

24-5643 ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE DEANDRE ARNOLD, Petitioner.

Supreme Court, U.S.
FILED
SEP 24 2024
OFFICE OF THE CLERK

On Petition for a Writ of Mandamus to the United States
Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF MANDAMUS

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QUESTIONS PRESENTED

Petitioner contends that the Respondent Judge and Circuit court clerk exceeded their jurisdiction when engaging in acts of a judicial nature which unjustifiably delays this court's review of the merits of a district court order dismissing Petitioner's case for lack of jurisdiction. On 6/25/2024, Respondent Circuit Judge Barbara Lagoa denied Petitioner's IFP motion on the grounds of frivolity. On 7/2/2024, Petitioner moved to disqualify judge Lagoa asserting actual or appearances of a prerequisite intent to impede or reach a decision adverse to him. On 7/17/2024, without providing Petitioner notice of a fixed time to pay the filing fee nor providing a required deficiency notice, the Respondent Circuit court clerk dismissed the Petitioner's appeal for want of prosecution for failure to pay said filing fee. On 7/18/2024 Petitioner then filed a Motion for Review by a panel of the court of judge Lagoa's order denying his IFP motion and on 7/22/2024, filed a Motion to Reinstate his appeal. On 7/23/2024, the Circuit court clerk's office denied such motion stating, "the case is closed." On 8/5/2024, Petitioner filed a motion for panel review of the clerk's failure to reinstate his appeal which was denied by the circuit clerk's office itself. The Petitioner contends facts show Respondents acted with an intent to reach a decision adverse to him the evidencing actual or the appearances of prerequisite bias, prejudice, partiality and antagonism and are delays not occasioned by appeal. The Questions presented are below:

Whether the Circuit Court Judge was disqualified and exceeded her jurisdiction in denying the Petitioner's Motion to proceed IFP?

Whether the Circuit court clerk's office was disqualified and exceeded its jurisdiction when performing tasks that were an integral part of a judicial function?

Whether the Clerk's failure to provide Petitioner a required deficiency notice prior to dismissal of his appeal for want of prosecution was a failure to perform its ministerial duties?

PARTIES TO THE PROCEEDING

The Petitioner is Deandre Arnold and is the Appellant in the Eleventh Circuit Court of Appeals.

The Respondents are Barbara Lagoa, a Circuit judge for the United States District Court for the Eleventh Circuit and David J. Smith, the Circuit court clerk for the United States Eleventh Circuit Court who is in charge and control of the entire clerk's office.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioner states that he has no parent company, and no publicly held company owning 10% or more of any stock.

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PETITION FOR WRIT OF MANDAMUS

The Petitioner, Deandre Arnold, the appellant below, respectfully applies pursuant to Section 1651, Title 28 of the United States Code and Rule 20.3 of the Supreme Court Rules, for a Writ of Mandamus directed to Circuit Judge Barbara Lagoa of the United States Court of Appeals for the Eleventh Circuit and David J. Smith, Circuit court clerk for the Eleventh Circuit Court of Appeals. In support of this application the Petitioner shows as follows:

ORDERS AND OPINIONS ENTERED BELOW

On 12/19/2023, Middle District Judge Thomas Barber for the Tampa Division entered an order dismissing Petitioner's case for lack of jurisdiction. (App. A) On 1/23/2024, district judge Barber denied Petitioner's motion to proceed "in forma pauperis" ("IFP") on appeal. (App. B) On 6/25/2024 Circuit Judge Barbara Lagoa entered in an order denying Petitioner's motion to proceed "in forma pauperis" ("IFP") on appeal. (App. C.) On 7/2/2024 Petitioner filed a Motion to disqualify Judge Barbara Lagoa. (App. D.) On 7/17/2024, the Circuit court clerk's office for the Eleventh Circuit entered an order stating that Petitioner's appeal was dismissed for want of prosecution and that Petitioner's motion to disqualify was MOOT. (App. E.) On 7/18/2024, the Petitioner filed a Motion for Review by panel of judge Barbara Lagoa's order denying his IFP Motion. On 7/22/2024, Petitioner filed a Motion to reinstate the clerk's dismissal of his appeal.

On 7/23/2024, the United States Circuit clerk for the Eleventh Circuit entered an in a procedural order stating that no action would be taken on Petitioner's motion for review by a panel nor his motion to reinstate the appeal. (App. F.) On 8/5/2024, Petitioner filed a "Motion for review" by a panel of the court of the circuit court clerk's procedural order refusing to reinstate his dismissed appeal. On 8/5/2024, the circuit court clerk itself entered in an order stating "[T]he deficiencies... have not been remedied. This case is CLOSED." (App. G.).

JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. § 1651(a).

RELEVANT LAW PROVISIONS INVOLVED

28 U.S.C. § 1651(a): The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S.C. § 1651(b): An alternative writ of rule nisi may be issued by a justice or judge of a court which has jurisdiction.

28 U.S.C. § 455(a): Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

11th Circuit Rule 42-1(b): Except as otherwise provided for briefs and appendices in civil appeals in 11th Cir 42-2 and 4203, when appellant fails to file a brief or other required papers within the time permitted, or otherwise fails to comply with the applicable rules, the clerk shall issue a notice to counsel, or to pro se appellant, that upon expiration of 14 days from the date thereof the appeal will be dismissed for want of prosecution if the default has not been remedied by filing the brief or other required papers and a motion to file documents out of time. Within that 14-day notice period a party in default must seek leave of the court, by appropriate motion, to file documents out of time or otherwise remedy the default. Failure to timely file such motion will result in dismissal for want of prosecution.

11th Circuit Rule 27-2: Motions Acted Upon by a Single Judge. Under FRAP 27(c), a single judge may, *subject to review by the court*, act upon any request for relief that may be sought by motion, except to dismiss or otherwise determine an appeal or other proceeding. Without limiting this authority, a single judge is authorized to act, subject to review by the court,

on the following motions ... (3) to appeal in forma pauperis pursuant to FRAP 24 and 28 U.S.C. § 1915(a).

