

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State ex rel. Haneef Muhammad,	:	
Relator,	:	
v.	:	No. 26AP-81
[Honorable] Michael Holbrook,	:	(REGULAR CALENDAR)
Respondent.	:	

D E C I S I O N

Rendered on September 8, 2026

On brief: *Haneef Muhammad*, pro se.

On brief: *Shayla D. Favor*, Prosecuting Attorney, *Gareth A. Whaley*, and *Devin E. Bartlett*, for respondent.

IN PROCEDENDO
ON RESPONDENT’S MOTION TO DISMISS

DINGUS, J.

{¶ 1} Relator, Haneef Muhammad, filed a complaint in procedendo on February 4, 2026 asking that this court order respondent, Judge Michael Holbrook, to rule on numerous motions that Muhammad filed in October and November 2025. Judge Holbrook filed a motion to dismiss Muhammad’s complaint under Civ.R. 12(B)(6). Pursuant to Civ.R. 53 and Loc.R. 13(M) of the Tenth District Court of Appeals, we referred this matter to a magistrate who issued the appended decision.

{¶ 2} On review, the magistrate recommends that we grant the motion to dismiss, noting that the Ohio Rules of Superintendence provide that courts should rule on motions within 120 days. *See* Sup.R. 40(A)(3), now codified at Sup.R. 5.23(A)(3). Because none of the motions identified in Muhammad’s complaint had been pending for 120 days or more at the time he filed his complaint, the magistrate concluded that the complaint failed to

state a claim that Judge Holbrook had unduly delayed or refused to enter judgment on the motions.

{¶ 3} Muhammad filed objections to the magistrate's decision, and Judge Holbrook responded with a memorandum in opposition to Muhammad's objections. In his objections, Muhammad argues that the "120-day guideline does not resolve whether the delay has become unreasonable," and that the magistrate erred in failing to consider the additional days that had passed by the time of the magistrate's decision. (June 22, 2026 Relator's Objs. at 1-2.) Muhammad additionally argues that he is seeking rulings, rather than particular outcomes, on his many pending motions. The latter of these objections is a general statement that is not relevant to the magistrate's decision, and we therefore disregard it as non-compliant with Civ.R. 53(D)(3)(b)(ii).

{¶ 4} Apart from a reference to the 120-day rule now found in Sup.R. 5.23(A)(3), Muhammad has not provided any legal support for his arguments. We likewise find no legal support for the proposition that it is possible to state a claim in procedendo for delays under 120 days or that a prematurely filed procedendo action can be cured by the additional passage of time alone.

{¶ 5} A writ of procedendo provides a remedy where a court has either refused to enter judgment or has caused unnecessary delay in rendering judgment. *State ex rel. Brown v. Logan*, 2014-Ohio-769, ¶ 13; *State ex rel. Sherrills v. Cuyahoga Cty. Court of Common Pleas*, 1995-Ohio-26, ¶ 6. A successful procedendo action requires relators to show that they have a clear right for a court to proceed, the court has a clear legal duty to do so, and the relators lack an adequate remedy in the ordinary course of law. *Logan* at ¶ 13; *Sherrills* at ¶ 4; *State ex rel. Ward v. Reed*, 2014-Ohio-4512, ¶ 9. The extraordinary remedy of procedendo exists to combat *undue* delay, not just *any* delay and; procedendo cannot be used to compel prompt decisions. *Sherrills* at ¶ 6; *State ex rel. Luna v. Huffman*, 74 Ohio St.3d 486, 488 (1996). And procedendo will not lie to interfere with ordinary court procedure. *Sherrills* at ¶ 4; *State ex rel. Cochran v. Quillin*, 20 Ohio St.2d 6, 6 (1969).

