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ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT (JULY 27, 2020)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CLARENCE MATTHEW OTWORTH,

Plaintiff-Appellant,

v.

PNC BANK,

Defendant-Appellee.

No. 19-2188

On Appeal from the United States District Court
for the Western District of Michigan

Before: STRANCH, THAPAR,
and READLER, Circuit Judges.

Clarence Matthew Otworth, proceeding pro se, appeals a magistrate judge's order dismissing his amended complaint filed pursuant to Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12182, other federal statutes, and Michigan law. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Otworth alleges that he is in a wheelchair, cannot walk, and had depended for years on an aide to shop for him after cashing a check made payable to the aide and drawn from Otworth's PNC Bank ("PNC") account. PNC, however, began charging non-customers a two percent check cashing fee and would not instead cash Otworth's check that was presented by the aide but was made payable to Otworth. Frustrated by the matter, Otworth filed suit on June 4, 2018, against PNC for money damages pursuant to 42 U.S.C. § 1983 and state law. He moved for a default judgment and attached copies of returns for summonses ostensibly showing that PNC had been served twice—on June 19, 2018, as well as on July 30, 2018.

Before service of the July 30th summons and a month before Otworth's motion for a default judgment, PNC moved to dismiss the complaint for failure to state a claim. Otworth filed a response in opposition, and PNC filed a reply. Otworth then tendered unauthorized sur-replies that were stricken by the district court. He next moved unsuccessfully for the appointment of counsel who would appear at hearings and be paid by him, but who would not prepare any documents.

A magistrate judge recommended denying Otworth's motion for a default judgment, reasoning that the June 19th summons had not been issued by the district court and that PNC thus had not failed to timely defend against the complaint. *See* Fed. R. Civ. P. 55(a). As to PNC's motion to dismiss, the magistrate judge recommended that it be granted because Otworth had failed to state a claim under § 1983 and state law.

Upon consideration of Otworth's objections, the district court denied Otworth's motion for a default

judgment, granted PNC's motion to dismiss, and granted Otworth leave to file an amended complaint.

In his amended complaint, Otworth asserted that PNC's actions violated the ADA; the Rehabilitation Act, *see* 42 U.S.C. § 12133; Title VI of the Civil Rights Act of 1964, *see* 42 U.S.C. § 2000d et seq.; and the Uniform Commercial Code. He thereafter moved for summary judgment on the ground that PNC had conceded his version of the facts by not responding to his request for admission of facts served with the summons. Otworth stated that he "waived" any hearing requiring a personal appearance and requested that all hearings be by telephone. He also moved to join Congress as a defendant.

The magistrate judge set a scheduling conference for March 26, 2019. Otworth and PNC filed a joint status report, noting that Otworth would appear by telephone and that the parties had consented to final disposition by the magistrate judge. Unable to reach Otworth on the day of the hearing despite several attempts, the magistrate judge rescheduled the hearing for April 9, 2019, and ordered Otworth to appear in person or risk the dismissal of his case for lack of prosecution.

In response, Otworth moved for recusal of the magistrate judge, accusing him of bias toward pro se plaintiffs and arguing that the magistrate judge "knew" that Otworth could not appear in person and "want[ed] an excuse for dismissing the case." Otworth requested that the court call him for the April 9th hearing and explained that a defective telephone handset was being replaced.

Shortly before the April 9th hearing was to commence, Otworth emailed PNC's counsel, stating, "Tell the Judge that Captel installed a new telephone in my house yesterday. I will expect him to call me at 11:00 a.m." The magistrate judge did not call Otworth when he failed to appear in person.

Otworth subsequently filed motions to terminate PNC's counsel, impose sanctions against counsel, and schedule a telephone conference. These motions were followed by a second motion for recusal of the magistrate judge. Chief Judge Jonker also placed in the record letters from Otworth to Attorney General William Barr seeking criminal prosecution of district judges and the magistrate judge.

In a single order, the magistrate judge denied all of Otworth's motions and dismissed the action. The court held that Otworth's summary judgment motion lacked any legal or factual basis. It also held that his motion for joinder cited no authority for joining Congress, and that Congress was not a necessary party. The motions for recusal were denied because the magistrate judge had no bias against pro se litigants, and the courthouse was accessible to wheelchair-bound litigants. Additionally, the court noted that personal appearance at a scheduling conference was beneficial because a pro se litigant could learn the legal process, resolve matters related to litigation, and consider settlement. The court further held that the motions to terminate counsel and impose sanctions, premised on counsel's mere denial of PNC's liability, were meritless. The motion to schedule a telephone conference, where Otworth again accused the magistrate judge of bias, was denied for the same reasons as the motions for recusal.

