

EX A order

EX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

DAVID LOUIS WHITEHEAD

PLAINTIFF

v.

No. 4:11-CV-04031

PRESIDENT WILLIAM
JEFFERSON CLINTON, et al.

DEFENDANTS

OPINION AND ORDER

Plaintiff filed a motion (Doc. 41) to amend his complaint and a motion (Doc. 42) "to attach Plaintiff's second affidavit with affidavit to motion to vacate, disqualify, recuse and allow attorney to amend complaint, and request transfer above captioned case to Philadelphia."

The Court must identify some procedural tension in its duty to apply the law in this case because there are two separate disqualification or recusal questions that must be answered. The Court must address whether the undersigned should have recused or been disqualified from this case at the outset, such that orders and judgments entered in this case must be vacated, and whether the undersigned should recuse now. Judicial disqualification and recusal are controlled by 28 U.S.C. § 455. With respect to the second question—whether the undersigned should recuse from matters now pending—the answer is "yes," because the undersigned presently owns shares of stock in a named Defendant, General Electric Company.¹ 28 U.S.C. § 455(b)(4). The Clerk will be directed to reassign this case, with motions pending.

With respect to the first question, however—whether the undersigned should have recused or been disqualified from this case at the outset, such that orders entered in and dismissing this

¹ If Plaintiff is arguing that the undersigned should recuse because he was appointed to be a United States Attorney by one of the former presidents named as a Defendant and a district judge by another, that issue has already been resolved against Plaintiff. (Docs. 12, 27).

case must be vacated—the answer becomes more complicated. “Discretion is confided in the district judge in the first instance to determine whether to disqualify himself, . . . [and a] judge is as much obliged not to recuse himself when it is not called for as he is obliged to when it is.” *In re Drexel Burnham Lambert Inc.*, 861 F.2d 1307, 1312 (2d Cir. 1988). Therefore, although most pending issues must be resolved by the district judge to whom this case is reassigned, it appears the undersigned still must address the issue of recusal with respect to matters decided in 2011 and 2012, even if the consequence of that decision is to control the Court’s ruling on some matters pending in motions following reassignment.

Had this issue been spotted at the outset of this case in 2011, recusal would have been mandatory (and any orders entered likely would have been vacated) because the Court also owned shares of GE stock at that time. Through oversight and mistake, the Clerk’s office and the Court did not identify the conflict in a case that named over 100 Defendants who were never served. Because the present question of whether there should be recusal from the outset of this case arises almost a decade after this case was filed, the answer now appears to be “no.” Despite the Court’s oversight in 2011 and 2012, the law is clear that Plaintiff has waited too long to make his request.

“[E]ven though § 455 has no express timeliness requirements, claims under § 455 will not be considered unless timely made.” *In re Kan. Pub. Employees Retirement Sys.*, 85 F.3d 1353, 1360 (8th Cir. 1996). The timeliness requirement exists to preserve judicial resources and prevent parties from judge shopping or tactically waiting to raise the issue of judicial disqualification until after they have received an unfavorable merits determination. *See Rubashkin v. United States*, Nos. 13-CV-1028-LRR, 08-CR-1324-LRR, 2016 WL 237119, at *20 (N.D. Iowa Jan. 20, 2016) (collecting cases). Section 455 motions must be made “at the earliest possible time” after the facts are known that form the basis for the disqualification. *Miller v. Tony and Susan Alamo*

Foundation, 924 F.2d 143, 146–47 (8th Cir. 1991). The motions pending in this case were filed years after denial of Plaintiff's first motion for recusal, denial of his interlocutory appeal, the ultimate dismissal of this case for Plaintiff's failure to serve Defendants, and the issuance of another appellate mandate affirming that decision. The request to disqualify and vacate is premised on financial disclosures from the undersigned, made in April of 2012. Under the circumstances of this case, too much time has passed for the undersigned to effect a *nunc pro tunc* recusal that would necessitate vacating orders and judgments on that basis. Whether some other basis than recusal or disqualification exists to justify vacating orders entered in 2011 and 2012 remains a matter for the Court to decide following reassignment.

IT IS THEREFORE ORDERED that the Clerk reassign this case, with motions pending.

IT IS SO ORDERED this 10th day of February, 2021.

P.K. Holmes, III

P.K. HOLMES, III
U.S. DISTRICT JUDGE

Exhibit B order

Other Orders/Judgments

4:11-cv-04031-PKH Whitehead v.
Clinton et al **CASE CLOSED on**
12/08/2011

CLOSED

U. S. District Court

Western District of Arkansas

Notice of Electronic Filing

The following transaction was entered on 2/10/2021 at 2:41 PM CST and filed on 2/10/2021

Case Name: Whitehead v. Clinton et al

Case Number: 4:11-cv-04031-TLB

Filer:

WARNING: CASE CLOSED on 12/08/2011

Document Number: 43

Docket Text:

MEMORANDUM OPINION AND ORDER ; Case reassigned to Honorable Timothy L. Brooks for all further proceedings. Honorable P. K. Holmes III no longer assigned to case. Signed by Honorable P. K. Holmes III on February 10, 2021. (cnn)

4:11-cv-04031-TLB Notice has been electronically mailed to:

4:11-cv-04031-TLB Notice has been delivered by other means to:

