UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID SCHIED, an individual

Plaintiff,

vs.

Case No. 2:15-cv-11840
Judge Avern Cohn
Magistrate Judge Dawkins Davis

KAREN KHALIL; CATHLEEN DUNN; JOSEPH BOMMARITO; JAMES TURNER; DAVID HOLT; JONATHAN STRONG; POLICE OFFICER BUTLER; JOHN SCHIPANI; REDFORD TOWNSHIP POLICE DEPARTMENT; REDFORD TOWNSHIP 17TH DISTRICT COURT; TRACEY SCHULTZ-KOBYLARZ; CHARTER TOWNSHIP OF REDFORD; CHARTER COUNTY OF WAYNE, MICHIGAN MUNICIPAL RISK MANAGEMENT AUTHORITY; THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA; AMERICAN INTERNATIONAL GROUP, INC; DOES 1-10.

Defendants.

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CONCISE STATEMENT OF THE ISSUES PRESENTED

I. Whether Plaintiff has filed any meritorious objections to the Report and Recommendation ("R&R"), recommending, *sua sponte*, dismissal of this case due to Plaintiff's failure to state a claim?

MMRMA answers: "No."

Wayne County answered: "No."

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Cases:

Apple v. Glenn, 183 F.3d 477 (6th Cir.1999), cert denied, 528 U.S. 1198 (2000)

Arrowood Indem. Co. v. City of Warren, Mich., 54 F.Supp.3d 723 (E.D. Mich. 2014)

Ashcroft v Iqbal, 556 US 662 (2009).

Boag v. MacDougall, 454 U.S. 364 (1982)

Bonacci v. Kindt, 868 F.2d 1442 (5th Cir.1989)

Craighead v. E.F. Hutton & Co., 899 F.2d 485 (6th Cir. 1990)

CSX Transp., Inc. v. Benore, 154 F.Supp.3d 541 (E.D. Mich 2015)

Gooden v. City of Memphis Police Dept., 29 Fed. Appx. 350 (6th Cir. 2002)

Gordon v. U.S. Dept. of Justice, 558 F.2d 618 (5th Cir. 1977)

Grinter v. Knight, 532 F.3d 567 (6th Cir.2008)

Hagans v. Lavine, 415 U.S. 528 (1974)

Haines v. Kerner, 404 U.S. 519 (1972)

Heck v. Humphrey, 512 U.S. 477 (1994)

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Statutes:

Federal Rules of Civil Procedure:

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Fed. R. Civ. P. 12(e)

Fed. R. Civ. P. 19(a)(1)(A), (B)

Fed. R. Civ. P. 20(a)(1)(A)-(B)

Fed. R. Civ. P. 72(b)(3)

Local Rules:

L.R. 7.1

L.R. 72.1(d)(5)

L.R. 83.20(i)

Secondary Sources:

BLACK'S LAW DICTIONARY

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INTRODUCTION

Plaintiff filed this lawsuit pertaining to events of June 8, 2012, when Plaintiff was allegedly "observing" proceedings in the 17th District Court, in Redford Township, Michigan. (**Dkt. #1**, Pg ID 9). Plaintiff alleged he was removed from the courtroom by the bailiffs on the order of Hon. Karen Khalil ("Judge Khalil"). (***Id.*** at Pg ID 15). Allegedly, Judge Khalil informed the bailiffs that she had "'like six or seven Moors' in the courtroom." (***Id.***). The "Moors" to whom Plaintiff claims Judge Khalil allegedly referred are apparently the so-called "Moorish Nation," which the federal courts have noted, "the United States has not recognized the sovereignty of the Moorish Nation[.]" *U.S. v. $7,000.00 in U.S. Currency*, 583 F.Supp.2d 725, 733 (M.D. N.C. 2008). The group is "merely the most recent incarnation of a notorious organization of scofflaws and ne'er-do-wells who attempt to benefit from the protections of federal and state law while simultaneously proclaiming their independence from and total lack of responsibility under those same laws." *Id.* at 732.

Plaintiff then claims he was detained in the "police lockup approximately 30 yards away in another building." (***Id.*** at Pg ID 16). He would remain in a "police holding cell ... for approximately six to eight hours." (***Id.*** at Pg ID 17). Plaintiff then claims that he was taken to the Clinton County Jail, and ultimately to the Midland County Jail. (***Id.*** at Pg ID 19-20). Plaintiff claims he was given a "30-day

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period of 'sentencing[.]'" (*Id.* at Pg ID 20). Plaintiff was informed that he was being held on a 30-day contempt of court charge from the Clinton County Court (presumably the Circuit Court for Clinton County), and was instructed to "write prosecutor for report and details." (**Dkt. #1**, Pg ID 24). He was released from the Midland County Jail on July 2, 2012, 24 days after initially being removed from the 17th District Court. (*Id.* at Pg ID 26). Apparently, Plaintiff never wrote the prosecutor, and never appealed his contempt conviction.

