the first, did. **Neither** mentioned the complaint was not signed. The difference between the two and the circumstances of their creation are addressed at App.131a:22-134a:16.

A secondary, tho’ major, departure is the judge’s barring all discovery without explanation. This is a departure from the “usual and accepted” practice. *See, Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812 (5th Cir. 2004), 818 and n. 25 for list of illustrative cases. However, while it is unlikely such a departure alone calls for this Court’s supervision, it should be considered as severely aggravating the Court’s *ex parte* communication with the Clerk when its substance was not reported and the judge had “inside” information. Accordingly, the judge’s *ex parte* communication with the Clerk, all circumstances considered, should merit this Court’s supervision.

Judge adds “ethics” (termed “candor” at hearing) issue

Significantly for this issue, after the Conference on February 5, 2025 and with no discussion at the Conference, the judge added an issue outside the remand order: Wilson’s ethical obligation to the clerk when attempting to file a pro se complaint on behalf of a third party he did not represent (the “ethics” issue). (App. 79a) The Clerk had never raised this issue with Wilson or filed a complaint. The issue necessarily arose from the judge’s discussion with the Clerk and/or a review of the Clerk’s narrative, D-1, prepared August 19, 2024. There was never a factual particularization of this issue; it was changed to one of “lack of candor” - equally vague - at the hearing. (App.112a:9-24) It emerged in the judge’s questioning of Wilson. Wilson was found “guilty” on all counts. (App. 5a at 30a-31a)

Alleging a non-particularized ethics violation by Wilson, based on an *ex parte* conversation, the allegation of which gives no notice of the offense, is a violation of Rule 2.9 (C), *id*, and a departure calling for this Court’s supervision.

The judge’s departures, so far (and as additionally shown below) all stemming from his *ex parte* communication with the Clerk, call for the exercise of this Court’s supervisory power.

Judge’s of-record anticipation at hearing of testimony complaint not signed.

At trial, 16 pages before any evidence the complaint was not signed (therefore not accepted for filing; plaintiff not permitted to proceed) is in the transcript, the Judge accurately predicted there would be testimony it was not signed. This exchange was the first time the “signing” issue was alluded to.

The judge asked why the photograph of the complaint did not include a copy of the signature page of the complaint. When Wilson asked what the court meant by “signature page” the Judge replied:

...I believe that there’s going to be testimony that it was not signed by the plaintiff. The signature page was not signed by the plaintiff, okay.

Immediately following this, the judge stated:

So my question is —but regardless of whether it was signed or not, that’s a question of fact that I’ll have to address (App..113a:18-114a:7)

Sixteen (16) pages later, the first evidence the complaint was allegedly not signed occurred when the Clerk testified to that effect:

I was told the tendered complaint was returned and we do not have a copy of it.

Q. Who told you that?

A. Mr Newell told me that.

- Q. And what was the basis for his telling you that?
A. Because...the document *wasn't signed* and it should not have been accepted for filing. (Emph. added.) (App.119a:18-120a:10)

Both this predication of testimony and the following apparently stem from the judge's *ex parte* communication with the Clerk and such departures call for this Court's supervision.

Judge's of-record anticipation at hearing of testimony complaint stamped "tendered" by mistake

The court's knowledge of another underlying fact - complaint stamped by mistake - again emerged in questioning of the Clerk. Wilson asked if the complaint were stamped tendered, could we assume it were signed and, then, when she disagreed, why a clerk would stamp something "tendered" if it weren't signed. The court cut the questioning off with another accurate prediction of clerk testimony that the tender stamp was a mistake:

...We're going to find that out when these other witnesses testify...
Maybe it was a mistake. (App.118a:10-18)

This prediction occurred *28 pages before* the first mention of "mistake." That occurred when Newell introduced a surprise exhibit D-2 - a "cleaned up" version of his first narrative of events that had been produced as part of the limited pre-hearing discovery. (D-1) (App.131a:22-136a:6)

Both these facts appeared in the court's ultimate conclusion:

Wilson, without plaintiff present, presented an *unsigned*, pro se complaint on behalf of plaintiff. The clerk's office *mistakenly* stamped the August 11 complaint as tendered for filing before returning it to Mr Wilson as deficient. (Emph. added.) (App.5at 34a)

The Clerk's office later claimed it mistakenly stamped the complaint and mistakenly gave it back. (App.104a:23-728:3) According to Wilson, "no papers were returned to us whatsoever."

(App.156a:19-25) The Clerk's website states that non-conforming *pro se* pleadings "will be returned to you with a notation showing you where they do not conform." (App.172a.) There is no mention in Newell's two narratives - not even in the "cleaned up" second - of a notation.²

² There are several glaring problems with the testimony of Brad Newell, the Manager of the *Pro Se* Unit. None of these were even alluded to in the Judge's opinion which gave only one-sided reasons for its credibility determination. (App. 4a at 34a) Though not here made an issue, it is a departure from the "usual and accepted." *U.S. v. Kelly*, 539 F.3d 172, 181 (3rd Cir. 2008)(abuse of discretion to give one-sided assessment.) It might be a factor in determining whether to exercise the Court's supervisory power.

Starting with whether the complaint was signed. Newell and other clerks testified Wilson tried to file the complaint three times and was told three times it would not be filed because it was not signed. (App.139a:1-20) It is implausible that Wilson, a 50+-year practitioner, would repeat the same mistake three times and, despite having two days left in the limitation period, not cure the mistake and return to file it timely. Contrary to the Clerk's website, no clerk made a "notation" of any deficiency with pleadings on any of his three failed attempts.

Second, **both** Newell's narratives, his original (D-1) and his "cleaned up" version (D-2), recite that on Wilson's second try August 11 Newell called plaintiff "several" times without answer, but that the Unit later received a call from plaintiff. In that call the only topic discussed as whether Wilson had authority to file for plaintiff. If the complaint were truly rejected because Catherine did not sign it, why bother to call even once? Why several times? And when Catherine called, why not at least mention that problem to him?

Third, **neither** of Newell's narratives - not even the one he "cleaned up" for trial - mentioned the complaint was not signed.

Fourth, Newell's first narrative, D-1 (the one produced by the Clerk) had another omission - it did not mention one word about the tender matter. Only his second narrative (D-2, p. 1) said anything about it all.

Finally, there is the bizarre issue of the race of the clerk who processed the tendered complaint. Both plaintiff and Wilson testified she was white; the Clerk's office testified she was Black and it was highly unlikely a white clerk had participated. Newell testified that both Black clerks were present at their work stations on August 11. (App..129a:22-716:3) However, one Black clerk, Johnson, purportedly on duty during the two afternoon filing attempts was absent from 2:30-5:00. (App.158a:10-17)

Since then Ms Johnson she has been replaced by a white female clerk. (See Website for EDLA at Directory/Clerk's Office/Pro Se Writ Unit.) She is a potential witness. Discovery related to the white female clerk during and after the hearing was denied. If permitted, request for her work records and deposition will be sought, and, if needed, of select co-workers. -14-

The judge's twice anticipating the Clerk's Office testimony tends to confirm his *ex parte* conversation with her and at the minimum gives the appearance of improperly obtained information in violation of Rule 2.9(C). Such a departure calls for this Court's supervision.

REASONS FOR GRANTING THE WRIT

There are two reasons for granting the writ. First, the "fairness, integrity and public respect of the proceedings" at three levels are at stake. Second, it is factually practical to do so.

Introduction

This case is unavoidably fact-intensive, but it is not "fact bound." It claims eight severe departures at three levels, beginning with the Clerk's allegedly **intentionally failing to file** a signed, timely complaint stamped "tendered", then allegedly **fraudulently filing** an untimely substitute complaint; and continuing through "of- record" departures by the appellate panel (1); judge (3)(pre-hearing); and again by the judge (2)(at hearing).

Relief is not prevented by the equitable bar of failing to timely file record excerpts. The supervisory power is distinct from equity. To the extent that such failure is a consideration, it is "dissipated" by the "isolated, one-time" and "rare" nature of this complaint. *See*,
v US,

539 U.S. 69, n.12 (2003)(exercise of supervisory power despite failure of "contemporaneous objection" to illegally constituted panel). Here, the public interest in the "fairness, integrity and public respect of the proceedings" at three levels is paramount. *Id.*, at 80.

Three levels of severe departure are alleged - Clerk, Judge, and appellate panel

The petition presents procedural departures far from the "accepted and usual" - an alleged two by the *Pro Se* Unit managed by Brad Newell; one *of-record* by a panel of the Fifth Circuit;

and five *of-record* by the Judge of the District Court, likely all stemming from his alleged admitted and insufficiently reported *ex parte* discussion with the Clerk. Eight total.

Although the alleged departures by the Clerk were tried and lost and remain unproven (and undiscovered), that loss occurred in a proceeding: *pre-judged* by the District Court (which barred depositions); *pre-determined* by a “vindicating” panel of the Fifth Circuit which also issued non-particularized, misleading “permission” instructions and thus tried with no notice of the “permission” issue (not filed because not signed); tried with no notice of the “ethics/candor” issue; and before a judge who was twice able to predict Clerk testimony.

On a final note, the asserted *ex parte* conversation between the judge and the Clerk derailed this matter before it left the station. Nine months before the hearing, the court had prejudged the permission issue and opined the complaint was “never accepted for filing”. At Conference he added an ethics/candor issue totally without any foundation in law and without adequate notice. At the hearing he twice predicted Clerk testimony - most significantly that the complaint was not signed. His opinion, added issue, and ability to predict the Clerk’s testimony could only have come from the *ex parte* conversation with the Clerk.

With his backdoor information, the judge ambushed both plaintiff and Wilson with the “no signature/no permission” issue and Wilson with the ethics/candor issue. The judge knew in advance what was coming - his first of two “anticipations” (“going to be testimony...not signed...”) shows he already knew the Clerk’s contention was that the complaint was not signed. He must have known this would be the reason the Clerk had not filed the complaint, i.e., no signature, no permission to proceed, no filing. The departure of an *ex parte* communication with the Clerk, coupled with the deposition bar, and manifested multiple times, is the single most serious departure calling for the exercise of this Court’s inherent supervisory power.

The panel's two instructions are a close second. If the judge's opinion "never accepted for filing" (query its source) had not already decided the matter, the panel's remand instruction to "vindicate" the Clerk's Office did.

The panel's second instruction to determine if plaintiff had "permission to proceed" - whether vaguely framed carelessly or intentionally - gave absolutely no notice of the signature issue and played right into its continuing concealment from plaintiff, despite motions for clarification.

The Clerk herself appears to have been blinded sided by the head of the *Pro se* Unit who seems to have made two serious mistakes, but in the view of this practitioner, they are not terminable offenses. Despite having allegedly initiated matters, he seems the least culpable.

As to Wilson and the ethics/candor issue, the judge obviously had some facts with which to construct two equally vague statements of the issue. However, neither statement managed to give any fact notice of the interaction between Wilson and the clerk (Newell) that allegedly aused concern. That obfuscation also persisted despite multiple requests for clarification.

The departures at all three levels are severe and call into question the integrity of the judicial process. Accordingly, the Court should grant the writ.

It is practical to grant the writ

The two alleged Clerk's departures can be proved

Proof of the alleged departures by the *Pro Se* Unit - its **intentional failure to file** a timely "tendered", signed complaint followed by its **fraudulent substitution** of an untimely complaint - was foreclosed before hearing - depositions were barred. Discovery was cut off during and after the evidentiary hearing by denying discovery directed at the identity of the white female clerk and

pos-heating by excluding forensic evidence of the date and time (meta-data) of the iphone photograph and expert opinion on the fraudulent signature. (The meta-data photograph was only found post-hearing and was not available for trial; plaintiff did not “decline” to introduce it.)

There are three connected issues beginning with whether the complaint was signed by plaintiff when presented to the *Pro Se* Unit as claimed late on August 11, 2023. Resolving that issue tends to resolve all the issues - if it were signed, there was no reason to return it and the clerk, having possession of it, failed to file it; having possession of the August 11 signature page, it was the clerk who substituted it as the August 22 signature page and filed the substitute complaint.

Plaintiff has now produced time-stamped iphone photographs of the signed complaint which corroborate that contention. (Orders, etc # 5) The photos show, subject to expert verification, the complaint was present at the courthouse with Wilson holding it and plaintiff photographing it, on August 11, 2023 in the late afternoon as claimed by plaintiff and Wilson.

The next issue, if not disposed of by the first, is whether the complaint was kept by a clerk or returned to Wilson. If it be proved the complaint were signed when presented, that proof corroborates there was no reason to return it and that it was indeed kept by the clerk. However, if that proof fails, it is not dispositive. There are other means to prove the clerk kept the complaint.

There is *as of yet* no forensic evidence on this issue. If none develops, the issue can be resolved by identifying the white female clerk with whom the complaint was left (and any observers) and her (their) truthful deposition(s) or, if not, then by a credibility call. Absent the white clerk’s evidence, the weight of other evidence should be with plaintiff. (See note 2.)

The next issue, if not resolved by the signature issue, is whether the signed second page

of the original complaint was recycled as the signature page of the August 22 complaint. The plaintiff's expert has opined unequivocally that the August 11 signature page was used for the August 22 complaint. (The judge denied plaintiff's post-hearing motion to re-open to admit the expert report so defendant has not submitted one.)

Clearly someone recycled the August 11 signature page. But the last issue, **who** recycled it, most proximately hinges on the issue who at the end of the tendering event had the original complaint? As previously suggested, if it be proved the complaint were signed when presented late on the afternoon of August 11, there was no reason to return it and it was the clerk who recycled it. Obviously, deposing the white female clerk might resolve the issue.

Proof of the underlying issue

Proof of the job discrimination case is facilitated by the existence of at least a prima facie case. The case arose out of an employment dispute between a black employee (plaintiff) and a white employee with the alleged greater culpability resting on the white employee. Yet only the black employee was fired. Proof beyond that depends on examination of the intricacies of managing a bar on Bourbon St in New Orleans which will have to be left to discovery and trial.

Summary

In view of the judge's premature, dispositive finding and the panel's "vindication" instruction, the "disappearance" issue was over before the hearing. The Judge was predisposed toward the Clerk, against plaintiff; his predisposition was certainly - at the least - fortified by the panel's earlier instruction. His total deposition bar coupled with the panel's opaque instructions about "permission" precluded any chance of: (1) even knowing the Clerk's contention the reason for not "accepting the complaint for filing" was that it was not signed and (2) avoiding ambush at

trial on the signature, permission, and ethics (candor) issues. The unavoidable conclusion is that the Judge and the three-judge panel “circled the wagons” and “railroaded” this matter before, during, and after the hearing to a favorable conclusion for the Clerk, “vindicating” that Office.

CONCLUSION

This Court should exercise its inherent supervisory authority and grant the petition. Petitioner requests it be with instructions to recuse Judge Africk and the three members of the panel, Davis, Smith, and Higginson, from any future proceedings.

Respectfully submitted.
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CERTIFICATE OF COMPLIANCE

I certify that the accompanying Petition for Writ of Certiorari in Catherine v MDK 706. L.L.C., complies with the word count limitations of Supreme Court Rule 33(g) in that it contains 6,614 words, based on the word-count function of Word Perfect 10, excluding material not required to be counted by Rule 33(g).

Date: July 31, 2026

/s/ J Courtney Wilson
J. Courtney Wilson

PROOF OF SERVICE

I certify that I have this date served the IFP papers, petition for writ of certiorari and appendix on counsel of record, Robert Ellis and Salvador Bivalacqua at their record address 650 Poydras Ste2615 New Orleans, La 70130 by delivery to FedEx for delivery within three calendar days. Declared under penalty of perjury.

Date: July 31, 2026

/s/ J Courtney Wilson
J. Courtney Wilson

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No.

In The
Supreme Court of the United States

Terry Catherine,

Petitioner,

v.

MDK 706, L.L.C.,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit**

PETITION FOR A WRIT OF CERTIORARI

Vol. II

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December____, 2025

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13.	Plaintiff Memorandum, per Order of February 5, 2025(requesting particularized notice of purported ethical violation; statement of facts re August 22 complaint; <i>advise to court of “no objection to the court’s <u>again</u> discussing the matter with the clerk’s office...”</i>)(Emph. added,).....	82a
14.*	Opinion United States Court of Appeals for the Fifth Circuit, Terry Catherine v MDK 706, L.L.C., No. 25-30341(January 27, 2025) (order on remand instructing “vindication” of Clerk’s Office and determination of “ permission ” to proceed).....	85a

15.*	Order and Reasons District Court of the Eastern District of Louisiana, No. 23-3986 (July 1, 2024)(RD 56)(denying motion to amend record with iphone photograph of complaint; stating “belief” “never accepted for filing” at p. 5).....	88a.
16.	Order, Reasons, and Judgment of the Eastern District of Louisiana, No. 23-3986 (April 16, 2024)(first dismissal).....	94a

B. Other pleadings

1.	Opposition (excerpt)March 30, 2024 to first motion to dismiss.....	102a
2.	Order (excerpt)District Court of the Eastern District of Louisiana, No.23-3986 (April 16, 2024)granting first motion to dismiss.....	103a
3.	Order, District Court of the Eastern District of Louisiana, No 23-3986 (March 5, 2025) for Clerk to produce two clerk/witnesses at hearing and documents first to defendant, then defendant.to plaintiff.....	105a
4.	Plaintiff’s supplemental memorandum (March 12, 2025) advising confusion re vindication, permission, and ethics issues.....	107a

C. Relevant transcript pages from evidentiary hearing.(with annotations of most pertinent pages and important “departure” pages marked with *)

Page	Remarks	
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674:24-675:5	*Judge’s anticipation of testimony complaint not signed.....	113a
684:18-19	*Judge’s statement there is no Marshall’s video.....	116a
691:15-18	*Judge’s anticipation of testimony the tender stamp was a mistake.....	118a
692:22-693:8	Newell told Clerk the complaint was not signed.....	119a
749	Denial of motion at hearing for information related to white clerk.....	142a
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D. Exhibits at evidentiary hearing

1.	D (also referred to as D-1) - Newell’s narrative (as produced by Clerk pre-hearing).....	163a
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3.	Court’s Ex 1 - Photograph of complaint <i>with</i> “tendered for filing” stamp, but without meta-data	168a
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1.	Meta-data: See A/8 Order of District Court for the Eastern District of Louisiana, No. 23-3986.(May 5, 2025)(RD 119)(reviewing first motion to reopen; denying motion to reopen for meta-data photographs of tendered complaint <i>with</i> memorandum and photographs).....	38a
2.	Expert Report: See A/9 Order of District Court for the Eastern District of Louisiana, No. 23-3986 (April 16, 2025)(RD 104)(denying motion to reopen for (1) expert report showing that signature of purported August 22 complaint matches signature of August 11 complaint and (2) information re white clerk <i>with</i> memorandum and report).....	59a

F. Other authorities

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1a(1)

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 6, 2025

Lyle W. Cayce
Clerk

No. 25-30341

TERRY CATHERINE,

Plaintiff—Appellant,

versus

MDK 706, L.L.C.,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:23-CV-3986

UNPUBLISHED ORDER

Before STEWART, WILLETT, and WILSON, *Circuit Judges*.

PER CURIAM:

A member of this panel previously DENIED Appellant's motion for reconsideration of the clerk order denying Appellant's motion to reopen the case. The panel has considered Appellant's motion for reconsideration.

IT IS ORDERED that the motion is DENIED.

1a(2)

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 29, 2025

Lyle W. Cayce
Clerk

No. 25-30341

TERRY CATHERINE,

Plaintiff—Appellant,

versus

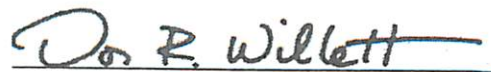
MDK 706, L.L.C.,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:23-CV-3986

ORDER:

IT IS ORDERED that Appellant's motion for clarification of the court's September 26, 2025 order is GRANTED. Counsel must fully comply with all filing requirements. This is not an exceptional or complicated case that warrants departure from the usual requirements.



DON R. WILLETT

United States Circuit Judge

10(3)

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 26, 2025

Lyle W. Cayce
Clerk

No. 25-30341

TERRY CATHERINE,

Plaintiff—Appellant,

versus

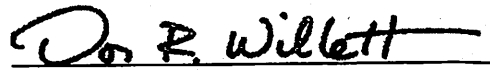
MDK 706, L.L.C.,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:23-CV-3986

ORDER:

On September 18, 2025, the clerk DENIED Appellant's motion to reinstate the case and file record excerpts in excess pages. Upon consideration of Appellant's motion for reconsideration, IT IS ORDERED that the motion is DENIED.


DON R. WILLETT
United States Circuit Judge

9/27/25, 10:47 AM

J Courtney Wilson Mail - 25-30341 Catherine v. MDK 706 "Clerk Order denying reopen case" (2:23-CV-3986)



1a(4)

Courtney Wilson <cwilson@courtlaw.net>

25-30341 Catherine v. MDK 706 "Clerk Order denying reopen case" (2:23-CV-3986)

1 message

cmecf_caseprocessing@ca5.uscourts.gov
<cmecf_caseprocessing@ca5.uscourts.gov>
To: cwilson@courtlaw.net

Thu, Sep 18, 2025 at
11:27 AM

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United States Court of Appeals for the Fifth Circuit

Notice of Docket Activity

The following transaction was entered on 09/18/2025 at 11:18:51 AM Central Daylight Time and filed on 09/18/2025

Case Name: Catherine v. MDK 706

Case Number: 25-30341

Document(s): Document(s)

Docket Text:

CLERK ORDER denying Motion to reopen case filed by Appellant Mr. Terry Catherine. [67]; denying Motion to file record excerpts in excess pages. filed by Appellant Mr. Terry Catherine. The deficiency was not corrected. There is no certificate of compliance. [67] [25-30341] (RA)

Notice will be electronically mailed to:

Mr. Robert J. Ellis, Jr., Attorney: bob@bivlaw.com, sonya@bivlaw.com, eileen@bivlaw.com, jodi@bivlaw.com

Ms. Carol L. Michel, Clerk of Court: appeals@laed.uscourts.gov

Mr. John Courtney Wilson: cwilson@courtlaw.net

The following document(s) are associated with this transaction:

Document Description: MOT-2 Letter

Original Filename: /opt/ACECF/live/forms/RebeccaBock_2530341_10679820_MotionNotice-MOT-2_381.pdf

Electronic Document Stamp:

[STAMP acecfStamp ID=1105048708 IDate=09/18/2025 IFileNumber=10679820-01 I

2a

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 16, 2025

Lyle W. Cayce
Clerk

No. 25-30341

TERRY CATHERINE,

Plaintiff—Appellant,

versus

MDK 706, L.L.C.,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:23-CV-3986

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of September 16, 2025, for want of prosecution. The appellant failed to timely file Appellant's record excerpts.

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

By: Rebecca Andry
Rebecca Andry, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

Ba

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CATHERINE

V

MDK 706, LLC (HUGE ASS BEERS)

CIVIL ACTION

No. 23-3986

Judge: Africk

Magistrate: Eva J Dossier

NOTICE OF APPEAL

PLEASE TAKE NOTICE that plaintiff appeals from the judgment filed May 5, 2025 RD 121 in the captioned matter. The appeal is taken to the United States Court of Appeals for the Fifth Circuit

Respectfully submitted
J Courtney Wilson 13561
/s/ J Courtney Wilson
Johnson St #1741
Metairie, La 70001
(T) 504/842-0585
e/m cwilson@courtlaw.net

Certification

I certify that I have this date filed the above via ECF which automatically serves opposing counsel.

6/2/25

/s/ J Courtney Wilson

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TERRY CATHERINE

CIVIL ACTION

VERSUS

No. 23-3986

HUGE ASS BEERS

SECTION I

JUDGMENT

On this date, the Court issued an order and reasons finding that plaintiff did not file his complaint in this matter until August 22, 2023. The Court therefore concluded that plaintiff's claim was time barred pursuant to the Court's previous order¹ and reasons granting defendant's motion² to dismiss plaintiff's federal claim pursuant to Federal Rule of Civil Procedure 12(b)(6). The Court likewise declined to exercise supplemental jurisdiction over plaintiff's state-law claim in accordance with the court's previous order and reasons. Accordingly,

IT IS ORDERED that plaintiff's federal claim is **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that plaintiff's state law claim is **DISMISSED WITHOUT PREJUDICE**.

New Orleans, Louisiana, May 5, 2025.


LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE

¹ R. Doc. No. 38.

² R. Doc. No. 29.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TERRY CATHERINE

CIVIL ACTION

VERSUS

No. 23-3986

HUGE ASS BEERS

SECTION I

ORDER AND REASONS

The question before this Court is whether plaintiff Terry Catherine (“plaintiff”) timely filed his Title VII complaint within 90 days of receiving his right-to-sue letter—or by August 13, 2023. The Court previously dismissed plaintiff’s complaint as untimely,¹ concluding that it was filed on August 22, 2023, as reflected by the original complaint filed in the record.² Plaintiff appealed³ from the same and introduced evidence in support of his allegation that his complaint was timely filed on August 11, 2023. This evidence was not presented to this Court when it issued its order and reasons. In a motion to supplement the record on appeal, plaintiff stated that he had never filed a complaint on August 22.⁴ Instead, he argued that the clerk’s office had taken a second original copy presented on August 11 and marked it as filed on August 22.⁵

“[I]n the interest of justice and to vindicate any adverse reflection on the district court clerk’s office,” the U.S. Fifth Circuit Court of Appeals vacated and

¹ R. Doc. No. 38.

² See R. Doc. No. 1.

³ R. Doc. No. 48.

⁴ R. Doc. No. 70, at 2.

⁵ *Id.*

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remanded this Court's judgment.⁶ The Fifth Circuit instructed the Court to "conduct further proceedings to determine whether Catherine tendered his complaint to the district court on August 11, 2023, and if so, whether he should be permitted to proceed with his suit."⁷ "If the answer to this question is yes," then the Court is instructed to "consider the merits of the action."⁸

On April 2, 2025, this Court held an evidentiary hearing as directed by the Fifth Circuit.⁹ At the hearing, testimony from plaintiff and his counsel John Courtney Wilson ("Mr. Wilson") directly conflicted with testimony from the employees in the clerk's office, making it clear that "someone is either grossly wrong or grossly lying."¹⁰ The Court concludes that this someone is plaintiff and Mr. Wilson. Accordingly, plaintiff's complaint was untimely filed and must be dismissed.

I. BACKGROUND

a. The Initial Lawsuit and Appeal

This matter arises from alleged workplace discrimination. Plaintiff alleges in his amended complaint that he was terminated and that his termination was racially motivated in violation of Title VII and Louisiana anti-discrimination laws.¹¹ Plaintiff's amended complaint states that he received a right-to-sue letter from the

⁶ R. Doc. No. 75, at 3.

⁷ *Id.*

⁸ *Id.*

⁹ R. Doc. No. 93.

¹⁰ See Tr. Evid. Hr'g, at 120.

¹¹ R. Doc. No. 25, ¶¶ 4–11.

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EEOC on or about May 15, 2023.¹² His initial complaint in this matter, as reflected in the record, is dated August 22, 2023.¹³

Defendant MDK 706, LLC ("defendant") filed a motion¹⁴ to dismiss, arguing that plaintiff's Title VII claim was time barred because plaintiff failed to initiate this lawsuit within 90 days of receiving his right-to-sue letter. In its motion, defendant stated that the EEOC charge file confirmed that plaintiff received his right to sue letter via email on May 15, 2023.¹⁵ The Court agreed, concluding that plaintiff had until August 13, 2023 to file his Title VII complaint and that plaintiff's complaint filed on August 22, 2023 was therefore time barred.¹⁶ The Court dismissed plaintiff's Title VII claim with prejudice and dismissed his state-law claim without prejudice, declining to exercise supplemental jurisdiction over the remaining state-law claim.¹⁷ Thereafter, the Court entered judgment.¹⁸

Plaintiff then filed a motion¹⁹ for reconsideration, arguing that his complaint was timely filed and that the clerk's office was responsible for the delay in entering the complaint into the record.²⁰ Plaintiff insisted that his complaint had actually been filed on August 11, 2023,²¹ but he provided the Court with no evidence or specific

¹² *Id.* ¶ 2.

¹³ R. Doc. No. 1.

¹⁴ R. Doc. No. 29.

¹⁵ R. Doc. No. 29-1, at 3.

¹⁶ R. Doc. No. 38, at 5-6.

¹⁷ *Id.* at 6-7.

¹⁸ R. Doc. No. 39.

¹⁹ R. Doc. No. 41.

²⁰ R. Doc. No. 41-1, at 2.

²¹ *Id.*

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references to the record demonstrating that the complaint was timely tendered. The Court concluded that, while there was some evidence that plaintiff had signed and dated the complaint on August 10, 2023—as shown on the civil cover sheet²²—there was no evidence that the complaint had been tendered to the Clerk's Office until August 22, 2023.²³

Plaintiff then filed a notice of appeal.²⁴ Shortly after, plaintiff filed a motion²⁵ to amend or correct the record and attached a photo of the first page of his complaint with a stamp indicating that the complaint was tendered for filing on August 11, 2023.²⁶ No photo of the signature page was included. The Court denied the motion to supplement the record, concluding that the Court had never received a copy of that complaint before rendering its judgment and that supplementing the record accordingly was inappropriate pursuant to Federal Rule of Appellate Procedure 10(e).²⁷ Plaintiff then filed another similar motion²⁸ to amend or correct the record pursuant to Federal Rule of Appellate Procedure 10(e) and Federal Rule of Civil Procedure 60(a), which the Court denied.²⁹

Noting that plaintiff “provided no evidence that the clerk’s August 22 date of filing was incorrect” nor any “other information or argument to support his

²² R. Doc. No. 1-1.

²³ R. Doc. No. 47, at 5–6.

²⁴ R. Doc. No. 48.

²⁵ R. Doc. No. 50.

²⁶ R. Doc. No. 50-2.

²⁷ R. Doc. No. 56, at 4–6.

²⁸ R. Doc. No. 63.

²⁹ R. Doc. No. 66.

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contention" that his complaint was filed on time before the Court issued its judgment, the Fifth Circuit vacated this Court's judgment and remanded the matter to this Court.³⁰ The Fifth Circuit instructed that, "in the interest of justice and to vindicate any adverse reflection on the district court clerk's office," the Court should "conduct further proceedings to determine whether Catherine rendered his complaint to the district court on August 11, 2023, and if so, whether he should be permitted to proceed with his suit."³¹

b. Pre-Hearing Proceedings

The Court thereby reopened³² this case and scheduled an evidentiary hearing on April 2, 2025 to determine whether plaintiff timely filed his complaint in this matter.³³ The Court ordered the parties to submit memoranda ahead of the hearing.³⁴

Before the parties submitted their pre-hearing memoranda, the clerk's office provided the parties with a narrative prepared on August 19, 2024 by Brad Newell ("Mr. Newell"), as supervisor of the *pro se* unit, in anticipation of a potential request for information by the Fifth Circuit.³⁵ The clerk's office narrative stated that Mr. Wilson came into the *pro se* unit minutes before closing on August 10, 2023, at which time it was too late in the day for the clerk to process the complaint.³⁶ Additionally,

³⁰ R. Doc. No. 75-1, at 2-3.

³¹ *Id.* at 3.

³² R. Doc. No. 72.

³³ *See* R. Doc. No. 89.

³⁴ R. Doc. No. 73.

³⁵ R. Doc. No. 97-6, at 2 (clerk's responses to requests for testimony & records).

³⁶ R. Doc. No. 97-4, at 1.