Finally, the magistrate judge dismissed Otworth's action as a sanction for failing to appear at the April 9th scheduling conference. *See* Fed. R. Civ. P. 16(f)(1). Observing that Otworth's defective telephone underscored the need for his personal appearance and that his conduct throughout the litigation indicated a misunderstanding or disregard of the court's rules, the magistrate judge concluded that requiring Otworth to appear in person was reasonable. But Otworth's persistent refusal to attend any hearings was not, and dismissal was the only appropriate sanction.

On appeal, Otworth asserts that: (1) PNC's check-cashing policies violated his rights under the ADA and other laws; (2) the magistrate judge should have recused himself; (3) the magistrate judge violated the Fourteenth Amendment by refusing to schedule a trial; and (4) the magistrate judge violated the ADA by requiring him to appear in person.

We review for an abuse of discretion a district court's dismissal of a complaint due to a plaintiff's failure to comply with an order. *Mager v. Wis. Cent. Ltd.*, 924 F.3d 831, 837 (6th Cir. 2019).

Federal Rule of Civil Procedure 16(a) provides that a court may order a pro se litigant to appear at pretrial conferences. If a litigant "fails to obey a scheduling or other pretrial order," the district court may impose sanctions, including dismissal of the action. Fed. R. Civ. P. 16(f)(1)(C) (cross-referencing Fed. R. Civ. P. 37(b)(2)(A)(ii)-(vii)). When contemplating whether to dismiss an action, a court must consider:

> (1) whether the party's failure is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the dismissed party's conduct; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered.

Mager, 924 F.3d at 837 (quoting *United States v. Reyes*, 307 F.3d 451, 458 (6th Cir. 2002)).

The district court did not abuse its discretion. First, Otworth willfully violated the magistrate judge's order requiring him to appear at the April 9th scheduling conference. As Otworth had previously and repeatedly indicated that he would participate only by telephone, his conduct may be deemed contumacious, *i.e.*, "behavior that is perverse in resisting authority and stubbornly disobedient." *Id.* (quoting *Carpenter v. City of Flint*, 723 F.3d 700, 705 (6th Cir. 2013)). Contumacious behavior by itself may warrant dismissal. *Id.*

Second, PNC suffered prejudice from Otworth's failure to appear because PNC incurred unnecessary time and resources in travelling to the court and preparing for the hearing. *See Schafer v. City of Defiance Police Dep't*, 529 F.3d 731, 737 (6th Cir. 2008).

Third, the magistrate judge gave Otworth explicit, written notice that his failure to appear could lead to dismissal.

Fourth, the magistrate judge concluded that no lesser sanction was available because Otworth could not prosecute his case if he would not appear in court or follow the court's orders. This also supports the

magistrate judge's decision to dismiss the complaint pursuant to Rule 16(f)(1)(C). In any event, a failure to expressly consider other sanctions "is not necessarily an abuse of discretion." *Reyes*, 307 F.3d at 458.

Otworth argues that the magistrate judge should have recused himself because he is biased and corrupt. Otworth further argues that the magistrate judge violated the Fourteenth Amendment by refusing to schedule a trial and violated the ADA by requiring him to appear in person.

The magistrate judge did not err by refusing to recuse himself under 28 U.S.C. § 455. Otworth's assertion of bias is based on his dissatisfaction with the magistrate judge's decisions. Judicial rulings almost never serve as a valid basis for recusal and almost invariably are simply grounds for appeal. *Liteky v. United States*, 510 U.S. 540, 555 (1994). Next, the magistrate judge did not err by dismissing the case prior to a jury trial. Prose plaintiffs are not automatically entitled to take a case to trial, *see Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996), and a dismissal for failure to prosecute does not violate one's right to a jury trial. *See Lewis v. Rawson*, 564 F.3d 569, 575 n.7 (2d Cir. 2009). Last, the ADA does not apply to any part of the federal government, including the federal courts. *See United States v. Snarr*, 704 F.3d 368, 384 (5th Cir. 2013).

Because the district court dismissed Otworth's action for failure to prosecute, we need not reach the merits of the claims brought in his complaint. *See Jourdan v. Jabe*, 951 F.2d 108, 109-10 (6th Cir. 1991).

Accordingly, we AFFIRM the district court's order.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt
Clerk

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN ADDRESSING MOTIONS AND DISMISSING THE CASE (SEPTEMBER 26, 2019)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CLARENCE MATTHEW OTTWORTH,

Plaintiff,

v.

PNC BANK,

Defendant.