Plaintiff described his own claim, alleging that he was "falsely imprisoned for 30 days." (*Id.* at Pg ID 2). He would repeat the allegation of "false imprisonment" numerous times. (*Id.* at Pg ID 17, 19, 20, 21, 23, 24, 25, 26, 32, 33, 35, 36, 38, 40, 43, 44). Thus, Plaintiff's claim is that his contempt charge and subsequent detention were not proper.

Plaintiff brought this lawsuit alleging 7 counts. (*Id.* at Pg ID 26-48). All of the claims relate to Plaintiff's alleged seizure on June 8, 2012, and subsequent confinement on a contempt charge. Though Plaintiff misuses legal concepts in his allegations, a summary of his allegations follows. The gist of his first count for declaratory judgment is that he is seeking a declaration that the acts of Judge Khalil in having him removed from her courtroom on June 8, 2012, and his subsequent detention on a contempt charge were illegal and improper. (*Id.* at Pg ID 26-29). His second count alleges violation of substantive due process, and apparently

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alleges that the Defendants, other than Judge Khalil, had a duty to protect him from her allegedly illegal and improper conduct of ordering him seized and removed from her courtroom, and his subsequent confinement on a contempt charge. (**Dkt. #1**, Pg ID 29-36). His third count alleges violation of procedural due process relative to his allegedly "false imprisonment," *i.e.*, the confinement on the contempt charge. (***Id.*** at Pg ID 36-37, particularly ¶144). His fourth count is that he was unlawfully seized "as a result of his false imprisonment" on the contempt charge. (***Id.*** at Pg ID 37-38, particularly ¶150). His fifth count is that he was denied his right to assemble, engage in free speech, and practice religion,[1] when he was allegedly identified as a "Moor," "and other consequences of his false imprisonment[.]" (***Id.*** at Pg ID 39-40, particularly, ¶¶158-159). His sixth count claims that he was denied equal protection when after allegedly being identified as a "Moor," he was detained and held in contempt, "as well as other consequences of his false imprisonment by Defendants." (***Id.*** at Pg ID 40-43, particularly ¶171). His seventh and final count seeks an injunction related to his seizure and false imprisonment. (***Id.*** at Pg ID 44-48, particularly ¶175). In short, all of the counts

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[1] Plaintiff fails to identify any practice of religion which was alleged to be going on at the time. As noted above, the "Moors" as most courts are unfortunately aware are not a religious sect, but a group of individuals who claim protections under the law, while denying the law's applicability to their own conduct.

relate to his being taken into custody, and subsequently detained on a contempt charge.

The Magistrate Judge recommended dismissal of Plaintiff's claims, *sua sponte*, due to Plaintiff's failure to state a claim, as actions brought pursuant to 42 U.S.C. §1983 based on a claim of unlawful conviction or confinement necessarily require a party to prove that unlawfulness of that conviction or confinement. (**Dkt. #140**, Pg ID 8909). A decision of the United States Supreme Court bars any such claims, including those related to charges/convictions of contempt, unless and until the contempt charge/conviction has been overturned on direct appeal, expunged, declared invalid by a state tribunal, or called into question in the issuance of a write of habeas corpus. (***Id.*** at Pg ID 8908-8912) (citing *Heck v. Humphrey*, 512 U.S. 477, 484 (1994), and following cases)). Indeed, Plaintiff fails to allege, and has presented no evidence, that he ever appealed his contempt conviction, had the conviction expunged, or successfully petitioned for a writ of habeas corpus related to his contempt conviction. (**Dkt. #1**). In short, the Magistrate Judge was correct that *Heck v. Humphrey* bars the claims, as Plaintiff has no claim to make unless, and until, his contempt charge/conviction has been adjudicated to be improper.

Since the filing of the Complaint in this case, Plaintiff has continually attempted to expand the reach of his complaint, which, on its face, is limited to his alleged seizure and false imprisonment on a contempt charge from June 8, 2012 to

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July 2, 2012, by making vexatious and unfounded allegations against jurists of this Court and attorneys representing other litigants in this case, which have absolutely nothing to do with the events in the relevant time period. In fact, he has made "criminal" allegations, apparently seeing himself as a private prosecutor. (*E.g.*, **Dkt. #139**, Pg ID 8836 (purporting to criminally charge Magistrate Judge Dawkins Davis); **Dkt #142**, Pg ID 8921 (referring to Magistrate Judge Dawkins Davis as a "criminal co-conspirator")). These baseless accusations all stem from various instances where someone did not agree with Plaintiff's filings with this Court, or did not act with the speed with which Plaintiff desired.

