

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

2013 JUL 12 PM 3:05

JOHN EDWARD FODDRILL SR

Plaintiff

v.

MICHAEL D. BERNARD, individually and
In his official capacity as San Antonio City
Attorney, WILLIAM P. McMANUS,
individually and in his official capacity as
San Antonio Police Chief and the
CITY OF SAN ANTONIO

Defendants

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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY YKZVF
DEPUTY CLERK

NO. 5:13-CV-00051

**PLAINTIFF'S MOTION TO EXTEND TIME / MOTION TO ALLOW LATE FILED RESPONSE
TO BE TREATED AS TIMELY FILED**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW the Plaintiff, John Edward Foddrill Sr., and makes this Motion in reply to Defendants demand that documents filed one day late by the Plaintiff be stricken.

1. The Plaintiff requests that the Court leave this Cause intact, and since the Plaintiff is appearing pro se, he asks that his complaint be liberally construed and "held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007), and as a consequence, he be allowed to amend his Complaint to correct any deficiencies in these Causes as filed. The Plaintiff asks that the Court deny Defendant's demands that documents filed one day late due to excusable neglect be denied and that Plaintiff's documents be treated as timely filed.
2. In their July 2, 2013 Response the Defendants declare that Plaintiff's response to their objections and motion to strike his exhibits was filed late and must be stricken. Taking into account the fact that the

Defendant filed their documents on June 12, 2013 and the fact that the Plaintiff was served via regular postal mail the rules show that Plaintiff's response was due on Saturday June 22, 2013. (seven days plus three days) The period would continue until a time on the next day that is not a Saturday ...See " (C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday." – Federal Rules of Civil Procedure – Rule 6. Computing and Extending Time. The Plaintiff concedes that his reply was due on June 24 but was filed ONE day late on June 25, 2013. The Plaintiff asks the Court to use its discretion and allow the late filing due the Plaintiff's excusable mistake. The Plaintiff acted in good faith and meant no disrespect to the Court. The Plaintiff will make every effort to better understand the rules and vows to follow them to the best of his ability. The Plaintiff is making an effort to obtain legal representation from an attorney with no allegiances to the Defendants, District Attorney Susan Reed, Civil Rights Groups or other entities standing to benefit from the dismissal of this lawsuit.

3. It has been shown that the Court has the discretion to extend the time for filing even after the expiration of the time. Section 2-1007 of the Code (735 ILCS 5/2-1007 (West 2010)) allows the trial court to, "[o]n good cause shown, in the discretion of the court and on just terms, [grant] additional time *** for the doing of any act or the taking of any step or proceeding prior to judgment." Similarly, Supreme Court Rule 183 (eff. Feb. 16, 2011) provides that the trial court, "for good cause shown on motion after notice to the opposite party, may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time." The determination of what constitutes good cause "is fact-dependent and rests within the sound discretion of the circuit court." *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 353 (2007).
4. The Court has declared - "We have equated 'good cause' with the concept of 'excusable neglect' of Federal Rule of Civil Procedure 6(b)(2), which requires 'a demonstration of good faith on the part of the party seeking an enlargement and some reasonable basis for noncompliance within the time specified in

the rules.”)(quoting Petrucelli, 46 F.3d at 1312 (Becker, J., concurring in part and dissenting in part); Brown v. Pena, No. CIV. A. 96-382 MMS, 1997 WL 235134, at *3 (D. Del. Apr. 11, 1997) (same).