Case No. 1:18-cv-625

Before: Hon. Ray KENT,
United States Magistrate Judge.

Pro se plaintiff Clarence Matthew Ottworth filed this action against PNC Bank. The parties consented to have a United States Magistrate Judge conduct any and all further proceedings in the case, including trial and entry of final judgment. This matter is now before the Court on a number of motions filed by plaintiff.

I. Background

Plaintiff filed this lawsuit demanding $1,000,000.00 from defendant PNC Bank (PNC) on a variety of theories. Compl. (ECF No. 1). The Court granted defendant's motion to dismiss and allowed the plaintiff to re-plead. Order (ECF No. 27, PageID.118-119). Plaintiff filed an amended complaint in which he alleged: that he is in a wheelchair; that he cannot travel to the bank to cash checks; that he sends his Agent "to collect his money;" and that PNC's refusal "to hand over the money to the Agent of the payee" violates the American with Disabilities Act, the Rehabilitation Act, and an implied private cause of action under Title VI of the Civil Rights Act of 1964. Amend. Compl. (ECF No. 28).

Prior to Rule 16 Scheduling Conference, plaintiff filed a motion for summary judgment (ECF No. 31) asking the Court to dismiss defendant's answer to the amended complaint, to grant his motion for summary judgment, and to have "all hearing conducted by telephone" because he is disabled. Plaintiff also filed a motion to join the United States Congress as a necessary party to this litigation because Congress enacted the ADA, the Rehabilitation Act, and Civil Rights Act of 1964 (ECF No. 32).

Plaintiff did not appear at the original scheduling conference on March 26, 2019. *See* Minutes (ECF No. 37). It appears that the parties reached an agreement, without the Court's approval, that plaintiff would not appear and that he "will be available by telephone" on March 26th at 10:00 a.m. Joint Status Report (ECF No. 34 PageID.149). Although the Court did not agree to this procedure, the undersigned's office attempted to contact plaintiff six times between 10:00 a.m., but

received a recording that the call could not be completed as dialed. When plaintiff neither appeared nor answered his telephone, the Court continued the scheduling conference until April 9, 2019, and sent plaintiff a notice advising him that "HE MUST APPEAR IN PERSON FOR THE CONFERENCE" and that "PLAINTIFF'S FAILURE TO APPEAR MAY RESULT IN HIS CASE BEING DISMISSED FOR LACK OF PROSECUTION." *See* Notice (ECF No. 36) (emphasis in original).

Plaintiff sent the Court a "response" to the notice stating that he could not place a telephone call into the original Rule 16 conference because he had a defective handset. Response (ECF No. 40-1). Plaintiff included as exhibits a copy of a letter from his telephone company stating he had a defective handset and a copy of his motion to recuse the undersigned for bias and to order the Court to call him for the April 9th scheduling conference. Plaintiff also filed a "Motion to recuse Magistrate Judge Kent from this civil action for bias" (ECF No. 39).

Plaintiff failed to appear at the April 9th Rule 16 Conference (*see* Minutes (ECF No. 41)). Shortly before the hearing, plaintiff sent PNC's counsel an email stating, among other things, that "Tell the Judge that Captel installed a new telephone in my house yesterday. I will expect him to call me at 11:00 a.m." (Recorded proceedings) (April 9, 2019).

After he failed to appear for the Rule 16 Conference, plaintiff commenced a litigation strategy based upon removing PNC's counsel and the trial judge from this case, which included a motion for the Court to terminate PNC's counsel (ECF No. 42), a motion for sanctions against PNC's counsel (ECF No. 44), another

motion to recuse the undersigned (ECF No. 50), and a motion for a "telephone scheduling conference" on his terms (ECF No. 47). Plaintiff expanded his litigation strategy to include the removal of other judges from the Western District of Michigan, by sending letters to the United States Attorney General to file a criminal complaint against Judge Robert J. Jonker, Judge Paul L. Maloney, and Magistrate Judge Ray Kent for fraud and obstruction of justice because no scheduling orders in his *pro se* lawsuits filed in this Court have issued. Letter (ECF Nos. 49 and 50).

Based on his filings, plaintiff takes the position that he can litigate this case from his home rather than appear in Court, that he is exempt from the Court's rules regarding pleading and motion practice, and that he can dictate the result of litigation: by removing judges he does not like; by discharging the attorneys who represent the adverse party; and by removing judges through a letter writing campaign directed to the United States Attorney General.