David Louis Whitehead
1906 Scott Street
Bossier City, LA 71111

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP_dcecfStamp_ID=1094675213 [Date=2/10/2021] [FileNumber=2013046-0] [6a33c7ed67f81ec3a40c61186d967bf2a70c07a2306ab5d8cebff0945452ec36152 a8671c665a37482bec8d829b9bd0faf57714269190beddc9c181dc803f367]]

Orders on Motions

4:11-cv-04031-TLB Whitehead v.
Clinton et al CASE CLOSED on
12/08/2011

CLOSED

U. S. District Court

Western District of Arkansas

Notice of Electronic Filing

The following transaction was entered on 2/16/2021 at 2:28 PM CST and filed on 2/16/2021

Case Name: Whitehead v. Clinton et al

Case Number: 4:11-cv-04031-TLB

Filer:

WARNING: CASE CLOSED on 12/08/2011

Document Number: 45

Docket Text:

ORDER denying [41] Motion to Amend and denying as moot [42] MOTION to Attach Plaintiff's Second Affidavit with Affidavit to Motion to Vacate.

The Clerk is DIRECTED not to accept further filings unless Court has given express approval.

Signed by Honorable Timothy L. Brooks on February 16, 2021. (src)

4:11-cv-04031-TLB Notice has been electronically mailed to:

4:11-cv-04031-TLB Notice has been delivered by other means to:

David Louis Whitehead
1906 Scott Street
Bossier City, LA 71111

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP_dcecfStamp_ID=1094675213 [Date=2/16/2021] [FileNumber=2014327-0
] [1889a8cb83ec65191f9a5922c4119e03dbb0f1c22cd72fb4de2f305451a00397616
92fe9637f4f768d2dfc9c218d333fcec88a5f7809cea04dad9db363a65034]]

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

DAVID LOUIS WHITEHEAD

PLAINTIFF

v.

CASE NO. 4:11-CV-04031

PRESIDENT WILLIAM
JEFFERSON CLINTON, et al.

DEFENDANTS

ORDER

Now before the Court are several documents filed by the Plaintiff in this closed case. The first document is styled "Emergency Motion to Allow Attorney for Plaintiff to Amend His Complaint Within 45 Days." (Doc. 41). The second document is Plaintiff's "Emergency Motion to Attach Plaintiff's Second Affidavit with Affidavit to Motion to Vacate, Disqualify, Recuse and Allow Attorney to Amend Complaint and Request Transfer Above Captioned Case to Philadelphia" (Docs. 42 & 43).

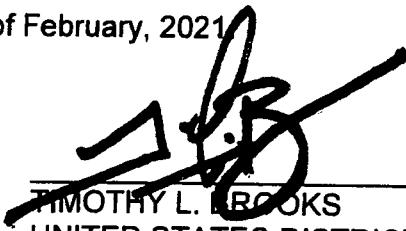
This case was dismissed in an order entered on December 8, 2011. (Doc. 29). Plaintiff took an appeal of the Court's order, and the Eighth Circuit dismissed the appeal on January 11, 2012. (Doc. 37). Plaintiff's first Motion (Doc. 41) asks the Court for leave to file an amended complaint and for counsel to be appointed to draft it. See Doc. 41, p. 2. "[T]here is no absolute right to amend [pleadings]," and a court may deny leave to amend under Federal Rule of Civil Procedure 15(b) "upon a finding of undue delay . . ." *Baptist Health v. Smith*, 477 F.3d 540, 544 (8th Cir.2007). The Court hereby finds that Plaintiff has unduly delayed in seeking leave to amend his complaint. Further, a civil litigant has no constitutional or statutory right to a court-appointed attorney, and Plaintiff has made no attempt to explain why counsel should be appointed to him in this case. IT

IS THEREFORE ORDERED that the Emergency Motion to Allow Attorney for Plaintiff to Amend His Complaint Within 45 Days (Doc. 41) is **DENIED**.

With regard to Plaintiff's second Motion (Docs. 42 & 43), part of the relief he requests is that the district judge formerly assigned to this case recuse himself. That recusal has now taken place, which means that Plaintiff's request is moot. See Doc. 43. As to any other request for relief that may be construed from the Motion, it is similarly moot—the case is closed and will not be reopened. **IT IS THEREFORE ORDERED** that the Emergency Motion to Attach Plaintiff's Second Affidavit with Affidavit to Motion to Vacate, Disqualify, Recuse and Allow Attorney to Amend Complaint and Request Transfer Above Captioned Case to Philadelphia (Docs. 42 & 43) is **DENIED AS MOOT**.

The Clerk of Court is **DIRECTED** not to accept further filings in this case from Plaintiff unless the Court has given express approval.

IT IS SO ORDERED on this 16th day of February, 2021.



TIMOTHY L. BROOKS
UNITED STATES DISTRICT JUDGE

Ex order C

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 21-1333

In re: David Louis Whitehead

Petitioner

Appeal from U.S. District Court for the Western District of Arkansas - Texarkana
(4:11-cv-04031-TLB)

JUDGMENT

Before COLLTON, SHEPHERD, and KOBES, Circuit Judges.

Petitioners motion to proceed in forma pauperis is granted.

Amended petition for writ of mandamus has been considered by the court and is denied.

Mandate shall issue forthwith.

March 10, 2021

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**Additional material
from this filing is
available in the
Clerk's Office.**