11th Circuit Rule 27-1(c): The clerk is authorized, *subject to review by the court*, to act for the court on the following unopposed procedural motions... (5) a party's first motion to reinstate an appeal dismissed by the clerk if the motion to reinstate is filed within 14 days of dismissal.

STATEMENT OF THE CASE

I. Background Facts.

A. Petitioner's Complaint in the District Court.

On December 4th, 2023, Petitioner ("Arnold") filed a diversity action in the Middle District Court of Florida for the Tampa Division against his child's mother ("Patterson") alleging that for a period of five (5) plus years, Patterson utilized court ordered child support in a manner, style, pattern and continuing scheme of extortion and blackmail in order to compel Petitioner to refrain from enforcing their child custody order for her alleged interference with his parenting with their minor child. *Arnold et al., v Patterson*, 8:23-cv-02708, Doc. 1. Arnold alleged that for a period of five plus (5) years, Patterson refrained from enforcing an order of support for years or several months at times support amounts were allegedly owing according to her but only suddenly sought to enforce such support order in response to Arnold's acts to enforce their child custody order for alleged parental interference by Patterson. [Id. Par. 255-266] Arnold alleged Patterson engaged in such scheme seeking to exploit what she knew or had reason to know was Arnold's fear of incarceration, which would be threatened or possible in response to acts to hold Patterson liable for parental interference or in proceedings seeking to enforce his custody order. [Id. Par. 1, 2] Arnold alleged that the motives for Patterson 's schemes was because she knew and

had reason to know that her acts of parental interference would lead to her incarceration and that to avoid such imprisonment she utilized the support order and Title IV-D mandates contrary to its original intent. [Id. Par. 1, 3, 22, 26-31, 235]

Arnold alleged that Patterson's acts caused him and his minor child Intentional Infliction of Emotional Distress ("IIED"). [Id. 224-244, 245, 254-266] Arnold further alleged that Patterson breached her fiduciary duty to act in good faith, with care and concern for their minor child and in exchanging their child consistent with the provisions of their child custody orders and acted in a manner contrary to the benefit of the parties minor child. [Id. 268-26] Arnold's sole requests for relief were (1) damages for the IIED under Title IXV, Chapter 836 of Florida's extortion statutes, (2) damages for the breach of Patterson's fiduciary duty and (3) punitive damages. [Id. Par. 254-276]. At no time did Arnold seek or request the issuance of any state court domestic relations order, nor did he ever request the court to enforce or otherwise modify any state court order. Arnold at no time challenged any state court order nor did he ever request the court to intervene in any state court proceeding. In fact, Arnold alleged that he "does not argue whether he is an absent parent within the meaning of Congresses legislation of Title IV-D being lawfully... obligated to pay support under Title IV-D mandates, rather... [Patterson] exploited [Arnold's] fear of making such a defense and knew and had reason to know that Arnold feared an absence in his child's life in such an act or incarceration for alleged owing [amounts in] support." Id. Par. 2.

B. Dismissal of Petitioner's Complaint by the district court and denial of pauper status on appeal.

On 12/19/2023, Florida Middle District judge for the Tampa Division, Thomas Barber, dismissed Petitioner's action *sua sponte* contending the district court lacked subject matter jurisdiction of the Complaint. Judge Barber's reasoning for dismissing the complaint was based on the "*likelihood, possibility, appearance and to the extent*" that the Arnold's claims were barred

by the Rooker-Feldman Doctrine, the Younger Abstention Doctrine and the Domestic Relations exception. (App. A. App. 1) On January 17th, 2024, Arnold filed a Notice of Appeal against the order dismissing his complaint for lack of jurisdiction. On the same date, the Petitioner filed a Motion to proceed "in forma pauperis" ("IFP") in the district court seeking to proceed on appeal without payment of filing and docketing fees. On January 23rd, 2024, judge Barber denied the Petitioner's IFP motion contending that the appeal failed to establish the existence of a reasoned, nonfrivolous argument raised on appeal. (App. B. pp. 1).

C. Petitioner files premature appellate brief and a Motion to proceed IFP in the United States Court of Appeals and Motion to expedite a ruling on his IFP motion.

On January 19th, 2024, Arnold's appeal was docketed in the United States Court of Appeals for the Eleventh Circuit. On February 6th, 2024, Petitioner then filed a motion to proceed IFP on appeal and a premature appellate brief although briefs are not required until the Court of Appeals rules on an IFP motion pending in said court. See 11th Cir. R. 31-1(b). On May 30th, 2024, Arnold filed an "Emergency Motion to Rule on IFP Motion within 8 days to prevent an impediment of justice" months following a delayed ruling on his IFP motion. In such motion, Arnold contended that the 11th Circuit discriminated against him and pauper filers on the basis of their poverty absent the least restrictive means by delaying review of the district court's order dismissing his complaint in the district court and by burdening him by depriving him of the benefit of briefing until said court ruled on his motion to proceed IFP. Petitioner contended the 11th Circuit treated him differently than paid filers who receive the immediate benefit of briefing on appeal and thus, the immediate review of their district court order dismissing their complaints on appeal.