"*Pro se* litigants are required to follow the rules of civil procedure." *Mooney v. Cleveland Clinic Foundation*, 184 F.R.D. 588, 590 (N.D. Ohio 1999). A *pro se* plaintiff "volitionally assumes the risks and accepts the hazards which accompany self-representation." *Graham-Humphreys v. Memphis Brooks Museum of Art, Inc.*, 209 F.3d 552, 561 (6th Cir. 2000). "While courts have historically loosened the reins for pro se parties, the right of self-representation is not a license not to comply with relevant rules of procedural and substantive law." *Eagle Eye Fishing Corporation v. United States Department of Commerce*, 20 F.3d 503, 506 (1st Cir. 1994) (internal citations and quotation marks omitted). Thus, when a non-prisoner litigant

chooses to represent himself, "he should expect no special treatment which prefers him over others who are represented by attorneys." *Brock v. Hendershott*, 840 F.2d 339, 343 (6th Cir. 1988).

II. Motions

A. Plaintiff Failed to File Supporting Briefs

As an initial matter, plaintiff has failed to file supporting briefs for any of his motions as required by W.D. Mich. LCivR 7.1(a), which provides in pertinent part that "[a]ll motions, except those made orally during a hearing or trial, shall be accompanied by a supporting brief" and that "[a]ll briefs filed in support of or in opposition to any motion shall contain a concise statement of the reasons in support of the party's position and shall cite all applicable federal rules of procedure, all applicable local rules, and the other authorities upon which the party relies." While this Court can deny his motions on that ground, it will address the merits of the motions.

B. Motion for Summary Judgment

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Rule 56 further provides that a party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those

made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c)(1).

In *Copeland v. Machulis*, 57 F.3d 476 (6th Cir. 1995), the court set forth the parties' burden of proof in a motion for summary judgment:

> The moving party bears the initial burden of establishing an absence of evidence to support the nonmoving party's case. Once the moving party has met its burden of production, the nonmoving party cannot rest on its pleadings, but must present significant probative evidence in support of the complaint to defeat the motion for summary judgment. The mere existence of a scintilla of evidence to support plaintiffs position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.

Copeland, 57 F.3d at 478-79 (citations omitted). "In deciding a motion for summary judgment, the court views the factual evidence and draws all reasonable inferences in favor of the nonmoving party." *McLean v. 988011 Ontario Ltd.*, 224 F.3d 797, 800 (6th Cir. 2000).

Plaintiff has failed to present any legal or factual basis to support his motion for summary judgment.

The only document filed in support of his motion is a "Request for admission of facts" which is dated June 20, 2018, and plaintiff's claim that he is entitled to summary judgment because PNC admitted those facts by failing to respond to the request. Contrary to plaintiff's theory, the request for admission is of no effect because PNC was not a party in this litigation when he mailed the request on June 20, 2018; PNC did not enter its appearance until July 24, 2018. In addition, plaintiff filed the request for admissions in violation of Fed. R. Civ. P. 26(d), which provides in pertinent part that "[a] party may not seek discovery from any source before the parties have conferenced as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when authorized by these rules, by stipulation, or by court order." Fed. R. Civ. P. 26(d)(1). For these reasons, plaintiffs motion for summary judgment (ECF No. 31) is DENIED.[1]

C. Motion for Joinder

Plaintiff seeks to join the United States Congress as a necessary co-plaintiff in this case. Plaintiff cites no authority to support this attempt to join Congress into his check-cashing dispute with PNC. While Congress enacted the federal statutes which PNC allegedly violated, Congress is not a necessary party

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[1] In a related matter, the Court notes that in his reply brief, plaintiff stated that he "decided to drop" the lawsuit against PNC at one time, but that now he demands a trial by jury and "if he wins, he will expect the amount that he sued for, one million dollars." Reply (ECF No. 38, PagelD.159). Contrary to plaintiff's statement that he decided to drop the lawsuit, he did not file any document requesting a voluntary dismissal of this action.

to plaintiff's lawsuit against PNC. Plaintiff can obtain complete relief against PNC under those statutes without having Congress as a co-plaintiff. *See* Fed. R. Civ. P. 19(a)(1).[2] Accordingly, plaintiff's motion for joinder (ECF No. 32) is DENIED.