5. As a general rule, enforcement of local rules is within the sound discretion of the Court see Michael v. Sentara Health Sys., 939 F. Supp. 1220, 1225 n.3 (E.D. Va. 1996). In Francisco v. Verizon South United States Magistrate Judge Dennis W. Dohnal found that “As a matter of practice, federal courts tend to consider untimely briefs and objections, in the court’s discretion, where no showing of prejudice is made. See, e.g., Gordon v. Heinman, 715 F.2d 531, 536 (11th Cir. 1983) (quoting Brown v. Palmetto 681 F.2d 1325, 1327 (11th Cir. 1982)) (“a claim for attorney’s fees would be untimely only on a showing of unfair surprise or prejudice.”); Sportsmans Warehouse, Inc. v. LeBlanc, No. 07-cv-01271-WDM-KMT, 2008 U.S. Dist. LEXIS 88359, at *1 (D. Colo. Oct. 20, 2008) (defendant asserted no prejudice as a result of an untimely mailing); Sanmina Corp. v. BancTec USA, Inc., No. 3-99-CV-665-H, 2004 U.S. Dist. LEXIS 23656 (N.D. Tex. Nov. 19, 2004) (district court permitted untimely bill of costs where no prejudice could be shown to result from the untimely filing); Wabnum v. Snow, No. 97-4101-SAC, 2001 U.S. Dist. LEXIS 22405, at *3-4 (D. Kan. Nov. 26, 2001) (objection to bill of costs was not untimely, even when the objections were filed five months after the bill of costs, because there was no showing of prejudice).”
6. The Plaintiff attributes his excusable neglect of filing of the late response to inexperience with the requirements of the District Court, misinterpretation of the Local Rules, the fact that he has never before filed a lawsuit pre-se and his reliance on misinterpreted well- intentioned guidance from the Court Clerk’s Office. The Plaintiff’s admitted neglect is excusable under the standard created by the Supreme Court in Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship, 507 U.S. 380 (1993).
7. The Plaintiff was unaware that the time limit changed from eleven to seven days and followed the rules

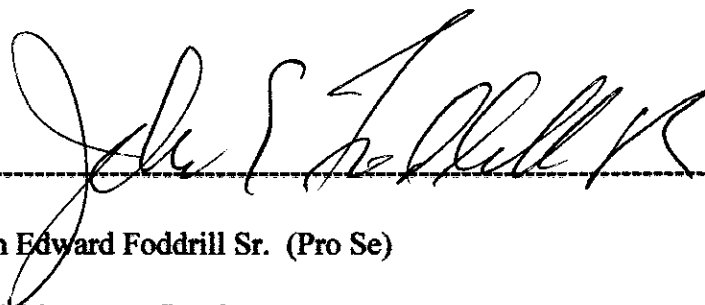
he believed to apply as stated in the Pro-Se manual, especially “Unless otherwise ordered by the court, motions are limited to ten (10) pages in length and responses to motions generally must be filed within eleven (11) calendar days of service of the motion. Local Rule CV-7(d). An additional three calendar days for filing a response is allowed if the motion was served upon you by mail. Fed.R.Civ.P. 6(e).” see Pro Se Manual - page 21

8. The Plaintiff filed his initial response and was assured by the Court Clerk that it was being filed within the required fourteen day time frame. The Plaintiff was unaware that the time required to file then changed to just seven days and believed the well-meaning assurances by the Court Clerk that the fourteen day rule applied and was being met. The Plaintiff is now aware, continues in efforts to obtain legal representation from an attorney with no allegiances to the Defendants, DA Susan Reed, Civil Rights Groups, etc. and will make every effort to diligently follow the rules in the future.

Conclusion and Prayer

For the reasons stated herein, Plaintiff begs the Court to use its discretion and excuse his mistake in filing paperwork one day late. The Plaintiff begs the Court to accept the Plaintiff's responses and exhibits.

Respectfully submitted,



John Edward Foddrill Sr. (Pro Se)

9650 Limestone Pond

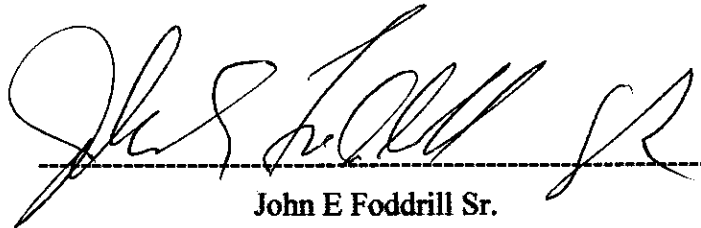
San Antonio TX 78254

210-824-3502

CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing response were hand delivered to the U.S. District Clerk's Office at 655 E. Cesar E. Chavez Blvd., Room G65 San Antonio, Texas 78206 and a single copy was mailed by certified U S Mail # 7010 3090 0002 7075 1497 on July 12, 2013 to:

Shawn Fitzpatrick
Fitzpatrick & Kosanovich
P O Box 831121
San Antonio TX 78283-1121



John E Foddrill Sr.

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NO. 5:13-CV-00051

**ORDER GRANTING PLAINTIFF'S MOTION TO EXTEND TIME AND TO
HAVE DOCUMENTS TREATED AS TIMELY FILED**

It is therefore ordered that the motion to extend time and to have documents treated as timely filed is GRANTED.

Signed on this _____ day of July 2013.

The Honorable Xavier Rodriguez