D. Circuit court judge Lagoa denies Petitioner's Motion to proceed IFP.

On 6/25/2024, approximately one-hundred and forty (140) days and during this court's summer term, Circuit Court Judge Barbara Lagoa entered an order denying Arnold's IFP motion, as frivolous on the contentions that Arnold's appeal lacked any arguable basis in law or fact as it was barred by the Domestic Relations Exception to diversity jurisdiction. (App. C. pp. 3). Judge Lagoa's order stated that, "[T]he district court properly concluded that his complaint fell within the domestic relations exception to diversity jurisdiction, Arnold's claims **stemmed from the custody and child support orders** relating to their child, an area from which federal courts generally abstain ... Arnold's allegations contend that Patterson utilized these orders to prevent Arnold from parenting their child, and a determination of these claims **would necessarily implicate the enforcement of these orders** ... Arnold's motion for leave to proceed IFP is denied." *Id.*

Judge Lagoa's sole reasoning for denying the Petitioner's IFP motion was because a determination of Arnold's claims would *necessarily* implicate the enforcement of the parties child custody and child support orders because his claims "stemmed" from those from the custody and child support orders and was barred by the Domestic Relations Exception to diversity jurisdiction. Judge Lagoa's order did not address nor mention any of the reasons that the district court dismissed Arnold's complaint based on the Rooker-Feldman Doctrine or the Younger Abstention Doctrine. Judge Lagoa's order stated that "The district court properly concluded that [Arnold's] complaint fell within the domestic relations exception to diversity jurisdiction." (App. C. pp. 2). Judge Lagoa's order or the clerk did not give notice to Petitioner of a fixed time period to pay filing fees nor was her name included in the order denying Petitioner's IFP motion. *Id.* Arnold learned from the circuit court clerk that Judge Lagoa entered the order.

E. Petitioner's Files Motion to Disqualify Circuit Judge Barbara Lagoa.

On July 2nd, 2024, a week after the entry of judge Barbara Lagoa's order denying the Petitioner's IFP motion was entered, Arnold filed a Motion to Disqualify Judge Lagoa contending that facts showed that judge Lagoa had an actual or reasonable *prerequisite* intent to obstruct or reach a decision adverse to the Petitioner evidencing bias, partiality, prejudice and antagonism as to make any fair judgment impossible. (App. D.) Petitioner's relief requested that Judge Lagoa disqualify herself from his appeal and that her order denying his IFP motion to proceed on appeal without payment be vacated as void. *Id.*

F. The Eleventh Circuit court clerk dismisses the Petitioner's Appeal.

On July 17th, 2024, the Eleventh Circuit Court clerk dismissed Petitioner's appeal for want of prosecution on the grounds that Petitioner failed to pay the filing and docketing fees within the time fixed by the rules. (App. E.). According to the circuit court clerk, the Petitioner's motion to disqualify judge Lagoa was then denied as MOOT. *Id.* The appeal was yet dismissed in despite of Judge Lagoa and the circuit court clerk's office refraining from providing Petitioner "notice" that filing and docketing fees were due within a fixed time period. Importantly to note, although failing to give Petitioner notice that filing and docketing fees were due in the appeal below, the circuit court clerk's office did give the Petitioner such a notice in a separate appellate case in which Arnold was also Appellant. (See USCA case no. 24-10634, styled as *Deandre Arnold v Chad Chronister et al.*, (App. H. pp. 1) In that case, the circuit clerk's office stated that Arnold had 14 days from the date of said notice to pay filing and docketing fees to the district court or that the case would be dismissed. *Id.* This notice was in fact provided precisely one day after the circuit court clerk's office dismissed Arnold's appeal for failure to prosecute. No such notice was ever provided to Arnold in the appeal below relevant to this Mandamus action.

G. Petitioner files Motion for review by a panel of the court and a Motion to Reinstate his appeal which is denied by circuit court clerk's office.

Pursuant to 11th Cir. R. 27-2, orders denying pauper status are "subject to review by the court." The Petitioner sought such review on July 18th, 2024, by filing a Motion for Review of judge Barbara Lagoa's order denying his IFP Motion by a panel of the court of appeals. Such review was sought one (1) day after the circuit court clerk's office dismissed Petitioner's appeal for failing to pay filing fees. On July 22nd, 2024, Petitioner then filed a Motion to Reinstate his dismissed appeal. On July 23rd, 2024, one day later, the Circuit court clerk's office entered in a procedural order stating that no action would be taken on the Petitioner's motion for review by a panel nor his motion to reinstate his dismissed appeal. The clerk's concluded that "This case is closed." (App. F pp. 2)

H. Petitioner files Motion for review by panel of the Circuit Court Clerk's Refusal to Reinstate his dismissed appeal.

Pursuant to 11th Cir. R. 27-1(c), a circuit court clerk's procedural orders refusing to reinstate a dismissed appeal are also "subject to review by the court." On August 5th, 2024, Petitioner sought such review by filing a motion for review by a panel of the court of the circuit court clerk's procedural order refusing to reinstate his dismissed appeal. On the same date, the circuit court clerk's office refused to reinstate the dismissed appeal stating, "that no action would be taken on the motion" and that "[T]he deficiencies that caused this case to be dismissed have not been remedied. This case is CLOSED." (App. G. pp. 2) The court itself did not review the circuit clerk's order refusing to reinstate his appeal, rather, the circuit court clerk's office reviewed its own procedural order dismissing Arnold's appeal in *its* refusing to reinstate Arnold's dismissed appeal nor present his filed motions to the court for review.

REASONS FOR GRANTING THIS WRIT

As more fully alleged below, this court should grant and issue a Writ against the Respondents for two reasons. The first is because Arnold complains of delays which are not delays occasioned by ordinary appeal being delayed until final judgment, rather, are the fruits of the actual or appearances of deliberate acts of the Respondent's collectively that unjustly delays a review of the merits of the district court's order dismissing his complaint for which this court has appellate jurisdiction to review. Arnold contends that the facts show that Circuit Judge Barbara Lagoa's denial of Arnold's IFP motion and the Circuit Clerk Court's Office's dismissal and refusal to reinstate his appeal were entered in excess of their appropriate jurisdiction by their having disqualifying factors evidencing the actual or the appearances of bias, prejudice, partiality and antagonism prior to their performance of judicial discretionary functions.