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the narrative states that Mr. Wilson did not have a motion to proceed *in forma pauperis* and was not prepared to pay the filing fee.³⁷

When asked in what capacity Mr. Wilson was filing the complaint, Mr. Wilson stated that he was dropping the complaint off for a friend.³⁸ Mr. Newell advised that it was too late to process the complaint in person and that plaintiff should be the one to submit his complaint, as he was proceeding *pro se*.³⁹ However, Mr. Newell explained that plaintiff could file his complaint in person at a later date, by mail, or by email.⁴⁰ He advised that if the complaint was emailed before midnight, the filing date would be the date it was sent, despite being sent after hours.⁴¹ Mr. Wilson then allegedly identified himself as an attorney at which point Mr. Newell advised him that attorneys are required to file electronically.⁴²

The clerk's narrative reflects that Mr. Wilson returned to the *pro se* unit the next day on August 11 at 1:30 p.m., again attempting to file the complaint on behalf of plaintiff.⁴³ The narrative states that Mr. Wilson did not initially identify himself as an attorney.⁴⁴ The assisting clerk began processing the complaint, assuming that

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

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Mr. Wilson was plaintiff, including stamping the complaint.⁴⁵ The clerk then noticed deficiencies with the filing and brought the issue to Mr. Newell.⁴⁶

Mr. Newell stated that he recognized Mr. Wilson from the previous day and asked Mr. Wilson why plaintiff was not there to file the complaint on his own behalf.⁴⁷ Mr. Wilson allegedly told Mr. Newell that plaintiff was busy.⁴⁸ The narrative states that Mr. Newell then attempted to call plaintiff, but plaintiff did not answer.⁴⁹ Mr. Newell reminded Mr. Wilson that he must file electronically if he was acting as plaintiff's attorney and reminded Mr. Wilson of alternative means that plaintiff could use to file his complaint on his own behalf.⁵⁰

The same day at 2:56 p.m., the clerk's narrative states that a person identifying himself as plaintiff called the *pro se* unit.⁵¹ Mr. Newell informed him that someone was attempting to file a case on his behalf, and plaintiff told Mr. Newell that Mr. Wilson was filing the case for him as his attorney.⁵² At 3:20 p.m., Mr. Wilson allegedly returned to the *pro se* unit, again attempting to file the complaint.⁵³ Based on Mr. Newell's discussion with plaintiff, Mr. Newell informed Mr. Wilson that he would have to file the complaint electronically if he was acting as plaintiff's attorney.⁵⁴

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*, at 1-2.

⁵³ *Id.* at 2.

⁵⁴ *Id.*

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On August 21, 2023, the clerk's office narrative states that Mr. Wilson called the *pro se* unit to ask why no one had called him about plaintiff's complaint.⁵⁵ The *pro se* clerk advised Mr. Wilson that, because he was not representing plaintiff, no one would be contacting him about the complaint.⁵⁶ He was again advised that if he intended to file the complaint as plaintiff's attorney, he would have to do so electronically.⁵⁷ Otherwise, the expectation was that plaintiff would file his complaint to the *pro se* unit on his own behalf.⁵⁸ That same day, plaintiff called the *pro se* unit to ask about his complaint.⁵⁹ When asked, he stated that Mr. Wilson was not really his attorney but was acting "more like an assistant attorney."⁶⁰ The clerk's narrative contends that plaintiff did not appear to understand what it means to proceed *pro se*.⁶¹ Mr. Newell thereby explained to plaintiff what it meant to act as a *pro se* party, how to file a *pro se* complaint, and explained that Mr. Wilson should refrain from contacting the *pro se* unit if he was acting as plaintiff's attorney.⁶² On August 22, 2023, the clerk's office narrative states that plaintiff came to the *pro se* unit in person and without Mr. Wilson to file his complaint.⁶³

In plaintiff's pre-hearing memorandum submitted on March 10, 2025, plaintiff outlined a very different series of events. Plaintiff maintained that Mr. Wilson had

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

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attempted to file the complaint at the *pro se* desk without plaintiff on August 10, 2023.⁶⁴ A young female clerk and her male supervisor told Mr. Wilson that a third party could not file a *pro se* complaint on behalf of a *pro se* plaintiff and declined to accept the complaint.⁶⁵ Plaintiff states that he came back the next day on August 11, 2023 with Mr. Wilson and two original complaints.⁶⁶ The memorandum contends that the female clerk at the desk refused to accept the complaint but that he could not remember why.⁶⁷ Upon refusal, plaintiff states that Mr. Wilson requested that she stamp the complaint as tendered, which she did.⁶⁸ Then, plaintiff immediately photographed the complaint at the *pro se* window.⁶⁹ According to the memorandum, the *pro se* clerk “nearly simultaneously” asked for another copy of the complaint, and plaintiff gave her the other original complaint.⁷⁰ Plaintiff states that this second copy appears to be the complaint that was filed on August 22, 2023,⁷¹ thereby suggesting that the clerk had held onto the second copy of his complaint for 11 days before filing it into the record.

Two days later, on March 12, 2025, plaintiff filed an amended memorandum based on a review of his photograph of the August 11 complaint and a visit to the courthouse that plaintiff made on March 11, 2025.⁷² In this memorandum, plaintiff

⁶⁴ R. Doc. No. 84, at 2.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 2–3.

⁶⁸ *Id.* at 3.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² R. Doc. No 88, at 1.

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withdrew his statement about photographing his stamped August 11 complaint at the *pro se* window. Instead, plaintiff stated that the *pro se* clerk had told him that there was a policy against taking photographs in the clerk's office and that she had also refused to make a copy of the complaint for him.⁷³ Plaintiff then states that he requested to take the complaint elsewhere to make a copy, which the *pro se* clerk agreed to allow him to do.⁷⁴ Once outside, plaintiff states that he took a photo of the complaint and that the bricks at the courthouse can be seen in the background.⁷⁵ Plaintiff and Mr. Wilson then allegedly went back to the *pro se* desk, returned the stamped complaint to the clerk, and gave the clerk a second original copy of the complaint that she requested.⁷⁶

Defendant filed a memorandum arguing that the evidence would show that the complaint was not filed until August 22, 2023.⁷⁷ Plaintiff then filed a reply.⁷⁸ In this reply, plaintiff without explanation withdrew his suggestion that the August 22 complaint filed in the record was the second copy of the complaint that he allegedly gave to the *pro se* clerk on August 11.⁷⁹

⁷³ *Id.* at 3.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ R. Doc. No. 90.

⁷⁸ R. Doc. No. 91.

⁷⁹ *Id.* at 2.

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c. The Evidentiary Hearing

The Court held the evidentiary hearing on April 2, 2025.⁸⁰ The witnesses presented the following testimony and evidence.

i. *Plaintiff's Testimony*

Plaintiff took the stand first, testifying that he met with Mr. Wilson outside the courthouse on August 11 and that they proceeded to the *pro se* unit to file paperwork for this case.⁸¹ Plaintiff testified that he signed the complaint and all paperwork on August 11 when he was with Mr. Wilson, and he stated that he did not sign any paperwork before then.⁸² Plaintiff maintained that the cover sheet dated August 10, 2023 was signed on August 11, that the date was not in his handwriting, and that the date was not on the paper when he signed it.⁸³ Plaintiff presented his personal appointment book, which contained an entry stating "EEOC lawsuit paperwork is filed August 11, 2023 . . . (Done!)."⁸⁴ Plaintiff stated that this entry was a reminder to meet Mr. Wilson at the courthouse.⁸⁵

After meeting Mr. Wilson outside the courthouse, plaintiff testified that they proceeded to the *pro se* desk and informed the clerk that they were there to file a lawsuit.⁸⁶ Plaintiff could not remember the name of the clerk but testified that she was a "Caucasian lady" between the ages of 20 and 50 with glasses and light brown

⁸⁰ R. Doc. No. 93.

⁸¹ Tr. Evid. Hr'g, at 11.

⁸² *Id.* at 22-23, 40.

⁸³ *Id.* at 173-74.

⁸⁴ R. Doc. No. 97-2.

⁸⁵ Tr. Evid. Hr'g, at 12.

⁸⁶ *Id.* at 13.

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hair.⁸⁷ Plaintiff stated that he was successful in getting the complaint stamped by the *pro se* clerk but that the clerk would not make a copy for him and would not let him take a photo of the complaint inside the court building.⁸⁸ Plaintiff and Mr. Wilson therefore went outside and took a photo of the stamped complaint outside the courthouse.⁸⁹

After taking a photo of the complaint, plaintiff testified that he and Mr. Wilson walked back into the *pro se* unit to give the papers to the clerk, at which point they were standing together in the clerk's office.⁹⁰ The clerk asked for more paperwork, which Mr. Wilson gave to her.⁹¹ Plaintiff testified that Mr. Wilson asked the clerk if that was everything, and the clerk said "fine."⁹² He and Mr. Wilson then left together.⁹³ Plaintiff denied ever having come into the courthouse to file his complaint on August 22, 2023.⁹⁴

Plaintiff testified that he remembered receiving a call from the clerk's office around the time of filing his complaint regarding Mr. Wilson.⁹⁵ He testified that he told the clerk that Mr. Wilson was his attorney.⁹⁶ However, plaintiff could not remember exactly when he received this call.⁹⁷

⁸⁷ *Id.* at 25.

⁸⁸ *Id.* at 14.

⁸⁹ *Id.* at 15.

⁹⁰ *Id.* at 17, 25–26.

⁹¹ *Id.* at 18–19.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 41.

⁹⁵ *Id.* at 31.

⁹⁶ *Id.*

⁹⁷ *Id.*

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During plaintiff's testimony, Mr. Wilson showed plaintiff a photo of the stamped August 11 complaint, which was introduced into evidence.⁹⁸ For the first time, plaintiff's counsel included a photo of the alleged signature page of the August 11 complaint.⁹⁹ However, plaintiff testified that no metadata was available for these photos because the phone on which they were taken is now broken.¹⁰⁰ He also testified that he does not have a backup of any of this data on the cloud.¹⁰¹

ii. *Mr. Wilson's Testimony*

Mr. Wilson testified that the first time he attempted to file plaintiff's complaint was on August 10 and that he had arrived late and without plaintiff.¹⁰² He stated that this was the only issue with the filing and testified that plaintiff must have been mistaken and signed the complaint and the civil cover sheet on August 10, as Mr. Wilson denied that the cover sheet was backdated.¹⁰³ Mr. Wilson testified that no one at the clerk's office advised him that attorneys could not file complaints on behalf of *pro se* litigants at that time.¹⁰⁴

The next day, on August 11, Mr. Wilson testified that he returned to the *pro se* unit alone around midday.¹⁰⁵ At that time, Mr. Wilson stated that Mr. Newell "vigorously" explained to him that the clerk's office would not allow an attorney to

⁹⁸ R. Doc. No. 97-11, at 1.

⁹⁹ *See id.* at 2.

¹⁰⁰ Tr. Evid. Hr'g, at 34.

¹⁰¹ *Id.*

¹⁰² *Id.* at 130-31.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 131.

¹⁰⁵ *Id.* at 132.

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file a complaint on behalf of a *pro se* litigant unless the plaintiff was also present.¹⁰⁶ Mr. Wilson said that he left after that conversation and that nothing had been stamped at that point.¹⁰⁷ Afterwards, he stated that he likely called plaintiff and told him to come down to the courthouse because he could not file the complaint without him.¹⁰⁸

When plaintiff arrived, Mr. Wilson testified that they went together to the *pro se* unit and spoke to a white female clerk with light brown hair.¹⁰⁹ He stated that he gave the clerk two signed originals of the complaint.¹¹⁰ Mr. Wilson testified that the clerk, without explanation, declined to accept the complaint.¹¹¹ He then asked her to stamp it "tendered" anyway.¹¹² The clerk allegedly stamped one complaint and did not stamp the other, and Mr. Wilson figured that that they would be "good to go."¹¹³ He stated that, "because of the vigor with which Mr. Newell had addressed [him] earlier," he had a gut feeling that he should take a photo of the complaint.¹¹⁴ Mr. Wilson testified that the female clerk told him that he could not take a photo of the complaint in the *pro se* office and declined to make him a copy.¹¹⁵ Consequently, Mr.

¹⁰⁶ *Id.* at 132–33.

¹⁰⁷ *Id.* at 134.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 136–37.

¹¹¹ *Id.* at 134–35.

¹¹² *Id.* at 135.

¹¹³ *Id.* at 135–37.

¹¹⁴ *Id.* at 135.

¹¹⁵ *Id.*

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Wilson stated that he and plaintiff took the complaint outside and that plaintiff took a photo of the complaint with his phone.¹¹⁶

Thereafter, Mr. Wilson stated that he and plaintiff took the complaint back inside.¹¹⁷ He testified that he left the stamped complaint with the clerk's office and that no one told him whether the pleading was being accepted or rejected.¹¹⁸ But he stated that no one told him that the pleadings were lacking in any way.¹¹⁹ Nonetheless, he testified that he did not pay a filing fee and that he could not recall whether plaintiff submitted an application to proceed *in forma pauperis*.¹²⁰

Mr. Wilson testified that on or about August 20, he called the clerk's office to check on the complaint and became aware that the complaint was not in the record, though he could not recall why he thought there might be an issue with the complaint.¹²¹ He said that his understanding was that plaintiff had cured any issues by filing a complaint on August 22.¹²² When asked why Mr. Wilson did not raise the issue about the correct filing date with the Court until after a motion to dismiss was filed, he testified that he believed that the complaint in the record would have a stamp on the back showing that it had been tendered on August 11.¹²³

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 136.

¹¹⁸ *Id.* at 140.

¹¹⁹ *Id.* at 140–41.

¹²⁰ *Id.* at 140.

¹²¹ *Id.* at 141–43.

¹²² *Id.* at 142–43.

¹²³ *Id.* at 144.

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During Mr. Wilson's testimony, he was asked about his attorney-client relationship with plaintiff. Mr. Wilson stated that he had been trying to retire and that he did not want to be plaintiff's attorney.¹²⁴ However, he stated that plaintiff was unable to find another attorney and that he felt an obligation toward plaintiff as a former client.¹²⁵ Mr. Wilson therefore testified that he told plaintiff that he would not be his official attorney and would not sign any pleadings.¹²⁶ Mr. Wilson could not remember when he began speaking to plaintiff about this matter, but he stated that it was at least 90 days before filing the complaint and probably sometime before that.¹²⁷ Mr. Wilson could not remember whether he was on record with the EEOC as plaintiff's attorney, but he confirmed that he drafted the complaint.¹²⁸

iii. *The Clerk's Office Testimony*

Four witnesses from the clerk's office testified at the evidentiary hearing: Clerk of Court Carol Michel ("Ms. Michel"), supervisor of the *pro se* unit Mr. Newell, former *pro se* clerk Sandra Simlin (Ms. Simlin), and former *pro se* clerk Arianna Johnson ("Ms. Johnson").¹²⁹ Ms. Simlin and Ms. Johnson are Black women with glasses and do not match the description given by plaintiff or Mr. Wilson about the white woman with light brown hair between the ages of 20 and 50 who allegedly helped them on August 11, 2023.

¹²⁴ *Id.* at 128.

¹²⁵ *Id.* at 128–29, 151.

¹²⁶ *Id.* at 128–29.

¹²⁷ *Id.* at 129.

¹²⁸ *Id.* at 129–30.

¹²⁹ *See* R. Doc. No. 93.

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The Court confirmed that Mr. Newell, Ms. Simlin, and Ms. Johnson were the only individuals who worked in the *pro se* unit on the dates in question.¹³⁰ Indeed, Mr. Newell testified that it was not possible that a woman matching that description was working at the *pro se* unit on August 11, 2023.¹³¹ Ms. Simlin and Ms. Johnson likewise testified that no one other than Ms. Simlin, Mr. Newell, or Ms. Johnson ever worked at the *pro se* desk on the dates in question.¹³² Ms. Michel confirmed that, according to human resources records, Ms. Johnson was on sick leave all day on August 10, 2023 and after 2:30 p.m. on August 11, 2023.¹³³ When a clerk is absent, Ms. Michel also testified that they ordinarily do not have substitute employees.¹³⁴

Mr. Newell and Ms. Simlin testified consistently with the clerk's office narrative submitted to the parties prior to the hearing. Mr. Newell said that when Mr. Wilson first came to the *pro se* unit on August 10, 2023, he found the interaction odd because Mr. Wilson came at 5 p.m., did not provide any information, and presented a complaint that was unsigned and without an *in forma pauperis* application or a filing fee.¹³⁵ According to his testimony, Mr. Newell attempted to help Mr. Wilson remedy those deficiencies, but only then did Mr. Wilson state that he could not because he was not the plaintiff.¹³⁶

¹³⁰ Tr. Evid. Hr'g. at 116-17.

¹³¹ *Id.* at 76-77, 84.

¹³² *Id.* at 107, 123.

¹³³ *Id.* at 155.

¹³⁴ *Id.* at 156-57.

¹³⁵ *Id.* at 86.

¹³⁶ *Id.*

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Ms. Simlin likewise testified that Mr. Wilson came to the *pro se* desk to file the complaint on August 10, 2023 but that he arrived seven or eight minutes before closing without enough time to process the complaint.¹³⁷ Ms. Simlin testified that Mr. Wilson was asked to come back the next day and that she did not examine any of Mr. Wilson's documents on that date.¹³⁸

Regarding Mr. Wilson's visit on August 11, Ms. Simlin testified that Mr. Wilson was alone and again attempted to file a complaint.¹³⁹ She stated that she took Mr. Wilson's documents and discovered that something was wrong with them.¹⁴⁰ Ms. Simlin testified that something was not signed and that he did not have an application to proceed in *forma pauperis*.¹⁴¹ Mr. Wilson gave her two copies of the complaint, one of which she gave to Mr. Newell.¹⁴² Ms. Simlin testified that she whited out the stamped one because Mr. Wilson did not have all of the documents and that she gave the deficient documents back to Mr. Wilson.¹⁴³

Mr. Newell testified that he was in his office when Ms. Simlin brought it to his attention that Mr. Wilson was attempting to file a complaint and that the complaint was deficient.¹⁴⁴ Mr. Newell testified that, to the best of his recollection, Ms. Simlin told him that the complaint was still not signed, there was no *in forma pauperis*

¹³⁷ *Id.* at 100.

¹³⁸ *Id.*

¹³⁹ *Id.* at 109.

¹⁴⁰ *Id.* at 100.

¹⁴¹ *Id.* at 109.

¹⁴² *Id.* at 107.

¹⁴³ *Id.* at 100, 107–08.

¹⁴⁴ *Id.* at 78, 83.

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application, and there was no filing fee.¹⁴⁵ Mr. Newell testified that he examined the complaint to confirm this.¹⁴⁶

After this interaction, Mr. Newell testified that he had a telephone conversation with plaintiff on August 11 to ask him about whether he was filing a *pro se* complaint and to inform him how he could cure the deficiencies with the filings.¹⁴⁷ Mr. Newell stated that plaintiff was unaware that he was proceeding *pro se* or what a *pro se* plaintiff was.¹⁴⁸ Plaintiff allegedly informed Mr. Newell that Mr. Wilson was his attorney and that Mr. Wilson would be filing the complaint.¹⁴⁹ After Mr. Wilson came back for the second time on August 11, Mr. Newell testified that he told Mr. Wilson about what plaintiff said about Mr. Wilson being his attorney.¹⁵⁰ Mr. Wilson told Mr. Newell that plaintiff was confused.¹⁵¹ At that point, Mr. Newell testified that he informed Mr. Wilson about the deficiencies with the complaint, including that it was unsigned, and let him know that plaintiff could file the completed documents in person, through the mail, or through email.¹⁵²

On both occasions when Mr. Wilson visited the *pro se* unit on August 11, Mr. Newell's testimony was clear that plaintiff was not present with Mr. Wilson and that the complaint was deficient.¹⁵³ However, he testified that plaintiff came alone and

¹⁴⁵ *Id.* at 83.

¹⁴⁶ *Id.* at 87.

¹⁴⁷ *Id.* at 102.

¹⁴⁸ *Id.* at 103.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 104.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.* at 84, 95–96.

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filed a complete complaint with an *in forma pauperis* application on August 22, 2023.¹⁵⁴

When asked why the August 11 complaint was stamped as tendered for filing, Mr. Newell stated that it must have been stamped erroneously and that it was returned to Mr. Wilson as deficient.¹⁵⁵ Ms. Simlin testified that the procedure is to white out the date on the stamp if someone in the *pro se* unit stamps a complaint that the plaintiff is not going to file that day.¹⁵⁶ When asked why the photo of the August 11 complaint was not whited out, she stated that it was possible that she had only whited out one of the copies that was given to her because she gave the other copy to Mr. Newell to reference when he spoke to Mr. Wilson at the window.¹⁵⁷

Regarding plaintiff's photograph of the August 11 complaint, Mr. Simlin denied ever advising Mr. Wilson or anyone else that they could not photograph the complaint in the clerk's office.¹⁵⁸ Additionally, if the complaint was accepted by the clerk with everything in order, Mr. Newell testified that Mr. Wilson would not have been allowed to leave with the complaint to photograph it.¹⁵⁹

Ms. Simlin contested plaintiff's allegations further and denied taking one of the copies given to her on August 11 and filing it into the record on August 22.¹⁶⁰ She stated that the *pro se* unit requires all documents to be docketed into the record no

¹⁵⁴ *Id.* at 105.

¹⁵⁵ *Id.* at 94-95.

¹⁵⁶ *Id.* at 108.

¹⁵⁷ *Id.* at 108-09.

¹⁵⁸ *Id.* at 110.

¹⁵⁹ *Id.* at 96-97.

¹⁶⁰ *Id.* at 113.

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later than 48 hours after being accepted for filing.¹⁶¹ After 48 hours, she would be required to notify her supervisor why she had not processed that document.¹⁶² Ms. Simlin stated that the *pro se* unit is not allowed to hold documents, which is why deficient documents are returned.¹⁶³

In addition to the factual circumstances of plaintiff's filing, the Court and the parties inquired into applicable clerk's office policies. As the Clerk of Court, Ms. Michel testified that the clerk's office rules are that *pro se* litigants can file documents at the *pro se* counter, through the mail, or through e-mail electronic filing.¹⁶⁴ The clerk's office has since added an electronic data submission system for filing *pro se* documents, but she stated that this did not exist when plaintiff filed his complaint.¹⁶⁵ Attorneys, on the other hand, must file their pleadings through CM/ECF, the Court's electronic filing system.¹⁶⁶

Pursuant to policies of the clerk's office, Ms. Michel stated that clerks are permitted to refuse to file a complaint that is marked "tendered" and given to the clerk if, for example, the complaint is not signed because the clerk's office cannot know that it is actually the complaint of the filer unless it is signed.¹⁶⁷ She also stated that complaints that are filed in person without a filing fee or application to proceed

¹⁶¹ *Id.* at 113-14.

¹⁶² *Id.* at 114.

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 69.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 57.

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in *forma pauperis* are not accepted.¹⁶⁸ However, Ms. Michel testified that if a *pro se* complaint is signed and presented for filing by the *pro se* plaintiff along with either a filing fee or a signed in *forma pauperis* application, then the complaint should be filed.¹⁶⁹

Ms. Michel stated that, if the complaint was not signed, it probably should not have been stamped.¹⁷⁰ But she could not say that the clerk would not stamp a complaint before verifying that it was signed.¹⁷¹ However, if a complaint is stamped and accepted for filing, Ms. Michel stated that the clerk's office would not allow a litigant to leave with the complaint.¹⁷²

Ms. Michel further testified that there would be no reason that a clerk would hold onto a complaint for 11 days before filing it into the record or put the wrong date on the complaint.¹⁷³ She explained that, if this were to ever happen, she would have to terminate the individual and notify the judge about what had occurred.¹⁷⁴ When presented with the clerk's record log for the *pro se* unit, Ms. Michel testified that if a complaint was filed properly and accepted by the clerk's office, it would appear in that log.¹⁷⁵ However, plaintiff's complaint does not appear in the log for either August 10 or 11, 2023.¹⁷⁶

¹⁶⁸ *Id.* at 164.

¹⁶⁹ *Id.* at 59-60.

¹⁷⁰ *Id.* at 60.

¹⁷¹ *Id.*

¹⁷² *Id.* at 70.

¹⁷³ *Id.* at 66.

¹⁷⁴ *Id.* at 67.

¹⁷⁵ *Id.* at 69.

¹⁷⁶ R. Doc. No. 97-9 (*pro se* log entries for E.D. La. Case No. 23-3986).

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II. LAW AND ANALYSIS

Pursuant to Federal Rule of Civil Procedure 5(d)(2), “[a] paper not filed electronically is filed by delivering it . . . to the clerk.” The Fifth Circuit has held that a complaint is filed when the complaint is received rather than when the complaint is actually filed into the record. See *Hernandez v. Aldridge*, 902 F.2d 386, 388 (5th Cir. 1990). The Court first makes factual findings regarding the circumstances of plaintiff’s attempt to file his complaint, as ordered by the Fifth Circuit. The Court then applies these facts to the law to determine whether those facts establish that plaintiff’s complaint was filed on August 11, 2023 within the meaning of Rule 5.

a. The Court’s Factual Findings

The Court begins this section by acknowledging the unusual posture of this case. “The ninety-day filing requirement is not a jurisdictional prerequisite, but more akin to a statute of limitations.” *Harris v. Boyd Tunica, Inc.*, 628 F.3d 237, 239 (5th Cir. 2010). When there are factual disputes concerning whether a complaint is timely filed, those factual disputes are ordinarily submitted to a jury. See, e.g., *Margolies v. Deason*, 464 F.3d 547, 555 (5th Cir. 2006) (stating that the question of whether claims were time barred was “a question for the jury” because there were factual disputes regarding when the plaintiff knew or should have known about the wrongful act and resulting injury). The Court will ordinarily not dismiss a matter as time barred on a 12(b)(6) motion unless “it is evident from the plaintiff’s pleadings that the action is barred and the pleadings fail to raise some basis for tolling or the like.” See *Jones v. Alcoa, Inc.*, 339 F.3d 359, 366 (5th Cir. 2003).

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When the Court initially dismissed this matter, it was evident from the pleadings that the matter was time barred. There were no facts alleged in plaintiff's complaint indicating that the complaint was timely filed or that there was a basis for tolling. Nor was there evidence supporting such a position. Furthermore, the Court was not required to accept plaintiff's bare legal conclusion in his response to defendant's motion to dismiss that he timely filed his complaint.¹⁷⁷ See *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) ("While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.").

The Fifth Circuit, however, has ordered this Court "to determine whether [plaintiff] tendered his complaint to the district court on August 11, 2023, and if so, whether he should be permitted to proceed with his suit."¹⁷⁸ Only if the answer to this question is yes should the Court consider the merits.¹⁷⁹ By treating the timeliness of the complaint as a prerequisite to considering the merits, the Fifth Circuit asks this Court to make a factual finding that it ordinarily would not be permitted to make.

Proceeding accordingly, the Court concludes by a preponderance of the evidence that the complaint that Mr. Wilson attempted to file on August 11, 2023 was rejected by the clerk's office because it was unsigned, plaintiff was not present, and the complaint was submitted by a party who was neither the *pro se* plaintiff nor plaintiff's lawyer. Plaintiff's complaint was not accepted by the clerk's office until

¹⁷⁷ See R. Doc. No. 33, at 1.

¹⁷⁸ R. Doc. No. 75-1, at 3.

¹⁷⁹ *Id.*

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August 22, 2023 when he personally presented a signed complaint with an application to proceed *in forma pauperis*.

Because plaintiff and the clerk's office present inconsistent narratives of the relevant events, the Court must make a credibility determination. Considering the totality of the record, the Court determines that the witnesses from the clerk's office testified credibly. Plaintiff and his attorney, however, have consistently displayed a lack of candor with this Court that undermines plaintiff's arguments. Furthermore, plaintiff and his counsel have consistently changed their factual allegations throughout the proceedings, casting significant doubt as to their credibility. Lastly, plaintiff's version of events strikes the Court as particularly implausible and internally inconsistent.

Plaintiff was less than forthright with the Court during the evidentiary hearing. When asked whether he had ever filed any other lawsuit before the Court, plaintiff testified that he had not.¹⁸⁰ The Court then referenced a 2019 case as well as another 2016 case,¹⁸¹ both of which were filed by a Terry Catherine in this Court.¹⁸² Plaintiff confirmed that these cases were his.¹⁸³ While plaintiff contended that he had misunderstood and did not understand the Court to be asking about cases before

¹⁸⁰ Tr. Evid. Hr'g, at 45-47.

¹⁸¹ See *Catherine v. Razzoo's Bar and Patio*, E.D. La. Case No. 19-13221; *Catherine v. Walk-Ons Bistreaux and Bar*, E.D. La. Case No. 16-11165.

¹⁸² Tr. Evid. Hr'g, at 47. The Court now notes that plaintiff appears to have had another 2017 case before another section of this Court. See *Catherine v. SureTemps, LLC*, E.D. La. Case No. 17-7561.

¹⁸³ Tr. Evid. Hr'g, at 47.

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other judges, the Court also noted to plaintiff that his 2016 case had been before the undersigned judge.¹⁸⁴

Furthermore, when plaintiff was asked whether Mr. Wilson had ever represented plaintiff in other lawsuits before the Court, plaintiff testified that he had not.¹⁸⁵ Yet, as the Court pointed out, Mr. Wilson was listed on the docket sheet as representing plaintiff in his 2019 case before another section of this Court.¹⁸⁶ That case was dismissed for failure to state a claim.¹⁸⁷ Plaintiff maintained that he had decided not to go forward with his 2019 lawsuit and had not hired an attorney for the case in which Mr. Wilson was listed as his attorney.¹⁸⁸ Yet, not only had the case not been voluntarily dismissed, but plaintiff filed a motion¹⁸⁹ for reconsideration of the Court's motion to dismiss, which the Court denied.¹⁹⁰

Mr. Wilson likewise has displayed a consistent lack of candor with this Court. Mr. Wilson attempted to act as plaintiff's attorney while insisting to the Court that he was nothing more than a personal friend. Mr. Wilson confirmed to the Court that he was the one who drafted the complaint.¹⁹¹ Indeed, Mr. Wilson had acted as plaintiff's counsel on other occasions before this Court, a fact which supports the existence of an attorney-client relationship here. Yet Mr. Wilson declined to correct

¹⁸⁴ *Id.* at 47, 51.

¹⁸⁵ *Id.* at 45.

¹⁸⁶ *Id.* at 48-49. See *Catherine v. Razzoo's Bar and Patio*, E.D. La. Case No. 19-13221.

¹⁸⁷ E.D. La. Case No. 19-13221, R. Doc. No. 9.

¹⁸⁸ Tr. Evid. Hr'g, at 47-48.

¹⁸⁹ E.D. La. Case No. 19-13221, R. Doc. No. 10.

¹⁹⁰ E.D. La. Case No. 19-13221, R. Doc. No. 20.

¹⁹¹ Tr. Evid. Hr'g, at 29.

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the record when plaintiff testified that he had not had other cases before this Court and that Mr. Wilson had not previously represented him in litigation.

Mr. Wilson's credibility is likewise undermined by evidence tending to show that he has displayed a lack of candor with his client. Plaintiff appeared to believe at all relevant times that he was represented by an attorney in this litigation. Plaintiff testified that Mr. Wilson was acting as his attorney on August 11, 2023 when they allegedly went to the courthouse.¹⁹² And he believed that "at that moment" Mr. Wilson was going to sign the paperwork to represent plaintiff in connection with his case.¹⁹³ Plaintiff testified that he believed Mr. Wilson to be fully responsible for his case.¹⁹⁴ Indeed, he testified that, at the time he was filing his complaint, he had not even read the contents of the complaint and that he signed the complaint and all paperwork on August 11 before filing.¹⁹⁵ Plaintiff's appointment book further demonstrates that plaintiff believed that he had formed an attorney-client relationship at least as early as April 2023.¹⁹⁶ Perplexingly, plaintiff testified that Mr. Wilson had told him that he "was helping [plaintiff] as [his] attorney but not as [his] official attorney."¹⁹⁷

In addition to a lack of candor, plaintiff's credibility has been undermined by the fact that his version of events has changed numerous times throughout the

¹⁹² *Id.* at 20–21.

¹⁹³ *Id.* at 20.

¹⁹⁴ *Id.* at 24.

¹⁹⁵ *Id.* at 22–23.

¹⁹⁶ R. Doc. No. 97-2.

¹⁹⁷ Tr. Evid. Hr'g, at 46.