{¶ 6} If the facts alleged in a complaint in procedendo do not show that the court has refused or delayed its consideration of a petitioner's motion, the complaint should be dismissed under Civ.R. 12(B)(6). *Sherrills* at ¶ 6-7. Ohio's Courts of Appeals, including the Tenth District, have consistently held that "complaints in procedendo are

premature when the time period to rule on motions has not exceeded 120 days.” *State ex rel. Goodwin v. Gaul*, 2007-Ohio-4294, ¶ 5 (8th Dist.) (petitioner’s filings had been pending for approximately 2 months when the procedendo action was filed). *See also Villavicencio v. Mingo*, 2026-Ohio-1665, ¶ 3 (10th Dist.) (petitioner’s filings had been pending for 108 days); *State ex rel. Cromwell v. Dellick*, 2017-Ohio-8032, ¶ 7 (7th Dist.) (petitioner’s filings had been pending for 96 days); *State ex rel. Ross v. McGookey*, 2019-Ohio-1710, ¶ 6 (6th Dist.) (petitioner’s filings had been pending for 54 days); *State ex rel. Stacey v. Owens*, 2026-Ohio-905, ¶ 28-29 (5th Dist.) (petitioner’s filings had been pending for 78 days). We see no reason to depart from our own precedent or to diverge from the views consistently expressed in our sister districts.

{¶ 7} Although Muhammad would like the court to consider the additional passage of time since the filing of his complaint in procedendo, such consideration would be inappropriate when determining whether his complaint states a valid cause of action to withstand a motion to dismiss. A motion to dismiss under Civ.R. 12(B)(6) “is procedural and tests the sufficiency of the complaint.” *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 1992-Ohio-73, ¶ 9. An action generally “must be determined upon the rights of parties as they existed at the commencement of [the] action.” *Clark v. Clark*, 20 Ohio St. 128, 136 (1870). To state a valid cause of action in mandamus or procedendo regarding the judicial disposition of pending motions, the complaint must show that the court had a pre-existing or presently existing legal duty to rule on the petitioner’s motions at the time the complaint is filed. *State ex rel. Martinelli v. Corrigan*, 1994-Ohio-179, ¶ 5. If the allegations in a complaint demonstrate that a cause of action has not yet arisen, the matter is not ripe and is therefore not justiciable. *See Keller v. Columbus*, 2003-Ohio-5599, ¶ 26 (“In order to be justiciable, a controversy must be ripe for review.”); *Kincaid v. Erie Ins. Co.*, 2010-Ohio-6036, ¶ 17 (“To be justiciable, a controversy must be grounded on a present dispute, not on a possible future dispute.”).

{¶ 8} If a litigant does not yet have a justiciable issue to bring before the court, the litigant cannot invoke the jurisdiction of the court and set the process in motion. *See Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 2012-Ohio-5017, ¶ 20-27; *Bank of Am., N.A. v. Kuchta*, 2014-Ohio-4275, ¶ 22. *See also Tobin v. McCann*, 17 Mo. App. 481, 483 (1885) (“One cannot bring another into court and tax him with cost in defending against a non-

existent right, upon the ground that a right may be created pending the procedure.”). Accordingly, if a cause of action has not yet arisen when the complaint is filed, then the complaint purporting to state such a cause of action should be dismissed. *Schwartzwald* at ¶ 28; *Kincaid* at ¶ 20; *State ex rel. Jones v. Husted*, 2016-Ohio-5752, ¶ 21.

{¶ 9} Muhammad’s complaint failed to indicate that Judge Holbrook had a pre-existing or presently existing legal duty to rule on Muhammad’s motions at the time Muhammad filed his complaint. He therefore failed to present a justiciable controversy and invoke this court’s jurisdiction. We note that such a defect generally cannot be cured through amended or supplemental pleadings. See *Schwartzwald* at ¶ 25-26, 37; *Clark* at 136 (a motion to amend pleadings is not proper when it is, “in fact, a motion for leave to make a new case”). Moreover, even if supplemental pleadings would have been appropriate here, Muhammad did not seek to file a supplemental complaint. We need not consider new claims found only in Muhammad’s briefing. See *RR. Co. v. Hutchins*, 37 Ohio St. 282 (1881), paragraph three of the syllabus (if a subsequent “change takes place in the rights of the parties, it must be shown by supplemental pleading, otherwise it should be disregarded”).