If this Court does not put a stop to Plaintiff's vexatious litigation, then it is likely that Plaintiff will pursue a subsequent action against the officers of this Court related to the "criminal" conduct Plaintiff believes occurred during the pendency of this case. Plaintiff has a history of continuing frivolous litigation through a subsequent collateral action, and attempting to bring "criminal" charges in civil lawsuits, related to the conduct of attorneys and judges in Plaintiff's prior frivolous civil complaints.[2] *Schied v. Snyder*, No. 10-1176, slip op. (6th Cir. January 19, 2011) (**Exhibit A**, p. 3); *Schied v. Rezmierski*, unpublished opinion per

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[2] *I.e.*, when Plaintiff does not get the desired result in one of his lawsuits, he files a second lawsuit making allegations regarding how the first lawsuit was handled.

curiam of the Michigan Court of Appeals, issued January 22, 2013 (Docket No 303715) (**Exhibit B**, p. 3, n. 2).

STANDARD OF REVIEW

While pro se pleadings are liberally construed, the district court may dismiss an action *sua sponte* if the complaint is so "implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion[ ]" as to deprive the court of jurisdiction. *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir.1999) (citing *Hagans v. Lavine*, 415 U.S. 528, 536–37(1974)), cert. denied, 528 U.S. 1198 (2000); *Boag v. MacDougall*, 454 U.S. 364, 365 (1982); *Haines v. Kerner*, 404 U.S. 519, 520 (1972). *Sua sponte* dismissal is permitted where "(1) that the court give the plaintiff a chance to amend the complaint or respond to notice of intended dismissal, and (2) that, if the claim is dismissed, the court state the reasons for dismissal, are appropriately applied to sua sponte dismissals for failure to state a claim." *Morrison v Tomano*, 755 F.2d 515, 516 (6th Cir. 1985). "However, the Court need not give leave to amend when the proposed amendment would be futile, result in undue delay, or is brought in bad faith." *CSX Transp., Inc. v. Benore*, 154 F.Supp.3d 541, 547-48 (E.D. Mich. 2015) (citing *Murphy v. Greiner*, 406 Fed.Appx. 972, 977 (6th Cir. 2011)).

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Such a dismissal is treated as a dismissal pursuant to Fed. R. Civ. P. 12(b)(6). *Gooden v. City of Memphis Police Dept*, 29 Fed. Appx. 350, 352 (6th

Cir. 2002). Under Fed. R. Civ. P. 12(b)(6), "we must take all of the factual allegations in the complaint as true, [but] we are not bound to accept as true a legal conclusion couched as a factual allegation." *Ashcroft v Iqbal*, 556 US 662, 678 (2009).

ARGUMENT

I. Plaintiff's Objections are Procedurally Improper.

The objections ramble for 30 pages, plus an additional 5 pages of preamble numbered in small Roman numerals, which are not required tables/indices of this Court. Pursuant to L.R. 72.1(d)(5), "LR 7.1 governs the form of objections, responses and replies." L.R. 7.1 permits a party 25 pages. That has clearly been violated. Therefore, the objections are improper, as they are over-length. The United States Court of Appeals for the Sixth Circuit has concluded:

> [W]hile pro se litigants may be entitled to some latitude when dealing with sophisticated legal issues, acknowledging their lack of formal training, there is no cause for extending this margin to straightforward procedural requirements that a layperson can comprehend as easily as a lawyer.

Jourdan v. Jabe, 951 F.2d 108, 109 (6th Cir. 1991). In fact, this Court has already stricken several of Plaintiff's filings for failure to comply with briefing limitations. **(Dkt.#77)**. Plaintiff responded to this Order contemptuously, filing "replacement" documents which contained many of the documents stricken. **(Dkt. ##81-85)**.

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Therefore, the Court should deny the objections for the simple failure of Plaintiff to abide by this Court's briefing requirements.