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proceedings. Most notably, in his brief before the Fifth Circuit and in his pre-hearing memorandum before this Court, plaintiff maintained that neither he nor his counsel filed a complaint on August 22, insisting that this complaint must have been the second original complaint given to the clerk on August 11.¹⁹⁸ Plaintiff withdrew that assertion in his pre-hearing reply brief,¹⁹⁹ which Mr. Wilson confirmed upon questioning at the hearing.²⁰⁰ He stated that he believed it to be true at the time but that he later found it to be incorrect.²⁰¹ However, after being questioned about his allegation and subsequent withdrawal of that allegation, Mr. Wilson informed the Court that he wanted to “withdraw [his] withdrawal.”²⁰²

This theory changed yet again when plaintiff submitted his first motion²⁰³ to reopen the evidentiary hearing. In that motion, plaintiff attached a report from a document expert,²⁰⁴ which presumably concluded that the photograph of plaintiff’s alleged August 11 signature page was identical to the signature page on the August 22 complaint filed in the record. Plaintiff thereby argued that the clerk must have taken the signature page from his stamped complaint submitted on August 11 and combined it with the first page of the second original that he gave to the clerk.²⁰⁵

¹⁹⁸ R. Doc. No. 70, at 2 (motion to supplement the record before the Fifth Circuit); R. Doc. No. 84, at 3 (plaintiff’s pre-hearing memorandum).

¹⁹⁹ R. Doc. No. 91, at 2.

²⁰⁰ Tr. Evid. Hr’g, at 159–60.

²⁰¹ *Id.* at 160.

²⁰² *Id.* at 166.

²⁰³ R. Doc. No. 99.

²⁰⁴ See R. Doc. No. 102 (manual attachment).

²⁰⁵ R. Doc. No. 99.

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Lastly, and in addition to the fluid nature of plaintiff's theory, plaintiff's narrative of events is inconsistent and relies on improbable facts and assumptions. Plaintiff's narrative fails to explain why the clerk's office would stamp a complaint that it had already refused to accept, why the clerk's office allegedly accepted the complaint after he photographed the complaint, or why it would allow him to leave with a complaint that was stamped and accepted for filing in order to take a photo. The Court finds it particularly improbable that the clerk's office would hold onto a complaint for 11 days before filing it into the record and deliberately mark the complaint with the wrong filing date.

Even more far-fetched is plaintiff's theory that the clerk mixed the pages from the two original complaints that he submitted on August 11 to create the August 22 complaint. While the Court declined to consider plaintiff's expert report because it was not submitted until after the evidentiary hearing, the Court does not believe that this expert report supports plaintiff's position. Indeed, the Court finds it more probable that plaintiff would photograph the August 22 complaint's signature page to make it appear that the August 11 complaint was signed in a last-ditch effort to save his lawsuit. This is particularly so because Mr. Wilson testified that he submitted two signed originals to the clerk.²⁰⁶ If true, the clerk would have no incentive to mix the pages of the various copies.²⁰⁷

²⁰⁶ Tr. Evid. Hr'g, at 137.

²⁰⁷ In his second motion to reopen the evidentiary hearing, plaintiff submitted alleged metadata for the photos of the August 11 complaint purporting to show that the photos were taken on August 11, 2023. R. Doc. No. 116-2. Plaintiff had previously testified that there was no metadata for these photos. Tr. Evid. Hr'g, at 34. The Court

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Mr. Wilson at one point not only suggested that the clerk's office had misplaced plaintiff's complaint, but he also suggested that the EEOC had misplaced certain documents filed with them.²⁰⁸ And despite no evidence that anyone other than Ms. Simlin or Mr. Newell assisted Mr. Wilson or plaintiff, Mr. Wilson has insisted that neither he nor his client had ever seen Ms. Simlin before.²⁰⁹ Instead, he has continued a baseless fishing expedition attempting to find the "expected white clerk" between the ages of 20 and 50.²¹⁰

The Court therefore concludes that the employees of the clerk's office presented more credible testimony. The Court finds by a preponderance of the evidence that Mr. Wilson, without plaintiff present, presented an unsigned, *pro se* complaint on behalf of plaintiff. The clerk's office mistakenly stamped the August 11 complaint as tendered for filing before returning it to Mr. Wilson as deficient. Plaintiff personally presented his signed complaint on August 22, 2023 along with an application to proceed *in forma pauperis*.

likewise declined to consider that evidence as untimely and minimally probative. R. Doc. No. 119. The Court notes that iPhones allow users to manually adjust a photo's timestamp and other metadata, as demonstrated by the "adjust" button that is present in the photos of the metadata. See iPhone User Guide, *See Photo and Video Information on iPhone*, Apple, <https://support.apple.com/guide/iphone/see-photo-and-video-information-iph0edb9c18f/ios> (last visited May 3, 2025); cf. R. Doc. No. 116-2 (photos of metadata attached to plaintiff's second motion to reopen the evidentiary hearing).

²⁰⁸ Tr. Evid. Hr'g, at 149.

²⁰⁹ *Id.* at 74.

²¹⁰ See R. Doc. No. 99-1, at 4-5 (plaintiff's first motion to reopen the evidentiary hearing, requesting T&A and payroll records along with photographs of every woman present in the *pro se* unit in order to find "the expected white clerk").

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b. Rule 5 Filing Requirements

The Court next considers whether the clerk's office was permitted to reject plaintiff's complaint, which was presented to it on August 11, 2023.

Federal Rule of Civil Procedure 5(d)(3)(A) provides that "[a] person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule." Unrepresented persons, however, are not required to file electronically unless there is a court order or local rule with reasonable exceptions. Fed. R. Civ. P. 5(d)(3)(B)(ii). Rule 11(a) also provides that "[e]very pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented." Notwithstanding these requirements, Rule 5(d)(4) provides that "[t]he clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice."

Describing the interaction between the Rule 11 signature requirement and the Rule 5 prohibition against refusing to file papers based on errors of form, the Fifth Circuit in *Gonzales v. Wyatt* addressed a situation in which a non-attorney prisoner filed an unsigned complaint on behalf of another prisoner. 157 F.3d 1016, 1018 (5th Cir. 1998). There, the original unsigned complaint was sent by mail and received on January 19. *Id.* The plaintiff did not file a signed complaint until March, after the expiration of the period of limitations. *Id.* at 1018–19.

"The purpose of requiring [in Rule 11a] unrepresented parties to sign their pleadings . . . was to make certain that those named as parties in an action in which

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there was no lawyer actually had assented to the filing of the action on their behalf." *Id.* at 1021 (quoting 5A Wright & Miller, Federal Practice and Procedure: Civil 2d § 1334 at 54–55). Additionally, the court noted that "where the document is tendered and signed by a nonlawyer on behalf of another, then there comes into play the underlying principle itself, namely that in federal court a party can represent himself or be represented by an attorney, but cannot be represented by a nonlawyer." *Id.*; see also 28 U.S.C. § 1645 ("In all courts of the United States the parties may plead and conduct their own cases personally or by counsel . . .").

In concluding that the complaint was not filed until March, the Fifth Circuit noted that, had the plaintiff personally sent or delivered an unsigned complaint, there would be an argument that the complaint should be considered filed for limitations purposes on January 19. *Id.* at 1020. But because the clerk received an unsigned complaint that was not personally mailed or delivered, the clerk did not receive a complaint by the plaintiff until March. *Id.* at 1022.

The same principles apply here. Plaintiff's complaint was unsigned. Because Mr. Wilson insisted that he was acting not as a lawyer but as a friend of plaintiff, the clerk's office was not required to accept the complaint for filing where it could not conclude that the complaint was submitted by the stated *pro se* plaintiff. The clerk's office did not receive a complaint filed by the plaintiff until August 22, 2023 when plaintiff appeared personally with a signed complaint. Accordingly, plaintiff did not file his complaint within the meaning of Rule 5 until August 22, 2023.

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III. CONCLUSION

Having found that plaintiff did not file his complaint until August 22, 2023, the Court concludes that plaintiff's Title VII claim is time barred and must be dismissed as outlined in the Court's previous order and reasons dismissing plaintiff's claims on this basis.²¹¹ The Court likewise declines to exercise supplemental jurisdiction over plaintiff's state-law claim for the reasons outlined in its previous order and reasons dismissing this case.²¹² Accordingly,

IT IS ORDERED that plaintiff's federal Title VII claim is **DISMISSED WITH PREJUDICE**. Plaintiff's state-law claim is **DISMISSED WITHOUT PREJUDICE**.

New Orleans, Louisiana, May 5, 2025.



LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE

²¹¹ See R. Doc. No. 38.

²¹² See *id.*

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TERRY CATHERINE

CIVIL ACTION

VERSUS

No. 23-3986

HUGE ASS BEERS

SECTION I

ORDER

On April 2, 2025, this Court held an evidentiary hearing to determine whether plaintiff Terry Catherine ("plaintiff") timely filed his complaint in this matter.¹ Now before the Court is plaintiff's second motion² to reopen this Court's previously held evidentiary hearing as well as a motion³ for expedited consideration of the motion to reopen.

In plaintiff's first motion⁴ to reopen the evidentiary hearing, plaintiff sought to offer additional evidence to the Court. Namely, plaintiff sought to introduce an expert report comparing the signature on the August 22, 2023 complaint with the signature that allegedly appeared on the complaint that was marked "tendered for filing" on August 11, 2023.⁵ Plaintiff stated that the expert report shows that these two signatures are identical, and he put forward his theory that the *pro se* clerk used the first page of his second copy of the complaint and combined that page with the signature page of the copy marked "tendered for filing."⁶ Plaintiff previously alleged

¹ See R. Doc. No. 93.

² R. Doc. No. 116.

³ R. Doc. No. 117.

⁴ R. Doc. No. 99.

⁵ *Id.*

⁶ R. Doc. No. 99-1, at 1-3.

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that he submitted two copies of his two-page complaint on August 11 and that he did not submit a complaint on August 22.⁷

Plaintiff's first motion to reopen also sought additional evidence from the Court to be introduced regarding the identity of the *pro se* clerks that assisted him. At the evidentiary hearing, plaintiff testified that the *pro se* clerk who assisted him on August 11 was a white woman with brown hair and glasses between 20 and 50 years old. Sandra Simlin (Ms. Simlin) and Arianna Johnson (Ms. Johnson), the only women who worked at the *pro se* desk at the time in question, each testified at the hearing. Both Ms. Simlin and Ms. Johnson are Black women, and plaintiff's counsel denied that either of these women was the *pro se* clerk that assisted him and his client on August 11.⁸ The Court confirmed that no other women worked in the *pro se* unit at that time. Furthermore, several members of the clerk's office testified that no one other than Ms. Simlin, Ms. Johnson, or their supervisor Mr. Newell ever served in at the *pro se* desk at the time in question.

Plaintiff's first motion to reopen sought "T&A and payroll records for all females present in the *pro se* unit on August 10 and 11, 2023."⁹ He also stated that photographs of the women present in the *pro se* unit would be helpful to eliminate

⁷ See R. Doc. No. 74, at 2-3.

⁸ The Clerk of Court confirmed that Ms. Johnson was on sick leave for the dates in question.

⁹ R. Doc. No. 99-1, at 4.

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"anyone obviously not the clerk in question."¹⁰ Plaintiff suggested that the requested information was necessary to identify "the expected white clerk."¹¹

Weighing the interests in reopening the hearing for additional evidence against the prejudice that it would cause the defendant and the interests in timely resolution of this matter, the Court denied plaintiff's first motion to reopen.¹² The Court concluded that plaintiff had the opportunity to present this evidence at the evidentiary hearing but declined to do so.¹³ The Court also concluded that the report of the forensic document examiner was minimally probative because plaintiff had testified that there was no metadata for the photographs, and the Court therefore had a limited ability to independently authenticate the photographs.¹⁴

Regarding the requested evidence about the *pro se* clerks, the Court concluded that plaintiff's search for the "expected white clerk" amounted to a fishing expedition with no basis in fact.¹⁵ The Court therefore concluded that the interests in reopening the evidentiary hearing did not outweigh the prejudice that it would cause to the defendant and the interests in timely resolving this matter.

Plaintiff now moves¹⁶ a second time for the Court to reopen its evidentiary hearing. In his motion, plaintiff includes screenshots of what appear to be metadata

¹⁰ *Id.*

¹¹ *See id.* at 4–5.

¹² R. Doc. No. 104.

¹³ *Id.* at 3–4.

¹⁴ *Id.* at 4–5.

¹⁵ *Id.* at 5.

¹⁶ R. Doc. No. 116.

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of the photos of the stamped August 11 complaint and its signature page.¹⁷ The metadata purports to show that the photos were taken on August 11, 2023.¹⁸

"Both the decision whether to reopen the record and the denial of an evidentiary hearing are . . . subject to review for abuse of discretion." *Bogan v. MTD Consumer Group, Inc.*, 839 F. App'x 832, 834 (5th Cir. 2020) (unpublished); *see also Brown v. Oil States Skagit Smatco*, 664 F.3d 71, 80 (5th Cir. 2011) ("We review the district court's denial of an evidentiary hearing for abuse of discretion."). The Court declines to exercise that discretion here.

The Court again determines that the interests of justice weigh against reopening the evidentiary hearing. Nothing prevented plaintiff from introducing this metadata at the earlier evidentiary hearing. Yet, plaintiff did not seek to introduce evidence of metadata at any point in the proceedings. When plaintiff was asked about potential metadata, he testified that none was available because his phone was broken and because he did not have a backup on the cloud.

Additionally, the Court concludes that the evidence remains minimally probative in its current form. The Court notes that iPhones allow users to manually adjust a photo's timestamp and other metadata, as demonstrated by the "adjust" button that is present in the photos of the metadata. *See* iPhone User Guide, *See Photo and Video Information on iPhone*, Apple, <https://support.apple.com/guide/iphone/see-photo-and-video-information-iph0edb9c18f> (last visited May 3,

¹⁷ R. Doc. No. 116-2.

¹⁸ *Id.*

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2025). To determine whether this evidence has significant probative value, plaintiff would likely need to present expert testimony regarding the metadata. Defendant would likely need to procure their own experts to contest this evidence. This battle of the experts would cause significant prejudice to defendant and further delay resolution of this matter.

Plaintiff was provided ample opportunity to present this evidence at the evidentiary hearing. He declined to do so. Recognizing *ex post facto* that there may be weaknesses in his case, plaintiff has presented a cascade of motions asking this Court to excuse his neglect and allow him additional bites at the apple. This Court will not exercise its discretion to appease such behavior. Plaintiff's Whack-a-Mole motion practice must come to an end.

Accordingly,

IT IS ORDERED that the motion for expedited consideration is **GRANTED**.

IT IS FURTHER ORDERED that the motion to reopen the evidentiary hearing is **DENIED**.

New Orleans, Louisiana, May 5, 2025.



LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE

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EASTERN DISTRICT OF LOUISIANA
UNITED STATES DISTRICT COURT

CATHERINE

CIVIL ACTION

V

No. 23-3986

Judge: Africk

MDK 706, LLC (HUGE ASS BEERS)

Magistrate: Eva J Dossier

MEMORANDUM

At the hearing, plaintiff testified he had lost the phone with which the photographs of the two-page August 11 complaint were taken. He has now found that phone and printed the attached metadata photographs. These data confirm the testimony of plaintiff as to what date and time the photographs were taken. They do not make the photos more authentic. Plaintiff testified they were taken near to closing time which he thought was 4 o'clock. The time stamp shows they were taken at 4:34, close to the actual closing time of 5 o'clock.

However, even though the metadata are red herrings, admission of the metadata photographs is sought to complete the record of evidence on hand and, following the court's analysis, buttress the excluded expert report. They are somewhat irrelevant to the issue of tender. They do not prove what happened to the August 11 complaint *after* the photos after were taken. Was it returned to Mr Wilson alone (Clerk's position) or kept by the Clerk (*tendered*) (plaintiff/Mr Wilson's position)? Correctly finding that the complaint was kept by the Clerk and not returned to Mr Wilson - that is, *tendered* - should be made *without* the photos or expert report. They and the August 22 complaint are irrelevant to determining who had possession of the August

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11 complaint after the photos were taken. The metadata and expert report have to do with the integrity of the August 22 complaint, not tender. It is not necessary to prove anything with respect to the August 22 filing.

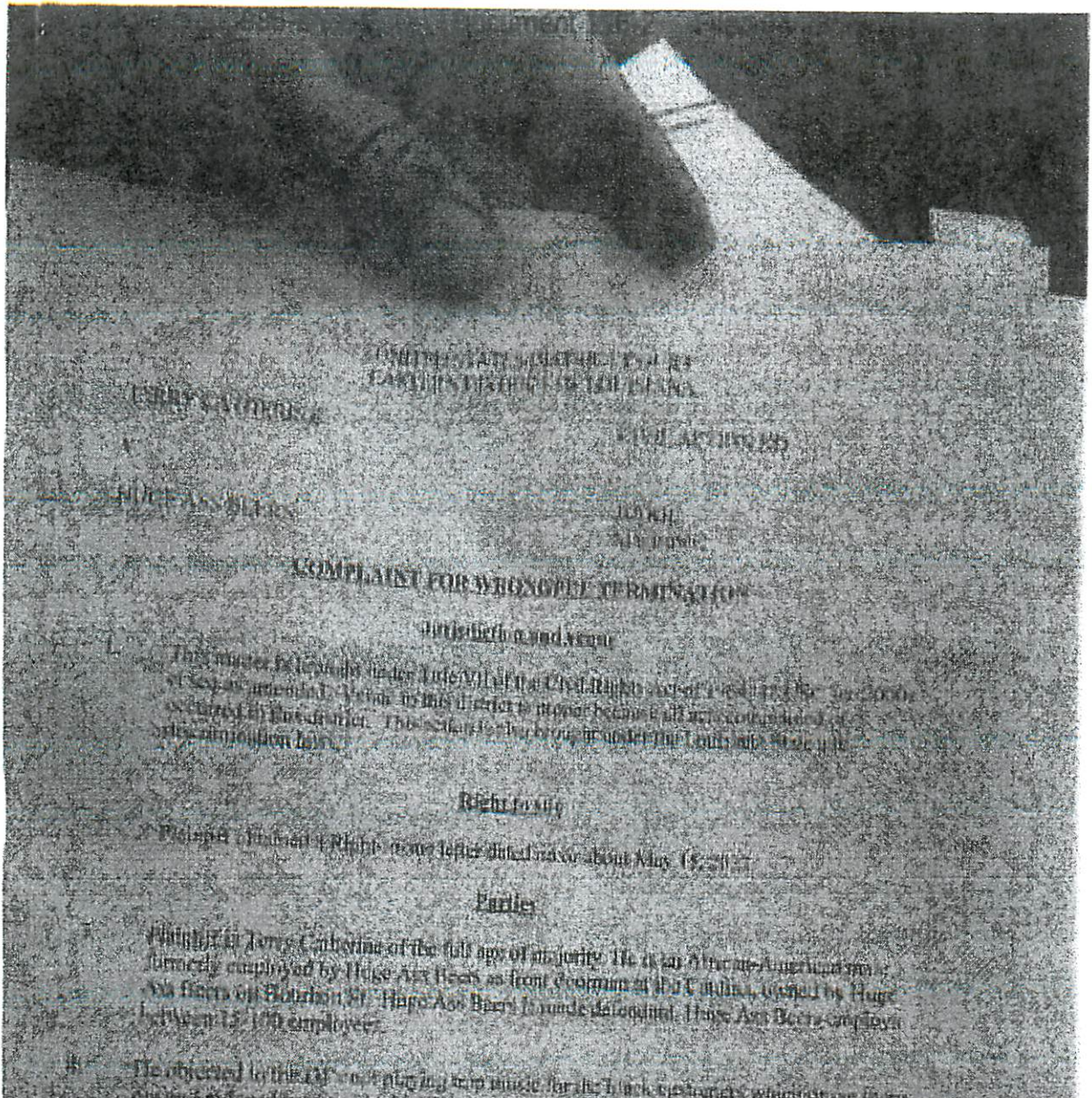
Granting this motion will not cause delay or prejudice because the expert report has already been excluded and the metadata have nothing to do with proving possession one way or the other. They show what is already shown by the August 11 tender stamp and raw photos - plaintiff and Mr Wilson were at the courthouse together on August 11. Newell's narrative admits at least Mr Wilson was there and achieved a tender stamp.

Concluding that the August 11 complaint was returned to Mr Wilson amounts to a finding that after three back-to-back attempts to file a timely complaint on two successive days he abandoned any effort to file a timely complaint - walking away with the tendered complaint, never to timely return. And with mistakenly stamped and returned documents from the clerk which the clerk never sought to recover. And that Mr Wilson made a meaningless call on August 21 to follow up a complaint he had not filed, but kept. That is not a probable or logical scenario. It is more logical - more probable - that the Clerk kept the August 11 complaint.

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The court should grant the motion in order to complete the record.

J Courtney Wilson 13561
/s/ J Courtney Wilson
Respectfully submitted,
3517 Johnson St #1741
Metairie, La 70001
(T) 504/842-0585
c/m cwilson@courtlaw.net



Friday • Aug 11, 2023 • 4:34 PM

Adjust

✓ IMG_1415

Screenshot

PNG

No lens information

3 MP • 1290 x 2796 • 10 MB

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9. However, when plaintiff shortly afterwards went to pick up his check he learned that Brandon was still working.

Cause of action

Count I

10. Under Title VII plaintiff alleges that his termination and the retention of Brandon were racially motivated and thus constitutes an illegal discriminatory discharge.

Count II

11. Under the Louisiana State anti-discrimination law, plaintiff alleges that his termination and the retention of Brandon were racially motivated and thus constitutes an illegal discriminatory discharge.

Relief sought

11. Under both Counts, plaintiff seeks relief as follows:

Friday • Aug 11, 2023 • 4:34 PM

Adjust

IMG_1416

Screenshot

PNG



No lens information

3 MP • 1290 × 2796 • 9.1 MB

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TERRY CATHERINE

CIVIL ACTION

VERSUS

No. 23-3986

HUGE ASS BEERS

SECTION I

ORDER

On April 2, 2025, this Court held an evidentiary hearing in this matter to determine whether plaintiff Terry Catherine (“plaintiff”) timely filed his complaint in this matter.¹ Now before the Court is plaintiff’s motion² to reopen this Court’s previously held evidentiary hearing as well as a motion³ to hold an expedited hearing on the motion to reopen. On April 16, 2025, the Court and the parties held a telephone conference to discuss the motions.

Plaintiff’s motion to reopen seeks to offer additional evidence to the Court. First, plaintiff seeks to introduce an expert report comparing the signature on the August 22, 2023 complaint with the signature that allegedly appeared on the complaint that was marked “tendered for filing” on August 11, 2023.⁴ Plaintiff states that this expert report shows that these two signatures are identical.⁵ Plaintiff opines that the respective signature pages must be the same page and that “the August 11 signature page was substituted for the August 22 signature page.”⁶

¹ See R. Doc. No. 93.

² R. Doc. No. 99.

³ R. Doc. No. 100.

⁴ R. Doc. No. 99.

⁵ R. Doc. No. 99-1, at 2.

⁶ *Id.* at 3.

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Plaintiff previously alleged that he submitted two copies of his two-page complaint on August 11 and that he did not submit a complaint on August 22.⁷ He thereby suggested that the clerk had held onto the second copy of his complaint for 11 days before filing it into the record on August 22, 2023.⁸ In his motion to reopen, plaintiff now suggests that the clerk used the first page of his second copy of the complaint and combined that page with the signature page of the copy marked “tendered for filing.”⁹ Plaintiff states that the expert report is highly probative and supportive of his previous argument that the complaint filed on August 22 was given to the Court on August 11.¹⁰

Secondly, plaintiff requests additional evidence from the Court to be introduced regarding the identity of the *pro se* clerks that assisted him, including “T&A and payroll records for all females present in the *pro se* unit on August 10 and 11, 2023.”¹¹ Plaintiff also states that photographs of the women present in the *pro se* unit on those days “may be helpful in eliminating anyone obviously not the clerk in question.”¹²

At the evidentiary hearing, plaintiff testified that the *pro se* clerk who assisted him on August 11 was a white woman with brown hair and glasses between 20 and

⁷ See R. Doc. No. 74, at 2–3.

⁸ See *id.*; R. Doc. No. 84, at 3; R. Doc. No. 88, at 3. While plaintiff withdrew this assertion in a reply brief submitted before the evidentiary hearing, see R. Doc. No. 91, at 2, he withdrew his withdrawal of that allegation during the hearing.

⁹ See R. Doc. No. 99-1, at 3.

¹⁰ *Id.* at 1, 3.

¹¹ *Id.* at 4.

¹² *Id.*

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50 years old. Sandra Simlin (Ms. Simlin) and Arianna Johnson (Ms. Johnson), the only women who worked at the *pro se* desk at the time in question, each testified at the hearing. Both Ms. Simlin and Ms. Johnson are Black women, and plaintiff's counsel denied that either of these women was the *pro se* clerk that assisted him and his client on August 11. Plaintiff now suggests that the requested information is necessary to identify "the expected white clerk."¹³

Plaintiff's motion states that its request will not cause undue prejudice to defendant.¹⁴ However, counsel for defendant advised during the telephone conference discussing this motion that reopening the evidentiary hearing would prejudice his client. Counsel for defendant advised that defendant would need to pay the costs of an additional hearing, potentially hire its own signature expert, depose plaintiff's expert, and conduct additional discovery.

"Both the decision whether to reopen the record and the denial of an evidentiary hearing are . . . subject to review for abuse of discretion." *Bogan v. MTD Consumer Group, Inc.*, 839 F. App'x 832, 834 (5th Cir. 2020) (unpublished); *see also Brown v. Oil States Skagit Smatco*, 664 F.3d 71, 80 (5th Cir. 2011) ("We review the district court's denial of an evidentiary hearing for abuse of discretion."). The Court declines to exercise that discretion here.

With respect to the expert report of the forensic document examiner, the Court concludes that the interests of allowing this additional evidence into the record does

¹³ *See id.* at 4–5.

¹⁴ *Id.* at 1.

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not outweigh the prejudice to defendant and the interests in bringing this matter to a timely resolution. The expert report states that the two signature pages were submitted for examination on April 11, 2025. The report is dated April 13, 2025. Plaintiff therefore had adequate time to engage a forensic document examiner before the evidentiary hearing and elected not to do so. The Court will not reopen the evidentiary hearing in this matter when the proposed evidence could have been presented at the original hearing. In so concluding, the Court notes that if it were to reopen the hearing on this basis, the Court may be required to allow defendant to hire its own expert and further delay resolution of this matter.

Furthermore, the Court is unconvinced that the expert report is of substantial probative value. The Court first became aware of the August 11 complaint that was stamped “tendered for filing” when plaintiff filed a motion to supplement the record on appeal to the Fifth Circuit.¹⁵ In that motion, plaintiff attached a photo of the first page of a complaint that included the stamp “tendered for filing” and the date August 11, 2023.¹⁶ No signature page was included in that motion. The alleged signature page of the August 11 complaint was not presented to the Court until the date of the evidentiary hearing.¹⁷ At the hearing, plaintiff testified that the metadata for these photos was unavailable—limiting the Court’s ability to independently authenticate the photos. Thus, even assuming that the photo perfectly matches the signature page for the August 22 complaint, this does not assist the Court in determining whether

¹⁵ See R. Doc. No. 70.

¹⁶ *Id.* at 3.

¹⁷ See R. Doc. No. 97-11, at 2.

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that signature page was filed with the August 11 complaint. The report's evidentiary value is therefore limited and does not outweigh the prejudice to defendant and the delay that would be caused by reopening this hearing.

Plaintiff's argument regarding the identity of the individuals who worked at the *pro se* desk is less availing still. Brad Newell, who supervises the *pro se* desk, testified that there was no woman on staff matching plaintiff's description who could have served at the *pro se* window at the time in question and that Ms. Simlin and Ms. Johnson were the only women who ever worked at the *pro se* desk at that time. Ms. Simlin and Ms. Johnson likewise each testified that they were the only women who worked at the front desk of the *pro se* unit during the time in question. Plaintiff's suggestion that Connie Kelly may have been the employee at the *pro se* desk¹⁸ is pure conjecture. Carol Michel, the Clerk of Court, testified at the hearing that Ms. Kelly was retired at that time and that she has not returned to service since her retirement. Plaintiff's search for the "expected white clerk" amounts to a fishing expedition with no basis in fact. The Court will not reopen its evidentiary hearing on that basis. Accordingly,

IT IS ORDERED that the motion for an expedited hearing is **GRANTED**. The Court conducted this expedited hearing by telephone conference on April 16, 2025.

IT IS FURTHER ORDERED that the motion to reopen the evidentiary hearing is **DENIED**.

¹⁸ See R. Doc. No. 99-1, at 4.

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IT IS FURTHER ORDERED that the Court's previously set deadlines for post-hearing briefs on April 23, 2025 remain in place. Counsel are reminded that said briefs must include specific citations to the record.

New Orleans, Louisiana, April 16, 2025.



LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CATHERINE

CIVIL ACTION

V

No. 23-3986

MDK 706, LLC (HUGE ASS BEERS)

Section I

MEMORANDUM

There is no rule that covers this motion to reopen for additional evidence.

Specifically, it is not brought under Rules 59(e) or 60(b). Thus, the court's discretion is not as strictly bound.

However, there are several factors the court should consider when the motion is made, the nature of the additional evidence, and the prejudice in granting or denying the motion. The test is whether the new evidence is sufficiently probative to offset the procedural disruption caused by reopening. *Garcia v Woman's Hosp. of Texas*, 97 F3d 810, 814 (5th Cir 1996)(motion made after trial).

The nature of the evidence (both requested as to the clerk and expert report produced as to the identity of signatures) is stated in the motion. The additional evidence will not will not cause undue delay and will not cause injustice or undue prejudice to defendant; and is relevant, admissible. Conversely, denial of the motion, particularly as to the expert's report, will prejudice plaintiff by excluding extremely probative evidence that addresses three critical issue. (See below.) It is technically adequate, helpful to the fact finder; and not cumulative.

A last factor, the party's diligence in producing the evidence but being

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reasonably and genuinely surprised by the need for the additional evidence, is partly adverse to mover. As above, mover suggests the court's discretion is not as tightly constrained as it would be under Rules 59(e) and 60(b). Mover addresses this issue in the next section.

The August 22 complaint. Mover has attempted to address the issue of the purported August 22, 2023 filing as candidly as possible. He first (correctly) understood that plaintiff had not filed this complaint and (half correctly) alleged that it consisted of the entirety of the second original complaint handed to the clerk at her request on August 11. Mover reasoned that the first page of the August 11 complaint could not have been used as the first page of the August 22 complaint because that page had a "tendered" stamp on it and assumed the signature page of the August 22 complaint was likewise from the second complaint.

Mover then misunderstood his client and withdrew these assertions, but then double checked matters with him in the course of the hearing and re-asserted his contention that the August 22 complaint as filed was the second complaint.

Now, however the matter has taken another turn. After the hearing, comparison of the signatures of the August 22 complaint and the August 11 complaint suggested they were identical. Accordingly, on April 11 mover submitted the photographs of the August 11 complaint (both pages - including the signature page- from which Court Exhibit 1 was constructed) and the 8/22 signature to an expert (James Green) who opines they are identical.

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That is, the signature page of the August 11 complaint was copied and used as the signature page for the August 22 complaint. The identify is shown both by overlaying the August 22 red signature on the August 11 blue signature and by offset comparison. That the August 22 signature is **not** an original but a copy is also shown by expert analysis. It should therefore be concluded that the pages themselves *are the same* - the August 11 signature page was substituted for the August 22 signature page. That is likewise shown by other analyses in the report.

This evidence shows several things: (1) The clerk had in its custody the August 11 tendered complaint on August 22 because its signature page was used as the signature page for the August 22 complaint - mover's assumption that the *whole* of the **second** complaint (both pages, particularly the signature page) had been used was incorrect. Only the first page, but not the second (signature) page, was used. Plaintiff and Mr Wilson, in fact, tendered the August 11 complaint to the clerk and left it in the clerk's possession; contrary to the clerk's assertion in D-2, it was not returned to their possession. (2) Plaintiff and Mr Wilson indeed gave the clerk a **second** complaint, the first page of which was used as the first page of the August 22 complaint. (3) Plaintiff did not sign the August 22 , was not in the courthouse on that date, and did not file a complaint on that date.

Finally, it might be noted that in neither of the clerk's narrative reporting Mr Wilson's call on August 21 about the status of the complaint is there any mention that

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the August 11 complaint had not been processed. The inference is that it was still in the clerk's possession when it was used the next day to file the 8/22 complaint.

In summary, although plaintiff's counsel was corrected by his client at the hearing to change position (3, above), that change in position has been fully supported by the expert's report.