{¶ 10} Based on the foregoing, along with our independent review of the record, we conclude the magistrate properly applied the law to the facts alleged in this action. Accordingly, we overrule Muhammad’s objections, and we adopt the magistrate’s decision as our own. In accordance with the magistrate’s decision, we grant respondent’s motion to dismiss. Muhammad’s petition for a writ of procedendo is dismissed.

*Objections overruled;
motion to dismiss granted;
action dismissed.*

MENTEL and JAMISON, JJ., concur.

APPENDIX

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State ex rel. Haneef Muhammad,	:	
Relator,	:	
v.	:	No. 26AP-81
[Honorable] Michael Holbrook,	:	(REGULAR CALENDAR)
Respondent.	:	

M A G I S T R A T E ' S D E C I S I O N

Rendered on June 17, 2026

Haneef Muhammad, pro se.

*Shayla D. Favor, Prosecuting Attorney, Gareth A. Whaley,
and Devin E. Bartlett, for respondent.*

IN PROCEDENDO
ON RESPONDENT'S MOTION TO DISMISS

{¶ 11} Relator, Haneef Muhammad, has filed this original action requesting that this court issue a writ of procedendo ordering respondent, Judge Michael Holbrook, to rule on relator's various motions filed after October 2025. Judge Holbrook has filed a motion to dismiss pursuant to Civ.R. 12(B)(6).

Findings of Fact:

{¶ 12} 1. Relator is the plaintiff in Franklin County C.P. No. 24CV005450 ("common pleas case"), a worker's compensation case.

{¶ 13} 2. Judge Holbrook is a judge in the Franklin County Court of Common Pleas and presides over relator's common pleas case.

{¶ 14} 3. In his February 4, 2026, petition for writ of procedendo, relator alleges that he has filed numerous motions since October 2025, and Judge Holbrook has failed to rule on these motions. In his petition, he requests that this court order Judge Holbrook to rule on these motions in his common pleas case. The earliest of these motions, a motion in limine, was filed on October 11, 2025, and that motion was fully briefed as of October 29, 2025.

{¶ 15} 4. In the present action, on March 9, 2026, Judge Holbrook filed a motion to dismiss relator's petition pursuant to Civ.R. 12(B)(6). Relator has filed a brief in opposition to the motion to dismiss.

Conclusions of Law:

{¶ 16} The magistrate recommends that this court grant Judge Holbrook's motion to dismiss relator's petition for writ of procedendo.

{¶ 17} To be entitled to a writ of procedendo, a relator must establish a clear legal right to require that court to proceed, a clear legal duty on the part of the court to proceed, and the lack of an adequate remedy in the ordinary course of law. *State ex rel. Miley v. Parrott*, 1996-Ohio-350. A writ of procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment. *Id.* An “ ‘inferior court's refusal or failure to timely dispose of a pending action is the ill a writ of procedendo is designed to remedy.’ ” *State ex rel. Dehler v. Sutula*, 74 Ohio St.3d 33, 35 (1995), quoting *State ex rel. Levin v. Sheffield Lake*, 1994-Ohio-385.

{¶ 18} The magistrate may take judicial notice of the pleadings and orders in related cases when these are not subject to reasonable dispute, at least insofar as they affect the present original action. *State ex rel. Nyamusevya v. Hawkins*, 2020-Ohio-2690, ¶ 33 (10th Dist.), citing Evid.R. 201(B); *State ex rel. Ohio Republican Party v. Fitzgerald*, 2015-Ohio-5056, ¶ 18; and *State ex rel. Womack v. Marsh*, 2011-Ohio-229, ¶ 8. Furthermore, a court may take judicial notice of pleadings that are readily accessible on the internet. See *Draughon v. Jenkins*, 2016-Ohio-5364, ¶ 26 (4th Dist.), citing *State ex rel. Everhart v. McIntosh*, 2007-Ohio-4798, ¶ 8, 10 (a court may take judicial notice of appropriate

matters, including judicial opinions and public records accessible from the internet, in determining a Civ.R. 12(B)(6) motion); and *Giannelli*, 1 Baldwin’s Ohio Practice Evidence, Section 201.6 (3d Ed.2015) (noting that the rule generally precluding a court from taking judicial notice of other cases has been relaxed if the record is accessible on the internet).