The second reason is because there is no adequate remedy for the same reasons above and because the circuit court clerk's office has closed and has dismissed without a required notice of default and has refused to reinstate Arnold's dismissed appeal *before* judge Barbara Lagoa could ever rule on Petitioner's disqualification motion and before the court or a panel thereof the court could ever *review* judge Lagoa's order denying Petitioner's IFP motion or review the Circuit Court Clerk's order refusing to reinstate Arnold's dismissed appeal. On these grounds, Arnold asserts that the issuance of the Writ is appropriate.

I. UNJUSTIFIED, UNCONSTITUTIONAL AND OBSTRUCTIONIST DELAYS JUSTIFY THE GRANTING OF THIS WRIT.

Arnold asserts that acts evidencing actual or the appearances of obstructionist or deliberate delays of the merits of a district court's order are not delays "[O]ccasioned by appeal being delayed until after final judgment." *Bankers Life & Casualty Co v. Holland, 346 U.S. 379 (1953)* The delays Petitioner complains of in this action, are of such a nature to unjustifiably

delay the entire appeals *process* and frustrate review of the district court's order dismissing his case for lack of jurisdiction – an order for which this court has "[A]ppellate jurisdiction although no appeal has been perfected." *Roche v Evaporated Milk Assn*, 319 US 21, - Supreme Court (1943). To this point, a Federal circuit court has stated that, "[M]andamus might be available if the appeals process were being unreasonably delayed." *Wolfe v. McDonough*, 28 F. 4th 1348 - Court of Appeals (2022) Petitioner contends that this is that case because the facts show that the delays complained of are not occasioned by ordinary appeal being delayed until final judgment, but deliberate acts of judicial nature which exceeds its jurisdictional authority.

II. **THE SPECIFIC DELAYS COMPLAINED OF.**

The delays complained of herein are the delays of the review of the merits of the district court's order dismissing Arnold's case for lack of jurisdiction *until* Petitioner pays filing and docketing fees to the district court in which Arnold would not be obligated to do if not but for the entry of the order denying his IFP motion entered in excess of Circuit judge Barbara Lagoa's jurisdiction. Arnold contends these delays arose from deliberate acts or the appearances thereof, to reach a decision adverse to Petitioner which thereby delays review of the merits of the district court's order dismissing Arnold's case for lack of jurisdiction as he cannot proceed further on appeal without payment of such filing fees *and* cannot afford such fees. The delays that followed were the Circuit Court Clerk's procedural court orders, entered in excess of their jurisdiction, dismissing and refusing to reinstate Petitioner's appeal for his failure to pay filing and docketing fees within a fixed time period in which the court nor the clerk's office gave Arnold any notice of. Against the backdrop of these delays, was the dismissal of Arnold's appeal without the clerk's office providing any notice of default or deficiency as it was ministerially required to do by 11th Circuit Rules 42-1(b), an act Arnold contends are too deliberate acts or the appearances thereof.

As a consequence of the clerk's actions, Arnold cannot obtain a ruling on his motion to disqualify against the Judge whom it seeks to disqualify, nor can he obtain a ruling on his Motion for review by a Panel of judge Lagoa's order denying Petitioner's IFP motion nor the circuit court clerk's procedural order refusing to reinstate Arnold's dismissed appeal because the Circuit Court Clerk stated that no action will be taken on such motions and refused to reinstate his appeal.

III. **THIS COURT HAS JURISDICTION OVER THE ACTS AND OMISSIONS OF THE RESPONDENT'S WHICH CAUSED THE UNJUSTIFIED DELAYS.**

This court has jurisdiction to review the discretionary acts of a circuit judge *and* a circuit court clerk which are alleged to have occurred in excess of their jurisdiction. This court further has jurisdiction to review the non-discretionary acts of a circuit court clerk. Moreover, a Writ of mandamus is appropriate to direct an *inferior* court to do so some form of action. "[L]ikewise, a federal court of appeals may not issue a writ of mandamus to another federal court of appeals, or to a district court outside of the court of appeals itself." *United States v Choi, 818 F. Supp. 2d 79 (D.D.C. 2011)*. Thus, filing a Writ of Mandamus within the Court of appeals for the issuance of a Writ against itself is not adequately remedial.

A. **This Court has jurisdiction over the acts and omissions of Respondent Circuit Judge Barbara Lagoa.**

"[T]he writs issued against a judge, in theory [is] to prevent him from exceeding his jurisdiction or to require him to exercise it." *Pulliam v. Allen, 466 U.S. 522 (1984)*. Thus, "An essential function of the writ of mandamus is to prevent a judge from acting in excess of his or her jurisdiction." *Mullis v. U.S. Bankruptcy Ct., Dist of Nevada, 828 F.2d 1385 (9th Cir. 1987)*. The Fifth Circuit held that "[A] judge who was obliged to recuse acts outside his jurisdiction... Mandamus is thus the proper remedy to vacate the orders of a judge who acted when he should have recused." *U.S. v O'keefe, 169 F.3d 281 (5th Cir. 1999)*. Even the 11th Circuit has stated that

"[J]udge Lando may have acted in the excess of her jurisdiction." *Sibley v. Lando, 437 F.3d 1067 (11th Cir. 2005)* Because it is contended that Respondent Circuit judge Barbara Lagoa acted in excess of her jurisdiction when denying the Petitioner's IFP motion, this court has jurisdiction to review those acts.

B. **This Court has jurisdiction over the acts and omissions of Respondent Circuit Clerk David J. Smith, clerk for the Eleventh Circuit Court of Appeals.**

Petitioner contends that the circuit court clerk(s) assigned with clerk duties in Arnold's appeal, individually and collectively, exceeded its jurisdiction by engaging in conduct forbidden by a federal judge when performing tasks of a judicial nature. These acts preceded the clerk's refusal to perform its ministerial duties in providing Arnold a required deficiency notice before dismissing his appeal when there was an indisputable duty to do so. Petitioner argues this court has jurisdiction to review both the discretionary acts and ministerial acts of a Circuit Court clerk.