The identity of the processing clerk. Mr Wilson likewise hired third-party assistance to locate and talk to Connie Kelly, the only white pro se clerk identified at the hearing. On April 9 she advised that she "did not think she was in the courthouse in 2023." Both black clerks were eliminated as the processing clerk. First, neither plaintiff nor Mr Wilson can be plausibly argued to have mistaken either of the two black clerks for a white woman. Second, Ms Johnson's T&A records showed she was absent August 10 and from 2-5 pm on August 11. Finally, Ms Simlin testified she had never seen the complaint as "tendered" August 11.

Accordingly, plaintiff narrows his (denied) request for the clerk's production to T&A and payroll records for all females present in the pro se unit on August 10 and 11, 2023. Photographs of same may be helpful in eliminating anyone obviously not the clerk in question, but might not be useful for identifying the clerk herself because of the limited attention paid to her by plaintiff and counsel and the passage of time.

Plaintiff suggests this request satisfies all the considerations above, particularly in view of the obvious surprise of plaintiff's counsel at the clerk's production of two

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black clerks instead of the expected white clerk and in view of the expert's opinion.

Moreover, conspicuously neither of the clerk's narratives identifies any clerk by name such that she remains to be identified.

Respectfully submitted,
J Courtney Wilson 13561
/s/ J Courtney Wilson
Respectfully submitted,
3517 Johnson St #1741
Metairie, La 70001
(T) 504/842-0585
c/m cwilson@courtlaw.net



James A. Green FORENSIC DOCUMENT EXAMINER

2456 SUNCREST AVENUE • EUGENE, OR • 97405

(541) 485-0832

JGREEN@DOCUMENTEXAMINER.INFO

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RECEIVED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA.

2025 APR 16 A 3:20

CAROL L. MICHEL
CLERK

April 13, 2025

Mr. J. Courtney Wilson
Attorney at Law
169 Beverly Drive
Metairie, LA 70001

EUGENE BIVANACQUA

4-13-25

Re: Catherine v Huge Ass Beers
No. 23-2986 EDLA

On April 11, 2025, the following two documents were submitted for examination, via email, from your office:

Uncontested document:

Exhibit 1: Complaint for Wrongful Termination, not dated. Tendered For Filing - date stamped on August 11, 2023. (Machine copy.)

Document in question:

Exhibit 2: Complaint for Wrongful Termination, not dated. Tendered For Filing - date stamped on August 22, 2023. (Machine copy.)

On April 13, 2025, the following known signature specimens of Mr. Catherine were received:

Known signature specimens of Terry Catherine:

K-1: Declaration Under Penalty of Perjury, dated 9/30/22. (Machine copy.)

K-2: Civil Cover Sheet, dated 8/10/23. (Machine copy.)

K-3: Contract for Civil Representation in Civil Rights Employment Matter, dated 12/7/23. (Machine copy.)

K-4: Application to Proceed in District Court Without Prepaying Fees or Costs, dated 7/7/24. (Machine copy.)

K-5: Bail Bond Apprenticeship Program Registration Form, dated 1/13/25. (Machine copy.)

Assignment

The letters were submitted due to your concern regarding the purported signature of Mr. Catherine on Exhibit 2 (the August 22, 2023 Complaint.) It is Mr. Catherine's contention he had not signed that document on that date.

A basic tenet of document examination is a person cannot sign their name *precisely* the same way twice. The combination of motor skills and cognitive influence both affect signature productions. A case of precise alignment of signatures has not been identified in the field of examination. All writers have natural variation in their writing, some to a greater degree than others.

A discussion related to the identification or elimination of a writer, and consideration of natural variation, was expressed well in a reference book relied upon in the field, "Scientific Examination of Questioned Documents".

"This natural variation plays an important role in an identification. No two specimens of even a minimally complicated signature should be identical. How much signatures vary from one another depends on the individual writer and the conditions under which each is written."¹

Another confirmation by a founding father in the field, Albert S. Osborn, was stated in his book:

"It is true that genuine writing by the same writer does vary and in an examination of questioned writing this phase of the subject should always receive careful consideration. The arm, hand, and fingers do not constitute an absolute accuracy reproducing machine, like an engraving plate or a printing process, and certain natural divergences are inevitable..."²

Additionally, two Canadian authorities on handwriting, stated,

"...mutability occurs and can be observed in any two or more examples of a person's writings, whether or not they are made on the same date, at the same time, in the same place. The reason for this mutability is simply that humans are not machines, and consequently, the executions of every writer vary to some extent from one occasion to the next."³

¹ Ordway Hilton, *Scientific Examination of Questioned Documents*, 2nd edition, Edited by Kelly and Lindblom, Taylor & Francis Group, Boca Raton, FL, 2006, pg. 79.

² Albert S. Osborn, *Questioned Documents*, 2nd edition, Nelson-Hall Co., Chicago, IL, 1929, pg. 205.

³ Roy A. Huber and A. M. Headrick, *Handwriting Identification: Facts and Fundamentals*, CRC Press, Boca Raton, FL, 1999, pg. 132.

4. Researchers further investigated the contention a writer cannot sign their name exactly alike and isolated four reasons why a person cannot do so. The research team consisted of two medical practitioners and one Forensic Document Examiner. The results of their research was published in the International Journal of Innovative Science, Engineering & Technology in 2021.⁴

The four reasons identified by the researchers that prevent precise, reproducible signatures were summarized in the following section:

"The authors present a detailed explanation based on the latest research in biomedical sciences, identifying four reasons: 1) The "strokes" of each signature last 1/10 of a second, while the visual reaction time in humans requires at least 2/10 of a second, so the "strokes" cannot be corrected by visual feedback. 2) Each time a signature is written, different motor units of the corresponding muscles are quasi-randomly activated, resulting in slightly different movements and thus a non-identical signature.

3) "In writing a signature, muscles of the forearm and the rest of the upper limb are used, which are less controllable from the motor cortex than the intrinsic muscles of the hand. 4) It is implied electromyogram studies and kinesiology that a unique sequence of muscle movements is required to produce a specific signature or handwriting, so if a person tries to repeat the same movement, the two actions will never be identical. In addition to the above, people usually sign "by heart" without seeing a model of their signature, using their "muscular memory", thus producing non-identical signatures."⁵

5. In the present case, the signatures of Mr. Catherine from Exhibit 1 and Exhibit 2 aligned precisely. The signature of his from Exhibit 1 is shown below. The intersecting text was carefully removed to allow the reader to focus on the signature.



Exhibit 1
8/11/23

⁵ Pávlos Kipouràs, Christos Kosmidis, and Dimitrios E. Skarpalezos, Why Two Genuine Signatures are Never Identical in Practice: Evidence and Scientific Explanation, International Journal of Innovative Science, Engineering & Technology, Vol. 8 Issue 4, April 2021.

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5. (cont.) The signature of Mr. Catherine from Exhibit 2 is shown below.

A handwritten signature in black ink, appearing to read "Mr. Catherine". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Exhibit 2
8/22/23

The following image has Exhibit 2 (in red) overlaid onto Exhibit 1 (in blue.)
Remnants of the blue background, as shown in the signature on the bottom of page three, are also shown in the signatures below.

A handwritten signature in red ink, appearing to read "Mr. Catherine". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline. The signature is overlaid onto a blue background, which is visible as a faint, textured pattern.

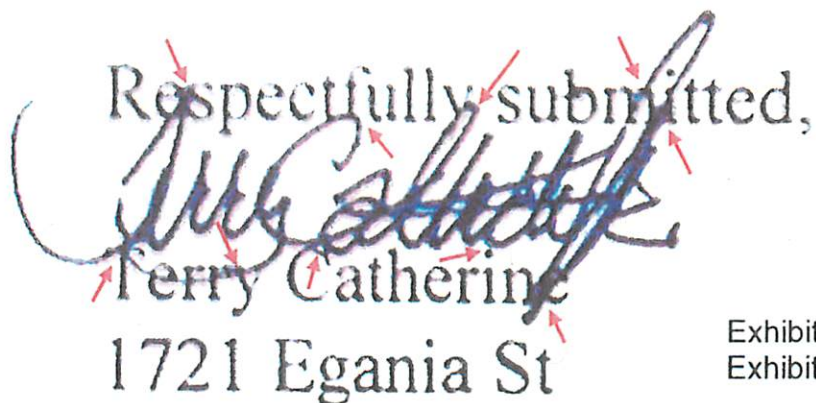
The same two Exhibit signatures overlaid, but slightly offset:

A handwritten signature in blue and red ink, appearing to read "Mr. Catherine". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline. The signature is overlaid and slightly offset, showing the blue and red ink separately.

Exhibit 1: Blue
Exhibit 2: Red

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6. The precise alignment of both signatures is very apparent. As further evidence illustrating their exceptional alignment, overlaid images of the text surrounding both signatures are provided below. Of significance, the points at which both signatures intersected with the printed text provides additional confirmation of the precise signature placement within the signature block.



Respectfully submitted,
Ferry Catherine
1721 Egan St

Exhibit 1: Blue
Exhibit 2: Red

7. Natural variation was discussed previously. To illustrate the natural variation specific to Mr. Catherine's signatures, I asked for additional signature specimens of his. You provided documents having five of his signatures.

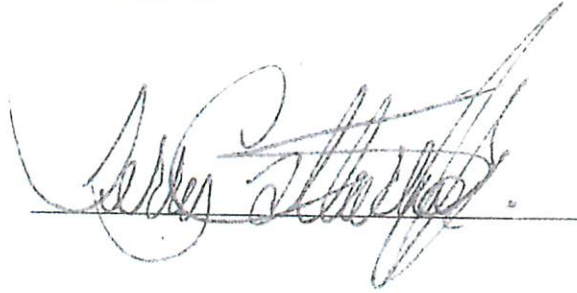
There were no signatures among the samples approaching the overlapping precision that existed in the two exhibit signatures of Mr. Catherine that are the focus of this report. Features in the signatures that vary in his signatures, as well as all writers, include the length and direction of approach and termination strokes, proportion of bowls, height relationships, letter slant, connecting strokes, and so forth.

(The remainder of this page was intentionally left blank.)

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7. (cont.)

Known signature specimens of Mr. Catherine:



K-1: 9/30/22

JUDGE

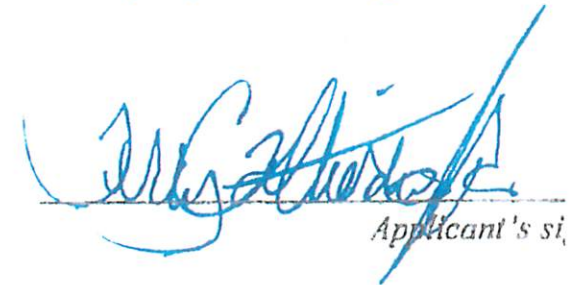
SIGNATURE OF ATTORNEY OF RECORD



K-2: 8/10/23

ney 
it 

K-3: 12/7/23


Applicant's si,

K-4: 7/7/24


Signature of Appren

K-5: 1/13/25

65a

8. The evidence the signature on Exhibit 2 was of a copy of Exhibit 1, was based on four features. First, Exhibit 1 had the signature written in blue ink. The photograph appeared to be an original document, signed with a pen in blue ink. (An examination of that original would be necessary to confirm it was signed with a writing instrument.) The signature on Exhibit 2 was black, common to documents photocopied in the default black and white mode.

The second feature was the reduced resolution quality of the signature and text on Exhibit 2 compared to Exhibit 1. The reduced resolution is a product of subsequent generations of copies made from an original document.

Exhibit 1:

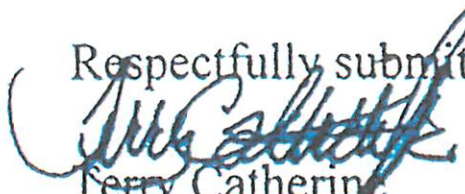
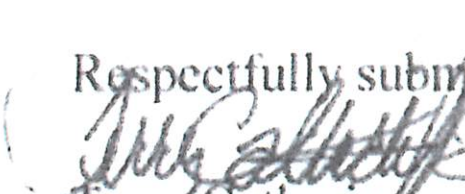
Respectfully submitted,

Terry Catherine
1721 Eganias St
New Orleans, La 70117
(T) 504/715-8303
terryjr7722@yahoo.com

Exhibit 2:

Respectfully submitted,

Terry Catherine
1721 Eganias St
New Orleans, La 70117
(T) 504/715-8303
terryjr7722@yahoo.com

8. (cont.) The third feature was a printing error common to both documents. The absence of ink/toner was noted in the "E," in Terry, in the case caption on page one of both Exhibits.

Exhibit 1

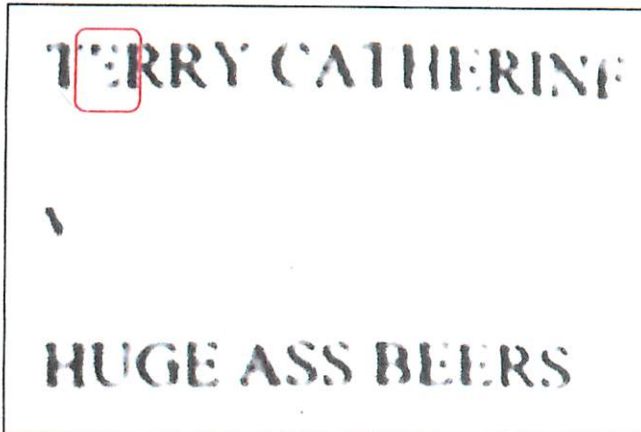
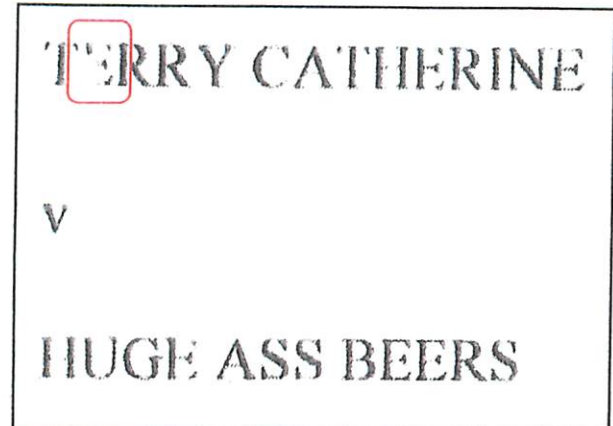


Exhibit 2



The fourth feature were typos noted in both Exhibit 1 and Exhibit 2 and shown below. They would not be expected in both documents if they were typed separately. The first typo shown, is the absence of the period following the abbreviation "Mr" (in paragraph 5 on page one.)

Exhibit 1

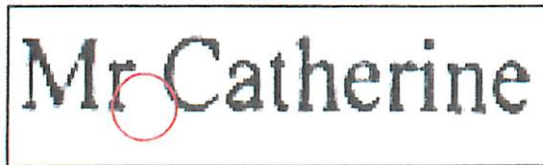
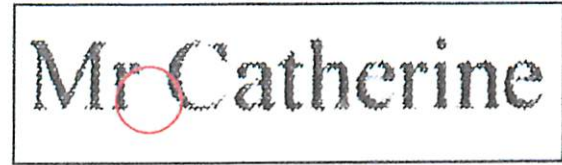


Exhibit 2



Additionally, the numeral "8" on page one of both Exhibits, lacked a period. Other numerals preceding the paragraphs had the period, as appropriate.

Exhibit 1



Exhibit 2



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Conclusion:

The compelling evidence on the two exhibits examined supports the conclusion the signature of Mr. Catherine originated from Exhibit 1, with that page reproduced as Exhibit 2.

If the signature of Mr. Catherine on Exhibit 2 was truly genuine, the purported original of Exhibit 2 would quickly confirm it was signed with a writing instrument. However, the evidence is overwhelming the signature in question on Exhibit 2 was the result of a common reproduction process, i.e., photocopied.

The documents submitted for the examination will be retained in the case file for testimony and/or any follow-up examination(s) requested.

Attached to this report are the following exhibits:

- Exhibit A: Documents submitted
- Exhibit B: CV
- Exhibit C: Testimony given in the past four years.
- Exhibit D: Compensation

Sincerely,



James A. Green

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TERRY CATHERINE

CIVIL ACTION

VERSUS

No. 23-3986

HUGE ASS BEERS

SECTION I

ORDER

Before the Court is plaintiff's motion¹ to continue the evidentiary hearing scheduled for March 31, 2025, and for clarification as to the scope of that hearing as well as a motion² to expedite consideration of the former motion. On February 5, 2025, the Court ordered the parties to provide the Court with memoranda outlining their version of the facts along with citation to the applicable local rules.³ The parties were also ordered to timely brief the ethical obligations of an attorney attempting to file a complaint on behalf of an individual whom the attorney is not enrolled to represent.⁴ Consequently, the Court has already advised the parties of the scope of the hearing and so further clarification is unnecessary. Upon consideration of the motions,

IT IS ORDERED that the motion for expedited hearing is **GRANTED**.

¹ R. Doc. No. 78.

² R. Doc. No. 79.

³ R. Doc. No. 73. The deadline for plaintiff to submit such memorandum is March 10, 2025. The deadline for defendant to file a response memorandum to plaintiff's memorandum is March 17, 2025.

⁴ *Id.*

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IT IS FURTHER ORDERED that the motion for a continuance and clarification is **DENIED**. All deadlines will remain as set forth in the Court's previous order.⁵

New Orleans, Louisiana, March 10, 2025.

A handwritten signature in black ink, appearing to read "Lance Africk", written over a horizontal line.

LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE

⁵ *Id.*

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CATHERINE

CIVIL ACTION

V

No. 23-3986

MDK 706, LLC (HUGE ASS BEERS)

Section I

**PLAINTIFF'S MOTION TO CONTINUE ALL DATES AND FOR
CLARIFICATION**

Plaintiff moves the above for the reasons in the attached.

Respectfully submitted,
J Courtney Wilson 13561
/s/ J Courtney Wilson
3517 Johnson St #1741
Metairie, La 70001
(T) 504/842-0585
e/m cwilson@courtlaw.net

Certification

I certify that I have this date filed the above via ECF which automatically serves opposing counsel.

3/7/25

/s/ J Courtney Wilson

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CATHERINE

CIVIL ACTION

V

No. 23-3986

MDK 706, LLC (HUGE ASS BEERS)

Section I

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION TO
CONTINUE ALL DATES AND FOR CLARIFICATION**

Defendant objects to this motion.

Introduction:

The scope of this hearing and the nature of the issues are vague and unclear. Plaintiff filed a motion with the Fifth Circuit for clarification of its remand order, but it was denied.

The issues under the remand order seem to be:

1. To vindicate any adverse reflection on the clerk's office;
2. To determine if Catherine tendered his complaint on August 11, 2023; and
3. If so, then to determine if he should be permitted to proceed with his suit.

The district court has ordered an evidentiary hearing March 31 and added its own inquiry as to the ethical obligations of an attorney - Mr Wilson - attempting to file a complaint obo a party the attorney does not represent. No explanation has been stated for this addition.

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According to defendant's papers the "singular issue" is "*filing*." (Emph. added.) [RD 111, p. 3] Plaintiff agrees there is only one issue - not filing, but tender.

In view of the vagueness of both the scope of this hearing and the issues as now stated (particularly the issue of the undersigned's ethical obligation) , the undersigned respectfully requests a continuance of the briefing deadline of March 10 in order for the court to clarify the scope of the hearing and the nature of the issues, and for him to *then* determine if he needs counsel, and accurately brief the issues.

Consequently, a related extension of the hearing date of March 31 is also sought in order for the court to rule on this motion to clarify, and, hopefully, provide such; in the light of the order on this motion, for Mr Wilson to determine if he needs counsel; and to permit accurate briefing of the issues identified and clarified by this court.

Vagueness of scope of hearing - the "vindication" issue

The scope is vague in that. first, it is not plaintiff's desire to vindicate (or implicate) the Clerk's office with respect to the claimed non-appearance of the purportedly tendered complaint. The question why the complaint is not in the record is irrelevant to whether it was tendered - either it was tendered or it was

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not. And, secondly, plaintiff does not care why it is not in the record - an inquiry which would vindicate or implicate the clerk. Either way, that inquiry is irrelevant to the tender issue. The court is respectfully requested to strike this as an issue or conduct a separate proceeding.

The issue whether if tender be proved, plaintiff may proceed

The next issue - determination if, proving tender, he should be permitted to proceed - suggests there is some procedural inquiry proximately related to the tender issue. While later procedural issues might arise, what that proximate issue might be is beyond the understanding of plaintiff's counsel. Accordingly, he seeks clarification from this court in order to properly brief and present the issue as it may be clarified. Alternatively, to strike it from the scope of the hearing.

The issue of the ethical obligation

Finally, requiring the undersigned to brief the ethical obligation of plaintiff's attorney suggests the possibility of a disciplinary sanction. If that be on the horizon, the undersigned requests particularized notice and a continuance in order to obtain counsel.(1) Moreover, it does not seem related to the remand issue of tender and the respectfully requests it be the subject, if necessary, of a separate proceeding. If this issue be retained then, particularly in view of the court's reminder at the last conference counsel might wish to retain counsel, continuance is sought.

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**United States Court of Appeals
for the Fifth Circuit**

No. 24-30334
CONSOLIDATED WITH
No. 24-30421

United States Court of Appeals
Fifth Circuit

FILED

February 20, 2025

Lyle W. Cayce
Clerk

TERRY CATHERINE,

Plaintiff—Appellant,

VERSUS

MDK 706, L.L.C.,

Defendants—Appellee.

Appeals from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:23-CV-3986

UNPUBLISHED ORDER

Before DAVIS, SMITH, and HIGGINSON, *Circuit Judges*.
PER CURIAM:

No. 24-30334
c/w No. 24-30421

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IT IS ORDERED that the motion of Appellant for clarification of the opinion issued January 27, 2025, is DENIED.

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UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 24-30334

CONSOLIDATED WITH

No. 24-30421

TERRY CATHERINE.

Plaintiff-Appellant,

versus

MDK 706,L.L.C.

Defendant-Appellee

MOTION FOR CLARIFICATION

Points of the remand opinion as to which clarification is requested

The stated purposes of this remand are:

1. To vindicate any adverse reflection on the clerk's office;
2. To determine if Catherine tendered his complaint on August 11, 2023; and
3. If so, then to determine if he should be permitted to proceed with his suit.

(The district court has ordered an evidentiary hearing March 31 and added its own inquiry as to the ethical obligations of an attorney - Mr Wilson - attempting to file a complaint obo a party the attorney does not represent.)

Points as to which clarification is sought

1. **Vindication of adverse reflection on the clerk's office**

Vindication is defined as the clearing of a person, here, an office, of suspicion, criticism, blame or doubt. (*Black's Law Dictionary*, 7th Ed) Plaintiff objects to vindication as a purpose of this hearing because it assumes that the clerk will be cleared of any error. It may be that the clerk will not be vindicated, but instead found to have engaged in some irregularity - implicated. The "vindication" language does not seem to permit a contrary finding and tends to bias the hearing.

Moreover, and perhaps more importantly, plaintiff's attorney suggests the clerk's conduct related to the absence of the August 11 complaint from the record, while interesting, is *irrelevant* to determining whether plaintiff tendered his complaint August 11. That is, unless there is some unstated aspect of the clerk's conduct that, notwithstanding a finding Catherine tendered his complaint on August 11, bars him from

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proceeding with this suit. (As to that issue please see # 2.)

Accordingly, for these two reasons it respectfully requested that the opinion be clarified and amended by deleting the vindication language.

2. **If plaintiff tendered his complaint on August 11, should he be permitted to proceed?**

It is unclear whether this issue is connected to the tender issue, and, if so, whether it (1) should be determined at the scheduled evidentiary hearing and, most importantly, if so, on what basis, or (2) whether this language refers to motions to dismiss that might be filed in due course.

Clarification of the "permission" issue is essential. The trial court has ordered a memorandum from each party "outlining their version of the facts..." The order does not require briefing the "permission" issue. Accordingly, at this juncture, plaintiff construes the order to mean that the "permission" issue is not related to the tender issue and is not an issue for the hearing. He respectfully requests clarification or amendment of the opinion with respect to the permission issue.

Respectfully submitted,
J Courtney Wilson La13561
/s/J Courtney Wilson
3517 Johnson #1741
Metairie, La 70001

Certificate of compliance

I certify that this motion contains 431 words.

Certificate of service

I certify that I have this date filed the above via ECF which automatically serves opposing counsel.

2/10/25

/s/J Courtney Wilson

MINUTE ENTRY
AFRICK, J.
February 5, 2025
JS-10 00:15

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TERRY CATHERINE

CIVIL ACTION

VERSUS

No. 23-3986

HUGE ASS BEERS

SECTION I

On this date, the Court held a status conference in chambers with counsel for both parties. The Court discussed holding an evidentiary hearing pursuant to the Fifth Circuit's directive.¹

After the conference, this Court was notified by the Clerk of Court, who was contacted by the Office of General Counsel of the Administrative Office of the U.S. Court, about an applicable judicial policy. Section 830 of chapter 8, volume 20 of the Guide to Judiciary Policy sets forth the requirements for requesting testimony or records from judicial employees. It provides:

(a) The request for testimony or production of records must set forth, or must be accompanied by an affidavit setting forth, a written statement by the party seeking the testimony or production of records, or by counsel for the party, containing:

- an explanation of the nature of the testimony or records sought,
- the relevance of the testimony or records sought to the legal proceedings, and
- the reasons why the testimony or records sought, or the information contained therein, are not readily available from other sources or by other means.

¹ Fifth Cir. Case No. 24-30334, R. Doc. Nos. 102–103.

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(1) This explanation must contain sufficient information for the determining officer designated in § 840(b) to determine whether or not federal judicial personnel should be allowed to testify or the records should be produced.

(2) Where the request does not contain an explanation sufficient for this purpose, the determining officer may deny the request or may ask the requester to provide additional information.

(b) The request for testimony or production of records, including the written statement required by § 830(a), must be provided to the federal judicial personnel from whom testimony or production of records is sought at least fifteen (15) working days in advance of the time by which the testimony or production of records is to be required. Failure to meet this requirement will provide a sufficient basis for denial of the request.

(c) The determining officer designated in § 840(b) has the authority to waive the requirements of this section (i.e., § 830) in the event of an emergency under conditions which the requester could not reasonably have anticipated and which demonstrate a good faith attempt to comply with the requirements of these regulations. In no circumstance, however, is a requester entitled to consideration of an oral or untimely request. To the contrary, whether to permit such an exceptional procedure is a decision within the sole discretion of the determining officer.

The Clerk of Court has informed the Court that the names of the two employees who are witnesses to the subject incident are Brad Newell and Sandra Simlin, the latter of whom has since retired.

IT IS ORDERED that an evidentiary hearing is scheduled for **March 31, 2025, at 9:00 a.m.** The Court advised plaintiff's counsel, Mr. Wilson, that he will be placed under oath and be subject to questioning. Mr. Wilson may be represented by counsel if he so chooses. In light of the *ex parte* suggestions directed to the Court by Mr. Wilson after the conference, the Court makes clear that counsel are responsible for securing any additional testimony or documents.

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IT IS FURTHER ORDERED that plaintiff must attend the hearing.

IT IS FURTHER ORDERED that counsel for both parties shall submit to the Court memoranda outlining their version of the facts along with citation to the applicable local rules as well as to the ethical obligations of an attorney attempting to file a complaint on behalf of an individual whom the attorney is not enrolled to represent. The deadline for plaintiff to submit such memorandum is **March 10, 2025**. The deadline for defendant to file a response memorandum to plaintiff's memorandum is **March 17, 2025**.

IT IS FURTHER ORDERED that the parties submit requests for the testimony of Brad Newell and Sandra Simlin in accordance with § 830 of chapter 8, volume 20 of the Guide to Judiciary Policy in a timely fashion.

New Orleans, Louisiana, February 5, 2025.

A handwritten signature in black ink, appearing to read "Lance Africk", written over a horizontal line.

LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CATHERINE

CIVIL ACTION

V

No. 23-3986

MDK 706, LLC (HUGE ASS BEERS)

Section I

PLAINTIFF'S PRELIMINARY MEMORANDUM PER ORDER OF FEBRUARY 5, 2023
[RD 73]

There are three purposes of this memorandum.

1. The first is to advise the court that plaintiff has filed a petition for panel rehearing.

The district court's judgment (correct on the facts before it) was vacated and remanded

...in the interest of justice and to vindicate any adverse reflection on the district court clerk's office ...to conduct further proceedings to determine whether Catherine tendered his complaint to the district court on August 11, 2023, and if so whether he should be permitted to proceed with his suit. If the answer to this question is yes, then the district court should consider the merits of the action.

Thus, the purposes of vacation and remand order are:

1. To vindicate any adverse reflection on the clerk's office;
2. To determine if Catherine tendered his complaint on August 11, 2023
3. If so, then to determine if he should be permitted to proceed with his suit

The district court has added its own inquiry as to the ethical obligations of an attorney attempting to file a complaint obo a party the attorney does not

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represent.

Plaintiff has this date filed a petition for panel rehearing on order to delete issue # 1 and clarify issue #3.

2. The second is to advise that he does not plan to subpoena either of the two clerks named in the court's order, nor the clerk herself, nor any documents such as notes, emails, memoranda, video or audio records or related rules, regulations, or internal operating procedures unless indicated by any ruling on the petition. They are not necessary to a determination whether Catherine tendered his complaint on August 11. Plaintiff will call only his attorney and himself with the device on which the tendered complaint was photographed.

3. Thirdly, the issue of the ethical obligations of an attorney attempting to file a complaint obo a party the attorney does not represent is outside the scope of the remand. Moreover, if this briefing is required as a predicate to a disciplinary hearing the undersigned requests particularized notice.

By way of preliminary briefing, as the facts will show, Mr Wilson attempted to file Catherine's complaint only once - August 10, acceded to the clerk's advice it could not be filed, and returned the next day, August 11, with Mr Catherine and the complaint. It was offered to the clerk who stamped it tendered and it was photographed by the plaintiff. Simultaneously, the clerk asked if we had another copy of the complaint which we did. It was a signed original which was given to

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the clerk. This appears to be the complaint marked as filed August 22.

In the absence of any published rules forbidding a third-party filing (none were cited by the clerk who referred only to the recent third-party filing problem in Lake Charles), the only ethical obligation is to respect to clerk as the attorney would respect the judge. That was done.

The undersigned has no objection to the court's again discussing the matter with the clerk's office with respect to the above representations in the hope it might avoid further briefing.

Respectfully submitted,
J Courtney Wilson La13561
/s/J Courtney Wilson
3517 Johnson #1741
Metairie, La 70001

Certificate of service

I certify that I have this date filed the above via ECF which automatically serves opposing counsel.

2/9/25

/s/J Courtney Wilson

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**United States Court of Appeals
for the Fifth Circuit**

No. 24-30334
CONSOLIDATED WITH
No. 24-30421
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 27, 2025

Lyle W. Cayce
Clerk

TERRY CATHERINE,

Plaintiff—Appellant,

versus

MDK 706, L.L.C.,

Defendant—Appellee.

Appeals from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:23-CV-3986

Before DAVIS, SMITH, and HIGGINSON, *Circuit Judges.*

PER CURIAM:*

This workplace-discrimination/retaliation suit under Title VII was filed on August 22, 2023 according to the district court's docket—over ninety days after Plaintiff-Appellant Terry Catherine received a right-to-sue letter from the Equal Employment Opportunity Commission. Defendant-

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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No. 24-30334
c/w No. 24-30421

Appellee MDK 706, L.L.C. (MDK) moved to dismiss the suit as untimely. Catherine responded his complaint was filed on time “as shown by the ‘Tendered’ stamp on the complaint.” However, he provided no evidence that the clerk’s August 22 date of filing was incorrect; nor did he provide other information or argument to support his contention. On April 16, 2024, the district court granted MDK’s motion and dismissed the case.

On April 23, 2024, Catherine filed a Rule 59 motion arguing he had tendered his complaint to the district court clerk for filing on August 11, 2023.¹ While Catherine added more to the contention that his complaint was timely filed (*e.g.*, law and argument that he tendered the complaint to the clerk of court on August 11), he again produced no evidence to support the allegation and nothing was found in the court file supporting Catherine’s claim. The district court denied the motion, noting the absence of evidence that would impeach the clerk of court’s August 22, 2023 filing date.