II. Plaintiff has Failed to State a Valid Objection, in Any Event.

To the extent they are understood due to their confusing presentation, Plaintiff has failed to state a valid objection to any portion of the R&R, instead using his objections, as he has many of his filings, to make *ad hominem* attacks against an officer of this Court. In this case, he attacks Magistrate Judge Dawkins Davis.[3] To the extent the Court believes any of Plaintiff's objections have possible

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[3] By way of example of his history of personal attacks, Plaintiff alleged that former Magistrate Judge Hluchaniuk's actions were arbitrary and capricious, and "executed under the questionable supervision of 90-year old judge Avern Cohn." **(Dkt. #79**, Pg ID 6411). Plaintiff further alleged that Judge Cohn may be corrupt, and, that due to Judge Cohn's age, His Honor will be unable to review the filings in this case within the current, unspecified time frame. **(Dkt. #75**, Pg ID 6367). Not content to level such accusations once, Plaintiff continued by titling one of his filings, "Argument in Favor of Allowing Time for 90-Year-Old Federal Judge to Properly Review Filings and Properly Respond to the Above-Referenced Thousands of pages of Filing[.]" ***Id.*** at Pg ID 6366) (emphasis added). Plaintiff suggested that due to Judge Cohn's age, he somehow may need more time to review the proceedings, or perhaps "to assign a more qualified judge to do so." ***Id.*** at Pg ID 6367). Next, Plaintiff alleged that Judge Cohn may be "so engrained [sic] into this corrupt judicial system" so as to lack objectivity ***(Id.)***. Plaintiff has even gone so far as to submitting a "writ" for Judge Cohn to "show cause" and chided Judge Cohn for failing "to present evidence against the likelihood that he is in some way 'incapacitated' and committing misconduct in office by failing to address issues[.]" **(Dkt. #130**, Pg ID 8596). Plaintiff then took it upon himself to begin issuing orders: "it is hereby ORDERED that Avern Cohn step down from his lifetime position as the Article III 'judge' appointed to this case or be subject to an escalated cause of action against him." ***(Id.)***

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merit, MMRMA requests a more definite statement of the objection, pursuant to Fed. R. Civ. P. 12(e).

Plaintiff, in an unnumbered objection, claims that Magistrate Judge Davis is a "criminal co-conspirator to domestic terrorism," and accuses her of unnamed "tortuous and treasonous actions." (**Dkt. #142**, Pg ID 8921). He claims that by making allegations against the Magistrate Judge, which she has failed to deny, his allegations have been admitted. (***Id.*** at Pg ID 8922). He claims that the Magistrate's actions are a nullity, as he has previously denied and objected to the assignment of a Magistrate Judge. (***Id.***). As usual, Plaintiff fails to cite any authority to support these objections.

> Moreover, Lockett's failure to cite any specific authority for his assertions in the above passage is another ground for refusing to entertain those assertions. *See In re Mitan*, 573 F.3d 237, 248 n. 5 (6th Cir.2009) ("The creditors provide no citation to authority or argument to support their last-sentence request. The creditors consequently have waived the issue.") (citing *Grinter v. Knight*, 532 F.3d 567, 574 n. 4 (6th Cir.2008)); [*U.S. v. Mellies*, 329 Fed.Appx. 592, 605 (6th Cir.2009)] (citing with approval *United States v. Alonso*, 48 F.3d 1536, 1544 (9th Cir.1995) ("refusing to address the appellant's 'unsupported' and ' [un]developed' arguments which contained no citations to authority because they violated the Federal Rules of Appellate Procedure")); *United States v. Robson*, 307 Fed.Appx. 907, 912 (6th Cir.2009) ("Robson cites no authority for this approach, and we are aware of none. Accordingly, we dismiss these undeveloped ... claims.").

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U.S. v. Lockett, 259 Fed. Appx. 598, 612 (6th Cir. 2009). Pursuant to 28 U.S.C. §636(b)(1), Plaintiff does not need to consent to assignment to a Magistrate.

Plaintiff proceeds to present numbered paragraphs, presumably with one objection per paragraph, though it is difficult to discern. He "denies" the Procedural History section, but fails to give any legal basis, other than he does not agree to it. (**Dkt #142**, Pg ID 8923). He then "denies" the section containing a recitation of the allegations of his Complaint by the Magistrate Judge, but again fails to provide any legal basis, other than he does not agree with it. (***Id.*** at Pg ID 8923-24). He further "denies" the analysis and conclusion section of the R&R, again without providing any legal basis. (***Id.*** at Pg ID 8924). The same is true of the Recommendation section. (***Id.*** at Pg ID 8925). There are four objections apparently presented here, bringing the total to five. Each is insufficient as no authority is cited in support. *Lockett*, 259 Fed. Appx. at 612.