(i) **This court has jurisdiction over non-discretionary acts of a clerk's office.**

Petitioner states that the clerk's office failure to provide him a required deficiency notice before dismissing his appeal was a non-discretionary act and that this "[M]andamus is an extraordinary remedy, available to "a plaintiff [because] ... the defendant owe[d] him a clear nondiscretionary duty." *Cheney v. U.S. Dist. Court for D.C., 542 U.S. 367 (2004)*.

(ii) **This court has jurisdiction over the discretionary acts of a clerk.**

As with the circuit clerk's discretionary acts in refusing to reinstate the Petitioner's appeal, this court has jurisdiction to review those acts because said acts were "[T]asks that are an integral part of the judicial process." Petitioner contends however, that the clerk's engaged in these tasks with an actual or the appearance of partiality, bias, prejudice and antagonism - judicial acts forbidden by a federal judge. "[W]e agree with the Sixth Circuit that the clerk is

forbidden to do all that is prohibited to the judge." *Hall v. Small Business Admin*, 695 F.2d 175 (5th Cir. 1983). "[J]udge and clerk enjoys absolute immunity for judicial acts regardless of whether he made a mistake, acted maliciously, or exceeded his authority." *Granger v. Wilson*, Civil Action No. 5:20-cv-00297-TES (M.D. Ga. Sep. 30, 2020) Because the clerk enjoys the same style of immunity and is restricted to the same style of conduct of a Federal judge when it is performing tasks of a judicial nature, Arnold contends that any and all of their acts which would normally disqualify any Federal judge or oblige a Federal judge to disqualify was an act entered in excess of their jurisdiction and is subject to review by this court under Writ of Mandamus.

IV. **BARBARA LAGOA'S COURT ORDER WAS ENTERED IN EXCESS OF HER JURISDICTION AND SHE WAS OBLIGED TO DISQUALIFY.**

"[A] judge who was obliged to recuse acts outside his jurisdiction." *Moody v. Simmons*, 858 F.2d 137 (3d Cir. 1988). "[A]fter judgment was entered, the plaintiff filed (1) a statement seeking to recuse the judge... We... reversed the judgment, concluding it... had been rendered by a disqualified judge and the plaintiff had raised the disqualification issue a timely manner."

Garcia v. Lacey, Cal: Court of Appeal, 5th Appellate District (2020) Arnold argues that no judge can be impartial in *intending* to reach a decision adverse to a litigant because "[A] deliberate intention to do wrong is the intent *to cause* the harm suffered by the plaintiff." *Quinette v. Reed*, No 18-10607 (11th Cir. Feb. 21, 2020) Petitioner argues that Circuit judge Barbara Lagoa was obliged to disqualify herself when ruling on Petitioner's IFP motion because the facts and all of the surrounding circumstances show she had an actual or the appearance of a prerequisite intent to impede or to reach a decision adverse to the Petitioner evidencing bias, partiality, prejudice and antagonism as to make any fair judgment impossible.

A. **Circuit Judge Barbara Lagoa was Disqualified under Liteky.**

“[T]o satisfy the requirements of Section 455(a), a party seeking recusal must offer facts, and not merely allegations, that evidence partiality.” US v. Montemayor, Dist. Court ND No. 1:09-cr-00551-WSD-2 (2016) Further, “[S]ome extrajudicial matter is neither a necessary nor a sufficient condition under any of the recusal statutes.” Liteky v. United States, 510 US 540 Supreme Court (1994). **This court has never held that all judicial rulings were not sufficient to disqualify a judge.** “[W]e said in American Steel Barrel that the recusal statute “was never intended to enable a discontented litigant to oust a judge because of adverse rulings … but to prevent his future action in the pending cause.” *Id.* This court made clear that the only reason adverse rulings “alone” could not satisfy the disqualification of a federal judge is only because, “[T]hey cannot possibly show reliance upon an extrajudicial source; and can **only in the rarest circumstances** evidence the degree of favoritism or antagonism required when no extrajudicial source is involved.” *Id.*

Arnold argues that there must be a line between good faith judicial error and bad faith judicial rulings and conduct entered with an intent to reach a decision adverse to a litigant. Petitioner contends this dividing line has been already drawn by this court in *Liteky*. In *Liteky*, this court stated “[A] prospective juror in an insurance-claim case may be stricken as partial if he always voters for insurance companies; but not if he always votes for the party whom the terms of the contract support.” Liteky v United States, 510 US 540 - Supreme Court (1994) Arnold contends that following *Liteky*, this dividing line can be especially identified by placing judicial rulings having an arguable basis in law or fact on one side and by placing those judicial rulings that “affirmatively” do not on the other. Arnold contends that right along with judge Lagoa’s presumption and experience to know what the law clearly demands, the law itself and reasonable claims supported by facts as to why judge Lagoa would depart from the law and her experience,

that it is easy to identify that judge Barbara Lagoa's adverse ruling affirmatively resides on the latter of this dividing line.

B. The Facts Show Circuit Judge Barbara Lagoa deliberately reached a decision adverse to the Petitioner when ruling on his IFP motion.