On June 26, 2024, Catherine moved the district court to correct or supplement the record under appellate Rules 10(e)(1) and (e)(2).² For the first time, Catherine attached a photograph of the first page of his complaint bearing a clerk’s stamp of “Tendered for Filing” on August 11, 2023. By this time, Catherine had filed an appeal of the district court’s dismissal. Because the case was on appeal, the district court denied the motion.

On July 31, 2024, the plaintiff again filed a similar motion in the district court under appellate Rule 10 and civil Rule 60(a).³ The district court denied that motion the same day.

¹ FED. R. CIV. P. 59.

² FED. R. APP. P. 10(e)(1)–(e)(2).

³ FED. R. APP. P. 10; FED. R. CIV. P. 60.

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No. 24-30334
c/w No. 24-30421

On August 15, 2024, Catherine moved this Court to supplement the record with the photo of the August 11 complaint stamped “Tendered for Filing,” which we granted the next day.

On appeal, Catherine points out that the stamped page of the August 11 complaint cannot be found in the district court record, and excuses counsel’s failure in timely presenting the photograph to the district court with his belief that the August 11 “Tendered” stamp would be found on the back side of the complaint in the record. Mindful that Catherine’s counsel has been less than diligent, in the interest of justice and to vindicate any adverse reflection on the district court clerk’s office, we VACATE the district court’s judgment and REMAND this case to the district court to conduct further proceedings to determine whether Catherine tendered his complaint to the district court on August 11, 2023, and if so, whether he should be permitted to proceed with his suit. If the answer to this question is yes, then the district court should consider the merits of the action. VACATED and REMANDED.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TERRY CATHERINE

CIVIL ACTION

VERSUS

No. 23-3986

HUGE ASS BEERS

SECTION I

ORDER & REASONS

Before the Court is a motion¹ to amend or correct the record filed by plaintiff Terry Catherine ("plaintiff"). Plaintiff also requests oral argument.² For the reasons set forth below, the Court denies the motion to amend or correct the record and cancels the previously set oral argument.

I. BACKGROUND

This matter arises from alleged workplace discrimination. Plaintiff's amended complaint alleges that plaintiff "is an African-American male formerly employed by MDK 706, LLC ["defendant"] dba Huge Ass Beers, as front doorman . . ."³ Plaintiff claims that, on July 7, 2022, he was threatened by another security guard, who plaintiff refers to as "Brandon."⁴ The manager asked the men to "take it outside."⁵ Plaintiff alleges that Brandon appeared outside with brass knuckles, and plaintiff asserts that he then pulled out his night stick.⁶ Plaintiff also claims that, while it is

¹ R. Doc. No. 50.

² R. Doc. No. 52.

³ R. Doc. No. 25, ¶ 3.

⁴ *Id.* ¶ 5.

⁵ *Id.*

⁶ *Id.* ¶ 6.

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alleged that he pulled out a gun, plaintiff never removed his gun from his backpack.⁷ Plaintiff's amended complaint states that no fight ensued.⁸ Plaintiff alleges that Angel, a white supervisor, informed plaintiff and Brandon that they were fired.⁹ Plaintiff's amended complaint states that when plaintiff returned to his former workplace to pick up his final paycheck, he learned that Brandon was still working there.¹⁰

On August 22, 2023, plaintiff filed this action pursuant to Title VII of the Civil Rights Act of 1991 and Louisiana antidiscrimination laws.¹¹ Plaintiff argued that his termination was racially motivated and constituted an illegal discriminatory discharge.¹² Plaintiff's amended complaint noted that he obtained a right to sue letter from the Equal Employment Opportunity Commission (the "EEOC") on or about May 15, 2023.¹³

Defendant subsequently filed a motion to dismiss pursuant to Rule 12(b)(6), arguing that plaintiff's claims were time barred.¹⁴ Plaintiff opposed the motion,¹⁵ and defendant filed a reply.¹⁶ On April 16, 2024, the Court granted defendant's motion to dismiss, explaining that the statutory period for plaintiff's claim expired on August

⁷ *Id.* ¶¶ 7–8.

⁸ *Id.*

⁹ *Id.* ¶ 7.

¹⁰ *Id.* ¶ 9.

¹¹ *Id.* ¶¶ 10–11.

¹² *Id.*

¹³ *Id.* ¶ 2.

¹⁴ *See generally* R. Doc. No. 29-1.

¹⁵ R. Doc. No. 33.

¹⁶ R. Doc. No. 37.

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13, 2023 and plaintiff did not file his complaint until August 22, 2023, as made clear by the "tendered" stamp on the complaint in the record.¹⁷

On April 25, 2024, plaintiff filed a motion for reconsideration, arguing that plaintiff filed his complaint on August 11, 2023.¹⁸ On May 16, 2024, the Court denied the motion for reconsideration, explaining that plaintiff did not provide any evidence or specific references to the record demonstrating that the complaint was timely tendered and therefore reconsideration was not appropriate.¹⁹ On May 21, 2024, plaintiff filed a notice of appeal with respect to this Court's judgment and the order denying the motion for reconsideration.²⁰

On June 26, 2024, plaintiff filed a motion to amend or correct the record pursuant to Federal Appellate Rule 10(e).²¹ Attached to plaintiff's motion is a picture of the complaint with a stamp indicating that the complaint was tendered for filing on August 11, 2023.²² Plaintiff argues that the picture of the complaint should be filed into the record and forwarded to the Court of Appeals.²³

II. LAW AND ANALYSIS

Federal Rule of Appellate Procedure 10(e) provides:

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

¹⁷ R. Doc. No. 38.

¹⁸ R. Doc. No. 41.

¹⁹ R. Doc. No. 47.

²⁰ R. Doc. No. 48.

²¹ R. Doc. No. 50.

²² R. Doc. No. 50-2.

²³ R. Doc. No. 50, at 1.

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(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;

(B) by the district court before or after the record has been forwarded; or

(C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

In *United States v. Page*, 661 F.2d 1080, 1082 (5th Cir. 1981), the U.S. Fifth Circuit Court of Appeals explained that “[w]hat in fact went on below may be settled and placed of record pursuant to Rule 10(e) and whatever proceedings are necessary to that end are permissible.” However, Rule 10(e) “does not empower a district court to modify parties’ stipulations or make new findings of fact after docketing of the appeal in the court of appeals.” *United States v. Smith*, 493 F.2d 906, 907 (5th Cir. 1974). The purpose of Rule 10(e) is to permit “the district court to conform the record to what happened, not to what did not.” *Id.*

Plaintiff suggests that the photographs of the complaint attached to his motion to amend the record can be added to the record pursuant to Federal Rule of Appellate Procedure 10(e)(1) and 10(e)(2) because plaintiff mistakenly believed that the photographed complaint was already in the record.²⁴

“The purpose of Rule 10(e) is to ensure that the record on appeal accurately reflects the proceedings in the trial court (thereby allowing [the appellate court] to review the decision that the trial court made in light of the information that was actually before it), not to enable the losing party to add new material to the record in

²⁴ R. Doc. No. 50, at 1; R. Doc. No. 50-1, at 1.

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order to collaterally attack the trial court's judgment." *United States v. Elizalde-Adame*, 262 F.3d 637, 641 (7th Cir. 2001). The Court never received a copy of the complaint with which plaintiff seeks to supplement the record. Accordingly, this document was not before the Court, and the Court's decision was not made after considering the document. Therefore, supplementation is not appropriate pursuant to Rule 10(e). See *United States v. Muhammad*, 46 F.4th 531, 535 n.3 (7th Cir. 2022) ("Rule 10(e) was not a proper vehicle to update the record on appeal with information that was never in the district court record to begin with."); *Adams v. Holland*, 330 F.3d 398 (6th Cir. 2003) ("[T]he purpose of amendment under [Rule 10(e)] is to ensure that the appellate record accurately reflects the record before the District Court, not to provide this Court with new evidence not before the District Court, even if the new evidence is substantial."); *Shooting Star Ranch, LLC v. United States*, 230 F.3d 1176, 177 n.2 (10th Cir. 2000) ("Rule 10(e) allows a party to supplement the record on appeal but does not grant a license to build a new record. . . This [appellate] court will not consider evidence not presented before the district court.").

While the Court believes that there is no error in the record and that the complaint that plaintiff seeks to supplement the record with was never accepted for filing, the caselaw is clear that "[n]ew proceedings of a substantive nature, designed to supply what might have been done but was not, are beyond the reach of the rule." *Page*, 661 F.2d at 1082. Therefore, the Court will not make findings with respect to a document that was not presented to this Court when it issued its judgment.

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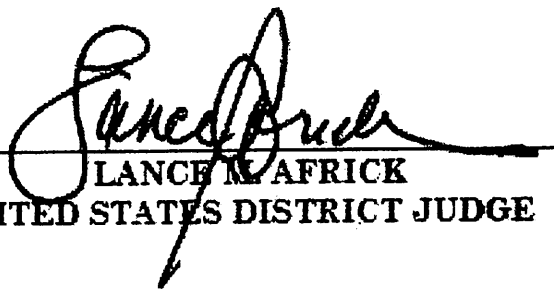
III. CONCLUSION

Accordingly,

IT IS ORDERED that the motion to amend or correct the record is **DENIED**.

IT IS FURTHER ORDERED that the previously scheduled oral argument is **CANCELLED**.

New Orleans, Louisiana, July 1, 2024.



LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TERRY CATHERINE

CIVIL ACTION

VERSUS

No. 23-3986

HUGE ASS BEERS

SECTION I

ORDER & REASONS

Before the Court is a motion¹ by defendant MDK 706, LLC (“defendant”) to dismiss plaintiff Terry Catherine’s (“plaintiff”) amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff opposes the motion.² Defendant filed a reply.³ For the reasons set forth below, the Court grants the motion to dismiss pursuant to Rule 12(b)(6).

I. BACKGROUND

This matter arises from alleged workplace discrimination. Plaintiff’s amended complaint alleges that plaintiff “is an African-American male formerly employed by MDK 706, LLC dba Huge Ass Beers, as front doorman . . .”⁴ Plaintiff claims that, on July 7, 2022, he was threatened by another security guard, who plaintiff refers to as “Brandon.”⁵ The manager asked the men to “take it outside.”⁶ Plaintiff alleges that Brandon appeared outside with brass knuckles, and plaintiff asserts that he then

¹ R. Doc. No. 29.

² R. Doc. No. 33.

³ R. Doc. No. 35-2.

⁴ R. Doc. No. 25, ¶ 3.

⁵ *Id.* ¶ 5.

⁶ *Id.*

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pulled out his night stick.⁷ Plaintiff also claims that, while it is alleged that he pulled out a gun, plaintiff never removed his gun from his backpack.⁸ Plaintiff's amended complaint states that no fight ensued.⁹ Plaintiff alleges that Angel, a white supervisor, informed plaintiff and Brandon that they were fired.¹⁰ Plaintiff's amended complaint states that when plaintiff returned to his former workplace to pick up his final paycheck, he learned that Brandon was still working there.¹¹

On August 22, 2023, plaintiff filed this action pursuant to Title VII of the Civil Rights Act of 1991 and Louisiana state antidiscrimination laws.¹² Plaintiff argues that his termination was racially motivated and constituted an illegal discriminatory discharge.¹³ Plaintiff's amended complaint notes that he obtained a right to sue letter from the Equal Employment Opportunity Commission (the "EEOC") on or about May 15, 2023.¹⁴

Defendant subsequently filed the present motion to dismiss pursuant to Rule 12(b)(6), arguing that plaintiff's claims are time barred.¹⁵ More specifically, defendant argues that plaintiff's Title VII claim is time barred because plaintiff failed to commence his action within 90 days of receiving his right to sue letter from the EEOC and because he failed to file his EEOC action within 300 days of the alleged

⁷ *Id.* ¶ 6.

⁸ *Id.* ¶¶ 7-8.

⁹ *Id.*

¹⁰ *Id.* ¶ 7.

¹¹ *Id.* ¶ 9.

¹² *Id.* ¶¶ 10-11.

¹³ *Id.*

¹⁴ *Id.* ¶ 2.

¹⁵ *See generally* R. Doc. No. 29-1.

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unlawful employment action.¹⁶ Defendant also argues that plaintiff's state law claims are time barred because plaintiff did not file his complaint within the one-year prescriptive period and there is no basis for equitable tolling.¹⁷

In response to defendant's argument that the complaint was not filed within 90 days of receiving the right to sue letter, which was received by plaintiff on May 15, 2023, plaintiff states that he "timely filed his complaint as shown by the "Tendered" stamp on the complaint."¹⁸ The stamp on the complaint shows that the complaint was filed in this U.S. District Court on August 22, 2023.¹⁹

Next, with respect to defendant's argument that the EEOC charge was not timely filed, plaintiff argues that he timely initiated his EEOC charge when he filed a "Declaration under Penalty of Perjury" on September 30, 2022.²⁰ Plaintiff argues that the formal signed charge relates back to the sworn declaration such that the charge was timely.²¹ In its reply, defendant argues that plaintiff's declaration did not appear in the EEOC file and therefore is not a part of the charge on which plaintiff is currently suing.²²

In response to defendant's argument regarding the state law claims, plaintiff argues that the prescriptive period had not run because it was suspended from September 19, 2022 until May 15, 2023 while the EEOC conducted its administrative

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 4-5.

¹⁸ R. Doc. No. 33, at 1.

¹⁹ R. Doc. No. 1.

²⁰ R. Doc. No. 33, at 1.

²¹ *Id.*

²² R. Doc. No. 35-2, at 2.

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review of plaintiff's claim.²³ As mentioned, defendant's reply disputes that the declaration initiated the charge on which this lawsuit is based.

II. STANDARD OF LAW

Rule 12(b)(6) allows for dismissal of a complaint for "failure to state a claim upon which relief can be granted." "To survive 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) (citation and internal quotations omitted). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Culbertson v. Lykos*, 790 F.3d 608, 616 (5th Cir. 2015) (citation and internal quotations omitted).

"[T]he face of the complaint must contain enough factual matter to raise a reasonable expectation that discovery will reveal evidence of each element of the plaintiffs' claim." *Hi-Tech Elec., Inc. v. T&B Constr. & Elec. Servs., Inc.*, No. 15-3034, 2017 WL 615414, at *2 (E.D. La. Feb. 15, 2017) (Vance, J.) (citing *Lormand v. US Unwired, Inc.*, 565 F.3d 228, 255-57 (5th Cir. 2009)). A complaint is insufficient if it contains "only labels and conclusions, or a formulaic recitation of the elements of a cause of action." *Whitley v. Hanna*, 726 F.3d 631, 638 (5th Cir. 2013) (citation and internal quotations omitted). The complaint "must provide the defendant with fair

²³ *Id.* at 1-2.

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notice of what the plaintiff's claim is and the grounds upon which it rests." *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 346 (2005) (internal quotations omitted).

In considering a motion to dismiss, a court views the complaint "in the light most favorable to [the] plaintiff, accepting as true all well-pleaded factual allegations and drawing all reasonable inferences in [the] plaintiff's favor." *Lovick v. Ritemoney Ltd.*, 378 F.3d 433, 437 (5th Cir. 2004). A court must limit its review to "the complaint, any documents attached to the complaint, and any documents attached to the motion to dismiss that are central to the claim and referenced by the complaint." *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010) (citing *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498–99 (5th Cir. 2000)).

III. ANALYSIS

"Title VII claims must be filed within 90 days of a plaintiff's receipt of the notice of right to sue or the action will be dismissed." *Stokes v. Dolgencorp, Inc.*, 367 F. App'x 545, 548 (5th Cir. 2010) (citing 42 U.S.C. § 2000e-5(f)(1) and *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 379 (5th Cir. 2002)). "The 90-day statutory period is strictly construed." *Id.* "Courts within this Circuit have repeatedly dismissed cases in which the plaintiff did not file a complaint until after the ninety-day limitation period had expired." *Taylor*, 296 F.3d at 379.

As mentioned, plaintiff's complaint states that plaintiff received a right to sue letter on or about May 15, 2023.²⁴ In its motion, defendant states that the EEOC charge file confirms that plaintiff received his right to sue letter via email on May 15,

²⁴ R. Doc. No. 1, ¶ 2.

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2023.²⁵ Accordingly, plaintiff had 90 days, until August 13, 2023, to file his complaint. Despite plaintiff's contention that the "tendered" stamp on the complaint shows it was timely filed,²⁶ the "tendered" stamp shows the complaint was submitted for filing on August 22, 2023.²⁷ Because plaintiff did not file his complaint until August 22, 2023 and the statutory period is strictly construed, the Court will dismiss plaintiff's Title VII claim as untimely.

Plaintiff's amended complaint alleges that this Court has federal question jurisdiction because of plaintiff's Title VII claim.²⁸ However, as described above, plaintiff's only federal claim must be dismissed as the complaint was not timely filed and therefore plaintiff's only remaining claim is brought pursuant to Louisiana state anti-discrimination law.

28 U.S.C. § 1367(c) provides that district courts may decline to exercise supplemental jurisdiction over a claim if "(1) the claim raises a novel or complex issue of [s]tate law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction." "The Supreme Court has given further guidance, instructing federal courts to consider and weigh the values of judicial economy, convenience, fairness, and comity in order to decide

²⁵ R. Doc. No. 29-1, at 3.

²⁶ R. Doc. No. 33, at 1.

²⁷ R. Doc. No. 1.

²⁸ R. Doc. No. 25, ¶ 1.

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whether to exercise supplemental jurisdiction over pendent state law claims.” *Schlorff v. Digital Eng’g & Imaging, Inc.*, No. CV 16-11016, 2016 WL 6276882, at *2 (E.D. La. Oct. 27, 2016) (Vance, J.) (citing *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988)).

Because there are no remaining claims over which this Court has original jurisdiction, this case is still in the preliminary stages, and the parties have not presented any factors justifying the exercise of supplemental jurisdiction, the Court will decline to exercise its supplemental jurisdiction.²⁹

IV. CONCLUSION

Accordingly,

IT IS ORDERED that the motion to dismiss is **GRANTED**. Plaintiff’s federal Title VII claim is **DISMISSED WITH PREJUDICE**. Plaintiff’s state law claim is **DISMISSED WITHOUT PREJUDICE**.

²⁹ Defendant also argues that plaintiff failed to file his EEOC action within the 300-day limitations period. Defendant argues that this period expired on May 3, 2023 because the charge was not signed until May 6, 2023 and not filed until May 8, 2023. R. Doc. No. 29-1, at 3. In response, plaintiff argues that he did timely initiate his EEOC charge by filing a declaration under penalty of perjury on September 30, 2022. R. Doc. No. 33, at 1. Defendant disputes that this signed declaration was a part of the EEOC charge that plaintiff’s present action concerns. R. Doc. No. 35-2, at 2. This factual dispute pertains to whether the state law claims are prescribed because the prescription period is suspended during the pendency of EEOC review. See La. Stat. Ann. § 23:303(D). Because the Court declines to exercise supplemental jurisdiction over the state claims, it is not necessary for the Court to address this dispute.

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New Orleans, Louisiana, April 16, 2024.

A handwritten signature in black ink, appearing to read "Lance Africk", written over a horizontal line.

LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE

B. Other pleadings

1.	Opposition (excerpt)(March 30, 2024) to first motion to dismiss.....	102a
2.	Order (excerpt), District Court of the Eastern District of Louisiana, No. 23-3986 (April 16, 2024) granting first motion.to dismiss.....	103a
3.	Order, District Court of the Eastern District of Louisiana, No. 23-3986 (March 5, 2025) for Clerk to produce two clerk/witnesses at hearing and documents first to defendant, then defendant to plaintiff.....	105a
4.	Plaintiff's supplemental memorandum (March 12, 2025) advising confusion re vindication, permission, and ethics issues.....	107a

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TERRY CATHERINE

CIVIL ACTION NO.23-03986

v

MDK 706 LLC

JUDGE: Africk
Magistrate: North

PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS

A. The Federal Claim

1. Plaintiff timely filed his action.

Plaintiff timely filed his complaint as shown by the "Tendered" stamp on the complaint.

2. Plaintiff timely filed his EEOC charge

Plaintiff timely initiated his EEOC charge with a Declaration under Penalty of Perjury September 30, 2022. (Ex 1, including the fax filing receipt.) The formal signed charge, the basis of this part of the motion to dismiss, relates back to the sworn Declaration such that the charge was timely. *Federal Express Corp. v. Holowecki*, 522 US 389, 128 S Ct 1147 (2008); *Hamilton v. Promise Healthcare*, 23-30190 (5th Cir. Oct 12, 2023); see, EEOC: ADEA Interpretations and Substantive Regulations, 29 USCA secs. 1626.6, 1626.8(a).

B. The State Law Claim

According to the above date of September 20, 2022, the prescriptive period

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TERRY CATHERINE

CIVIL ACTION

VERSUS

No. 23-3986

HUGE ASS BEERS

SECTION I

ORDER & REASONS

Before the Court is a motion¹ by defendant MDK 706, LLC ("defendant") to dismiss plaintiff Terry Catherine's ("plaintiff") amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff opposes the motion.² Defendant filed a reply.³ For the reasons set forth below, the Court grants the motion to dismiss pursuant to Rule 12(b)(6).

I. BACKGROUND

This matter arises from alleged workplace discrimination. Plaintiff's amended complaint alleges that plaintiff "is an African-American male formerly employed by MDK 706, LLC dba Huge Ass Beers, as front doorman . . ."⁴ Plaintiff claims that, on July 7, 2022, he was threatened by another security guard, who plaintiff refers to as "Brandon."⁵ The manager asked the men to "take it outside."⁶ Plaintiff alleges that Brandon appeared outside with brass knuckles, and plaintiff asserts that he then

¹ R. Doc. No. 29.

² R. Doc. No. 33.

³ R. Doc. No. 35-2.

⁴ R. Doc. No. 25, ¶ 3.

⁵ *Id.* ¶ 5.

⁶ *Id.*

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unlawful employment action.¹⁶ Defendant also argues that plaintiff's state law claims are time barred because plaintiff did not file his complaint within the one-year prescriptive period and there is no basis for equitable tolling.¹⁷

In response to defendant's argument that the complaint was not filed within 90 days of receiving the right to sue letter, which was received by plaintiff on May 15, 2023, plaintiff states that he "timely filed his complaint as shown by the "Tendered" stamp on the complaint."¹⁸ The stamp on the complaint shows that the complaint was filed in this U.S. District Court on August 22, 2023.¹⁹

Next, with respect to defendant's argument that the EEOC charge was not timely filed, plaintiff argues that he timely initiated his EEOC charge when he filed a "Declaration under Penalty of Perjury" on September 30, 2022.²⁰ Plaintiff argues that the formal signed charge relates back to the sworn declaration such that the charge was timely.²¹ In its reply, defendant argues that plaintiff's declaration did not appear in the EEOC file and therefore is not a part of the charge on which plaintiff is currently suing.²²

In response to defendant's argument regarding the state law claims, plaintiff argues that the prescriptive period had not run because it was suspended from September 19, 2022 until May 15, 2023 while the EEOC conducted its administrative

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 4-5.

¹⁸ R. Doc. No. 33, at 1.

¹⁹ R. Doc. No. 1.

²⁰ R. Doc. No. 33, at 1.

²¹ *Id.*

²² R. Doc. No. 35-2, at 2.

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2023.²⁵ Accordingly, plaintiff had 90 days, until August 13, 2023, to file his complaint. Despite plaintiff's contention that the "tendered" stamp on the complaint shows it was timely filed,²⁶ the "tendered" stamp shows the complaint was submitted for filing on August 22, 2023.²⁷ Because plaintiff did not file his complaint until August 22, 2023 and the statutory period is strictly construed, the Court will dismiss plaintiff's Title VII claim as untimely.

Plaintiff's amended complaint alleges that this Court has federal question jurisdiction because of plaintiff's Title VII claim.²⁸ However, as described above, plaintiff's only federal claim must be dismissed as the complaint was not timely filed and therefore plaintiff's only remaining claim is brought pursuant to Louisiana state anti-discrimination law.

28 U.S.C. § 1367(c) provides that district courts may decline to exercise supplemental jurisdiction over a claim if "(1) the claim raises a novel or complex issue of [s]tate law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction." "The Supreme Court has given further guidance, instructing federal courts to consider and weigh the values of judicial economy, convenience, fairness, and comity in order to decide

²⁵ R. Doc. No. 29-1, at 3.

²⁶ R. Doc. No. 33, at 1.

²⁷ R. Doc. No. 1.

²⁸ R. Doc. No. 25, ¶ 1.

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MINUTE ENTRY
AFRICK, J.
March 5, 2025
JS-10 00:05

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TERRY CATHERINE

CIVIL ACTION

VERSUS

No. 23-3986

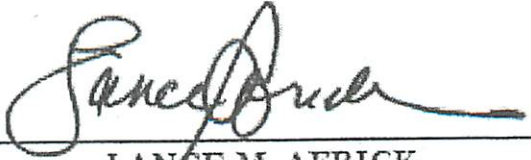
HUGE ASS BEERS

SECTION I

On this date, the Court held a telephone conference with counsel for both parties regarding defendant's *ex parte* request¹ for the production of testimony and records. The Clerk of Court also participated in the conference and identified which records are responsive. Pursuant to the discussion at the conference,

IT IS ORDERED that defendant's request is GRANTED as set forth herein. Brad Newell and Sandra Simlin will testify at the hearing scheduled for March 31, 2025. The Clerk of Court shall provide defendant with the requested records that are responsive. Defendant shall then provide such records to plaintiff.

New Orleans, Louisiana, March 5, 2025.



LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE

¹ R. Doc. No. 76.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CATHERINE

CIVIL ACTION

v

No. 23-3986

MDK 706, LLC (HUGE ASS BEERS)

Section I

**PLAINTIFF'S SUPPLEMENTAL AND AMENDED MEMORANDUM IN
RESPONSE TO ORDER [RD 73]**

Plaintiff's attorney files this supplemental and amended response based on a review of the photographed complaint and visit to the courthouse with plaintiff on March 11, 2025.

Procedure for the hearing

Mr Wilson will call the Chief Clerk, probably as his first witness, and thereafter call himself and then the plaintiff. Plaintiff will make available the phone with which he took the picture of the tendered complaint and the photo itself. Mr Wilson believes this evidence will satisfy his burden of proof that the complaint was tendered. Plaintiff will object to the introduction of the Clerk's produced documents as irrelevant. Mr Wilson will have counsel. He advises counsel will be Dane Ciolino who in turn has advised he will be in deposition March 31 such that Mr Wilson will move for a continuance.

The issue of vindication of the Clerk

Mr Wilson does not understand the remand allusion to vindication of the

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clerk and believes that why the clerk stamped the complaint as tendered, but did not file it, is irrelevant to the issue of whether it was, in fact, tendered. Further, because the clerk's discovery has not been made or produced to plaintiff and Mr Wilson has no other facts, he cannot brief the vindication issue.

The issue whether upon proof of tender, may plaintiff thereafter proceed

Another vague secondary issue seems to be whether, proving tender, plaintiff may thereafter proceed. Motions to clarify this aspect of the remand have been denied. Not understanding what this issue might be, plaintiff also cannot address it.

Facts to be adduced by plaintiff: Plaintiff will show that his attorney attempted to file the complaint with a younger female clerk on August 10, the day before it was photographed. When she declined, he requested to speak to someone with more authority. An older male clerk explained that in view of the recent incident with attorneys filing unauthorized claims for hurricane damage plaintiffs, the clerk would not accept a third party filing for a *pro per* plaintiff. Mr Wilson asked if they "could call upstairs [to the chambers of some judge or magistrate]. Someone might vouch for me." The clerk declined. No other explanation was offered. Mr Wilson advised he would return the next day with his client.

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He returned the next day, August 11, with Mr Catherine and two original complaints. One was offered to a clerk he remembers as fairly young female (possibly, but not definitely, the same woman of the day before) who refused to file it (the attorney cannot remember the reason of refusal). Upon that event, the undersigned requested she stamp it tendered and she did so. Mr Wilson then told Mr Catherine to make a camera copy with his phone, but the clerk, citing the rule against photographs, declined. We asked if she could make a copy, but that request was also refused. We then asked if we could take the complaint elsewhere to make a copy. She agreed.

Once outside, Mr Wilson and Mr Catherine realized that it was too late to go to the Hyatt which has copy facilities. Therefore, Mr Catherine took a photograph of the tendered complaint at the first bench on the courthouse sidewalk. It is those bricks which show in the background of the photograph. Mr Wilson and Mr Catherine then went back into the courthouse and gave the tendered complaint to the clerk. Nearly simultaneously, the clerk asked if we had another copy of the complaint which we did. A second signed original was given to the clerk. This appears to be the complaint marked as filed August 22.

Plaintiff believes there is no countervailing evidence that the complaint was not tendered.

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The ethical obligation of an attorney filing a complaint obo a third party

The district court has added its own inquiry as to the ethical obligations of an attorney attempting to file a complaint obo a party the attorney does not represent. Preliminarily, this issue seems outside the scope of the remand and suggestive of a disciplinary proceeding. If this briefing is required as a predicate to a disciplinary hearing the undersigned requests particularized notice.

Mr Wilson has twice been to the Supreme Court law library, but has been unable to find any authority on the subject even with the assistance of a librarian on both occasions. However, the general rule (of which Mr Wilson was aware at the time of tender) of the ethical obligation of an attorney with respect to the clerk is to respect to clerk as the attorney would respect the judge. That was done.

Respectfully submitted,
J Courtney Wilson La13561
/s/J Courtney Wilson
3517 Johnson #1741
Metairie, La 70001

Certificate of service

I certify that I have this date filed the above via ECF which automatically serves opposing counsel.

3/12/25

/s/J Courtney Wilson

C. Relevant transcript pages from evidentiary hearing.(with annotations of most pertinent pages and important “departure” pages marked with *)

	Page	Remarks	
1.	634:9-24	*Ethics issue now a candor issue.....	112a
2.	674:24-675:5	*Judge’s anticipation of testimony complaint not signed.....	113a
3.	684:18-19	*Judge’s statement there is no Marshall’s video.....	116a
4.	691:15-18	*Judge’s anticipation of testimony the tender stamp was a mistake.....	118a
5.	692:22-693:8	Newell told Clerk the complaint was not signed.....	119a
6.	749	Denial of motion at hearing for information related to white clerk...	142a
7.	787	Absence of Clerk Johnson.....	158a

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TERRY CATHERINE

Docket No. 23-CV-3986
Section "I"
New Orleans, Louisiana
Wednesday, April 2, 2025

HUGE ASS BEERS, ET AL

TRANSCRIPT OF EVIDENTIARY HEARING PROCEEDINGS
HEARD BEFORE THE HONORABLE LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

J. COURTNEY WILSON, ESQ.
3517 Johnson St., #1741
Metairie, LA 70001

FOR THE MOVANT
COURTNEY WILSON:

DANE S. CIOLINO, ESQ.
18 Farmham Pl.
Metairie, LA 70005-4008

FOR THE DEFENDANT:

GRIFFIN & BIVALACQUE
BY: ROBERT J. ELLIS, JR., ESQ.
SALVADOR I. BIVALACQUA, ESQ.
650 Poydras St., Suite 2615
New Orleans, LA 70130

Official Court Reporter:

Karen A. Ibo, CCR, RPR, CRR, RMR
500 Poydras Street, B-275
New Orleans, Louisiana 70130
(504) 589-7776

Proceedings recorded by mechanical stenography, transcript
produced by computer.

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MR. BIVALACQUA: Thank you, Judge.

THE COURT: So welcome.

MR. ELLIS: One other thing just for the record. Huge Ass Beers is a trademark, it's not -- MDK 726, LLC is the actual company. I know it's in the pleadings, I've filed a corrective pleading for that; but the trademark keeps coming up and the trademark is not part of this litigation. I just want to make sure that's clear for the record. Thank you, sir.

THE COURT: All right. Thank you. Prior to this hearing the Court ordered the parties to submit memorandum outlining their view of the facts, along with citations to any applicable local rules and any ethical obligations of an attorney intending to file a complaint on behalf of an individual whom the attorney is not enrolled to represent.

While the Court has inquired regarding ethical obligations, I would like to emphasize this is not a disciplinary hearing; rather, the Court considers the ethical obligations of an attorney only insofar as the norms embodied in the ethical rules and formal local rules on the Clerk of Court's customary interactions with parties and their counsel.

For instance, the Court deems the scope of an attorney's duty of candor to the Court, which includes the clerk's office, to be relevant in assessing the factual issues presented in this evidentiary hearing.