Plaintiff then moves on to "Specific Statements of Objection." (**Dkt #142**, Pg Id 8926). It is unclear why Plaintiff ceased using numbered paragraphs. He objects to Magistrate Davis, an objection which seems to be a restatement of his prior, unnumbered objection that he never consented to a Magistrate Judge. (*Compare*, ***Id.*** at Pg ID 8923 and 8926). This objection is invalid for the reasons explained above. He next objects to the Magistrate not having considered the voluminous, but inconsequential, documentation he submitted. (***Id.*** at Pg ID

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8927). This objection ignores two salient points. First, the R&R is based on the allegations of the Complaint being insufficient, so further documentation is not necessary or permissible. Under Fed. R. Civ. P. 12(b)(6), dismissal is proper if the complaint lacks an allegation regarding a required element necessary to obtain relief. *Craighead v. E.F. Hutton & Co.*, 899 F.2d 485, 489-90 (6th Cir. 1990). Since dismissal is based on the Complaint, the Court cannot review any further documentation.[4] *Mediacom SE LLC v. BellSouth Telecomm., Inc.*, 672 F.3d 396, 399 (6th Cir. 2012) ("A district court is not permitted to consider matters beyond the complaint.").. Second, the Court previously struck most of Plaintiff's documentation, only to have him attempt to re-file that stricken material, in violation of this Court's Order. (**Dkt. #77**; **Dkt. ##81-85**). Adding these two objections to the total, there are apparently now 7 objections.

Plaintiff then goes back to numbering paragraphs, confusingly starting at "5." (**Dkt. #142**, Pg ID 8927). It is unclear whether Plaintiff is counting his

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[4] While it is true that normally, before a *sua sponte* dismissal, opportunity to amend should be given, in this case, no such opportunity must be afforded because amendment is futile. *CSX Transp., Inc.*, 154 F. Supp. 3d at 547-48 (citing *Murphy*, 406 Fed.Appx. at 977). The R&R recommends dismissal because Plaintiff failed to plead that his contempt charge/conviction was overturned on direct appeal, expunged, declared invalid by a state tribunal, or called into question in the issuance of a write of habeas corpus. (**Dkt. #140**, Pg ID 8909). As Plaintiff's charge/conviction has never been declared invalid or illegal, any amendment is futile. Plaintiff cannot add an allegation of an event which has never occurred.

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unnumbered objections in his total. He next objects to being characterized as "pro se" when he claims to be "sui juris." (*Id.*). This objection is apparently based on Plaintiff's miscomprehension of Latin terms. "Pro se" means "One who represents oneself in a court proceeding without the assistance of a lawyer." BLACK'S LAW DICTIONARY 1258 (8th ed. 2004). Plaintiff is unquestionably *pro se*, as he has no attorney. "Sui juris," by contrast, means "of full age and capacity." BLACK'S LAW DICTIONARY 1475 (8th ed. 2004). As there is no known order declaring Plaintiff to lack capacity, Plaintiff is presumably *sui juris*. However, because every litigant who is not incapacitated is *sui juris*, the designation means nothing in the context of this case.

He next objects to the Court's usage of capital lettering to state the names of the parties. (**Dkt. #142**, Pg ID 8928). He claims this somehow disregards his existence as a natural person, and renders him a "corporation." (***Id.***). Again, Plaintiff provides no authority for this contention. *Lockett*, 259 Fed. Appx. at 612. He next objects that he has been "enjoined" by the parties whom he added without court authorization. (**Dkt #142**, Pg ID 8929). This is no grounds for objection because the parties were never properly added, and, in fact, are not proper parties to this lawsuit. Fed. R. Civ. P. 19 and Fed. R. Civ. P. 20 address joinder of parties. Fed. R. Civ. P. 19 does not apply. These putative parties are not required, as the Court can accord complete relief to Mr. Schied, should he prevail, in their absence.

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Fed. R. Civ. P. 19(a)(1)(A). Further, these putative plaintiffs have no interest in the subject of the action, as their claims have nothing to do with the events involving Plaintiff of June 8, 2012 through July 2012 in either the 17th District Court or the Midland County Jail. Fed. R. Civ. P. 19(a)(1)(B). Permissive joinder is likewise inapplicable, as parties must "assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences" and have common questions of law or fact. Fed. R. Civ. P. 20(a)(1)(A)-(B) (emphasis added). There is no common occurrence for these putative parties.

