
*Let it be wrong for a vessel to
ensnare its passengers in the
strict formalities of ship-borne
rules, then fly off on the winds
of unauthorized plans.*



Background: Plaintiff sued a judge for the judge's injurious perjury
Problem: This magistrate judge - *sua sponte* - recommended dismissal
Request: This district judge denies dismissal

28 USC §636(b) (1) (A) | Jurisdiction, Powers, and Temporary Assignment

"(A) a judge may designate a **magistrate judge** to hear and determine any pretrial matter pending before the court, **except... to involuntarily dismiss an action**. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law."

Rule 6(d) | Fed. R. Civ. P. | Computing and Extending Time...

"When a party may or must act within a specified time after being served and service is made [by mail], **3 days are added...**"

Rule 72(b) (2) | Fed. R. Civ. P. | Magistrate Judges: Pretrial Order

"(2) **Objections**. **Within 14 days** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations."

Precedence

- 2:14-cv-00437-SPC-NPM - USFLMD (12/10/20)
- 2:18-cv-00781-SPC-MRM - USFLMD (9/18/20)
- 2:19-cv-00054-SPC-NPM - USFLMD (9/29/20)
- 8:16-cv-02899-CEH-AAS - USFLMD (11/25/20)
- 6:18-cv-01823-GAP-LRH - USFLMD (2/10/21)
USFLMD recently sustained written objections
- 4:20-cv-00292-MW-HTC - USFLND (10/1/20)
- 1:20-cv-00267-MW-GRJ - USFLND (3/23/21)
This Court recently sustained objections

Abbreviations

- [RO##] - Page ## from That Order
- [TD##] - Page ## from 'Those Directions'
- USFLMD - US District Court, Florida, Middle District
- USFLND - US District Court, Florida, Northern District

INTRODUCTION

I. Underlying Facts

1. The underlying facts of the instant case are as follows.
2. Plaintiff's former employer, Allstate Insurance Company, discriminated against him on a number of bases. Most prominently: race and sex.
3. The employer's unlawful conduct involved (among other things):
 - a. racist dolls;
 - b. racist characterizations;
 - c. recurring, unwanted date requests;
 - d. disparate pay;
 - e. discriminatory denial of the work-from-home privilege;
 - f. forcing Plaintiff to spend \$1,025 for an exam fee while never doing the same to Plaintiff's similarly-situated comparators;
 - g. retaliating for filing an internal complaint;
 - h. terminating Plaintiff for reasons it never applied to others; and
 - i. retaliating against Plaintiff for filing a lawsuit;

The most egregious of these acts are supported by concrete evidence. Evidence - importantly - that is not subject to interpretation.

4. Unfortunately, these facts ran counter to the centuries' long teachings of the Ku Klux Klan. So, when presented with this reality, Defendant (a state officer) set out to deprive Plaintiff of his constitutional rights. Doing so - importantly - by breaking the very laws he was sworn to uphold. Thereby injuring Plaintiff, and necessitating this action.
 - a. It is important to add that the unlawful acts which Plaintiff complains of were neither discretionary nor within Defendant's jurisdictional powers.

II. Immediate Procedural History

5. On-or-around January 31, 2021, Plaintiff sued Defendant under the *Ku Klux Klan Act of 1871* (42 USC §1983). As an out-of-county *pro se* party, he mailed his documents to the Court; which received it in February.
6. His documents included:
 - a. a civil cover sheet^{2/};
 - b. a court-issued complaint form^{3/};
 - c. a court-issued civil indigency form (Doc No 2)^{4/}; and
 - d. a free-form complaint (Doc No 1)^{5/}.
7. Shortly thereafter, the Court determined that Plaintiff's complaint was unactionable because it lacked a handwritten signature. Thus, this tribunal ordered Plaintiff (see Doc No 4; hereinafter "Those Directions")^{6/} to replace his electronic signature with a physical one. Those Directions also instructed Plaintiff to resolve the filing fee.
8. On March 30, 2021, Plaintiff obliged.
 - a. He signed and returned his free-form complaint (Doc No 6); and
 - b. He paid the filing fee (Doc No 9).

Out of deference for this Court's strict formalities, Plaintiff made no other changes^{7/}.

III. Addressing Misleading Submissions

9. Contrary to That Order, this Honorable Court never directed Plaintiff to sign & return the court-issued complaint form [RO01]. Those Directions made no such mention of it. The only form they mentioned was the application for *forma pauperis* (see [TD01], [TD02], [TD03]) (highlights added)^{8/}:

"Moreover, Plaintiff's prior motion, ECF No. 2 [*forma pauperis*], was not on the form used in this Court"

- 'Those Directions' | Page 2 | USFLND | 2/22/21

"1. The Clerk of Court shall forward to Plaintiff the form used in this Court for requesting leave to proceed in *forma pauperis*."