All right. Let's proceed.

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09:56:47 1 THE COURT: About how tall?

09:56:49 2 THE WITNESS: I couldn't tell how tall the lady was
09:56:51 3 because she was sitting in the chair.

09:56:53 4 THE COURT: Fair enough. Fair enough. Thank you. Go
09:56:54 5 ahead, Mr. Wilson.

09:56:55 6 REDIRECT EXAMINATION

09:56:55 7 BY MR. WILSON:

09:57:07 8 Q. Directing your attention to Exhibit A. On both pages there are
09:57:14 9 photographs of somebody's hands at the top and the bottom of the
09:57:17 10 complaint. Can you identify whose hands those are?

09:57:22 11 A. That is your hands in the photographs, Mr. Wilson.

09:57:25 12 MR. WILSON: Thank you. Indulge me just a moment,
09:57:41 13 please.

09:57:41 14 THE COURT: I'm sorry, sir?

09:57:42 15 MR. WILSON: Indulge me just a moment.

09:57:42 16 THE COURT: Sure.

09:57:43 17 MR. WILSON: Thank you.

09:59:15 18 THE COURT: I just have a couple of questions for you.
09:59:19 19 When you took the photograph of this complaint, according to your
09:59:23 20 testimony, outside of the federal courthouse, can you tell me why
09:59:26 21 you didn't take a -- why the photograph did not include a copy of
09:59:31 22 the signature page of the complaint? Why you didn't take a
09:59:36 23 photograph of that?

09:59:39 24 MR. WILSON: Your Honor, I would respectfully ask for
09:59:44 25 clarification. What do you mean by "the signature page?"

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09:59:47 1 THE COURT: Where his signature is on the complaint. The
09:59:49 2 complaint has a line for his signature, right, and I believe that
09:59:56 3 there's going to be testimony that it was not signed by the
10:00:00 4 plaintiff. The signature page was not signed by the plaintiff,
10:00:04 5 okay.

10:00:04 6 So my question is -- but regardless of whether it was
10:00:09 7 signed or not, that's a question of fact that I'll have to address.
10:00:12 8 My question is, why didn't you take a picture of the page of the
10:00:17 9 complaint that has a line for your signature?

10:00:20 10 MR. WILSON: Your Honor, I object to the question. I
10:00:23 11 believe the Court does not understand Exhibit A. Would the Court
10:00:28 12 please look at Exhibit A?

10:00:31 13 THE COURT: Sure.

10:00:32 14 MR. WILSON: And look at the second page, please.

10:00:35 15 THE COURT: Oh, I see. So that's part of the -- hold on
10:00:42 16 one second, please.

10:00:43 17 MR. WILSON: All right. Thank you, your Honor.

10:01:00 18 THE COURT: All right. So I have a photograph, I mean,
10:01:13 19 there's testimony as to when it was taken of this complaint, and it
10:01:17 20 has -- you gave me a very -- not a very good copy, I don't know if
10:01:22 21 you have a better copy or not.

10:01:24 22 MR. WILSON: Yes, sir, I think I do have the original
10:01:26 23 photographs. May I explain the degradation? We had to transfer
10:01:30 24 between phones and go to a copy shop and it degrades with each
10:01:34 25 copy. But I do have the original.

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10:32:26 1 THE WITNESS: I have cases that I have filed through the
10:32:29 2 EEOC, yes, sir, in the past.

10:32:31 3 THE COURT: In this court?

10:32:32 4 THE WITNESS: No, not in this court.

10:32:42 5 THE COURT: Not in this court. Okay. What else? Go up
10:32:46 6 to the podium, please. Okay. Go ahead.

10:33:13 7 FURTHER EXAMINATION

10:33:13 8 BY MR. WILSON:

10:33:13 9 Q. Mr. Catherine, is it possible that you signed the document the
10:33:24 10 judge showed you and your lawsuit the day before you and I went to
10:33:25 11 the courthouse, is it possible that you signed those documents the
10:33:32 12 day before?

10:33:35 13 A. I don't remember. Only thing I remember is August 11th, 2023.

10:33:41 14 Q. All right. Okay. Did I ever explain to you that I was helping
10:33:48 15 you as your attorney but not as your official attorney?

10:33:55 16 A. Yes.

10:33:56 17 THE COURT: As your attorney but not as your official
10:33:58 18 attorney? I don't even know what that means.

10:34:01 19 MR. WILSON: All right. Well, then let me rephrase that.

10:34:03 20 BY MR. WILSON:

10:34:03 21 Q. Did I ever tell you that I was helping you but I wasn't to go
10:34:07 22 on the pleadings for you and be your official attorney?

10:34:09 23 A. Yes, you did.

10:34:11 24 MR. WILSON: Thank you. Your Honor --

10:34:13 25 THE COURT: Hold on one second. Are you Terry Catherine,

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10:12:41 1 Is that agreeable?

10:12:48 2 A. Yes, sir. Uh-huh, yes, sir.

10:12:48 3 Q. Okay. If you do not understand the question, please ask me to
10:12:52 4 repeat it and I will be glad to do so.

10:12:54 5 A. Yes, sir.

10:12:54 6 Q. And if you need a break, please let us know.

10:12:57 7 A. Yes, sir.

10:12:58 8 Q. Was there at any time video or audio in the building of
10:13:02 9 plaintiff or Mr. Wilson, me, on August 11, 2023, at about 3:20 in
10:13:05 10 the afternoon?

10:13:12 11 A. We don't, to my knowledge, have any audio or video recordings
10:13:16 12 that happened in the lobby of the clerk's office where the pro se
10:13:22 13 and intake areas are. I cannot speak to what the Marshal's office
10:13:26 14 might have, but I don't -- in the lobby where -- in the hallways
10:13:32 15 and the lobby that the clerk's office controls, I have never been
10:13:34 16 aware of any audio or video recordings in the lobby area. But
10:13:42 17 again, I can't speak to what the Marshal has --

10:13:43 18 THE COURT: I can represent to you that the Marshal
10:13:46 19 service does not have any video or audio of August 11th, 2023.

10:13:52 20 MR. WILSON: Thank you.

10:13:54 21 BY MR. WILSON:

10:13:54 22 Q. Are the exhibits still in front of the witness?

10:13:57 23 A. No, there's nothing in front of me.

10:14:03 24 Q. I would like to show you Exhibit B, and ask you if you can
10:14:08 25 identify that, please?

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10:22:05 1 THE COURT: No, Court Exhibit 1.

10:22:05 2 BY MR. WILSON:

10:22:17 3 Q. So, now that we've established it's signed. Is there any
10:22:20 4 authority for the clerk not to file a complaint stamped "Tendered
10:22:24 5 for Filing" by the clerk and received by the clerk?

10:22:26 6 THE COURT: Well, that's a problematic question because
10:22:28 7 she doesn't know whether it was signed at the time it was presented
10:22:31 8 to the clerk. Only the clerk can testify to that and, of course,
10:22:35 9 your client and yourself. She doesn't know the answer to that.

10:22:35 10 BY MR. WILSON:

10:22:39 11 Q. Let's assume that it was signed at the time it was tendered.

10:22:44 12 A. Well, again, I don't -- I've never seen the document and I
10:22:49 13 don't know what document was actually presented at the clerk's
10:22:52 14 office on August 11th, I don't know, and I don't have a copy of it.

10:22:55 15 But if there was a signed complaint and it had -- it had
10:22:59 16 the signature of the plaintiff along with a filing fee or an IFP
10:23:06 17 application that was signed, then it should have been filed.

10:23:11 18 THE COURT: Am I also correct that with respect to a pro
10:23:13 19 se plaintiff, the pro se plaintiff himself would have to be there
10:23:15 20 to sign it so you know that the person who is filing the complaint
10:23:18 21 is the same person before them; is that correct?

10:23:21 22 THE WITNESS: Correct. The pro se plaintiff is supposed
10:23:23 23 to be there to sign it. In normal circumstances, yes.

10:23:28 24 BY MR. WILSON:

10:23:29 25 Q. Pro se plaintiff doesn't have to sign it in your presence, does

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10:23:31 1 he?

10:23:31 2 A. They don't have to sign it in our presence.

10:23:34 3 Q. And the clerk wouldn't have put the "Tendered" stamp on it
10:23:37 4 unless it had a signature, would she?

10:23:38 5 A. I cannot answer that question.

10:23:38 6 Q. But the regular procedure would be to refuse the complaint
10:23:42 7 until it had a signature and not stamp it?

10:23:44 8 A. If the complaint wasn't signed, it probably should not have
10:23:50 9 been stamped.

10:23:50 10 Q. All right. And if it were stamped "Tendered," we can assume
10:23:55 11 that it was signed, correct?

10:23:55 12 A. No, I can't agree with that. I don't agree with that.

10:23:55 13 Q. Why would a clerk stamp something "Tendered" if it weren't
10:24:02 14 signed?

10:24:03 15 THE COURT: We're going to find that out when these other
10:24:05 16 witnesses -- there's no reason to argue with her, with the clerk.
10:24:07 17 We're going to find that out when these other witnesses testify.
10:24:10 18 She wasn't there, she doesn't know. Maybe it was a mistake. How
10:24:13 19 would she know that?

10:24:13 20 MR. WILSON: Can I ask her what the regular procedure is?

10:24:16 21 THE COURT: Ask her that.

10:24:18 22 BY MR. WILSON:

10:24:18 23 Q. Isn't it the regular procedure to mark stamped "Tendered for
10:24:22 24 Filing" only if the complaint is signed?

10:24:25 25 A. The clerk should have looked through all of the documents and

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10:24:27 1 made sure they were all signed before they stamped "Tendered for
10:24:33 2 Filing," that's correct.

10:24:32 3 Q. By any chance have you ever seen the original complaint that is
10:24:51 4 represented by the photographs in Exhibit A?

10:24:54 5 A. I have never seen it, no.

10:24:56 6 Q. Have you ever heard anything about that tendered complaint?

10:24:59 7 A. I am not sure what your question is, have I heard about it?

10:25:04 8 Q. Yes.

10:25:04 9 A. Like what would I have heard about it? I mean, I have read the
10:25:10 10 documents. Are you asking me to tell you what other people told me
10:25:13 11 about it?

10:25:14 12 Q. Yes, ma'am. What happened to it after the plaintiff and I
10:25:22 13 left, where did it go, who handled it?

10:25:26 14 A. Well, I have to tell you that I am not sure me telling you what
10:25:32 15 other people who are getting ready to testify would tell you, you
10:25:36 16 know, whether that's really supposed to be a question I am supposed
10:25:39 17 to answer.

10:25:40 18 But, yes, I have talked to my staff, of course, about
10:25:44 19 what happened in this particular situation, that is why I had
10:25:48 20 Mr. Newell prepare this document. This is basically what he has
10:25:52 21 told me occurred.

10:25:55 22 Q. Okay. All right. At any point during the preparation of that
10:26:03 23 document, did you see the original tendered complaint?

10:26:05 24 A. I was told the tendered complaint was returned and we do not
10:26:09 25 have a copy of it.

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10:26:10 1 Q. Who told you that?

10:26:12 2 A. Mr. Newell told me that.

10:26:13 3 Q. And what was the basis for his telling you that?

10:26:16 4 A. Because it wasn't -- the document wasn't signed and it should
10:26:21 5 not have been accepted for filing. And he also told me he told the
10:26:25 6 person who was -- who presented it, which I think he said was you,
10:26:29 7 that he explained that it needed to be returned to you and signed
10:26:35 8 by Mr. Catherine if it was a pro se document.

10:26:38 9 He also said if you were going to represent
10:26:42 10 Mr. Catherine, that it should be filed through CM/ECF, through our
10:26:51 11 electronic filing system, according to our administrative rules for
10:26:54 12 attorney discipline -- I mean, for attorney filing.

10:26:57 13 Q. Did he tell you on what day he returned the tendered complaint
10:27:01 14 to me for signature? Did he tell you that happened on the 10th or
10:27:04 15 the 11th?

10:27:06 16 A. He told me, just exactly what is in here, that on the 10th you
10:27:11 17 came close to five o'clock, it wasn't signed, he explained to you
10:27:14 18 that Mr. Catherine had to sign it, he returned it to you, and then
10:27:17 19 he explained that you came the next day.

10:27:21 20 THE COURT: Ms. Michel, I have a question for you.

10:27:22 21 THE WITNESS: Yes. Yes, Judge.

10:27:24 22 THE COURT: I am looking at a Fifth Circuit brief that
10:27:26 23 was filed by Mr. Wilson on September 20th, 2024. I want to read
10:27:31 24 you one paragraph.

10:27:31 25 THE WITNESS: Okay.

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10:30:14 1 friend for Mr. Catherine.

10:30:15 2 Q. Okay.

10:30:15 3 THE COURT: And the time, according to your deputy, the
10:30:15 4 time Mr. Wilson was trying to file this complaint, am I correct,
10:30:22 5 that the record does not reflect that he was representing the
10:30:27 6 plaintiff as a lawyer; is that correct?

10:30:29 7 THE WITNESS: That's correct. It appears to be a pro se
10:30:31 8 complaint and Mr. Newell told me that Mr. Wilson said he was not
10:30:37 9 filing this as an attorney, he was filing this as a friend of
10:30:41 10 Mr. Catherine.

10:30:43 11 MR. WILSON: Okay.

10:30:45 12 THE WITNESS: He also told me Mr. Catherine was not
10:30:48 13 present.

10:30:48 14 BY MR. WILSON:

10:30:50 15 Q. And what?

10:30:50 16 A. He told me Mr. Catherine was not present on the 11th.

10:30:55 17 Q. And did he tell you what consequences, if any, resulted from
10:31:02 18 Mr. Catherine's not being present on the 11th?

10:31:05 19 A. He told me, he said the document needs to be signed by
10:31:09 20 Mr. Catherine and that he suggested Mr. Catherine could sign it,
10:31:12 21 submit it that day electronically, could mail it in, or could come
10:31:15 22 back to the window and file it that day before five o'clock.

10:31:41 23 THE COURT: Anything else for the clerk?

10:31:43 24 MR. WILSON: Just a second.

10:31:46 25 BY MR. WILSON:

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10:31:47 1 Q. Did he mention that anyone returned with that document later
10:31:51 2 that day before five o'clock?

10:31:53 3 A. He said Mr. Catherine came on the 22nd to file it himself.

10:32:00 4 Q. So in other words, no one returned later before five o'clock?

10:32:01 5 A. I think he said that you came later that day also.

10:32:05 6 Q. Okay. And did he tell you why I came?

10:32:11 7 A. He said he had called Mr. Catherine and Mr. Catherine said you
10:32:16 8 were his attorney, so then I think he came -- you came back and
10:32:23 9 attempted to file it, and he said it needed to be signed by
10:32:26 10 Mr. Catherine.

10:32:28 11 Q. It needed to be signed by Mr. Catherine.

10:32:27 12 A. And we needed the IFP application or the filing fee.

10:32:31 13 Q. So the document -- the lawsuit was, again, unsigned the last
10:32:33 14 time I came in; is that correct?

10:32:43 15 A. I believe that's true, but I didn't see the document.

10:32:53 16 THE COURT: Is there any reason that the clerk's office,
10:32:55 17 if it had a properly tendered, I'll use that word, complaint on
10:33:01 18 August 11th, is there any reason that the clerk's office would wait
10:33:06 19 11 days later to go ahead and file that document into the record
10:33:10 20 without anybody else initiating anything?

10:33:13 21 THE WITNESS: None whatsoever. There is no reason. We
10:33:16 22 take -- we file hundreds, thousands of documents each year.
10:33:21 23 There's no reason to hold on to a document for 11 days and put the
10:33:26 24 wrong date on it, purposely or even accidentally.

10:33:27 25 THE COURT: Of course you realize that could be critical

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10:33:35 1 with respect to whether something was timely or not, correct?

10:33:36 2 THE WITNESS: Absolutely. Absolutely.

10:33:42 3 THE COURT: As a matter of fact, if anybody in the
10:33:44 4 clerk's office ever did that and you found out about it, what would
10:33:48 5 your response be?

10:33:49 6 THE WITNESS: I would have to take action to terminate
10:33:51 7 the person and notify the judge, the Court that that had happened.

10:33:52 8 BY MR. WILSON:

10:33:59 9 Q. I wonder if you could recap your testimony. It seems there
10:34:02 10 have been multiple times when I showed up with an unsigned
10:34:08 11 complaint. Do you recall how many times you've testified that I
10:34:11 12 showed up with an unsigned complaint?

10:34:14 13 A. Mr. Wilson, I did not see you at all on the 11th or the 10th.
10:34:19 14 I only heard about what happened from other people.

10:34:25 15 Q. Right.

10:34:21 16 A. So the other people in my office who know what happened who
10:34:26 17 were there are available to testify, they're sitting outside. I
10:34:33 18 can only tell you what I was told.

10:34:32 19 So I don't know how I can recap my testimony because I
10:34:36 20 really didn't -- I was not present for any of these events.

10:34:41 21 Q. Fair enough. But I understand that you were consistently told
10:34:44 22 that every time I showed up, it was with an unsigned complaint; is
10:34:48 23 that correct?

10:34:49 24 A. My understanding is you came with an unsigned complaint --

10:34:54 25 Q. Each and every time?

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10:34:36 1 THE COURT: When you say "each and every time," are you
10:34:38 2 talking about August 10th or August 11, right?

10:35:01 3 MR. WILSON: No. August 10th, August 11, each and every
10:35:04 4 time I showed up --

10:35:04 5 THE COURT: Those two days, that's what we're focused on,
10:35:06 6 right?

10:35:06 7 MR. WILSON: That's right, unsigned complaint each and
10:35:09 8 every time.

10:35:10 9 THE WITNESS: I'm sorry, go ahead, finish your question.

10:35:10 10 THE COURT: Go ahead.

10:35:11 11 THE WITNESS: I cannot say I cross-examined the employees
10:35:13 12 about that particular point. I did say -- he did say that you came
10:35:15 13 twice and that the complaint was not in proper order and needed to
10:35:22 14 be signed. And that he suggested ways that you could file it
10:35:25 15 properly on the 11th so that it would be filed on the 11th.

10:35:25 16 MR. WILSON: Okay. No further questions.

10:35:31 17 THE COURT: Thank you. Any questions?

10:35:33 18 MR. ELLIS: Just a couple, Judge. May I approach? This
10:35:35 19 is for the witness. It's tab 4.

10:35:45 20 CROSS-EXAMINATION

10:35:50 21 BY MR. ELLIS:

10:35:51 22 Q. Good morning, Ms. Michel. I am Bob Ellis on behalf of MDK 706.

10:35:52 23 A. Good morning.

10:35:57 24 Q. And I'm going to be very brief with you. That binder, I am
10:35:57 25 going to represent to you, is everything that your office produced

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10:47:32 1 THE COURT: All right. That's admitted.

10:47:33 2 THE DEPUTY CLERK: Come up to the stand, please, ma'am.

10:48:01 3 Please raise your right hand.

10:48:02 4 (WHEREUPON, SANDRA SIMLIN, WAS SWORN IN AND TESTIFIED AS
10:48:05 5 FOLLOWS:)

10:48:08 6 THE DEPUTY CLERK: Thank you. Please be seated. Please
10:48:10 7 state your name and spell it for the record, but please speak
10:48:14 8 directly into the microphone.

10:48:16 9 THE WITNESS: Sandra, S-A-N-D-R-A, Simlin, S-I-M-L-I-N.

10:48:21 10 THE COURT: And for the record, the witness is an African
10:48:25 11 American female with eyeglasses.

10:48:26 12 MR. WILSON: I have no questions for this witness.
10:48:29 13 Neither I nor the plaintiff have ever seen this woman before.

10:48:32 14 THE COURT: I'm sorry?

10:48:32 15 MR. WILSON: I say I have no questions for this witness.
10:48:35 16 Neither I nor the plaintiff has ever seen this woman before.

10:48:37 17 THE COURT: Well, you know, when you testify you'll have
10:48:41 18 a chance to say that. Of course --

10:48:42 19 MR. WILSON: I can't -- your Honor --

10:48:43 20 THE COURT: When you testify you'll have an opportunity
10:48:45 21 to say that under oath and your client has already testified to who
10:48:48 22 he believed he was addressing at the clerk's office.

10:48:52 23 MR. WILSON: I have no questions for the witness.

10:48:54 24 THE COURT: Why did you call the witness then?

10:48:56 25 MR. WILSON: Because I thought I was calling a Caucasian

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10:48:52 1 witness with light brown hair, glasses, between 20 and 50.

10:49:04 2 THE COURT: And she does not have light brown hair.

10:49:06 3 Any questions by the defense?

10:49:07 4 MR. ELLIS: No, your Honor.

10:49:08 5 THE COURT: All right, thank you. You can step down.

10:49:10 6 Let's call your next witness.

10:49:12 7 MR. WILSON: Mr. Newell.

10:49:13 8 MS. CAROL MICHEL: May Ms. Simlin stay in the courtroom

10:49:23 9 now?

10:49:23 10 THE COURT: She can remain in the courtroom at this
10:49:25 11 point.

10:49:45 12 THE DEPUTY CLERK: Please raise your right hand.

10:49:52 13 (WHEREUPON, BRAD NEWELL, WAS SWORN IN AND TESTIFIED AS
10:49:55 14 FOLLOWS:)

10:49:55 15 THE DEPUTY CLERK: Thank you. Please be seated. Please
10:49:57 16 state and spell your name for the record.

10:49:59 17 THE WITNESS: Brad Newell, B-R-A-D N-E-W-E-L-L.

10:50:04 18 DIRECT EXAMINATION

10:50:05 19 BY MR. WILSON:

10:50:07 20 Q. Good morning, Mr. Newell. Would you state your position for
10:50:10 21 the Court, please?

10:50:11 22 A. I am the supervisor of the pro se unit and I am also the case
10:50:14 23 manager for Judge Susie Morgan.

10:50:17 24 Q. We're here this morning about a possibly tendered complaint,
10:50:26 25 and do you recognize me as someone you dealt with in that

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10:57:25 1 A. Ms. Simlin was the previous witness that was just on the stand.
10:57:28 2 You're pronouncing her name incorrectly.

10:57:32 3 Q. Oh. So there are only two pro se clerks?

10:57:34 4 A. There's two pro se clerks.

10:57:36 5 Q. One is Ms. Shimlin who just left?

10:57:38 6 A. Simlin, Sandra Simlin.

10:57:39 7 Q. Simlin.

10:57:42 8 A. Who just testified. And Ari Johnson, who didn't assist you on
10:57:45 9 the 11th.

10:57:47 10 THE COURT: I am going to place into the record, although
10:57:50 11 the record is clear, the complaint that was filed in the record on
10:57:54 12 August 22nd, 2023. And also has the plaintiff's signature on it
10:58:01 13 dated August 19th, 2023, that's the civil cover sheet. I am going
10:58:06 14 to put it in the record as Court Exhibit 2.

10:58:09 15 BY MR. WILSON:

10:58:21 16 Q. Does that complaint filed on the 22nd have "Tendered for
10:58:23 17 Filing" on it?

10:58:24 18 A. It does.

10:58:26 19 Q. And you've never seen an original paper complaint with the
10:58:29 20 stamped "Tendered for Filing" on it, correct?

10:58:32 21 A. I have not seen a "Tendered for Filing" for the August 11th.

10:58:40 22 Q. Directing your attention to Exhibit B, what I'm going to call
10:58:42 23 the clerk's narrative --

10:58:45 24 THE COURT: Excuse me, I'm sorry. Do you know who the
10:58:47 25 clerk was that initially had this interaction, at least with

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11:04:49 1 THE COURT: Did you see the unsigned complaint, the
11:04:51 2 complaint that you say was unsigned on August 11th, did you
11:04:53 3 specifically see the complaint?

11:04:55 4 THE WITNESS: To the best of my recollection, I looked at
11:04:57 5 the complaint and there was still no signature and there was still
11:05:00 6 no IFF and there was still no filing fee. It was exactly the same
11:05:04 7 as the previous day when Mr. Wilson had come in.

11:05:04 8 BY MR. WILSON:

11:05:27 9 Q. Is Ari Johnson on duty today present in this building?

11:05:31 10 A. I don't know.

11:05:38 11 Q. Would she ordinarily be here today?

11:05:47 12 A. She is employed in the clerk's office. I would hope she would
11:05:49 13 be here today.

11:05:46 14 Q. Okay. But maybe we can make a phone call and find out, right?

11:05:49 15 A. I am not her supervisor.

11:05:52 16 Q. I thought she worked in your unit?

11:05:54 17 A. She has since moved on.

11:05:56 18 Q. Okay. Where is she, please?

11:05:58 19 A. She is now in our case administration unit.

11:06:00 20 Q. Okay. But that's in this building?

11:06:02 21 A. It's in this building.

11:06:03 22 Q. Mr. Newell, with respect to Exhibit D, is it fair to say that
11:06:43 23 the word "Tendered" is not mentioned any place in this document?

11:06:48 24 A. Exhibit D being my notes?

11:06:51 25 Q. Yes.

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11:59:47 1 THE COURT: Do you know now whether Ms. -- is it Simlin
11:59:51 2 who just left the courtroom?

11:59:52 3 THE WITNESS: Simlin is her last name.

11:59:54 4 THE COURT: Do you know whether she was at all involved
11:59:56 5 with respect to the issues involving alleged filing of the
11:59:58 6 complaint on August 11th, do you know if she was the person
11:59:59 7 involved with that?

11:59:59 8 THE WITNESS: She was the primary person who assisted
11:59:59 9 Mr. Wilson.

11:59:59 10 THE COURT: So we need to hear from you. Okay, let's
11:59:59 11 proceed.

11:59:59 12 BY MR. WILSON:

11:59:59 13 Q. Did she tell you she actually processed this complaint?

11:59:59 14 A. She came to me during the processing of the complaint and noted
11:59:59 15 that things were missing and brought it to my attention, which then
11:59:59 16 brought me to the front window.

11:59:59 17 THE COURT: What did she say was missing?

11:59:59 18 THE WITNESS: To the best of my recollection, the
11:59:59 19 complaint was not signed, there was no EFP, and there was no filing
11:59:59 20 fee.

11:59:59 21 BY MR. WILSON:

11:59:59 22 Q. And what date was this?

11:59:59 23 A. This was August 11th.

11:59:59 24 Q. Did you ever see her in my presence?

11:59:59 25 A. No.

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11:00:35 1 Q. Did you ever see her in the presence of Mr. Catherine?

11:00:40 2 A. No.

11:00:41 3 Q. Did you see any clerk at the front window in my presence?

11:00:46 4 A. When I arrived at the window, there was no one at the window
11:00:49 5 but you.

11:00:50 6 Q. Did you see any clerk in the presence of Mr. Catherine?

11:00:54 7 A. Mr. Catherine was not present.

11:00:59 8 Q. And that's on August 11th in the mid-afternoon?

11:01:01 9 A. August 11th.

11:01:05 10 THE COURT: So when you came to the window on August
11:01:09 11 11th, you didn't see anybody else there, other than clerk office
11:01:12 12 personnel, you didn't see anybody else there other than Mr. Wilson;
11:01:16 13 is that your testimony?

11:01:18 14 THE WITNESS: Correct.

11:01:19 15 BY MR. WILSON:

11:01:23 16 Q. Have you -- is there anyone -- to your knowledge has a
11:01:28 17 previously described Caucasian lady, even though she is not
11:01:33 18 formally part of your staff, ever filled in at the front window?

11:01:40 19 A. Has a Caucasian lady served to cover our window at some point,
11:01:44 20 yes.

11:01:45 21 Q. That's a yes?

11:01:49 22 A. At some point in the existence of the pro se unit, a Caucasian
11:01:53 23 woman has sat in the pro se unit.

11:01:57 24 Q. Was that theoretically possible on August 11th, 2023?

11:02:00 25 A. No.

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11:01:38 1 Q. Why not?

11:01:39 2 A. Because both Ari Johnson and Sandra Simlin were present at
11:02:03 3 their work stations.

11:02:04 4 Q. In other words, Ms. Simlin was seated at the front desk?

11:02:09 5 A. Again, Ms. Simlin --

11:02:12 6 Q. Ms. Simlin, okay. She was seated at the front desk?

11:02:16 7 A. Her desk is not at the front, Ms. Johnson's desk is at the
11:02:20 8 front.

11:02:21 9 Q. So if I interacted with anybody, it would have been
11:02:25 10 Ms. Johnson, correct?

11:02:26 11 A. Ms. Johnson might have said, good morning. And then passed the
11:02:29 12 work over to Ms. Simlin.

11:02:34 13 THE COURT: Where does Ms. Johnson work, what section of
11:02:35 14 the clerk's office, on that day?

11:02:37 15 THE WITNESS: She worked in the pro se unit on that day.

11:02:41 16 THE COURT: She did.

11:02:41 17 BY MR. WILSON:

11:02:42 18 Q. Did you interview Ms. Johnson when you compiled Exhibit D?

11:02:47 19 A. I didn't interview anyone.

11:02:58 20 Q. Did you speak to anybody in compiling Exhibit D?

11:03:01 21 A. No.

11:03:03 22 Q. I noticed that some times are very precise and other times are
11:03:07 23 generally. How is it that you were able to give precise times in
11:03:14 24 some cases and not in others?

11:03:16 25 A. I had written down the times to remind myself when the incident

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11:04:45 1 THE COURT: Did you see the unsigned complaint, the
11:04:51 2 complaint that you say was unsigned on August 11th, did you
11:04:52 3 specifically see the complaint?

11:04:55 4 THE WITNESS: To the best of my recollection, I looked at
11:04:57 5 the complaint and there was still no signature and there was still
11:05:00 6 no LFF and there was still no filing fee. It was exactly the same
11:05:04 7 as the previous day when Mr. Wilson had come in.

11:05:04 8 BY MR. WILSON:

11:05:27 9 Q. Is Ari Johnson on duty today present in this building?

11:05:31 10 A. I don't know.

11:05:38 11 Q. Would she ordinarily be here today?

11:05:45 12 A. She is employed in the clerk's office. I would hope she would
11:05:45 13 be here today.

11:05:46 14 Q. Okay. But maybe we can make a phone call and find out, right?

11:05:49 15 A. I am not her supervisor.

11:05:52 16 Q. I thought she worked in your unit?

11:05:54 17 A. She has since moved on.

11:05:56 18 Q. Okay. Where is she, please?

11:05:58 19 A. She is now in our case administration unit.

11:06:00 20 Q. Okay. But that's in this building?

11:06:02 21 A. It's in this building.

11:06:03 22 Q. Mr. Newell, with respect to Exhibit D, is it fair to say that
11:06:42 23 the word "Tendered" is not mentioned any place in this document?

11:06:48 24 A. Exhibit D being my notes?

11:06:51 25 Q. Yes.

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11:06:32 1 A. First page, last paragraph, "Tendered" in bold.

11:06:55 2 THE COURT: Do you stand by everything you said in
11:07:01 3 Exhibit D?

11:07:02 4 THE WITNESS: I do.

11:07:03 5 MR. WILSON: I'm sorry?

11:07:03 6 THE COURT: I asked him if he stood by what was stated in
11:07:07 7 Exhibit D and he says he does.

11:07:11 8 MR. WILSON: All right.

11:07:12 9 BY MR. WILSON:

11:07:12 10 Q. You say -- where is the word tendered mentioned, please?

11:07:13 11 A. Last paragraph, last line on the first page. Would you like me
11:07:18 12 to read it?

11:07:21 13 THE COURT: Read it into the record, please.

11:07:22 14 THE WITNESS: "And was mistakenly returned without
11:07:25 15 removing or amending the stamp marking it as 'TENDERED FOR
11:07:27 16 FILING'."

11:07:37 17 MR. WILSON: May I approach the witness? Would you show
11:07:47 18 me --

11:07:48 19 THE COURT: Speak up. You need to speak up, this is all
11:07:51 20 on the record.

11:07:52 21 THE WITNESS: Are you on the second page?

11:07:54 22 THE COURT: Ask the question, please. You can't have a
11:07:57 23 conversation with the witness, everything is on the record.

11:07:59 24 MR. WILSON: I understand that. May I please take the
11:08:01 25 exhibit from the witness and look at it?

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11:38:03 1 THE COURT: Sure.

11:38:12 2 MR. WILSON: Your Honor, what I have as Exhibit D does
11:38:15 3 not match this gentleman's document.