D. Motions for Recusal

Plaintiff has filed two motions to recuse the undersigned as the trial judge in this case. The gist of plaintiff's first motion for recusal, which was filed before the April 9, 2016 Rule 16 Conference, is that "Judge Kent knows very well that it is impossible for the plaintiff to appear in person because he cannot walk" and that "Judge Kent just wants an excuse for dismissing the case." Motion to recuse (ECF No. 39). In his second motion for recusal, filed on September 11, 2019, plaintiff stated that the undersigned "knew or should have known that the plaintiff's phone was out of order when he [sic] tried to call him [sic] for the Rule 16 scheduling conference on March 26, 2019", and that the undersigned should have not ordered

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[2] Fed. R. Civ. P. 19(a) provides in relevant part as follows:

> "(1) Required Party. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if. (A) in that person's absence, the court cannot accord complete relief among existing parties; or (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest."

plaintiff to appear in person. Motion to recuse (ECF No. 50). Plaintiff repeats his statement that "Judge Kent knew very well that it was impossible for the plaintiff to appear in person because he cannot walk" and that "Judge Kent just wanted an excuse for dismissing the case." *Id.*

> The standard for recusal is an objective one: "'a judge must recuse [himself] if a reasonable, objective person, knowing all of the circumstances, would have questioned the judge's impartiality.'" *United States v. Sammons*, 918 F.2d 592, 599 (6th Cir. 1990) (citation omitted). Petitioner's mere subjective view does not support disqualification. *See id.* ("[T]he judge need not recuse himself based on the 'subjective view of a party,' no matter how strongly that view is held.") (citation omitted). "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994).

Taylor v. McKee, No. 1:14-cv-1284, 2015 WL 5593223 at *2 (W.D. Mich. Sept. 21, 2015).

Contrary to plaintiff's contentions, the undersigned has no personal knowledge on whether plaintiff is in a wheelchair or whether plaintiff "cannot walk." Even if plaintiff requires a wheelchair, the federal building is accessible to individuals with disabilities. Individuals who require wheelchairs appear in both civil and criminal proceedings in this courthouse.

Next, the undersigned is not biased against *pro se* litigants. The undersigned handles motions in *pro*

se cases on a regular basis, has been the trial judge in lawsuits brought by *pro se* plaintiffs, and has decided Social Security Appeals filed by *pro se* plaintiffs. When a *pro se* party such as plaintiff files a civil lawsuit, the undersigned requires the *pro se* party to appear in person at the scheduling conference. The Court requires personal appearance for a number of reasons. The Rule 16 scheduling conference sets out the framework for the entire case and gives the Court and the parties an opportunity to meet in person and address any number of matters related to the pending litigation. *Pro se* plaintiffs benefit from familiarizing themselves with the courthouse, the courtroom, the trial judge, and the opposing party (or attorney). Typically, a number of preliminary matters are resolved during the Rule 16 Conference which benefits all parties. The seeds of a settlement are often planted at the Rule 16 Conference, and some parties reach tentative settlements at that time. In addition, the undersigned utilizes the Rule 16 Conference to explain the legal process to *pro se* litigants so that they understand how to develop a legal case for trial and what the Court expects of litigants. For all of these reasons, plaintiff's subjective view that the undersigned is biased against *pro se* litigants is unsupported. Accordingly, plaintiff's motions to recuse (ECF Nos. 39 and 50) are DENIED.

E. Motion to Terminate Legal Representation Provided by Attorney Renner for Defendant PNC Bank

In this motion, plaintiff asks the Court to terminate Attorney Jason Renner's representation of PNC Bank because Renner "deliberately lied in the Joint Status Report" (ECF No. 42, PageID.173) (emphasis omitted). The basis for plaintiff's claim is that his

version of events as recited in the Joint Status Report is correct, that PNC's version of events "is a flat out lie", and that as a result of this lie, plaintiff's motion to terminate the legal representation of Attorney Renner "must be granted, and substantial sanctions must be imposed to discourage other attorneys from lying." Motion (ECF No. 42, PageID.174).

In its statement of the case, PNC denied that it is liable to plaintiff.

> Defendant's View: Defendant denies that its non-customer check cashing fee violates the American with Disabilities Act, the Rehabilitation Act of 1973, or any other law. Defendant further denies Plaintiff has any other colorable cause of action against it arising out of its non-customer check cashing fee.

Joint Status Report (ECF No. 34, PageID.150). Neither PNC nor its attorney did anything wrong or sanctionable by stating PNC's position. Plaintiff's motion to terminate PNC's attorney (ECF No. 42) is frivolous and DENIED.