The objection is further improper because a pro se party cannot sign pleadings on behalf of another plaintiff. *Palasty v. Hawk*, 15 Fed. Appx. 197, 200 (6th Cir. 2001) (refusing to permit a *pro se* plaintiff represent a class); *Johns v. County of San Diego*, 114 F.3d 874, 876 (9th Cir.1997) ("While a non-attorney may appear pro se on his own behalf, '[h]e has no authority to appear as an attorney for others than himself.'"); *Bonacci v. Kindt*, 868 F.2d 1442, 1443 (5th Cir.1989). "That a non-lawyer may not represent another person in court is a venerable common law rule based on the strong state interest in regulating the practice of law." *Heldt v. Nicholson*, 229 F.3d 1152 (Table) (6th Cir. August 10, 2000). In fact, with limited exception, none of which apply in to Plaintiff, "A person must be a member in good standing of the bar of this court to practice in this court

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or to hold himself or herself out as being authorized to practice in this court[.]" L.R. 83.20(i). Therefore, Plaintiff cannot represent these other individuals, in any event.

Plaintiff next objects to the Magistrate Judge changing his "claims for relief" to "counts." (**Dkt. 142**, Pg ID 8930). A "count," is defined as: "In a complaint or similar pleading, the statement of a distinct claim." BLACK'S LAW DICTIONARY 375 (8th ed. 2004). Therefore, the Magistrate's use of "count" was correct. Plaintiff next claims that the Magistrate Judge did not appreciate the fact he alleged the absurd, and unsupported amount of $150,000,000.00 in money damages. (**Dkt. #142**, Pg ID 8930). The R&R recites that Plaintiff alleged money damages, so this objection is not even accurate. (**Dkt #140**, Pg ID 8904). Further, it does not change the fact that Plaintiff is seeking relief related to a contempt proceeding which has never been adjudicated in his favor, and is barred by *Heck v. Humphrey*. (***Id.*** at Pg ID 8911-12). Plaintiff next objects that the Magistrate Judge committed perjury in her oath of office. (**Dkt. #142**, Pg ID 8931). First, there has been no demonstration that there was any violation of any oath by the Magistrate Judge. Second, he fails to cite authority demonstrating how, even if this false statement were true, it would have any bearing. *Lockett*, 259 Fed. Appx. at 612.

He next objects that the R&R refers to his contempt proceedings in the Michigan Court as if they were established facts. (**Dkt. #142**, Pg ID 8931).

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Plaintiff is the one who alleged he was held in contempt. (**Dkt #1**, Pg ID 24). While pro se pleadings are liberally construed, the district court may dismiss an action *sua sponte* if the complaint is so "implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion[ ]" as to deprive the court of jurisdiction. *Apple*, 183 F.3d at 479 (citing *Hagans*, 415 U.S. at 536–37), cert. denied, 528 U.S. 1198 (2000). Under Fed. R. Civ. P. 12(b)(6), "we must take all of the factual allegations in the complaint as true, [but] we are not bound to accept as true a legal conclusion couched as a factual allegation." *Ashcroft*, 556 US at 678. Thus, Plaintiff cannot base an objection on the fact that the R&R accepted his allegation as true, as the R&R was required to do so, in this context. Adding these seven objections to the total, Plaintiff apparently now claims 14 objections through Paragraph 10.

Plaintiff next moves on to objections regarding the recitation of his Complaint allegations. (**Dkt. #142**, Pg ID 8932). Plaintiff objects that the R&R "brushed over" his "demands," but Plaintiff fails to state what "demands" were not properly considered. Where error is assigned, but not explained, the claimed error is waived. *Wege v. Safe-Cabinet Co.*, 249 F. 696, 705 (6th Cir. 1918). Plaintiff next objects that the R&R did not consider all of the filings in this matter. (**Dkt #142**, Pg ID 8932-33). However, the R&R could only look at the allegations of the Complaint. Fed. R. Civ. P. 12(b)(6); *Trustees of Detroit Carpenters Fringe Benefit*

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Funds v. Patrie Constr. Co., 618 Fed.Appx. 246, 255 (6th Cir. 2015) ("In considering a Rule 12(b)(6) motion, a district court cannot consider matters beyond the complaint.").

Plaintiff next objects on the grounds that he has made baseless criminal allegations against the Magistrate Judge, as well as the Judge by way of "orders" that Plaintiff, himself, has issued. (**Dkt. #142**, Pg ID 8933-34). This objection again fails to cite any authority supporting the validity of any "criminal" charges alleged by Plaintiff, and again deals with matters outside the Complaint. *Lockett*, 259 Fed. Appx. at 612; *Mediacom SE LLC*, 672 F.3d at 399.