Petitioner argues that judge Lagoa's order was entered with the deliberate purpose to (1) deny Arnold's IFP motion (2) *in order to* or which caused a delay of the review of the merits of the district court's order dismissing Arnold's complaint. Arnold asserts that these assertions can be easily determined by looking at "what acts and omissions" of Lagoa's were contrary to this court's dominant instruction, the law, her judicial experience and her presumption to know what the law demanded when ruling on Arnold's IFP motion and what it operated to do. Petitioner contends that each act and omission operated to delay a review of the merits of the district court order dismissing Arnold's complaint because, "An action must be reviewed to determine frivolity *before* addressing the merits of the claim." Brown v. Dept of Corrs, No 1155 C.D. 2016 (Pa. Commw. Ct Aug 8 2017). It cannot be disputed that review of the merits of the district court's order dismissing Arnold's complaint cannot be reviewed until his IFP motion is granted or until he pays filing fees. As more fully alleged below, facts affirmatively show that the Petitioner's complaint was far from frivolous and judge Lagoa was presumed to know this when ruling on Petitioner's IFP motion, which Arnold argues evidences an intent to or appearance thereof an intent to reach a decision adverse to Arnold – the fruits of specific delays complained of herein.

C. Petitioner's Complaint was not frivolous nor barred by the Domestic Relations Exception under diversity jurisdiction.

Circuit Judge Barbara Lagoa's sole reasoning for denying Petitioner pauper status on appeal was because his appeal was allegedly "frivolous" because it would *necessarily* implicate the enforcement of his child custody and child support orders and was therefore barred by the

Domestic Relations Exception. (App. C. pp. 1-3) Judge Lagoa read the entire complaint that was dismissed in the district court. Thus, she knew that it was an action for the Intentional Infliction of Emotional Distress (“IIED”). Judge Lagoa has the experience and is presumed to know that this court has said “[T]hat the domestic relations exception encompasses **only cases involving the issuance of a divorce, alimony, or child custody decree.”** *Ankenbrandt v. Richards, 504 US 689 – Supreme court (1998); See Drewes v. Ihnicki, 863 F. 2d 469 (CA6 1988)* (holding that the exception **does not apply to a tort suit for intentional infliction of emotional distress**). *Id.*; *Raftery v. Scott, 756 F.2d 335, 338 (4th Cir. 1985)* (district court **has jurisdiction** over damages for intentional infliction of emotional distress where former husband alleges **that former wife has taken custody of child illegally**). Arnold's claims are substantially similar to the 4th Circuit case of *Raftery*. However, Arnold does not allege any taken of custody illegally which caused the IIED, he alleges that the extortionist usage of a child support order to compel him not to enforce his child custody order by his child's mother interference with his parenting time did. Judge Lagoa's IFP order does not state that Arnold's complaint sought the issuance of any divorce, alimony or child custody decree. In fact, Arnold's “[L]awsuit in no way [sought] such a decree; rather, it alleges that [Patterson] … committed torts against [him]. *Catz v. Chalker, 142 F. 3d 279 (6th Cir. 1998).*

This court has already explained when the domestic relations applies. This court did so by addressing the 1859 case of *Barber* for which the domestic relations authority stemmed from. “[T]he Barber court did not intend to strip the federal court of authority to hear cases arising from the domestic relations **unless they seek the granting or modification of a divorce or alimony decree.”** *Ankenbrandt v. Richards, 504 US 689 – Supreme court (1992)*. This court then said “[B]ecause the allegations in this complaint do not request the District court to issue a

divorce, alimony, or child custody decree, we hold that the suit is **appropriate for the exercise of 1332 jurisdiction.**” *Id.* Judge Lagoa held that Arnold's IFP motion was frivolous because his claims “stemmed” from child custody and support orders and would “necessarily implicate the *enforcement*” of these orders. (App. C) Judge Lagoa did not at all assert that Arnold's claims requested the court to issue, grant or modify a state court domestic relations order. In fact, judge Lagoa did not identify at all *how* Arnold's claims would *necessarily* implicate the enforcement of such orders. Because Arnold's complaint did not involve the granting, modifying or the issuance of a state court domestic relations order in his “diversity action”, Arnold's IFP motion could not possibly be considered as frivolous as being barred by the Domestic Relations *Exception*.

D. The elements of Arnold's claims for the IIED based on the Extortionist Usage of a Child Support Order pursuant to Fla Stat. 836.05 does not seek the issuance, granting or modification of any state court order.

Arnold argues that his IIED claim cannot remotely be barred under Domestic Relations because the elements of such claim does not concern itself with any state court order because under Florida's extortion statutes, in which his IIED claim is based on, the failure to perform to a child custody order is immaterial. Arnold contends that the Florida case of *State v Roberts* is an excellent case to determine whether the elements of his extortion claims even involve a failure to perform to a child custody order considering his extortion claims are based on Florida law. In considering the factors to determine jurisdiction under the omission-to-perform a duty, *State v Roberts*, citing the *Caruso* court, stated that one of the factors were “[W]hether the charged offense... forms the foundation or essence of an offense, even though the omission is not the offenses only element.” *State v Roberts, 143 So. 3d 936 (Fla. Dist Ct. App 2014)*¹. Arnold sought

¹ “[I]n *People v Caruso*, 119 Ill.2d 376, 116 Ill. Dec. 548, 519 N.E.2d 440 (1987), the court held that the father's acts of harboring his children in Ohio and failing to return them to the mother in violation of an Illinois custody order subjected him to prosecution in Illinois... The *Caruso* court found this language consistent with the Supreme Court's holding in *Strassheim v. Daily*, 221 U.S. 280, 285, 31 S.Ct. 558, 55

damages against his child's mother for IIED based on her acts of extortion under Florida law.

Neither of the elements of extortion under Florida law require any violation of a custody order.

Under Florida law, “[T]o prove the crime of extortion the State must prove the following four elements... [1] verbal communication... [2] by such communication threatened an injury to the person ... [3] the threat was made maliciously... [4] with the intent to extort money... or with intent to compel the person so threatened... to do any act... against his or her will.” *Duan v State, 970 So. 2d 903 (Fla. Dist. Ct. App. 2007)*; *Duan v State, 970 So. 2d 903 (Fla. Dist. Ct. App. 2007)* (A threat to a person's mental well-being can constitute a threat of injury to a person).