{¶ 19} A court may dismiss a complaint pursuant to Civ.R. 12(B)(6) if, after all factual allegations in the complaint are presumed true and all reasonable inferences are made in relator’s favor, it appears beyond doubt that relator could prove no set of facts entitling him or her to the requested extraordinary writ. *State ex rel. Turner v. Houk*, 2007-Ohio-814, ¶ 5. “Although factual allegations in the complaint are taken as true, ‘unsupported conclusions of a complaint are not considered admitted . . . and are not sufficient to withstand a motion to dismiss.’ ” *Justice v. Jefferson-Pilot Life Ins.*, 10th Dist. No. 98AP-177 (Dec. 24, 1998), quoting *State ex rel. Hickman v. Capots*, 45 Ohio St.3d 324 (1989).

{¶ 20} In the present case, Judge Holbrook presents the following two grounds for dismissal: (1) relator’s petition is barred by res judicata because relator’s petition seeks identical relief to that sought in his mandamus action filed with the Supreme Court of Ohio in *State ex rel. Muhammad v. Holbrook*, 2026-Ohio-156 (“*Muhammad*”); and (2) the petition fails to state a claim upon which relief in procedendo can be granted because relator cannot show Judge Holbrook has a clear legal duty to decide relator’s motion to vacate within 98 days of filing, which is based on the date that the earliest motion was fully briefed, October 29, 2025.

{¶ 21} The magistrate finds Judge Holbrook’s second ground is fully dispositive of the motion to dismiss. The earliest of relator’s motions relevant to the present action is an October 11, 2025, motion in limine. That motion was fully briefed as of October 29, 2025. Relator filed his petition for writ of procedendo on February 4, 2026. There is no authority for the proposition that procedendo is appropriate after motions have been pending 98 days or less. Even considering the date of filing of the motion in limine, only 116 days elapsed before relator filed his petition in this court.

{¶ 22} Sup.R. 40(A)(3) provides that “[a]ll motions shall be ruled upon within one hundred twenty days from the date the motion was filed, except as otherwise noted on the report forms.” Sup.R. 40 has been used as a guide for determining whether a trial court

has unduly delayed ruling on a motion for purposes of ruling on a request for an extraordinary writ. *State ex rel. Culgan v. Collier*, 2013-Ohio-1762, ¶ 11. However, “the Rules of Superintendence are general guidelines for courts’ conduct that do not create substantive rights in individuals or procedural law.” *In re C.H.*, 2015-Ohio-2109, ¶ 51 (7th Dist.). Regarding Sup.R. 40(A)(3) specifically, the Supreme Court of Ohio has held the rule does not give rise to an enforceable right in mandamus or procedendo. *Culgan* at ¶ 8.

{¶ 23} In the present case, at the time of the petition, the court was within the 120-day time frame in Sup.R. 40. Furthermore, “procedendo . . . will lie when a trial court has refused to render, or unduly delayed rendering, a judgment.” *Id.* at ¶ 8. Here, Judge Holbrook has not refused to render or unduly delayed rendering a judgment.

{¶ 24} Accordingly, it is the magistrate’s decision that this court should grant Judge Holbrook’s motion to dismiss relator’s petition for writ of procedendo.

S/ MAGISTRATE
THOMAS W. SCHOLL III

NOTICE TO THE PARTIES

Civ.R. 53(D)(3)(a)(iii) provides that a party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b). A party may file written objections to the magistrate’s decision within fourteen days of the filing of the decision.