IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-60869

In re: KEITH A. GORDON,

Petitioner

Petition for a Writ of Mandamus
to the United States District Court for the
Southern District of Mississippi

Before DENNIS, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:

This panel previously granted petitioner's motion to proceed in forma pauperis (IFP) and denied the petition for writ of mandamus. The panel has considered Petitioner's motion for reconsideration of the petition for writ of mandamus. IT IS ORDERED that the motion is DENIED.

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A True Copy
Certified order issued Apr 10, 2019

Clerk, U.S. Court of Appeals, Fifth Circuit

Petition for a Writ of Mandamus to the
United States District Court for the
Southern District of Mississippi

Before DENNIS, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:

Keith A. Gordon has filed in this court a pro se petition for a writ of mandamus and a motion requesting leave to file his mandamus petition in forma pauperis (IFP). The motion for leave to proceed IFP is GRANTED.

This matter arises out of Gordon's pending civil action for damages and other relief against multiple defendants, alleging medical malpractice and violations of Gordon's constitutional rights. In his mandamus petition, Gordon seeks disqualification of the district court judge based on alleged bias. By motion and declaration stamped as filed in the district court on October 17, 2018, Gordon sought disqualification of the district court judge, and on October 30, 2018, the court denied the motion for recusal.

A party may not challenge the denial of a judicial disqualification motion by interlocutory appeal. *Nobby Lobby, Inc. v. City of Dallas*, 970 F.2d 82, 86 n.3 (5th Cir. 1992); *In re Corrugated Container Antitrust Litigation Steering Comm. v. Mead Corp.*, 614 F.2d 958, 960-61 (5th Cir. 1980). However, a party

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may seek review of a disqualification ruling by way of a mandamus petition. *In re Chevron U.S.A., Inc.*, 121 F.3d 163, 165 (5th Cir. 1997); *In re Corrugated Container*, 614 F.2d at 961 n.4.

Nevertheless, mandamus relief is an "extraordinary remedy" justified only by "exceptional circumstances." *In re Corrugated Container*, 614 F.2d at 961-62 (internal quotation marks and citation omitted). Because mandamus seeks to direct a public official to perform a duty required by law, it "will not issue to correct a duty that is to any degree debatable." *Id.* at 962 (internal quotation marks and citation omitted). The movant has the burden of showing a "clear and indisputable right" to the issuance of the writ. *Id.* (internal quotation marks and citation omitted); *see also In re Willy*, 831 F.2d 545, 549 (5th Cir. 1987) (same).

Recusal of judges for bias is governed by 28 U.S.C. § 144 and 28 U.S.C. § 455. *United States v. Scroggins*, 485 F.3d 824, 829 & n.19 (5th Cir. 2007). Under either statute, bias warranting disqualification must be personal, rather than judicial. *Id.* at 830. Adverse rulings on motions ordinarily do not warrant disqualification for bias: they must "reveal an opinion based on an extrajudicial source" or "demonstrate such a high degree of antagonism as to make fair judgment impossible." *Id.* The same standard applies to critical, disapproving, or even hostile judicial remarks directed to counsel, their parties, or their cases; they will not require recusal unless they show favoritism or antagonism to such a high degree that fair judgment is not possible. *In re Chevron*, 121 F.3d at 165.

Gordon's petition alleges that his motion to recuse was not based on a mere disagreement with the district court's rulings and that bias and prejudice against him were evinced by the court's "flawed readings of various laws," which he asserts "hinder[ed] litigation." According to Gordon, disqualification

is appropriate based on "the appearance of impropriety" because the district court erroneously set aside a default judgment; altered "medical damages/evidence"; failed "to respond to pending motions"; and failed to liberally construe his pro se pleadings. Alleging that the district court threatened him and his brother with a "foreseeable danger of imprisonment," he reasserts his complaint raised in the district court regarding language in a footnote in a December 22, 2017 Show Cause Order in which the court observed that although Gordon's brother had signed some of Gordon's pleadings, the brother had not listed a Mississippi bar number and had not been admitted *pro hac vice*. The court warned of the penalty for the unauthorized practice of law, acknowledging that it did not "know the details of this arrangement," which might be "fine," but the court felt "obligated to warn [Gordon] and his 'advocate' of these concerns." Gordon has not made a showing that the court's admonition regarding the unauthorized practice of law or any other district court remark or ruling reflected such favoritism or antagonism as to make fair judgment impossible. *See Scroggins*, 485 F.3d at 830.