Plaintiff then claims some sort of due process violation. (**Dkt. #142**, Pg ID 8934-35). This objection is not even clear, and MMRMA lacks knowledge or information as how Plaintiff alleges due process has been violated. If MMRMA had to guess, it would appear that Plaintiff claims that due process has been violated because the individuals he has made unsubstantiated "criminal" allegations against have decided this case. If this were a valid objection, then all a party to litigation would have to do is accuse the judge of some outlandish, unsubstantiated impropriety, and the party would be able to effectively "judge shop" at will. Recusal is governed by two statutes, 28 U.S.C. §144 and 28 U.S.C. §453. The U.S. Court of Appeals for the Sixth Circuit has held that "'[i]t is well settled that sections 144 and 455 must be construed in pari materia and that

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disqualification under section 455(a) must be predicated as previously under section 144, upon extrajudicial conduct rather than on judicial conduct." *Youn v. Track, Inc.*, 324 F.3d 409, 423 (6th Cir. 2003) (quoting *U.S. v. Story*, 716 F.2d 1088, 1091 (6th Cir. 1983)) (internal quotation omitted).

All of Plaintiff's complaints about the courts in this case arise from judicial, not extra-judicial conduct. Therefore, the claims are baseless. Further:

> A recusal is no small matter. "There is as much obligation for a judge not to recuse when there is no occasion for him to do so as there is for him to do so when there is." *Hinman v. Rogers*, 831 F.2d 937, 939 (10th Cir.1987). Judges must not "abdicate in difficult cases at the mere sound of controversy." *In re United States*, 666 F.2d 690, 695 (1st Cir.1981). "That is because the disqualification decision must reflect not only the need to secure public confidence through proceedings that appear impartial, but also the need to prevent parties from too easily obtaining the disqualification of a judge, thereby potentially manipulating the system for strategic reasons, perhaps to obtain a judge more to their liking." *In re Allied-Signal Inc.*, 891 F.2d 967, 970 (1st Cir.1989).

Arrowood Indem. Co. v. City of Warren, Mich., 54 F.Supp.3d 723, 726 (E.D. Mich. 2014). Statutes regarding recusal are "to be construed narrowly to prevent judge shopping." *In re Letters Rogatory from Supreme Court of Ontario, Canada*, 661 F.Supp. 1168, 1172 (E.D. Mich. 1987). In essence, Plaintiff's objection appears to be that he was not obtaining favorable rulings, so he made outlandish claims against the judicial officers, and it now violates due process that those officers

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have continued to decide this case. Plaintiff, in short, seeks the exact "judge shopping" that is prohibited.

Plaintiff next objects that the R&R misrepresented facts evidenced in his various post-complaint filings. (**Dkt. #142**, Pg ID 8935). Again, since the dismissal is based on the Complaint, his post-Complaint filings are inconsequential. *Mediacom SE LLC*, 672 F.3d at 399. Plaintiff then restates this objection, claiming the Magistrate Judge has committed felonies in ignoring his extraneous materials. (**Dkt. #142**, Pg ID 8935). He again objects to omissions from the R&R regarding the actions he took while masquerading as "Private Attorney General," after the prior Magistrate Judge struck most of Plaintiff's unnecessary filings. (***Id.*** at Pg ID 8936). Though listed as six separate objections, bringing the total to 20, through Paragraph 17, in actuality many of these objections are duplicative.

Plaintiff then moves on to object to the standard of review employed. (***Id.*** at Pg ID 8937). The five numbered paragraphs are actually a single objection. Plaintiff objects that the R&R employed an incorrect standard of review, and makes a series of personal attacks upon the Magistrate Judge. (***Id.*** at Pg ID 8937-39). Plaintiff claims the standard of review is "the recognized standard that state legislation has over federal rules; and that 'substantial' [sic] claims have over 'procedure.'" (***Id.*** at Pg ID 8938). Plaintiff is simply wrong. The correct standard

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is that of a 12(b)(6) motion. Standard of Review, *supra*. Through Paragraph 22, Plaintiff now has stated 21 objections.

Plaintiff next objects to the analysis as it relates to *Heck v Humphrey*. **(Dkt. #142**, Pg ID 8939). The first objection is incoherent, but it appears to be that the R&R introduced cases Plaintiff does not consider relevant, and that the cases in the R&R "were presented ... with fraudulent and other criminal intent." ***(Id.)***. Plaintiff fails to demonstrate how those cases are not relevant, and has therefore waived this objection. *Wege*, 249 F. at 705. Plaintiff moves on to the "fraudulent" recommendation in the R&R. **(Dkt. #142**, Pg ID 8940). This objection is also incoherent, but apparently claims that the Magistrate Judge is somehow implicated in the vast conspiracy Plaintiff has imagined. Plaintiff has not demonstrated any actual bias or prejudice by the Magistrate Judge, but instead relies upon his own machinations of conspiracy. This is insufficient to permit recusal. 28 U.S.C. §144, 28 U.S.C. §453.