F. Motion for Sanctions

Plaintiff also seeks sanctions against Attorney Renner pursuant to Fed. R. Civ. P. 11 for the alleged "lies" in the Joint Status Report, *i.e.*, "deliberately lying to the plaintiff and the court that Defendant PNC Bank did not violate the Americans with Disabilities Act of 1990 (ADA) by refusing to cash plaintiff's checks unless he presented his checks to the bank himself or paid their check cashing fee." Motion for sanctions (ECF No. 44). As a procedural matter, plain-

tiff's request for Rule 11 sanctions is improperly filed because he failed to comply with the safe harbor provisions of Fed. R. Civ. P. 11(c)(2), *i.e.*, "The [Rule 11] motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets." The Sixth Circuit "has expressly ruled that Rule 11 is unavailable where the moving party fails to serve a timely 'safe harbor' letter." *First Bank of Marietta v. Hartford Underwriters Insurance Co.*, 307 F.3d 501, 510-11 (6th Cir. 2002).

Even if plaintiff had met the safe harbor requirement, his motion is without merit because neither PNC nor its attorney engaged in sanctionable conduct. *See* discussion, § II.D., *supra.* Accordingly, plaintiff's motion for sanctions (ECF No. 44) is DENIED.

G. Motion for Scheduling Conference, or in the Alternative Motion for Commencement of Discovery

In this motion, plaintiff states that "[t]his matter should have been disposed of in March [2019], but it wasn't because of the bias of the Magistrate Judge Ray Kent against pro se litigant plaintiff Clarence Otworth," and plaintiff requests "that a telephone scheduling conference be held as soon as possible, or grant plaintiff's alternative motion for commencement of discovery." Motion for scheduling conference (ECF No. 47). This matter having come full circle, plaintiff once again wants to litigate this case via telephone. For the reasons discussed, plaintiff's motion regarding

a scheduling conference and to commence discovery (ECF No. 47) is DENIED.

In its notice of hearing issued on March 26, 2019, the Court advised plaintiff that the scheduling conference would be held on April 9, 2019, at 11:00 a.m. and further advised plaintiff as follows:

> CONTINUATION OF RULE 16 SCHEDULING CONFERENCE SET FOR MARCH 26, 2019, AT 10:00 A.M. PLAINTIFF IS NOTIFIED THAT HE MUST APPEAR IN PERSON FOR THE CONFERENCE. PLAINTIFF'S FAILURE TO APPEAR MAY RESULT IN HIS CASE BEING DISMISSED FOR LACK OF PROSECUTION.

Notice (ECF No. 36) (emphasis in original). As discussed, plaintiff failed to appear in person as ordered by the Court.

Since commencing this lawsuit, plaintiff has filed meritless motions. As discussed, plaintiff did not attend the March 26th Rule 16 Conference and did not seek the Court's permission to attend by telephone. When plaintiff failed to appear, the Court could not reach him because his telephone was apparently out of order. The fact that plaintiff has a defective telephone underscores the Court's requirement that he appear in person. When the Court adjourned the Rule 16 Conference until April 9th, the Court made clear to plaintiff that he had to appear in person. In this regard, the Court was aware of plaintiff's past conduct which indicated that he either misunderstood or disregarded Court rules, *e.g.*: plaintiff's improper attempts to serve PNC; plaintiff's improper attempt to secure a default judgment against PNC; plaintiff's

filing of improper "sur-reply" briefs (ECF Nos. 10 and 11); plaintiff's legally deficient claims set forth in the original complaint; plaintiff's statement that he unilaterally "waived" personal appearance for a hearing on his summary judgment motion; plaintiff's request that all hearings be conducted by telephone; and, plaintiff's frivolous motion to join Congress as a plaintiff in this action.

In short, the Court's requirement that plaintiff attend the April 9th Rule 16 Conference in person was reasonable. Plaintiff has made it clear that he will not attend any Court hearings. It is patently unreasonable for a *pro se* plaintiff to file a lawsuit, claim that he cannot attend any court proceedings, and then expect this Court to conduct all pre-trial matters, all motions, and the trial via telephone. The Court cannot adjudicate a lawsuit when the plaintiff refuses to enter the courthouse.

Fed. R. Civ. P. 16(a) provides that:

> In any action, the court may order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as:
>
> (1) expediting disposition of the action;
>
> (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
>
> (3) discouraging wasteful pretrial activities;
>
> (4) improving the quality of the trial through more thorough preparation; and
>
> (5) facilitating settlement.

Fed. R. Civ. P. 16(a)(1)-(5). Plaintiff has refused to attend a pretrial conference as directed by the Court. The Court may issue sanctions if a party "fails to appear at a scheduling or other pretrial conference." Fed. R. Civ. P. 16(f)(A). Sanctions may include "dismissing the action or proceeding in whole or in part." Fed. R. Civ. P. 16(f)(1), citing Fed. R. Civ. P. 37(b)(2)(v). In this instance, the Court advised *pro se* plaintiff that his action may be dismissed if he failed to appear at the April 9, 2019, scheduling conference. This Court cannot adjudicate a plaintiff's claim if the plaintiff refuses to appear in court when ordered. Plaintiff is steadfast in his position that he can litigate this case at home over the telephone. Plaintiff cannot prosecute his case if he will not appear in Court or follow the Court's orders. Under the facts of this case, there is no lesser sanction that the Court can consider than to dismiss plaintiff's lawsuit.