To the extent that Gordon alleges in his petition that on October 17, 2018, he filed a separate motion seeking recusal of the magistrate judge, which motion he asserts remains pending, the record reflects that no such motion was filed. Thus, as to the magistrate judge, there is no record or ruling for this court to review. *Cf. In re Chevron U.S.A., Inc.*, 121 F.3d at 165. In any event, Gordon does not provide any details regarding purported bias by the magistrate judge such as would warrant mandamus relief.

In sum, Gordon has not shown a "clear and indisputable right" to issuance of a writ of mandamus to compel recusal. *In re Corrugated Container*, 614 F.2d at 962. The petition for a writ of mandamus is DENIED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

KEITH A. GORDON — PLAINTIFF

V. — CIVIL ACTION NO. 3:17-CV-84-DPJ-KFB

CENEDRA D. LEE, ET AL. — DEFENDANTS

ORDER

Pro se Plaintiff Keith A. Gordon seeks an order of recusal. Pl.'s Mot. [109]. For the reasons that follow, the motion is denied.

Federal law provides that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Section (b) of that statute sets forth a number of additional grounds for disqualification, including where the judge "has a personal bias or prejudice concerning a party." *Id.* § 455(b). "The standard for judicial disqualification under 28 U.S.C. § 455 is whether a reasonable person, with full knowledge of all the circumstances, would harbor doubts about the judge's impartiality." *Matassarin v. Lynch*, 174 F.3d 549, 571 (5th Cir. 1999) (citation omitted).

In this case, Gordon does not like the Court's rulings on some of his motions, but it is well-established that "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Andrade v. Chojnacki*, 338 F.3d 448, 455 (5th Cir. 2003) (citation omitted). The same is true here.

Gordon also takes issue with the tone of the Court's orders. Gordon has pressed flawed readings of various procedural rules. and the Court has been required to explain his errors, sometimes more than once—Gordon has filed two motions for reconsideration. Pl.'s Motions

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[63, 64]. Explaining those rulings does not create grounds for recusal. As the Fifth Circuit stated in an analogous context, "not establishing bias or partiality . . . are expressions of impatience, dissatisfaction, annoyance, and even anger that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display." *Matassarin*, 174 F.3d at 571 (citations omitted). The orders in the present case came nowhere near such expressions and merely explained the rules to a pro se plaintiff.

Finally, Gordon complains that "[b]ias and prejudice is believed to exist where Judge Jordan warn(ed) (threat(ened)) Gordon and his brother with a term of imprisonment." Pl.'s Decl. [110] at 1. This assertion relates to an order observing that Gordon's brother may have engaged in the unlawful practice of law. Specifically, the Court entered a Show Cause Order [61] on December 22, 2017, directing Gordon to respond to two motions. The Order also included a footnote observing that

> Wayne Gordon [Gordon's brother] has . . . signed some of [Gordon's] pleadings, though he has not listed a Mississippi Bar number and has not been admitted *pro hac vice*. Given the nature of the pleadings, the Court suspects Wayne Gordon is not a licensed attorney. If he is, he should immediately seek *pro hac vice* status in this case. If he is not, then the Court has concern that he may be engaged in the unauthorized practice of law, a misdemeanor offense that carries a term of imprisonment of no more than twelve months. *See* Miss. Code Ann. §§ 73-3-55, 97-23-43; *see also Darby v. Miss. State Bd. of Bar Admissions*, 185 So. 2d 684, 687 (Miss. 1966) (defining unauthorized practice of law). The Court does not know the details of this arrangement—perhaps they are fine—but feels obligated to warn Plaintiff and his "advocate" of these concerns.

Dec. 22, 2017 Order [61] at 2 n.1.

Gordon viewed those comments as a "threat," but the Court is required to enforce its rules, including those dealing with *pro hac vice* status. Moreover, the Court never threatened that it would imprison Gordon and/or his brother as he now claims. It was merely the Court's intent to advise Wayne Gordon that there are state laws addressing the practice of law by those

without a license to do so. Indeed, the Court acknowledged that it did not know whether Wayne Gordon was engaged in the unlawful practice of law. *Id.*

None of this would cause a reasonable person to question the Court's objectivity. The motion is denied.

SO ORDERED AND ADJUDGED this the 30th day of October, 2018.

s/ *Daniel P. Jordan III*
CHIEF UNITED STATES DISTRICT JUDGE