These four elements are absent any mentioning of a failure to perform to a child custody order.

Domestic relations are in fact, cases concerning child custody decrees and divorces which are historically based on “[H]usband and wife, parent and child, belong[ing] to the laws of the States and not to the laws of the United States.” *Ankenbrandt v. Richards, 504 US 689 – Supreme court (1998)* But the elements of Arnold's extortion claims for which his IIED claim is based upon, does not concern itself with the failure to perform to a state child custody order. His claims cannot even remotely be regarded as such as to “[R]egulate the domestic relations of society and produce an inquisitorial authority in which federal tribunals enter the habitations and even into the chambers and nurseries of private families.” *Ankenbrandt v. Richards, 504 US 689 – Supreme court (1998)*. Thus, Arnold's claims for the IIED have no bearing to any Domestic Relations to be considered barred let alone frivolous under the Domestic Relations Exception.

E. **Both of the elements of Arnold's claims does not seek the issuance, granting or modification of any state court order to be barred under the Domestic Relations Exception.**

L.Ed. 735 (1911), that acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a State in punishing the cause of the harm as if he had been present at the effect.” *State v Court Roberts, 143 So. 3d 936 (Fla. Dist Ct. App 2014)*.

The only claim which does involve a failure to perform or act pursuant to a child custody order is count two (2) within Arnold's complaint for the breach of a fiduciary duty. Unlike Arnold's IIED claim based upon Florida's extortion statutes, the only element of the offense for Arnold's breach of fiduciary duty claim is based on his child's mother disobedience to their child custody order. [Compl. Par. 268-269] Arnold alleged that Patterson's interference with him and his minor child's parenting time was encouraged, stimulated and emboldened by Patterson's blackmail and extortion scheme crafted to avoid being held liable for any interference of Arnold's parenting time with their minor child. [Compl. Par. 273] Although Arnold's claims here allege that Patterson's extortion scheme caused her to be confident she could avoid liability for her interference, it cannot be disputed that Arnold's breach of fiduciary duty claim involves a sole element of his child's mother allegedly being in disobedience to their state child custody order. However, even if both of Arnold's claims involved an element of the failure to perform pursuant to a child custody order, it cannot be barred under Domestic Relations because neither elements involve the issuance, granting or modifying of a state court domestic relations order.

Based on this simple fact, Barbara Lagoa attempts to iron away Arnold's claims under the general assertion that his claims "stems from" and "necessarily implicate the enforcement" of his child custody and child support order is frivolous in of itself if considered barred under Domestic Relations. "[T]here is a wrinkle: the so-called domestic relations exception to federal diversity jurisdiction deprives federal courts of jurisdiction to adjudicate "only in cases involving the issuance of a divorce, alimony, or child custody decree." *Chevalier v. Estate of Barnhart, 803 F.3d 789 – Court of Appeals, 6th Circuit (2015)* Thus, under no circumstance can either of Arnold's claims for relief be considered barred under domestic relations because neither of the elements of his claims involves or would cause the issuance of a divorce, alimony or child custody decree.

(i) The Child Custody and Child Support Orders were not implicated in any way as to barred by the Domestic Relations Exception.

Arnold's claims is simply one involving the extortionate usage of a child support order by his child's mother in response to Arnold's actions to enforce their child custody order against Patterson for her alleged interference with his court ordered parenting time. These are "acts" that Arnold alleged *caused* him Intentional Infliction of Emotional distress ("IIED") in his federal diversity action seeking damages for IIED. Judge Lagoa's assertion that his claims *would* "implicate" the enforcement of these state court orders are frivolous simply because no arguable claim can be made that any implication of enforcement would result in the issuance of any state order to make the domestic exception applicable to this court's dominant instruction. Moreover, there would be no enforcement of compliance or modification of any state court order to make the said exception applicable, indirectly or directly. The exception was only designed for "[R]emedies which are attendant to domestic situations sitting before state courts in which federal courts are poorly equipped to handle the task... However, Federal courts [are] equally equipped [as state courts] to deal with complaints alleging the commission of torts" and breach of contract." *Chevalier v. Estate of Barnhart, 803 F. 3d 789 (6th Cir. 2015)* Nothing in judge Lagoa's order makes these cites to law even appear questionable or arguable as to deem Arnold's complaint frivolous. Thus, to say that Arnold's appeal was frivolous, was frivolous in of itself.

(ii) Intentional Infliction of Emotional Distress claims does not depend on the determination of the Appellant's parental status.

Under Florida law, a parent may sue for intentional infliction of emotional distress for parental interference regardless if that parent is a custodial parent or not. "[W]ith regard to the [tort] of intentional infliction of emotional distress claim, the trial court erred in determining that the father lacked standing and in dismissing the claim... The concept of "standing" in terms of

custodial rights is therefore irrelevant if the father can satisfy the four elements of the tort.

Stewart v. Walker 5 So. 3d 746 (Fla. Dist. Ct. App. 2009) Thus, Arnold's IIED claim against his child's mother for parental interference does not depend on his parental status. Further, Arnold has standing to sue Patterson for extortion/blackmail which too does not concern any status related to a court order which questions his claim. Lastly, Arnold's counts do not at all involve a claim against Patterson for *tortious* interference of a custodial relationship under their child custody order where custody has been removed from him because according to *Stewart*, the Appellant would “[L]ack standing to bring this suit because he is not the custodial parent.” *Id.*

(iii) Arnold's breach of fiduciary duty claim for parental interference does not depend on the determination of the Appellant's status.