Accordingly, this case is DISMISSED.

IT IS SO ORDERED.

/s/ Ray Kent
United States Magistrate Judge

Dated: September 26, 2019

RESTRICTED ACCESS ORDER ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN (OCTOBER 4, 2019)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CLARENCE MATTHEW OTWORTH,

Plaintiff,

v.

PNC BANK,

Defendant.

Case No. 1:18-CV-625
HON. RAY S. KENT

CLARENCE OTWORTH,

Plaintiff,

v.

FIFTH THIRD BANK, ET AL.,

Defendants.

Case No. 1:19-CV-55
HON. PAUL L. MALONEY

CLARENCE OTWORTH,

Plaintiff,

v.

TONY MOULATSIOTIS, ET AL.,

Defendants.

Case No. 1:19-cv-621
HON. PAUL L. MALONEY

Before: Robert J. JONKER
Chief United States District Judge.

Plaintiff Otworth has three pro se cases on the docket of the Western District of Michigan. The undersigned is not the assigned Judicial Officer in any of the cases, but plaintiff continues to write, presumably because of the undersigned's current role as Chief Judge of the District. The undersigned has previously informed plaintiff of the administrative limits of the Chief Judge role, and further advised plaintiff of the impropriety of ex parte communications, in any event.

This has not stopped the flow of correspondence. The Court wrote plaintiff on October 1, 2019, in response to plaintiff's September 24, 2019, submission. On October 4, 2019, the Court received a new submission from plaintiff in a mailing postmarked October 2, 2019. The submission makes the same basic claims

about the Judicial Officers assigned to each of his cases, but in more strident and vulgar tones. And the submission makes the same demands on the undersigned for relief that is outside the scope of the office of Chief Judge.

The Court is again writing to plaintiff to repeat the same explanations previously provided. And the Court will again direct a filing of the exchange of correspondence on the record of each case to ensure a compete archive of communications. This time the filing will be on a restricted access basis to avoid further burdening the public record with irrelevant and increasingly profane assertions from plaintiff.

IT IS SO ORDERED.

/s/ Robert J. Jonker
Chief United State District Judge

Dated: October 4, 2019

ATTACHMENT TO RESTRICTED ACCESS ORDER: LETTER FROM CLARENCE OTWORTH TO CHIEF JUDGE JONKER (OCTOBER 1, 2019)

CLARENCE OTWORTH
187 East Daniels Road
Twin Lake, MI 49457
(231) 292-1205

Case No: 1:19-cv-55
Hon. Paul Lewis Maloney

Mr. Robert J. Jonker, Chief Judge
United States District Court
685 Federal Building
110 Michigan Street, NW
Grand Rapids, MI 49503

Re: Magistrate Judge Raymond Kent

Dear Mr. Jonker:

Please take notice that on the accompanying pleading—"Plaintiff's Response to CMDA Response Opposing Plaintiff's Motion for Summary Judgment"—the name Phillip J. Green appears as the current Magistrate Judge—that is because I received a pleading from the Michigan Department of Attorney General and it listed Phillip J. Green as the Magistrate Judge. I assumed that you came to your senses and recused that bias corrupt piece of shit, but you didn't! I received a letter from Raymond Kent today which, for all intensive purposes, he dismissed by lawsuit against Fifth Third Bank, et al., Why? Because, in

my demand that he be recused—I demanded that all three of my lawsuits be set for trial, because Raymond Kent had not ordered a scheduling conference in my first case, Otworth v. PNC Bank 1:18-cv-625, since I filed the case on June 04, 2018, 482 days ago. Raymond Kent had not ordered a scheduling conference in my second case, Otworth v. Fifth Third Bank, et al., 1:19-cv-55, since I filed the case on January 02, 2019, 270 days ago. And Raymond Kent had not ordered a scheduling conference in my third case, Otworth v. Tony Moulatsiotis, et al., 1:19-cv-621, since I filed the case on August 01, 2019, 61 days ago. According to Rule 16 (b)(2) of the Federal Rules of Civil procedure, "The Judge must issue the scheduling order as soon as practicable, but unless the judge finds good cause for delay, the judge must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared." Magistrate Judge Raymond Kent, the puppet of every law firm in Michigan, found a damn good cause for delay—the defendants attorneys, in the law firms of Dinsmore & Shohl; Mika Myers; CMDA; Plunkett Cooney; Williams, Hughes & Cook, and Michigan's Department of Attorney General, representing defendants Governor Gretchen Whitmer, Attorney General Dana Nessel, and Assistant Attorney General Samantha Reasner, DO NOT WANT DISCOVERY! I urge you to recuse Raymond Kent, and rescind his Order of September 26, 2019, "that plaintiff's motion to commence discovery and postpone decisions in this case (Otworth v. Fifth Third Bank, et. al, 1:19-cv-55 Judge Paul Lewis Maloney /Magistrate Judge Ray Kent) is DENIED." And SET ALL THREE CASES FOR JURY TRIAL—as I declared

