

Response to:

**MOTION TO DISMISS and BRIEF IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS FOR FAILURE TO
FILE A CHARGE WITHIN THE ALLOWABLE TIME**

As stated by HR Westbrook, I did file a complaint with the Sheboygan Police Department on February 16, 2023. Per the procedures, they had 30 days to investigate and send a response. Within days of filing my complaint, HR Westbrook advised me that they would not be investigating my concerns. As you know, my complaint is in depth and quotes directly from SPD written reports, emails, and other reports. I needed time to prepare my complaint for the PFC so it was as accurate as possible. Unfortunately, the 10-day time frame for which I had to appeal to the PFC was an oversight on my part. Your policies and guidelines do not call for immediate dismissal of a complaint if not provided within 10 days. For the reasons below, I request that this not be dismissed.

As HR Westbrook notes, you are not bound by the Federal Rules of Civil Procedures. However, I do note that the American Bar Association has recognized "excusable neglect" under these procedures. When considering excusable neglect, you must consider the following:

1. Whether the delay in filing was within reasonable control of the movant;
2. The length of the delay and delay's potential impact on judicial proceedings;
3. The danger of prejudice to the non-moving party; and
4. Whether the movant acted in good faith

The ABA further notes that the most important factors are the length of delay and the danger of prejudice. The delay in no way prejudiced the Chief, as you guys were unaware of the complaint until I filed it. The delay is reasonable as this is an ever-changing situation and more information is given to me by the day. In no way was I acting in bad faith, as it was a simple oversight on my part.

The ABA states that one of the underlying premises of the excusable neglect doctrine is that it exists to prevent victories by default. *Newgen, LLC. V. Safe Cig LLC*, 840 F.3d 606, 616 (9th Cir.2016) (observing that it is "the general rule that default judgments are ordinarily disfavored). ABA further states that an oft stated but often undervalued principle of the federal civil procedure system that cases should, in the main, be decided *on the merits*, not on technicalities.

Missing this deadline with the PFC was completely inadvertent. I have acted as expeditiously as possible in providing you with my complaint, given the complexity and seriousness of my allegations. The Chief has in no way been prejudiced by my delay in filing my complaint.

To further prove my point that the delay was not prejudicial, it should be noted that Attorney Adams did not provide my complaint to the commission for over 30 days. According to former PFC President Bob Lettre, this goes against any standard procedures. He relayed to me personally that in previous complaints that he had received, it was forwarded immediately to the rest of the commissioners. Sheboygan PFC guidelines even call for me to provide the complaint to the PFC President, which I did. The complaint was then given to Attorney Adams and withheld from the Board. Had the delay been so prejudicial to the Chief, Attorney Adams would have provided you with my complaint immediately.

For all the reasons stated above, I urge the commission to understand the complexity, seriousness, and length of my complaint and follow the American Bar Association's recommendations that this case be heard on the merits, not dismissed because of a technicality. I believe the excusable neglect doctrine applies to this situation.

Thank you.

Justin Daniels