2. Plaintiff shall have until **March 22, 2021**, to file an amended civil rights complaint, which contains his original signature, and an amended in *forma pauperis* motion on the form provided to him with this Order."

- 'Those Directions' | Page 3 | USFLND | 2/22/21

10. The Clerk seemed to recognize this, too. As she never mailed a court-issued civil rights complaint form (*Pro Se 15*). She only sent Plaintiff the court-issued form for leave to proceed in *forma pauperis* - as instructed by the Court.

11. In sum, the magistrate unfortunately submitted misleading information upon rearranging his own words ("Plaintiff was required to submit his amended complaint "on the form used in this Court"" [RO01]).

12. Bottom line: Those Directions never required Plaintiff to use the court-issued civil rights form (*Pro Se 15*). They required Plaintiff to resolve the filing fee and replace his electronic signatures. He did that.

13. That Order was also misleading in its omission of a key part of Plaintiff's Complaint. Under the heading "Judicial Immunity" (Doc No 1) were the following two sentences (highlights added):

"58. First, Defendant is not a judicial officer. Although he is a judge per se, he is an administrative judge. A designation that does not afford him the immunities reserved for judicial officers.

59. Secondly, and perhaps more importantly, Defendant broke the law (§92.525 FS - perjury). Judicial Immunity does not cover legal violations."

- Verified Civil Complaint | USFLND | 4:21-cv-00096

14. That Order left out the second sentence (ie, Paragraph 59). That sentence, of course, was Plaintiff's operative argument. Judicial Immunity does not attach because Defendant broke the law (on an issue he had no discretion/jurisdiction over).

a. Specifically, Defendant perjured himself. A crime that injured Plaintiff, and violated the constitutional rights that the government afforded him. No reasonable peer can attest that Defendant was authorized - discretionarily or otherwise - to commit crimes while on the bench.

15. As the federal system holds, the key inquiry into a 42 USC §1983 lawsuit is the unlawful act - not the statutorily-cloaked actor. The US Supreme Court explained as much in Forrester v White, 484 US 219 S. Ct. 538 L. Ed. 2d 555 (1988):

"Here, as in other contexts, immunity is justified and defined by the functions it protects and serves, not by the person to whom it attaches."

16. Bottom line: That Order launched itself upon misleading this proceeding about Plaintiff's prevailing argument against immunity.

OBJECTIONS

IV. Objection #1: Hijacked Complaint

17. To put it briefly, this Court cannot hijack a complaint in an effort to steer this cause into an abyss of discarded cases. In Limone v Condon, 372 F.3d 39 (1st Cir. 2004), the United States warned that precision must be accorded to flights towards dismissal:

"It is certainly true that the manner in which a right is defined can make or break a qualified immunity defense"

...

"Courts must be equally careful, however, not to permit a defendant to hijack the plaintiff's complaint and recharacterize its allegations so as to minimize his or her liability."

- *Limone v Condon*, 372 F.3d 39 (1st Cir. 2004)

18. Yet - as detailed in Section III (*supra*) - oversimplifying and mischaracterizing Plaintiff's complaint is exactly what this Honorable Court did.

19. Pursuant to 28 USC §636(b)(1)(C), this Court can "recommit [this] matter to the magistrate judge with instructions" to correct That Order's malformed submissions.

20. Recommitment notwithstanding - and as can be gleaned from Limone - this Court was in no position to have even proffered That Order.

V. Objection #2: Lack of Authority

21. This Honorable Court was in no position to captain this plane into a path of dismissal.

22. For starters, this Court never listed any rule or statute that authorized the magistrate to *sua sponte* recommend dismissal of Plaintiff's §1983 action.

a. The first page does not state a jurisdictional rule for dismissal. It only recites past acts **[RO01]**.

b. Neither does the second page.

Likewise, it only introduces the reader to the matter **[RO02]**.

c. Nor does the third.

Which just continues its description of the underlying cause.

d. The fourth page does not cite any jurisdictional rule either.

Importantly, this page segues into the Court's reasoning.

e. The same can be said about page five.

A page that merely continues the Court's argument **[RO05]**.

f. Next is the sixth page; which makes no citation to jurisdiction.

It only references case law for its misleading submission.

g. Page seven does no better; offering neither rule nor statute.

Instead, it adds more case law **[RO07]**.

h. Likewise, there are no requisite rules/statutes on page eight.

Only more case law **[RO08]**.

i. The flight plan concludes on the ninth page – where it carries no cited jurisdiction for its recommended path.

It only lists the rules for Plaintiff's objections/appeal.

