

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

THEOSHAMOND NORMAN (#407759)

VERSUS

CIVIL ACTION

DEPARTMENT OF PUBLIC SAFETY  
AND CORRECTIONS, ET AL

NUMBER 08-449-JVP-DLD

ORDER ON PLAINTIFF'S MOTION TO RESCIND CONSENT TO PROCEED

Before the court is the plaintiff's Motion to Rescind Consent to Proceed. Record document number 73.

Plaintiff sought to withdraw his consent to proceed before a magistrate judge at the trial of this matter because he mistakenly thought that he would have to have a bench trial if he consented, and he wanted to have a jury trial. Plaintiff is entitled to a jury trial regardless of who (a district judge or a magistrate judge) tries the case because plaintiff requested a trial by jury in his amended complaint.<sup>1</sup> Thus, even if all parties consent to the magistrate judge conducting all proceedings in accordance with 28 U.S.C. § 636(c) , the matter would be tried before a jury.

Although defendant has filed an executed consent form and plaintiff previously indicated at the pretrial conference that he wanted to consent to having a magistrate judge preside over the trial, the court has not received a signed and filed a consent form, so he has not formally consented to waive his right to trial before a district judge and to have a magistrate judge preside over the trial of this matter. Additionally, before a case can be tried by magistrate judge, the district judge must enter a referral order – which cannot be

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<sup>1</sup> Record document number 20.

done until all parties have formally consented.

In summary, plaintiff has not formally consented; thus there is nothing to withdraw. Should plaintiff want to have a district judge preside over the jury trial, he does not have to do anything. The district judge will set the matter for a jury trial in due course. Should he want to have a magistrate judge preside over the jury trial, he should sign and file the consent form, and if the district judge approves the consent and refers the matter to the magistrate judge for trial, a jury trial will be set as soon as it can be scheduled. Either way, it is totally his decision to make.

Accordingly,

**IT IS ORDERED** that the plaintiff's Motion to Rescind Consent to Proceed is GRANTED only to the extent that any consent executed and mailed prior to the date of this order, even though not yet received by the court, is null and void, and upon receipt shall be returned to the plaintiff.

Signed in Baton Rouge, Louisiana, on January 26, 2011.



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**MAGISTRATE JUDGE DOCIA L. DALBY**