11:38:18 4 THE COURT: Can you explain that?

11:38:23 5 THE WITNESS: I'm assuming I printed a version that was
11:38:26 6 not provided.

11:38:34 7 THE COURT: Well -- okay. So let's label one of them D-1
11:38:38 8 and one of them D-2. So the one that you were provided we'll label
11:38:43 9 D-1, and this other one we'll label D-2. So tell me what the
11:38:48 10 differences are between D-1 and D-2? Give it to the witness. D-1
11:38:55 11 is the one that Mr. Wilson was provided. Let's make sure we have
11:38:58 12 that marked correctly.

11:38:59 13 MR. WILSON: That has been marked, your Honor, as D-1.

11:39:01 14 THE COURT: Is the that one you gave the Court?

11:39:02 15 MR. WILSON: Yes, sir.

11:39:04 16 THE COURT: Okay. And D-2 will be the other document --
11:39:07 17 what, did you bring that document with you?

11:39:09 18 THE WITNESS: Yes.

11:39:09 19 THE COURT: Okay. We'll mark that as D-2. So tell me.
11:39:12 20 What is the difference between D-1 and D-2? Is the "Tendered"
11:39:17 21 language not in the one you received?

11:39:18 22 MR. WILSON: That's correct.

11:39:19 23 THE COURT: Okay. So is there any other difference in
11:39:22 24 D-2 that you're aware of right now?

11:39:24 25 MR. WILSON: I have not had a chance to compare them.

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11:09:26 1 THE COURT: Okay. All right.

11:09:32 2 Make a copy for counsel for sure, both counsel.

11:09:36 3 THE COURT: Is there any difference that you're aware of
11:09:38 4 between D-1 and D-2 other than what was just pointed out by
11:09:43 5 Mr. Wilson?

11:09:44 6 THE WITNESS: The overall narrative I would say no.

11:09:46 7 THE COURT: Can you explain why there is a second version
11:09:48 8 of D, why you made a second version of D?

11:09:53 9 THE WITNESS: I may have cleaned up the text before
11:09:56 10 providing it to the clerk.

11:10:00 11 THE COURT: Do you know when D-2 was made?

11:10:06 12 THE WITNESS: Months ago.

11:10:07 13 THE COURT: I'm sorry?

11:10:08 14 THE WITNESS: It would have been made months ago.

11:10:13 15 THE COURT: How long after D-1 made was D-2 made?

11:10:15 16 THE WITNESS: I'm not sure.

11:10:23 17 BY MR. WILSON:

11:10:25 18 Q. Did you consult with anyone when you made the change?

11:10:26 19 A. I provided it to the clerk.

11:10:28 20 Q. Did you tell her that there was a difference between D-2 and
11:10:31 21 D-1?

11:10:33 22 A. I didn't know until this moment.

11:10:36 23 Q. Did you prepare D-1?

11:10:38 24 A. D-1 was supplied by the clerk's office.

11:10:43 25 Q. Did you prepare it for the clerk?

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11:10:45 1 A. I prepared D-2.

11:10:48 2 Q. You never prepared D-1 for the clerk?

11:10:51 3 A. D-1, which is D-4, was after consulting what we were providing
11:11:01 4 in response to defense counsel's motion, that was then created for
11:11:05 5 that.

11:11:08 6 Q. You've referenced a D-4, what does D-4 mean?

11:11:11 7 A. I believe D-4 is your Exhibit D-4.

11:11:15 8 Q. That must be defense numbered for D-4, okay.

11:11:18 9 THE COURT: Let me ask Ms. Michel, who is here.

11:11:22 10 Ms. Michel, can you explain what's going on with respect to this
11:11:27 11 D-1 and D-2? And I'll allow counsel to recall her and ask any
11:11:31 12 questions if you want to do that after I just hear what she has to
11:11:35 13 say. Go ahead.

11:11:38 14 MS. CAROL MICHEL: So when we received the request -- do
11:11:39 15 you want to get by a Mike?

11:11:39 16 THE COURT: That's all right.

11:11:41 17 MS. CAROL MICHEL: When we received the request from
11:11:43 18 defense counsel, I asked for us to gather the information. I
11:11:48 19 consulted my two chief deputies, and I asked them to gather the
11:11:51 20 information. We were not sure that this narrative was -- the
11:11:56 21 narrative that was provided to me was responsive to one of the
11:11:58 22 questions. But out of an abundance of caution, I wanted to produce
11:12:04 23 it in case it was responsive. I didn't know that there was another
11:12:08 24 maybe different version of it, that's what was provided to me and
11:12:12 25 that's what we provided. I didn't realize that there might have

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11:12:15 1 been a different version since I didn't prepare it, it was just
11:12:18 2 given to me and we turned it over.

11:12:21 3 THE COURT: So it's your testimony that the witness never
11:12:24 4 provided you with D-2?

11:12:26 5 MS. CAROL MICHEL: I don't recall getting anything other
11:12:28 6 than that one that we produced.

11:12:29 7 THE COURT: Okay. Thank you. If you want to recall her
11:12:32 8 later on, you're more than welcome to do so. Either side.

11:12:33 9 MR. WILSON: Well, I'm a little befuddled, your Honor.
11:12:37 10 I'm surprised I've got the wrong live witness, I think, and I've
11:12:39 11 now got the wrong clerk's narrative. I'm still trying to make
11:12:42 12 sense of where we are. May I read D-2 for just a moment before I
11:12:45 13 proceed?

11:12:50 14 THE COURT: Sure.

11:12:51 15 MR. WILSON: Thank you.

11:13:00 16 BY MR. WILSON:

11:13:05 17 Q. Mr. Newell, directing your attention to D-2.

11:14:01 18 THE COURT: Am I correct that you never -- is it correct
11:14:03 19 or incorrect -- well, is it correct or not that you provided -- you
11:14:05 20 never provided D-2 to the clerk?

11:14:07 21 THE WITNESS: D-2 was provided to the clerk at some
11:14:09 22 point.

11:14:10 23 THE COURT: So you -- your testimony is you provided both
11:14:12 24 versions to the clerk?

11:14:13 25 THE WITNESS: Correct.

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11:16:18 1 front window.

11:16:21 2 Q. So she was not the person that interacted with me then,
11:16:23 3 correct?

11:16:23 4 A. No.

11:16:24 5 Q. And what you're telling me is that the IFP documents were
11:16:28 6 erroneously stamped and they were returned to me; is that correct?

11:16:33 7 A. I would believe if there was an existence of an August 11th
11:16:37 8 stamped complaint, it was only the complaint.

11:16:40 9 Q. Is it your position that it was erroneously stamped "Tendered
11:16:44 10 for Filing;" is that correct?

11:16:45 11 A. The complaint?

11:16:48 12 Q. The complaint, yes. Is that correct?

11:16:50 13 A. Correct.

11:16:52 14 Q. And that it was returned to me, correct?

11:16:55 15 A. Correct.

11:16:58 16 Q. With a statement that it was being -- that it was being
11:17:02 17 rejected; is that correct?

11:17:05 18 A. Being reminded that we were still missing an original signature
11:17:09 19 from the complainant, the IFP, and a filing fee.

11:17:12 20 Q. And all that had to be tendered before it could be accepted; is
11:17:16 21 that correct?

11:17:21 22 A. For the document to be submitted and filed, it would need to
11:17:25 23 have completed all of those elements.

11:17:28 24 Q. All right. And I was told that when I was handed the
11:17:32 25 documents; is that correct?

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11:17:41 1 A. Correct.

11:17:42 2 Q. Were you present when I was handed the documents -- the final
11:17:45 3 time when I was handed the documents, were you present?

11:17:48 4 A. On August 11th, the second time you appeared?

11:17:52 5 Q. Yes, sir. Second to the last time, you were present?

11:17:54 6 A. I was present both times you appeared on August 11th.

11:17:57 7 Q. And you were present when I was handed the documents and told
11:18:01 8 that they were deficient and would not be accepted; is that
11:18:03 9 correct?

11:18:05 10 A. I interacted with you through the majority of the process.

11:18:06 11 Q. My question to you again, were you present when I was handed
11:18:08 12 the documents, told they were deficient, and they were returned and
11:18:12 13 would not be filed, were you present?

11:18:13 14 A. Yes.

11:18:15 15 Q. And you told me that?

11:18:18 16 A. Yes.

11:18:18 17 THE COURT: And both times, both encounters with
11:18:23 18 Mr. Wilson on that date, you never had -- you never saw a copy of a
11:18:26 19 signed complaint; is that correct?

11:18:27 20 THE WITNESS: To the best of my recollection, no.

11:18:33 21 MR. WILSON: Just a moment, please. I have no further
11:18:33 22 questions, I tender the witness. I would propose that my next
11:18:37 23 witness be this R.J. (SIC) woman.

11:18:38 24 THE COURT: We're going to hear from the last witness,
11:19:03 25 who we sent back, we're going to hear from her next.

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11:19:08 1 MR. WILSON: Okay.

11:19:14 2 CROSS-EXAMINATION

11:19:14 3 BY MR. ELLIS:

11:19:16 4 Q. Hello, Mr. Newellman (SIC). My name is Bob Ellis, I represent
11:19:19 5 MDK 706, LLC. I just have some brief questions. You've kind of
11:19:26 6 gone over the full gamut.

11:19:28 7 Did you interact with Mr. Wilson on August 10th; is that
11:19:32 8 correct?

11:19:32 9 A. Correct.

11:19:32 10 Q. And the complaint was returned to him?

11:19:35 11 A. Correct.

11:19:35 12 Q. And that one was not stamped?

11:19:38 13 A. Not stamped.

11:19:39 14 THE COURT: So there's two instances you're talking about
11:19:42 15 with Mr. Wilson, one was on August 10th and one was August 11th?

11:19:47 16 THE WITNESS: Correct.

11:19:47 17 THE COURT: Is that right?

11:19:47 18 THE WITNESS: Three, one on August 10th, twice on August
11:19:51 19 11th.

11:19:52 20 MR. ELLIS: You beat me to it.

11:19:52 21 THE COURT: Thank you for clearing that up.

11:19:51 22 BY MR. ELLIS:

11:19:51 23 Q. On August 11th he appeared twice to you, correct?

11:19:54 24 A. Correct.

11:19:55 25 Q. Okay. And the second time is what I want to focus on, because

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11:19:58 1 that's the one with the exhibit where it's been stamped that you
11:20:02 2 saw today. That was returned to him mistakenly, correct?

11:20:06 3 A. Correct.

11:20:07 4 Q. Because if it was accepted by the clerk, if everything was in
11:20:11 5 order, the clerk's office would have kept it, correct?

11:20:13 6 A. We would have kept it.

11:20:15 7 Q. He wouldn't have been allowed to leave with it?

11:20:17 8 A. Correct.

11:20:24 9 Q. And do you know if this complaint was at some point filed?

11:20:27 10 A. It was.

11:20:27 11 Q. Do you know the date of that?

11:20:28 12 A. August 22nd.

11:20:32 13 MR. ELLIS: Just one second, your Honor, I think y'all
11:20:34 14 covered everything.

11:20:35 15 THE COURT: Do you know if anybody from the clerk's
11:20:37 16 office, including yourself, held a signed complaint from August
11:20:41 17 11th and did not file it until August the 22nd?

11:20:44 18 THE WITNESS: To the best of my recollection, no.

11:20:52 19 MR. ELLIS: Just want to clarify one thing.

11:20:53 20 BY MR. ELLIS:

11:20:54 21 Q. There was some earlier testimony today, and I want to make sure
11:20:57 22 the record is perfectly clear.

11:21:00 23 To make sure the clerk's office would not do this, stamp
11:21:04 24 a document, give it to a litigant, and then allow them to leave and
11:21:07 25 come back and bring it to you for filing?

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14:55:47 1 THE DEPUTY CLERK: -- and this be Court Exhibit 4?

14:59:50 2 THE COURT: That would be Court Exhibit 4.

14:59:52 3 And finally we have plaintiff's request for testimony and
14:59:54 4 records. Plaintiff asked for all time and attendance records for
14:59:57 5 all individuals, regular staff or otherwise, on duty on August 10th
15:00:01 6 and 11th, 2023, and request photographs of all clerk employees on
15:00:04 7 duty on the dates of August 10th and August 11th, 2023. And I
15:00:08 8 understand there are no specific time records from the clerk's
15:00:11 9 office that they have with respect to hours, but regardless, it's
15:00:13 10 way too broad, I don't find it relevant or probative of anything,
15:00:23 11 and that request is denied.

15:00:22 12 I will say also that Ariana Johnson, although there is a
15:00:28 13 judiciary policy with respect to -- both lawyers are aware of, both
15:00:32 14 sides are aware of because the Court made them aware of it earlier
15:00:36 15 in this litigation, that has to be followed to have someone like
15:00:40 16 Ms. Johnson testify. I called our clerk and I didn't know whether
15:00:46 17 we were going to have to continue this hearing or not, and asked
15:00:49 18 whether the clerk would agree to have Ariana Johnson testify and
15:00:53 19 waive any requirement that it be approved by Washington, D.C. and
15:01:00 20 by the clerk, and the Clerk of Court has agreed to do that. So she
15:01:03 21 is available for testimony and questioning by Mr. Wilson and the
15:01:06 22 defense, should they wish to do so.

15:01:08 23 All right. I think that's all I have to say at this
15:01:11 24 point. So let's move on. Would you like to have Ms. Johnson
15:01:17 25 testify?

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15:02:45 1 THE COURT: All right, Let's have Ms. Johnson, please.

15:03:05 2 MR. WILSON: Just for the record, I do want to note my
15:03:08 3 objection to the Court's disallowance of the request for the
15:03:15 4 documents.

15:03:16 5 THE COURT: What did you think -- how did you think it
15:03:19 6 was going to help you to get the time and attendance records of all
15:03:21 7 individuals, whether regular staff or otherwise, on duty on
15:03:25 8 August 10th and 11th, 2023, when it's your position that there was
15:03:29 9 a white female with glasses, with brownish hair, or light brown
15:03:32 10 hair, whatever it was, on this particular day? What would give you
15:03:35 11 the right to get that information with respect to all of the
15:03:38 12 clerk's office employees?

15:03:38 13 MR. WILSON: Well, then I would want photographs of
15:03:43 14 everybody and then I'd pick out -- we'd pick out who the person
15:03:46 15 was. I don't want to let them try to pick it out. We'd like to
15:03:47 16 have that view. And I think had we had prehearing discovery, we
15:03:49 17 wouldn't be in this predicament now. Because somebody is either
15:03:54 18 grossly wrong or grossly lying, and the best way to do it is, I
15:03:55 19 think with all due respect, is the one that was just rejected.

15:04:04 20 THE COURT: The request is way overbroad as far as I'm
15:04:08 21 concerned. And the only people who work in the pro se desk are the
15:04:13 22 three people that I just mentioned, between July 24th certainly and
15:04:18 23 the August date, August the 14th, 2023.

15:04:22 24 Where is the witness?

15:04:28 25 MR. WILSON: Judge, what you just stated is a contention

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13:12:47 1 THE COURT: Okay.

13:13:48 2 MR. WILSON: Your Honor, I could not hear the testimony.

13:13:50 3 THE COURT: She says, no, she doesn't remember when it
13:13:53 4 was. She saw y'all together but she doesn't remember when that
13:13:56 5 was.

13:13:56 6 Thank you.

13:13:57 7 THE WITNESS: You're welcome.

13:14:11 8 THE COURT: All right. Let's proceed.

13:14:18 9 MR. CIOLINO: Your Honor, we call Courtney Wilson.

13:14:33 10 THE DEPUTY CLERK: Please raise your right hand.

13:14:36 11 (WHEREUPON, JOHN COURTNEY WILSON, WAS SWORN IN AND TESTIFIED
13:14:38 12 AS FOLLOWS:)

13:14:38 13 THE DEPUTY CLERK: Thank you. Please be seated. Please
13:14:41 14 state your name and spell it for the record.

13:14:44 15 THE WITNESS: My name on the court rolls is John C.
13:14:49 16 Wilson, J-O-H-N C. Wilson. I sign my pleadings J. Courtney Wilson.

13:14:56 17 DIRECT EXAMINATION

13:14:57 18 BY MR. CIOLINO:

13:14:57 19 Q. Mr. Wilson, would you recount for the Court how you came to
13:15:01 20 represent the plaintiff Mr. Catherine in the Big Ass Beers (SIC)
13:15:10 21 case?

13:15:10 22 A. As was brought out, we had prior attorney-client relationship.
13:15:14 23 When he came to me with this matter, since I'm pushing 80 with a
13:15:18 24 short stick, I've been trying to retire, I did not want to be his
13:15:22 25 attorney. I explained to him that even though I wasn't going to be

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1 officially his attorney and wasn't going to sign any pleadings, I
2 had an obligation to him as an attorney as if I had formally signed
3 a pleading.

4 I did not want to have him think that there was, would be
5 any excuse for me to perform with less than all of my competence
6 that I could bring. So I always tell clients that when we don't
7 have a signed contract that I am just trying to help them out,
8 that's the situation that I'm obligated to them just as though we
9 had signed a contract.

10 Q. All right. So the events we're talking about here happened in
11 August of 2023. How soon before August of 2023 did you start
12 talking to Mr. Catherine about this matter?

13 A. I can't tell you. We filed an EEOC complaint and we filed
14 within 90 days of getting a right to sue, so you can work
15 backwards, at least 90 days and probably sometime before that.

16 THE COURT: Were you on the record with EEOC as being his
17 counsel?

18 THE WITNESS: I don't know. Probably, probably because
19 they usually don't let -- well, no, I don't know. But I know that
20 I did not let him file his complaint by himself. I probably
21 drafted it in order that we make it as complete and accurate as
22 possible.

23 THE COURT: My question was, did you formally represent
24 him for the EEOC?

25 THE WITNESS: Did I formally --

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15:16:35 1 THE COURT: Yeah, were you representing him as his
15:16:37 2 attorney, was your signature on the record?

15:16:58 3 THE WITNESS: I don't know, your Honor. That's what I'm
15:17:02 4 trying to tell you, I don't know.

15:17:02 5 THE COURT: Okay.

15:17:02 6 BY MR. CIOLINO:

15:17:02 7 Q. So when it came time to draft up the complaint to file in this
15:17:05 8 court, did you draft it?

15:17:06 9 A. Yes.

15:17:07 10 Q. All right. How soon before August 10th did you draft it? A
15:17:13 11 couple of days before?

15:17:14 12 A. Reasonably close to that. You know, I knew we were approaching
15:17:18 13 the deadline, yes.

15:17:19 14 Q. All right. After you drafted the complaint, typed it up,
15:17:23 15 printed it out, did you discuss it with Mr. Catherine?

15:17:26 16 A. I'm sure I did. I'm sure I read it to him to make sure that it
15:17:33 17 was as accurate as I could make it. I don't know if he saw it. My
15:17:36 18 standard procedure would have been to at least read it to him.

15:17:35 19 Q. All right. So when did you take that complaint in to the
15:17:45 20 clerk's office?

15:17:46 21 A. I think the first time is consistent with Ms. Shimlin's
15:17:53 22 testimony, I recall that now, that I got there late and that was
15:17:53 23 the only problem with filing at that time.

15:17:55 24 Q. That was August 10th?

15:17:56 25 A. Yes.

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18:17:37 1 Q. All right. Was the complaint signed by Mr. Catherine?

18:18:02 2 A. Um, he is saying that he signed the complaint on the 11th, but
18:18:12 3 the Court earlier referred to a document that I think was signed on
18:18:16 4 August 10th.

18:18:17 5 THE COURT: The civil cover sheet.

18:18:18 6 THE WITNESS: Civil cover sheet. And that was not
18:18:21 7 backdated. I assume that if he signed it on the 10th, he also
18:18:25 8 signed the complaint on the 10th. I can't imagine that I would
18:18:28 9 show up with an unsigned complaint. That's -- just doesn't make
18:18:32 10 sense. So I'm assuming it was signed notwithstanding Mr. Terry's
18:18:36 11 testimony.

18:18:38 12 BY MR. CIOLINO:

18:18:38 13 Q. All right. So if you went in to the clerk's office on
18:18:41 14 August 10th, 2023, with a signed cover sheet and a signed
18:18:47 15 complaint, why didn't they take it?

18:18:48 16 A. We arrived -- I arrived too late. I came down alone and it was
18:18:54 17 too late to really do anything. That was the only reason that was
18:18:58 18 explained to me for not filing, we were too late to the close of
18:19:02 19 business.

18:19:04 20 Q. All right. So you went back -- well, did they say anything
18:19:08 21 about not taking complaints from lawyers --

18:19:10 22 A. No.

18:19:11 23 Q. -- without the clients being present?

18:19:13 24 A. No. That didn't emerge until the next day.

18:19:16 25 THE COURT: Was the Clerk of Courts closed when you say

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15:19:19 1 it was something about being too late, close to the close of
15:19:22 2 business?

15:19:23 3 THE WITNESS: It was as Ms. Shimlin testified, that it
15:19:25 4 was too close to the close of business for them to process it
15:19:28 5 before closing. And I agreed with her, it was too close to --

15:19:32 6 THE COURT: So it's your testimony it was still -- the
15:19:36 7 clerk's office hours were still in session, so to speak, but the
15:19:42 8 clerk would not take it because it was too close to when the
15:19:45 9 clerk's office closed its doors basically, is that what you're
15:19:48 10 saying?

15:19:49 11 THE WITNESS: Yes. And I was early, I had a few more
15:19:52 12 days before the prescription date, so it was no problem, I'll come
15:19:55 13 back.

15:19:58 14 BY MR. CIOLINO:

15:19:57 15 Q. So when did you go back?

15:19:59 16 A. The next day.

15:19:59 17 Q. All right. Did you go back alone or did you go back with
15:20:04 18 Mr. Catherine?

15:20:04 19 A. I think the first time I went back I went back alone, and at
15:20:08 20 that time --

15:20:09 21 Q. Wait, wait, wait. Why don't you give us an approximate time.

15:20:12 22 A. Midday, maybe. I don't have an accurate recollection of that.

15:20:15 23 Q. All right. And what happened when you went back alone midday?

15:20:18 24 A. Mr. Newell met me and vigorously explained that because there
15:20:22 25 had been a -- somewhat of an irregularity with respect to filing

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15:20:35 1 plaintiffs Lake Charles hurricane claims, they would not let an
15:20:35 2 attorney file the pro per complaint unless the client were also
15:20:47 3 there. And so I said, okay -- well, I asked him, well, could you
15:20:52 4 call upstairs to vouch for me and he declined that. I said, okay.
15:20:53 5 Well, I'll come back tomorrow. Because I'm still early, I'm ahead
15:20:57 6 of the prescription date, so that's no problem and I came back
15:21:02 7 later that day.

15:21:02 8 Q. You said two things, you said you'll come back tomorrow and
15:21:04 9 then you just said you went back later that day.

15:21:05 10 A. On the 10th I said I'll come back tomorrow because I have --
15:21:13 11 I'm ahead of the prescription date, I'll come back on the 11th.

15:21:18 12 Q. No, I understand, so we're talking about the 11th right now.

15:21:22 13 A. Yes, when I spoke to Mr. Newell.

15:21:23 14 Q. All right. Let me stop you. Sometime midday on the 11th you
15:21:26 15 talked to Mr. Newell and you were standing at the pro se desk with
15:21:31 16 the complaint ready to file?

15:21:32 17 A. Yes.

15:21:32 18 Q. And that's when he told you you couldn't do it because of this
15:21:38 19 Lake Charles problem?

15:21:39 20 A. Yes.

15:21:40 21 Q. So then what did you do on that day, the 11th?

15:21:44 22 A. I then asked, well, can you call upstairs and maybe somebody
15:21:48 23 upstairs would vouch for me, meaning call a judge or a magistrate.
15:21:52 24 I've been around here so long I've outlived all of the other
15:21:56 25 clerks, I didn't know anybody in the clerk's office, and he

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15:21:38 1 declined to do that. I said, okay. I'll come back.

15:22:02 2 Q. All right. So you left?

15:22:03 3 A. Correct.

15:22:04 4 Q. Okay. At that point had anybody stamped anything on the
15:22:08 5 complaint you were holding in your hand?

15:22:10 6 A. No.

15:22:12 7 Q. Okay. So where did you go?

15:22:14 8 A. Not sure where I went, but I probably called Mr. Catherine and
15:22:20 9 said I need you down here because I can't file the complaint
15:22:23 10 without you. And he came back and met me at the courthouse.

15:22:27 11 Q. All right. So at first you were there all by yourself, no
15:22:34 12 client, and then you went back later that day. What time was it?

15:22:37 13 A. Mid to late afternoon.

15:22:39 14 Q. Okay. And it was you and Mr. Catherine?

15:22:42 15 A. Yes.

15:22:43 16 Q. All right. Tell us what happened.

15:22:44 17 A. Well, we went to the pro se window and, it was the two of us,
15:22:55 18 and, again, it was a Caucasian woman with light brown hair, I can't
15:23:01 19 remember whether she wore glasses or not, she was seated, don't
15:23:04 20 really know her name, didn't pay a lot of attention to her.

15:23:08 21 THE COURT: She was at the window of this unit?

15:23:11 22 THE WITNESS: Yes, sir, seated behind the glass window.

15:23:17 23 And let me see. She agreed -- she would not file it, and
15:23:22 24 I said, well, in that case, how about just stamping it "Tendered".

15:23:27 25 BY MR. CIOLINO:

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15:23:27 1 Q. Let me stop you. Why would she not file it if you had a signed
15:23:32 2 complaint and a signed cover sheet?

15:23:32 3 A. She didn't explain that I recall. I don't recall any
15:23:36 4 explanation. But I figured, well, no problem. I'll just get her
15:23:40 5 to stamp it "Tendered," and I figured we were good to go.

15:23:45 6 But because of the vigor with which Mr. Newell had
15:23:49 7 addressed me earlier, I thought, just had a gut feeling, maybe I
15:23:54 8 should take a photograph. So we first considered a camera
15:23:58 9 photograph and she refused to do that, and I understood that. I
15:24:02 10 said, well, could you make us a copy? No, can't do that. Can we
15:24:06 11 take the complaint outside and go some place to make a copy? And
15:24:08 12 we went outside and we realized that it was a long walk to the
15:24:11 13 Hyatt, and there's no way that we could walk there and back and get
15:24:17 14 to the court before it closed.

15:24:19 15 I'm a little confused, I don't think the court closed at
15:24:22 16 four o'clock, so it must have been closer to five. And I've got a
15:24:26 17 bad hip, so I knew I couldn't make that roundtrip walk. So at that
15:24:31 18 point Mr. Terry, Mr. Catherine got his phone out and we
15:24:33 19 photographed it over the dark brick steps by the first bench on the
15:24:37 20 Poydras Street side.

15:24:39 21 Q. All right. Now, Exhibit A is what we've all been looking at,
15:24:42 22 which is that photograph (INDICATING).

15:24:46 23 A. Yes.

15:24:48 24 Q. You've got it here.

15:24:49 25 A. This is the Court's Exhibit 1, a clearer copy.

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13:24:31 1 Q. It's the same Court Exhibit 1 and your Exhibit A?

13:24:36 2 A. Yes.

13:24:36 3 Q. Well, let's look at the Court's Exhibit 1 since that's a
13:24:55 4 cleaner copy. So on this there are -- it's a two-page document,
13:25:04 5 correct?

13:25:04 6 A. Yes.

13:25:05 7 Q. And were these pictures taken one right after another?

13:25:07 8 A. Yes.

13:25:09 9 Q. And your two hands -- are those your hands on there?

13:25:13 10 A. They sure are, yes.

13:25:16 11 Q. And that's on both pictures, right?

13:25:18 12 A. Yes.

13:25:19 13 Q. Your hands at the top and the bottom of the document?

13:25:22 14 A. Yes.

13:25:22 15 Q. Who took the picture?

13:25:24 16 A. Well, I didn't take the picture because I was holding the
13:25:28 17 document. Mr. Catherine took the picture, as I described, right
13:25:31 18 outside the courthouse by the bench over the dark bricks on the
13:25:35 19 Poydras Street side.

13:25:36 20 Q. After you took -- well, after Mr. Catherine took those
13:25:40 21 pictures, what did you all do next?

13:25:42 22 A. We then took that complaint back inside. And I think before
13:25:52 23 that when the clerk stamped this complaint "Tendered," she asked if
13:25:58 24 I had another copy and I told her yes, and I gave her another
13:26:03 25 signed original. So I actually presented two copies, one was

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13:26:06 1 stamped "Tendered" and one was not stamped. I hesitated for a
13:26:11 2 minute to give her my other complaint, but I said, well, I've got a
13:26:15 3 photograph copy.

13:26:17 4 THE COURT: So it's your testimony that the clerk had a
13:26:19 5 signed copy of the complaint on August the 11th?

13:26:22 6 THE WITNESS: I'm sorry?

13:26:23 7 THE COURT: There was an original and a copy on August
13:26:26 8 11th --

13:26:27 9 THE WITNESS: There were two originals, your Honor, both
13:26:30 10 with plaintiff's signature.

13:26:31 11 THE COURT: Two originals. And you're saying that the
13:26:33 12 clerk kept a signed copy of the original complaint on August 11th;
13:26:37 13 is that correct?

13:26:38 14 THE WITNESS: Unstamped, yes, yes.

13:26:40 15 THE COURT: Unstamped but nevertheless kept a copy of
13:26:44 16 the -- had an original copy of the complaint or original complaint
13:26:48 17 with the signature on it on the 11th, correct, kept that for
13:26:52 18 herself or for the clerk's office? Is that right?

13:26:54 19 THE WITNESS: She kept it, yes. Two copies, two
13:26:56 20 originals. Two originals.

13:26:58 21 THE COURT: I thought you just left one with the clerk,
13:27:00 22 though, right?

13:27:01 23 THE WITNESS: I left -- she asked me if I had another
13:27:04 24 copy, and so I had a second original on me and I gave her that. So
13:27:07 25 I left her with one original stamped "Tendered for Filing" and

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13:27:12 1 another signed original unstamped. Two originals.

13:27:16 2 BY MR. CIOLINO:

13:27:17 3 Q. All right. During that second visit to the clerk's office on
13:27:22 4 August 11th, did you see the supervisor Mr. -- I forgot his name.

13:27:27 5 A. Newell.

13:27:27 6 Q. Newell, sorry.

13:27:28 7 A. I saw him in the background, but I don't recall any active --
13:27:33 8 interaction with him at all. In fact, I'm pretty sure because I
13:27:38 9 was happy not to have to deal with him again.

13:27:42 10 Q. So the one time that you dealt with Mr. Newell on the 11th, in
13:27:46 11 fact, your client was not with you because it was the first visit?

13:27:49 12 A. That's correct.

13:27:52 13 Q. Now, the deputy clerk just testified -- and I'm sorry I've
13:28:00 14 forgotten her name.

13:28:02 15 A. Johnson.

13:28:02 16 Q. No -- yes, Ms. Johnson.

13:28:04 17 A. Ariana Johnson.

13:28:06 18 Q. Yes, Ariana Johnson. Ms. Johnson says that she has seen you
13:28:10 19 and Mr. Catherine together in the clerk's office before. How many
13:28:13 20 times have you been into the clerk's office with Mr. Catherine
13:28:17 21 physically?

13:28:17 22 A. One time.

13:28:19 23 Q. When was that?

13:28:21 24 A. August 11th, mid to late afternoon.

13:28:23 25 Q. You never went -- I don't want to lead him. Did you ever go

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1 Have you ever had any problems with any members of the
2 clerk's office who testified, any issues with them where they would
3 have some reason to lie about what you had to say or do something
4 which was inappropriate with respect to you and your client?

5 THE WITNESS: Your Honor, you would have to ask them.

6 THE COURT: No, I'm asking if you're aware of any.

7 THE WITNESS: Your Honor, I would never impute that to a
8 clerk. I would never impute that to a clerk. If you're asking me
9 what I want to speculate, I am not going to speculate. I just --
10 you've always got to impute good faith to the other person you're
11 dealing with.

12 BY MR. CIOLINO:

13 Q. All right. So when you left on August 11th, you left the
14 stamped in version of the complaint that the picture of which is in
15 your Exhibit A, the Court's Exhibit 1?