23. So, after a meticulous review of That Order it must be settled that this Court authored no jurisdiction for its *sua sponte* action.

24. Nevertheless, Plaintiff will take the analysis one step further, and hereby state in the affirmative: no authority exists for That Order.

a. As a proxy, Rule 8(c) Fed. R. Civ. P. (*Affirmative Defenses*) may be used in conjunction with Rule 56 (*Summary Judgment*) to preclude trial. However, neither rule delivers to a magistrate the power to *sua sponte* dismiss an action.

b. Rule 12(b) Fed. R. Civ. P. (*Defenses*) is also worth looking into. Yet – like Rule 8 – it does not provide a magistrate with the power to *sua sponte* dismiss a case.

c. 28 USC §1915(e) (*Proceedings in Forma Pauperis*) is the only known statute that does grant a magistrate the authority to do such a thing. However, for the instant case, that statute is unavailable.

Reason: Plaintiff is not a *pauper*. Plaintiff paid the filing fee (see ¶8b *supra*).

d. USFLND's Local Rules, of course, also carry weight (pursuant to 28 USC §636(b)(4)). Yet, none of them give a magistrate the power to *sua sponte* dismiss a case.

e. Of greater consequence is 28 USC §636(b)(1)(A), which **explicitly disarms** a magistrate of the power to "involuntarily dismiss an action".

25. In total, without stating authority – and in the face of legislated prohibition – this Court cannot sit disguised in the pilot seat of wayward destiny. Doing so would be *clear error*.

VI. Objection #3: Unwarranted

26. Lastly, it is well-established that immunity is an affirmative defense that the Court is unwarranted to *sua sponte* advocate for.

"[an affirmative defense] is "a personal privilege of a defendant"... and [the district] court "had no right to apply the [unpled defense] *sua sponte*"

- Wagner v Fawcett, 307 F.2d 409, 412 (7th Cir. 1962)

27. Please also accord the 11th Circuit Court of Appeal's decision in Moore v Morgan, 922 F.2d 1553 (11th Cir. 1991); which stated, most pertinently, that it is improper for a court to inject a defense of qualified immunity (highlights added):

"In this civil rights case against a sheriff and the county commissioners of an Alabama county, we reverse the district court because the magistrate judge improperly injected into the case the defense of qualified immunity."

- Moore v Morgan, 922 F.2d 1553 (11th Cir. 1991)

28. Thus, since affirmative defenses are defendant privileges, this Court "had no right" to affix it *sua sponte*.

Summary

29. In all, an unevenly-parked/unauthoritatively-boarded/unwarrantedly captained flight recommendation (such as this one) must be aborted. Thereby allowing a meritorious case to "immediately" take its proper course (please see Edwards v Balisok, 520 US 649, 117 S.Ct. 1584).

CONCLUSION

WHEREFORE, Plaintiff kindly and humbly asks this Honorable Court to reject dismissal; and in its stead: permit process service (Rule 4 Fed. R. Civ. P.). Whereby Defendant will have proper chance to atone/self-govern.

Dated this 21st day of April 2021.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the size and style of type used in this document is Times New Roman 14-point Font (caption) and Courier New (contents); thus complying with the font requirements of Local Rule 5.1(C) USFLND.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of April 2021, I mailed the foregoing (via USPS) to the Clerk of Courts. Who will docket this paper for public use.

Endnotes:

^{1/} 'That Order' = Doc No 11; USFLND; ^{5/} "Verified Civil Complaint".
4:21-cv-00096-MW-MAF; 4/9/21.

^{2/} JS44 (Rev. 09/19) *Civil Cover Sheet* ^{6/} 'Those Directions' = Doc No 4;
USFLND; 4:21-cv-00096-MW-MAF;
2/22/21.

^{3/} Pro Se 15 (Rev. 12/16) *Complaint for Violation of Civil Rights (Non-Prisoner)*. ^{7/} Plaintiff updated the signature date, though (from 1/31/ to 3/30).

Note: this district uses a different version of the document that Plaintiff sent.

^{4/} AO 240 (Rev. 07/10) *Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)*.

Note: this district uses a different version of the document that Plaintiff sent.

^{8/} Please note that the quote cites an electronic docket entry on PACER ("ECF No. 2"). At the time, Plaintiff had not been granted PACER's 'one free look' (see USFLND Local Rule 5.4; see this Court's denial for electronic filing). Thus, it would have cost plaintiff over \$4 to download his own file. A file that this Honorable Court combined with another one (thereby bumping the page numbers). Plaintiff proffers this endnote to showcase the unreasonable burden of purchasing his own property. As such, Plaintiff had to rely solely on the document that this Honorable Court mailed to him.

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