I wanted when I filed each case, and that I am entitled to receive as an American citizen!

Govern Yourself Accordingly,

/s/ Clarence Otworth

cc: William Pelham Barr
cc: Christopher Asher Wray
cc: Donald John Trump

ATTACHMENT TO RESTRICTED ACCESS ORDER: LETTER FROM CHIEF JUDGE JONKER TO MR. OTWORTH (OCTOBER 4, 2019)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
685 Gerald R. Ford Federal Building
110 Michigan Street, NW
Grand Rapids, Michigan 49503

Mr. Clarence Otworth
187 East Daniels Road
Twin Lake, MI 49457

Re: *Otworth v. Fifth Third Bank, et al.*
Case No. 1:19-CV-55-PLM

Dear Mr. Otworth:

I received your letter postmarked October 2, 2019. This case is assigned to my colleague, the Honorable Paul Maloney. I am copying Judge Maloney on this exchange of correspondence.

As the current Chief Judge of the District, I have certain administrative responsibilities added to my regular case load, but I have no authority whatsoever to review the judicial decisions of my colleagues in cases assigned to them. If you continue to believe you are entitled to any kind of judicial relief, you must follow the appropriate rules and procedures for litigating those issues before the Judicial Officer assigned to your case—in this instance the Honorable Paul L. Maloney.

The Court cannot communicate with you substantively regarding the issues in your case. Nor can we deal with any issues regarding your case in the absence of a properly filed motion. Any motion in the case must be served on counsel for all parties in the case. I will again direct the Clerk to file a copy of the exchange of correspondence on the record of each case to ensure a compete archive of communications.

Sincerely,

/s/ Robert J. Jonker
Chief United States District Judge

RJJ/ymc

cc: Hon. Paul L. Maloney

NOTICE OF HEARING (MARCH 26, 2019)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CLARENCE MATTHEW OTWORTH,

Plaintiff,

v.

PNC BANK,

Defendant.

Case No. 1:18-cv-00625-RSK

Before: Hon. Ray KENT,
United States Magistrate Judge.

TAKE NOTICE that a hearing has been scheduled as set forth below:

Type of hearing(s): Scheduling Conference

Date/Time: April 9, 2019 11:00 AM

Magistrate Judge: Ray Kent

Place/Location:
584 Federal Building, Grand Rapids, MI

CONTINUATION OF RULE 16 SCHEDULING CONFERENCE SET FOR MARCH 26, 2019, AT 10:00 A.M. PLAINTIFF IS NOTIFIED THAT HE MUST

APPEAR IN PERSON FOR THE CONFERENCE. PLAINTIFF'S FAILURE TO APPEAR MAY RESULT IN HIS CASE BEING DISMISSED FOR LACK OF PROSECUTION.

Ray Kent
U.S. Magistrate Judge

By: /s/ Faith Hunter Webb
Judicial Assistant

Dated: March 26, 2019

MINUTES OF HEARING
(MARCH 26, 2019)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

MINUTES

Case No: 1 :18-cv-625-RSK
Caption: Otworth v. PNC Bank
Date: March 26, 2019
Time: 10:32-10:47 a.m.
Place: Grand Rapids
Magistrate Judge: Hon. Ray Kent

APPEARANCES

Plaintiff

Counsel:	*Pro Se*
Representing:	Clarence Matthew Otworth DID NOT APPEAR

Defendant

Counsel:	Jason M. Renner PNC Bank
Representing:	PNC Bank

PROCEEDINGS

NATURE OF HEARING:

Ominbus hearing; date and time set for Rule 16 Scheduling Conference; pro se plaintiff was to appear by telephone; the Court was unable to reach plaintiff; Rule 16 scheduling conference to be rescheduled and plaintiff to appear in person.

Proceedings Digitally Recorded

Deputy Clerk: S. Carpenter