16 A. Yes.

17 Q. And you left with Mr. Catherine, and then when is the next time
18 you heard something was a problem in this case?

19 A. (SOUND EFFECT.) I called asking the clerk what the situation
20 was, it was close to the -- around the 20th or so, and the clerk
21 explained to me that since I wasn't the attorney, something -- I
22 don't know, they couldn't -- they wouldn't answer -- oh, I know. I
23 asked why hadn't somebody called that nothing had been filed.
24 And --

25 THE COURT: Why hadn't somebody called you to say what?

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15:24:02 1 you, just occurred to me maybe you ought to check the status of
15:24:05 2 this thing and see what's happening. So I called.

15:24:08 3 THE COURT: Well, the status of the thing according to
15:24:09 4 you was you thought it was filed.

15:24:11 5 THE WITNESS: I did.

15:24:12 6 THE COURT: So why would you call to follow-up and say,
15:24:16 7 by the way, is it filed, if you already thought it was filed?

15:24:18 8 THE WITNESS: Let me see. Why would I call. I don't
15:24:25 9 know. I probably -- I haven't given that any thought. I don't
15:24:30 10 know why I called, but it did not occur to me that something was
15:24:34 11 amiss.

15:24:38 12 BY MR. CIOLINO:

15:24:38 13 Q. So then why is it that Mr. Catherine decided to file another
15:24:42 14 complaint on the 22nd?

15:24:44 15 A. Because we determined that there was nothing in the record, and
15:24:51 16 I think that's when he went down and filed the other complaint. I
15:24:54 17 didn't really know that he was going to file it, but he did that.

15:25:00 18 Q. Is there anything else that you want to add?

15:25:04 19 A. Yes. When we, when Mr. Catherine and I left the clerk's
15:25:12 20 office, clerk's pro se window on the only date that we were down
15:25:15 21 there together, mid to late afternoon August 11th, no papers were
15:25:21 22 returned to us whatsoever. We left two original complaints with
15:25:26 23 this Caucasian female clerk, one was stamped "Tendered for Filing"
15:25:31 24 and the other was a clean copy that she had asked me for when she
15:25:35 25 stamped the first complaint.

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13:50:11 1 THE COURT: Okay.

13:50:13 2 MS. CAROL MICHEL: According to our HR records,
13:50:15 3 Ms. Johnson on August the 10th was on sick leave all day, eight
13:50:20 4 hours, so she wasn't in the office on August the 10th. On August
13:50:23 5 the 11th, she was -- our records show he was on sick leave from
13:50:29 6 2:30 P.M. until 5:00 P.M.

13:50:32 7 THE COURT: Do y'all want to ask the clerk any questions
13:50:34 8 about that?

13:50:36 9 MR. WILSON: At the podium, your Honor?

13:50:39 10 THE COURT: Well, sure. If you'd like to go to the
13:50:41 11 podium, I'm sure Ms. Michel will be glad to answer your questions.

13:50:46 12 (WHEREUPON, CAROL MICHEL RESUMES THE WITNESS STAND.)

13:52:21 13 THE COURT: By the way, just a question, Mr. Wilson. So
13:52:24 14 tell me why you needed to make a copy of the complaint if your
13:52:29 15 testimony was that you had two originals on August the 11th, why
13:52:34 16 would you need to possibly make another copy of it?

13:52:39 17 MR. WILSON: Because I wanted to have a copy of the
13:52:41 18 complaint with the "Tendered" stamp on it, that was the complaint,
13:52:45 19 the copy that I wanted to make and that is the copy that we made.

13:52:48 20 THE COURT: But you had that, your testimony is you had
13:52:53 21 that, right?

13:52:51 22 MR. WILSON: No, sir; no, sir. I had two complaints when
13:52:54 23 I went and only two. I gave her one, she stamped that "Tendered
13:52:59 24 for Filing," and at that time asked me if I had another one. I
13:53:03 25 said -- I hesitated a second because I didn't understand why she

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15:53:07 1 was asking that, but I figured, no problem, we've got a "Tendered"
15:53:10 2 stamp here, and I gave her a second signed original. And left with
15:53:15 3 nothing, except the photograph that we took outside.

15:53:20 4 Am I making myself clear? If you're not -- if I am not,
15:53:23 5 ask me again because I want to make sure you understand this.

15:53:26 6 THE COURT: Okay. I'll be thinking about that. Let's
15:53:29 7 ask the clerk any questions that you have.

15:53:29 8 FURTHER EXAMINATION

15:53:29 9 BY MR. WILSON:

15:53:32 10 Q. All right. Ms. Michel, you testified that someone was absent
15:53:35 11 all day on the 10th and she was absent from 2:30 to five on the
15:53:38 12 11th. Who --

15:53:41 13 A. According to the HR records. I don't have independent
15:53:44 14 knowledge of that, but that's what our HR records show.

15:53:46 15 Q. Okay. Who by name was absent?

15:53:46 16 A. Ariana Johnson who testified earlier today. And whose
15:53:52 17 photograph I gave to the judge.

15:53:55 18 Q. All right. Okay. Do you have any idea of who substituted for
15:53:58 19 her?

15:53:59 20 A. I don't think anyone substituted for her.. I think the two
15:54:03 21 people who were working in the unit on August the 10th and August
15:54:07 22 the 11th were Brad Newell and Sandra Simian. We normally do not
15:54:12 23 have backup people to work in the unit. It's not infrequent that
15:54:16 24 one person in the unit will be absent for one reason or another,
15:54:20 25 and we don't generally put another person in there.

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13:54:23 1 I am not going to say that never happens, I can't say
13:54:26 2 that never happens, but that's not the general procedure.

13:54:28 3 Q. If someone functioned as backup on the 11th from 2:30 to five
13:54:42 4 o'clock, would you have a record of who that backup person was?

13:54:45 5 A. We don't have a backup person, a general backup person.

13:54:48 6 Q. But if someone did function as backup on that date during those
13:54:53 7 hours, would you have a record of it?

13:54:54 8 A. We don't have anyone. No, we would not have -- we would not
13:54:58 9 have a record of where everybody was standing at any particular
13:55:02 10 time on August the 11th.

13:55:15 11 Q. Do you have any documented way of determining who was on duty
13:55:23 12 August 11th 2:30 to five, do you have any document way to determine
13:55:25 13 that? Yes or no, please.

13:55:31 14 A. You told me I could ask for a clarification of a question.

13:55:34 15 Q. Yes, ma'am, sure.

13:55:35 16 A. So my clarification is, do you mean in the pro se unit or do
13:55:39 17 you mean anywhere in the clerk's office?

13:55:42 18 Q. No, ma'am, I'm sorry. At the pro se unit.

13:55:44 19 A. The documented way I would have is who was -- what HR records I
13:55:51 20 have showing who was on duty and who wasn't.

13:55:53 21 Q. Okay. Was Ms. Shimlin on duty on that day?

13:55:57 22 A. I have not checked her HR records, but she told me she was on
13:56:01 23 duty and she testified that way here.

13:56:27 24 Q. Ms. Johnson testified that a Caucasian lady trained her before
13:56:34 25 she assumed duties in 2022. Were you here for that testimony?

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18:56:33 1 A. Yes, I was.

18:56:40 2 Q. Okay. Is that accurate?

18:56:42 3 A. Yes, I believe she's talking about Connie Kelly. Connie Kelly
18:56:46 4 was a long-term employee of the clerk's office. She retired and
18:56:50 5 that's why Ariana was training with her. She retired prior to
18:56:57 6 2023, I believe. I would have to check but I believe she retired
18:57:01 7 before 2023.

18:57:12 8 Q. Do you know if she -- well, first of all, would her retirement
18:57:17 9 date be easily available to you?

18:57:19 10 A. Yes, it would.

18:57:22 11 Q. Do you know if she's ever been called in as backup?

18:57:24 12 A. She has never been called in since her retirement.

18:57:27 13 Q. I'm sorry, never been called --

18:57:28 14 A. She has never been called in since her retirement. We don't
18:57:31 15 have any authority to call somebody in. After they've retired,
18:57:35 16 they don't work here anymore.

18:57:36 17 Q. Well, I thought maybe there might be some informal arrangement,
18:57:42 18 not that you would mandate that she come in, but that you could
18:57:46 19 request and she would agree.

18:57:47 20 A. I would appreciate that at times, but to my knowledge, that has
18:57:51 21 never occurred with a retired employee that we have been able to
18:57:55 22 get them to come in and help us for free.

18:57:56 23 Q. If the records show that Ms. Shimlin was also absent on the
18:58:00 24 11th --

18:58:00 25 A. I will check those records. I don't know that. But I will

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13:58:03 1 check those records. If the judge would like me to check them, I
13:58:06 2 can.

13:58:06 3 THE COURT: Yeah, that would be good.

13:58:06 4 MS. CAROL MICHEL: I'll check them.

13:58:07 5 BY MR. WILSON:

13:58:07 6 Q. Who would have filled in, if anybody?

13:58:11 7 A. Brad Newell would probably have would been the one who -- I
13:58:14 8 have seen him -- I have seen him stay in the unit by himself.

13:58:18 9 THE COURT: So the issue is whether Ms. Simlin was -- am
13:58:22 10 I pronouncing that correctly?

13:58:22 11 THE WITNESS: Simlin, Sandra Simlin.

13:58:24 12 THE COURT: Ms. Simlin was working on the 11th?

13:58:24 13 MS. CAROL MICHEL: Right. I can have one of my chief
13:58:24 14 deputies --

13:58:28 15 THE COURT: Can you find that out? Can you go find that
13:58:31 16 out?

13:58:31 17 MS. CAROL MICHEL: Uh-huh.

13:58:33 18 THE COURT: By the way. Mr. Wilson, I am looking at the
13:58:34 19 brief you filed in the Fifth Circuit Court of Appeals on
13:58:38 20 September 21st, 2024, page 10. Why did you say in that brief on
13:58:43 21 page 10 that "neither plaintiff nor his counsel tendered any
13:58:46 22 complaint on August 22nd, 2023, that was done by someone else,"
13:58:51 23 when your testimony to the contrary -- you just testified to the
13:58:54 24 contrary before this Court?

13:58:55 25 MR. WILSON: No, I withdrew that in one of my pleadings

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18:24:08 1 THE COURT: So you're assuming facts which may not be in
18:24:11 2 evidence yet. So let's first -- you can ask him again whether now
18:24:16 3 he still contends that he did not file on August 22nd, 2023.

18:24:21 4 MR. ELLIS: Okay.

18:24:21 5 BY MR. ELLIS:

18:24:22 6 Q. Do you contest that there was a complaint filed on August 22nd,
18:24:27 7 2023, with your signature on it?

18:24:28 8 A. Sir, I did not file a complaint on August 22nd, 2023rd. I
18:24:32 9 filed my complaint August 11th, 2023rd.

18:24:38 10 Q. Same question with the motion for in forma pauperis that's
18:24:42 11 filed on August 22nd.

18:24:43 12 A. Excuse me, sir?

18:24:45 13 Q. There's another motion, it's asking the Court for a waiver of
18:24:45 14 court costs and fees. There was another motion filed on the same
18:24:52 15 day August 22nd, 2023. Is it your testimony that you did not file
18:24:55 16 that?

18:24:56 17 A. Sir, no, I did not. I only filed when I was asked to come down
18:25:00 18 here to meet Mr. Wilson on August 11th.

18:25:04 19 THE COURT: Is that in the record --

18:25:06 20 THE WITNESS: -- to file the paperwork with the pro set
18:25:08 21 unit.

18:25:08 22 MR. ELLIS: Yes, sir. Yes, sir.

18:25:10 23 THE COURT: Hold on one second. I just want to check the
18:25:13 24 docket sheet.

18:25:16 25 MR. ELLIS: I can tell you in one second, I just have to

D. Exhibits at evidentiary hearing

1. D (also referred to as D-1) - Newell's narrative (as produced by Clerk pre-hearing)..... 163a
2. D-2 - Newell's narrative as produced at hearing..... 165a
3. Court's Ex 1 - Photograph of complaint *with* "tendered for filing" stamp, but without meta-data 168a
4. Def't 1- Clerk's Responses re "notation" on returned *pro se* pleadings..... 172a

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On August 10, 2023 (Thursday), a gentleman appeared at the Pro Se Intake window at 4:59 p.m., attempting to "drop off" a complaint for a Mr. Terry Catherine. The Pro Se Unit Supervisor, Brad Newell, assisted the gentleman. When asked in what capacity the gentleman was acting, he said he was simply dropping it off as a friend. It was explained that the office closes at 5:00 p.m. and the Pro Se Unit would not be able to process the complaint as the gentleman was not prepared to pay the filing fee nor did he have a motion to proceed in forma pauperis for Mr. Catherine. It was further explained that if Mr. Catherine was moving as a pro se Plaintiff, he should be the person submitting the complaint and he could do so in person, by mail, or via email. He was also told that if the document was emailed after hours, the filing date would be reflected as the day it was received if it was emailed prior to midnight that day.

At that point, the gentleman identified himself as an attorney but would not provide his name or identification. It was explained that if he was acting as Mr. Catherine's attorney, he would need to file the complaint electronically, as required by Rule 1 of the Administrative Procedures for Electronic Case Filings and Unique Procedures and Practices for Electronic Filings, unless he had an exemption from the Court that would allow for him to file on paper and bypass filing documents electronically. The attorney stated that he was not acting as Mr. Catherine's attorney but was only helping Mr. Catherine as a friend.

On August 11, 2023 (Friday), at 1:30 p.m., the attorney again appeared at the Pro Se Intake window and attempted to file the complaint on behalf of Mr. Catherine. The attorney did not mention the previous days events and a pro se docket clerk began processing the complaint assuming he was Mr. Catherine. This included stamping the documents that were provided by Mr. Wilson. When the docket clerk noticed some deficiencies with the filing, they approached their supervisor who intervened. Mr. Newell immediately recognized the attorney from the day before and inquired why Mr. Catherine was not filing this document on his own behalf. The attorney stated that Mr. Catherine was busy. The supervisor notified the attorney that he would call Mr. Catherine to confirm that he had given this attorney permission to file the complaint on his behalf. Several calls were attempted but Mr. Catherine did not answer, and a voicemail was not available.

At this point, the attorney identified himself as John Wilson and stated that Mr. Catherine "does not answer his phone." The documents were returned to Mr. Wilson and it was further explained that if he was acting as his attorney, he is required to file them electronically pursuant Rule 1 of the Administrative Procedures for Electronic Case Filings and Unique Procedures and Practices for Electronic Filings. It was further explained that if Mr. Catherine is acting as a pro se party, he could file the documents in person, by mail or submit them via email.

On the same day at 2:56 p.m., the Pro Se Unit received a phone call from a person identifying himself as Terry Catherine. Mr. Newell assisted Mr. Catherine and asked if he was aware that someone was attempting to file a case on his behalf. Mr. Catherine then informed Mr. Newell that John Courtney Wilson was his attorney and that Mr. Wilson was filing his case for him. Being that this conflicted with what Mr. Wilson told



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the Pro Se Unit at the intake window, Mr. Newell asked for clarification from Mr. Catherine at which point Mr. Catherine repeated that Mr. Wilson was his attorney. Mr. Catherine said that Mr. Wilson would on the 14th (Monday) to file his complaint.

On the same date at around 3:20 p.m., Mr. Wilson returned to the Pro Se Intake Window and again attempted to file the complaint. Mr. Newell informed Mr. Wilson that Mr. Catherine had contacted the Pro Se Unit and indicated that Mr. Wilson was representing him in this matter. Mr. Newell expressed his concerns about what capacity Mr. Wilson was acting in and informed Mr. Wilson that Mr. Newell would need to speak to the Clerk, Carol Michele, before proceeding any further. He asked that he be allowed to speak to the Clerk first or that Mr. Newell call a District Judge to "vouch for him." The documents were again returned to Mr. Wilson and he was advised that if he was acting as Mr. Catherine's attorney, they should be filed electronically pursuant to Rule 1 of the Administrative Procedures for Electronic Case Filings and Unique Procedures and Practices for Electronic Filings.

On August 21, 2023, at around 11:30 a.m., Mr. Wilson called the Pro Se Unit at which point Mr. Newell provided assistance. Mr. Wilson inquired as to why no one had called him about Mr. Catherine's complaint at which point he was advised he was never told that someone would be contacting him about Mr. Catherine's complaint being that he was not acting as his attorney. Mr. Wilson requested that Mr. Newell cite a rule that states a 3rd party could not file on behalf of a pro se party. Again, Mr. Wilson was advised that if he was acting as Mr. Catherine's attorney, he is required to file documents electronically pursuant to Rule 1 of the Administrative Procedures for Electronic Case Filings and Unique Procedures and Practices for Electronic Filings, otherwise the expectation was that Mr. Catherine would be submitting his pro se complaint to the Pro Se Unit as a pro se party.

On the same day at around 1:00 p.m., Mr. Catherine called the Pro Se Unit to inquire about his filing. Mr. Newell again assisted Mr. Catherine and again asked Mr. Catherine if Mr. Wilson was acting as his attorney to which he responded, "not really, more like an assistant attorney." Mr. Newell asked if Mr. Catherine understood that he would be acting as a pro se party and if he understood what that entails. Mr. Catherine did not seem aware of what it meant to act as a pro se party and Mr. Newell went on to clarify what pro se parties are responsible for doing, what assistance the Pro Se Unit offers to the public and how he could submit his complaint to the Court. Mr. Catherine was also informed that if Mr. Wilson was not his attorney, Mr. Wilson should refrain from contacting the Pro Se Unit on Mr. Catherine's behalf. It was also explained that it would be in Mr. Catherine's and Mr. Wilson's best interest not to share conversations held between the two with the Pro Se Unit.

On August 22, 2023, Mr. Catherine filed his complaint with the Pro Se Unit, in person, and without Mr. Wilson.

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On August 10, 2023 (Thursday), a gentleman appeared at the Pro Se Intake window at 4:59 p.m., attempting to "drop off" a complaint for a Mr. Terry Catherine. The Pro Se Unit Supervisor, Brad Newell, assisted the gentleman. When asked in what capacity the gentleman was acting, he said he was simply dropping it off as a friend. It was explained that the office closes at 5:00 p.m. and the Pro Se Unit would not be able to process the complaint as the gentleman was not prepared to pay the filing fee nor did he have a motion to proceed in forma pauperis for Mr. Catherine. It was further explained that if Mr. Catherine was moving as a pro se Plaintiff, he should be the person submitting the complaint and he could do so in person, by mail, or via email. He was also told that if the document was emailed after hours, the filing date would be reflected as the day it was received if it was emailed prior to midnight that day.

At that point, the gentleman identified himself as an attorney but would not provide his name or identification. It was explained that if he was acting as Mr. Catherine's attorney, he would need to file the complaint electronically, as required by Rule 1 of the Administrative Procedures for Electronic Case Filings and Unique Procedures and Practices for Electronic Filings, unless he had an exemption from the Court that would allow for him to file on paper and bypass filing documents electronically. The attorney stated that he was not acting as Mr. Catherine's attorney but was only helping Mr. Catherine as a friend.

On August 11, 2023 (Friday), at 1:30 p.m., the attorney again appeared at the Pro Se Intake window and attempted to file the complaint on behalf of Mr. Catherine. The attorney did not mention the previous days events and a pro se docket clerk began processing the complaint assuming he was Mr. Catherine. This included stamping the documents that were provided by Mr. Wilson. When the docket clerk inquired as to whether the required filing fee would be paid or an application to proceed *in forma pauperis* (IFP) would be submitted, Mr. Wilson stated he would not be able to pay and could not submit the IFP application. Mr. Wilson stated that he could not submit the IFP application, which requires the party's original signature, because he was not Mr. Catherine. Due to this deficiency, the docket clerk approached the. Mr. Newell recognized the attorney from the day before and inquired why Mr. Catherine was not filing this document on his own behalf. The attorney stated that Mr. Catherine was busy. The supervisor notified the attorney that he would call Mr. Catherine to confirm that he had given this attorney permission to file the complaint on his behalf. Several calls were attempted but Mr. Catherine did not answer, and a voicemail was not available.

At this point, the attorney identified himself as John Wilson and stated that Mr. Catherine "does not answer his phone." The deficient documents were returned to Mr. Wilson and it was further explained that if he was acting as Mr. Catherine's attorney, he is required to file them electronically pursuant Rule 1 of the Administrative Procedures for Electronic Case Filings and Unique Procedures and Practices for Electronic Filings. One document was stamped during processing, before it was apparent that the filing was deficient, and was mistakenly returned without removing or amending the stamp marking it as "TENDERED FOR FILING." It was further explained that if Mr. Catherine



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25-30341.816

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is acting as a pro se party, he could file the documents in person, by mail or submit them via email.

On the same day at 2:56 p.m., the Pro Se Unit received a phone call from a person identifying himself as Terry Catherine. Mr. Newell assisted Mr. Catherine and asked if he was aware that someone was attempting to file a case on his behalf. Mr. Catherine then informed Mr. Newell that John Courtney Wilson was his attorney and that Mr. Wilson was filing his case for him. Being that this conflicted with what Mr. Wilson told the Pro Se Unit at the intake window, Mr. Newell asked for clarification from Mr. Catherine. Mr. Catherine repeated that Mr. Wilson was his attorney. Mr. Catherine said that Mr. Wilson would return on the 14th (Monday) to file his complaint.

On the same date at around 3:20 p.m., Mr. Wilson returned to the Pro Se Intake Window and again attempted to file the complaint. Mr. Newell informed Mr. Wilson that Mr. Catherine had contacted the Pro Se Unit and indicated that Mr. Wilson was representing him in this matter. Mr. Newell expressed his concerns about what capacity Mr. Wilson was acting in and informed Mr. Wilson that Mr. Newell would need to speak to the Clerk, Carol Michel, before proceeding any further. He asked that he be allowed to speak to the Clerk first or that Mr. Newell call a District Judge to "vouch for him." The documents were again returned to Mr. Wilson and he was advised that if he was acting as Mr. Catherine's attorney, they should be filed electronically pursuant to Rule 1 of the Administrative Procedures for Electronic Case Filings and Unique Procedures and Practices for Electronic Filings.

On August 21, 2023, at around 11:30 a.m., Mr. Wilson called the Pro Se Unit and spoke to Mr. Newell. Mr. Wilson inquired as to why no one had called him about Mr. Catherine's complaint. Mr. Newell explained that Mr. Catherine was never told he would be contacted about the complaint and reminded Mr. Wilson that he had denied being Mr. Catherine's attorney. It was still unclear whether Mr. Wilson was acting as Mr. Catherine's attorney because although Mr. Wilson had repeatedly stated he was not acting as Mr. Catherine's attorney, Mr. Catherine had stated that Mr. Wilson was acting as his attorney. Mr. Wilson requested that Mr. Newell cite a rule that states a 3rd party could not file on behalf of a pro se party. Again, Mr. Wilson was advised that if he was acting as Mr. Catherine's attorney, he is required to file documents electronically pursuant to Rule 1 of the Administrative Procedures for Electronic Case Filings and Unique Procedures and Practices for Electronic Filings, otherwise the expectation was that Mr. Catherine would be submitting his pro se complaint to the Pro Se Unit as a pro se party.

On the same day at around 1:00 p.m., Mr. Catherine called the Pro Se Unit to inquire about his filing. Mr. Newell assisted Mr. Catherine and again asked Mr. Catherine if Mr. Wilson was acting as his attorney, to which he responded, "not really, more like an assistant attorney." Mr. Newell asked if Mr. Catherine understood that he would be acting as a pro se party and if he understood what that entails. Mr. Catherine did not seem aware of what it meant to act as a pro se party and Mr. Newell went on to clarify what pro se parties are responsible for doing, what assistance the Pro Se Unit offers to the public and how he could submit his complaint to the Court. Mr. Catherine was also

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informed that if Mr. Wilson was not his attorney, Mr. Wilson should refrain from contacting the Pro Se Unit on Mr. Catherine's behalf. It was also explained that it would be in Mr. Catherine's and Mr. Wilson's best interest not to share conversations held between the two with the Pro Se Unit.

On August 22, 2023, Mr. Catherine filed his complaint with the Pro Se Unit, in person, and without Mr. Wilson.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TERRY CATHERINE

CIVIL ACTION NO.

v

HUGE ASS BEERS

JUDGE
Magistrate

COMPLAINT FOR WRONGFUL TERMINATION

Jurisdiction and venue

1. This matter is brought under Title VII of the Civil Rights Act of 1964, 42 USC sec 2000e et seq as amended. Venue in this district is proper because all acts complained of occurred in this district. This action is also brought under the Louisiana State anti-discrimination laws.

Right to sue

2. Plaintiff obtained a Right-to-sue letter dated on or about May 15, 2023.

Parties

3. Plaintiff is Terry Catherine of the full age of majority. He is an African-American male formerly employed by Huge Ass Beers as front doorman at the Cantina, owned by Huge Ass Beers on Bourbon St. Huge Ass Beers is made defendant. Huge Ass Beers employs between 15-100 employees.
4. He objected to the DJ's not playing trap music for the black customers which drove them out and reduced bar tips in which he shared.
5. Finally, on July 7, 2022 one of the other security men (Brandon, w/m) threatened plaintiff and the manager suggested they take it outside which Mr Catherine did.
6. Brandon followed with two managers (w/m) and appeared with brass knuckles at which point plaintiff got out his night stick. No fight ensued.
7. The upshot was Angel (a white supervisor) informed plaintiff that both Brandon and he were fired; Catherine was alleged to have pulled out a gun.
8. He had one in his back pack, but never pulled it out. This should have been caught on the house street surveillance camera, on the camera for the place across the street - Cat's Meow, and on the Earth camera.

TENDERED FOR FILING

AUG 1 2023

U.S. DISTRICT COURT
Eastern District of Louisiana
Deputy Clerk

EXHIBIT

Court 1

23-3986 "I"

4/2/2025

BLG

25-30341.909

9. However, when plaintiff shortly afterwards went to pick up his check he learned that Brandon was still working.

Cause of action

Count I

10. Under Title VII plaintiff alleges that his termination and the retention of Brandon were racially motivated and thus constitutes an illegal discriminatory discharge.

Count II

11. Under the Louisiana State anti-discrimination law, plaintiff alleges that his termination and the retention of Brandon were racially motivated and thus constitutes an illegal discriminatory discharge.

Relief sought

11. Under both Counts, plaintiff seeks all legal and equitable relief, including damages for lost wages and emotional distress; punitive damages; costs, fees, and attorney fees should he retain one; and trial by jury.

Respectfully submitted,

Terry Catherine
Terry Catherine

1721 Egan St

New Orleans, La 70117

(T) 504/715-8303

terryjr7722@yahoo.com

PLEASE HOLD SERVICE
NOTICE AND WAIVER WILL BE ATTEMPTED

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

TERRY CATHERINE

CIVIL ACTION NO.
2:23-cv-3986-LMA-EJD

v.

JUDGE: LANCE M. AFRICK

MDK 706, LLC

MAGISTRATE JUDGE:
EVA J. DOSSIER

CLERK'S RESPONSES TO REQUESTS FOR TESTIMONY & RECORDS

Pursuant to the Court's minute entry (R. Doc. 77) and the Guide to Judicial Policy, Vol. 20, Ch. 8, § 810 *et seq.*, the Clerk's Office provides these responses to the requests for testimony and records made by MDK 706, LLC.

1. The testimony of Brad Newell and Sandra Simlin.

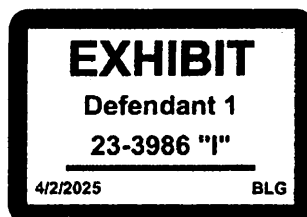
The Clerk will make Mr. Newell available for the evidentiary hearing. Ms. Simlin retired from the Clerk's Office and is no longer subject to the Clerk's control. However, the Clerk has made Ms. Simlin aware of the request for her testimony, and she has agreed to attend the hearing.

2. The procedure and process for accepting *pro se* complaints.

Please see Exhibit A, (i) pages from the Court's website that include instructions for initiating a *pro se* lawsuit and (ii) the Court's Local Rules. Local Rule 11.1 provides, "Documents filed by a party not represented by counsel must be signed by the party. The unrepresented party's name, e-mail, post office and street addresses and telephone number must be typed or clearly printed."

3. The procedure and process for accepting *Forma Pauperis* complaints.

Please see Exhibit A, pages from the Court's website that include instructions for applying for *in forma pauperis* status.



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4. The procedure and process for accepting paper complaints or pleadings.

Please see Exhibit B, the Court's Administrative Procedures for Electronic Case Filings and Unique Procedures and Practices for Electronic Filings, which is also available on the Court's website.

5. Any logs that are maintained when accepting paper complaints or pleadings.

Please see Exhibit C, the entries from the Clerk's Office *Pro Se* Unit's pleading log and complaint log that are related to this matter.

6. Any destruction logs that are maintained after accepting paper complaints.

The Clerk has no documents responsive to this request.

7. Any knowledge of the complaint filed in this matter; specifically, any recollection of either Mr. Terry Catherine or Mr. Courtney Wilson's attempted filing of a *pro se* complaint.

Please see the response to No. 1 above. In addition, please see Exhibit D, a narrative prepared by Brad Newell on August 19, 2024, in anticipation of a potential request for information by the United States Court of Appeal for the Fifth Circuit.

8. Any conversation or instruction provided by Brad Newell and Sandra Simlin to either Mr. Terry Catherine or Mr. Courtney Wilson.

Please see the response to No. 1 above.

9. Any copies of the complaint and *forma pauperis* applications.

The only copies of the complaint and *in forma pauperis* application in this matter maintained by the Clerk are those in the record at R. Docs. 1 and 2.

New Orleans, Louisiana, this 12th day of March 2025.

/s/ Carol L. Michel

Carol L. Michel, Clerk of Court

3/10/25, 1:29 PM

Federal and Local Rules of Civil Procedure | Eastern District of Louisiana | United States District Court

Federal and Local Rules of Civil Procedure

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Compliance with Rules

A. Individuals who appear in court in proper person are required to be familiar with and to follow the Federal Rules of Civil Procedure and the Local Rules of this Court.

B. Pleadings and papers submitted for filing which do not conform to the Federal Rules of Civil Procedure and/or the Local Rules of this court will be returned to you with a notation showing you where they do not conform.

If resubmitted, pleadings and papers filed that do not conform with these Rules may be stricken by the Court and returned to you.

C. It is your responsibility to draft and submit such pleadings and papers (in compliance with the Rules) which you feel are necessary to prosecute your lawsuit in this court. Compliance with filing requirements only allows the Clerk's Office to accept and file your pleadings and papers and submit them to the Court for consideration. The merits of your pleadings can only be determined by the Judge or Magistrate Judge to whom your case is assigned.

Federal Rules of Civil Procedure

Local Rules of Civil Procedure

E. Evidence offered post-hearing but barred by Judge

1. **Meta-data:** See A/5 Order of District Court for the Eastern District of Louisiana, No. 23-3986.(May 5, 2025)(RD 119)(reviewing first motion; denying motion to reopen for meta-data photographs of tendered complaint *with* memorandum and photographs)..... 38a
2. **Expert report:** See A/6 Order of District Court for the Eastern District of Louisiana, No. 23-3986 (April 16, 2025)(RD 104)(denying motion to reopen for: (1) expert report* showing that signature of purported August 22 complaint matches signature of August 11 complaint *with* memorandum and report, and (2) information re white clerk)..... 58a

* The expert report is submitted without attachments such as CV, etc.

F. Other authorities

ABA Model Code of Judicial Conduct

Canon 1	174a
Rule 1.2.....	175a
Comment 5.....	176a
Canon 2	177a
Rule.2.4(B).....	178a
Rule 2.9(A).....	179a
Rule 2.9(C).....	180a

Model Code of Judicial Conduct: Canon 1

Share:

Canon 1

A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.2: Promoting Confidence in the Judiciary

Share:

A judge shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety and the appearance of impropriety.

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Comment on Rule 1.2

Share:

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty,

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CANON 2

A judge shall perform the duties of judicial office impartially, competently, and diligently.

178a Rule 2.4: External Influences on Judicial Conduct

Share:

- (A) A judge shall not be swayed by public clamor or fear of criticism.
- (B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.
- (C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

179a Rule 2.9: Ex Parte Communications

Share:

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending* or impending matter,* except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges,

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parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

[Comment](#) | [Back to homepage](#) | [Next Rule](#)

ABA American Bar Association |

[/content/aba-cms-dotorg/en/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_2/rule2_9expartecommunications](#)

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