Plaintiff then allegedly cites "controlling or most appropriate authority for relief." **(Dkt. #142**, Pg ID 8941). Plaintiff cites only his own previous filings, including the duplicative filings he improperly filed after the Court struck his initial filings. He fails to cite a single statute, case, or other authority which would be in any way controlling. Plaintiff simply does not seem to realize that his filings

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are not "controlling authority," leaving him without citation to any authority. *Lockett*, 259 Fed. Appx. at 612

Plaintiff finally issues an "order of default judgment." **(Dkt. #142,** Pg ID 8947). Plaintiff is not a judge, and lacks authority to issue any orders enforceable by any court. Thus, the entire purpose of this section is not even clear. He then proceeds to a "conclusion," which is nothing more than further "orders" he is issuing. (***Id.*** at Pg ID 8949-50). This is not even a valid objection.

III. Even if Heck *did not Apply, the Court can Dismiss MMRMA for the Alternate Bases Raised in MMRMA's Motion.*

Even assuming, *arguendo*, that this Court disagrees with the R&R that Plaintiff cannot challenge his contempt charge/conviction without first having that charge/conviction determined to be unlawful or invalid, the Court is still permitted to modify the R&R to adopt another basis for dismissal. Fed. R. Civ. P. 72(b)(3). MMRMA raised several valid reasons to dismiss it from this lawsuit. **(Dkt. #27).** MMRMA, which is a group self-insurance pool created under Michigan law, has no control over court or law enforcement operations of its municipality members; Plaintiff is not a Member of MMRMA, has no judgment against any Member of MMRMA, and no right to make any claim against MMRMA; and Plaintiff is not a third-party beneficiary of the contract between MMRMA and its Member. (***Id.***).

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IV. Plaintiff's Frivolous and Vexatious Litigation Must Come to an End.

There is ample authority for barring serial litigants from further abusing the court system. *Sims-Eiland v. Detroit Bd. of Ed.*, 173 F.Supp.2d 682, 689 (E.D. Mich. 2001) ("The Sixth Circuit has held that district courts may properly enjoin vexatious litigants from filing further actions against a defendant without first obtaining leave of court."); *Ortman v. Thomas*, 906 F.Supp. 416, 424 (E.D. Mich. 1995); *Northen New England Tele. Ops., LLC v. Public Utilities Comm'n of ME*, 05-53-B-H, 2008 WL 2782926, at *1 (D. Maine July 17, 2008) (**Exhibit C**, p. 1) (noting that a litigant was already barred from filing new cases without leave of the court, and enjoining him "from making any type of filing in this case or any pending case in the District of Maine without prior leave of this Court."); *Gordon v. U.S. Dept. of Justice*, 558 F.2d 618, 618 (5th Cir. 1977); *Matter of Hartford Textile Corp.*, 681 F.2d 895, 897-98 (2d Cir. 1982); *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989); *Urban v. United Nations*, 768 F.2d 1497, 1500 (D.C. Cir. 1985). In fact, Plaintiff has been explicitly warned that "one who files repeated frivolous complaints may be prohibited from filing further actions unless a magistrate judge certifies that any proposed complaint is not frivolous." *Schied v. Snyder*, (**Exhibit A**, p. 3). The sanction is even more necessary here, as Plaintiff has made "criminal" allegations against various court officers in this very case, and absent a firm stance by the Court, it is extremely likely that Plaintiff will merely

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continue his parade of frivolous litigation, and press his "criminal" claims in another lawsuit.

Finally, given the nature of the dismissal, and the fact that Plaintiff cannot produce a declaration that his contempt charge/conviction was illegal/overturned, the Court should certify that any appeal would not be taken in good faith, pursant to 28 U.S.C. §1915(a)(3).

CONCLUSION

MMRMA requests this Honorable Court enter an Order (i) overruling Plaitniff's objections to the R&R, (ii) adopting the recommendation of the R&R, (iii) dismissing Plaintiff's case for failure to state a cause of action, (iv) certifying that any appeal would not be taken in good faith, pursuant to 28 U.S.C. §1915(a)(3), and (v) prohibiting Plaintiff from further filings with this Court in this, or any other case, without first obtaining the Court's permission.

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DATED: September 8, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2016, I electronically filed the preceding **MMRMA'S RESPONSE TO PLAINTIFF'S OBJECTIONS (DKT. #142) TO THE REPORT AND RECOMMENDATION** using the ECF system, which will electronically serve all counsel of record. I have further mailed a copy of **MMRMA'S RESPONSE TO PLAINTIFF'S OBJECTIONS (DKT. #142) TO THE REPORT AND RECOMMENDATION** to Plaintiff via United States Post Office, First Class Mail at the following address:

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