Arnold also has standing to sue Patterson for the breach of a fiduciary duty. As with this claim, Arnold also did not sue his child's mother for tortious custodial interference, rather, breach of the Appellee's fiduciary duty because of her parental interference with his and his minor child's parenting time with one another on behalf of himself and his minor child. [Compl. Par. 267-273] [See also Compl. Pg. 54, Section C of relief] In this instance, the custodial relationship is also irrelevant. Parents clearly have a fiduciary duty to act in the best interests of their minor child while the child is in their custody. “[R]estatement (Second) of Torts, § 874... (“A fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of that relation.” Schovanec v. Archdiocese, 2008 OK 70 (Okla. 2008) As the Father, Arnold too has “[A] legal duty to act to protect [his] child[] from harm and abuse.” State v. Crosky, 2007 Ohio 6533 (Ohio Ct. App. 2007) Furthermore, Arnold's breach of fiduciary duty would not seek to enforce the custody order because “[T]he liability is not dependent solely upon an agreement or contractual relation between the fiduciary and the beneficiary but, results from the relation.” Schovanec v.

Archdiocese 2008 OK 70 (Okl. 2008). Nonetheless, Arnold's breach of fiduciary duty count does not depend on the status of the parties as to fit within the domestic relations.

V. CIRCUIT JUDGE BARBARA LAGOA WAS OBLIGED TO DISQUALIFY.

The Petitioner contends that Circuit judge Barbara Lagoa was obliged to disqualify herself when ruling on Petitioner's IFP motion because the facts and all of the surrounding circumstances show she had an actual or the appearance of a prerequisite intent to impede or reach a decision adverse to Arnold evidencing bias, partiality, prejudice and antagonism. This is because even as a Circuit judge, judge Lagoa is "[P]resumed to know the law and apply it in making [her] decisions." Walton v Arizona, 497 US 639 - Supreme Court (1990) As such, Circuit judge Lagoa is presumed to know that this court has "[E]xplained the difference between an assertion that is frivolous and an assertion that is wrong... An assertion is not frivolous unless it lacks an arguable basis in either law or fact." Daker v. Commissioner, Ga Dept. of Corrections, 820 F. 3d 1278 (2016) Judge Lagoa was in fact presented with this court's dominant instruction in *Ankenbrandt* when reviewing Arnold's "Emergency Motion to Rule on IFP Motion..." filed May 30th, 2024. Thus, judge Lagoa was more than presumed to know that a suit allegedly barred by the Domestic Relations Exception can only lack an arguable basis in law or fact if the suit seeks the issuance, granting or modification of a state court domestic relations order. One may infer that judge Lagoa's impartiality can reasonably be questioned because the *facts* show judge Lagoa decision was so far departed from this court's dominant instruction, her presumptions and experience as a judge to know this courts dominant instruction and how it applied to Arnold's case that it evidences an intent to do wrong – an evil mind. An "[E]vil mind can be proven either by direct evidence or by evidence that his conduct was so oppressive, outrageous, or intolerable such that an evil mind can be inferred." Walter v Simmons, 169 Ariz. 229 (Ariz. Ct. App. 1991)

(i) Facts Reasonably support motives of Judge Lagoa to depart from the law, her experience and this court's dominant instruction.

Arnold further asserts cognizance of Lagoa's intent to deny his IFP motion may also be inferred based on what the denial operated to do. The denial of Arnold's IFP motion has caused a delay a review of the merits of the district court order dismissing his complaint because, "An action must be reviewed to determine frivolity *before* addressing the merits of the claim." Brown v. Dept of Corrs, No 1155 C.D. 2016 (Pa. Commw. Ct Aug 8 2017) "[I]ntent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind. But you may *infer* from the [facts and] circumstances surrounding." United States v. Kozminski, 487 U.S. 931 (1988) Arnold argues that the only plausible reason a judge would depart from their experience and disregard this court's dominant instruction is to gain some sort of an advantage. Arnold asserts that facts reasonably support that these advantages were to delay a review of the merits of the district court order dismissing Arnold's complaint for lack of jurisdiction because denying Arnold's IFP motion delays such review. As to the reasons Judge Lagoa would delay the review of the merits of the district court order, Arnold incorporates those facts alleged within his Motion to disqualify Judge Lagoa shall this court inquire or decide that such motives or reasons are necessary for its decision. (See App. D. pp 17-20) Because Judge Lagoa was obliged to disqualify, she exceed her jurisdiction when ruling on Arnold's IFP motion.

VI. **THE CIRCUIT COURT CLERK'S OFFICE DISMISSAL OF THIS ACTION WAS IN EXCESS OF THEIR JURISDICTION.**

See Butler v. Stover Bros. Trucking Co., 546 F. 2d 544, 548 (7th Cir. 1978) ("If the clerk fails to stay within authority given him by statute, entry of judgment by the clerk is void.") Because circuit court clerks are forbidden to do all that is prohibited to a judge, the clerk's office cannot act with bias, prejudice, partiality or antagonism when performing tasks that are an

integral part of the judicial process. Petitioner contends that just as there must be a line between good faith judicial error and bad faith judicial rulings and conduct as it applies to Circuit Judge Barbara Lagoa, the same applies to federal circuit court clerks who are performing tasks that are integral part of the judicial process.

A. The Circuit court clerk's office was disqualified from dismissing the Petitioner's Appeal.

Arnold argues that no clerk can be impartial in intending to reach a decision adverse to a litigant in performing tasks that are an integral part of the judicial process because "[A] deliberate intention to do wrong is the intent *to* cause the harm suffered by the plaintiff."

Quinette v. Reed, No 18-10607 (11th Cir. Feb. 21, 2020) Arnold contends that the Circuit clerks were obliged to disqualify when ruling on his Motion to Reinstate his appeal because the facts and all of the surrounding circumstances show said clerk's had an actual or the appearance of a prerequisite intent to impede or reach a decision adverse to the Petitioner evidencing bias, partiality, prejudice and antagonism as to make any fair judgment impossible.

B. The Circuit Court Clerk deliberately reached a decision adverse to the Petitioner when ruling on his Motion to Reinstate his appeal.

The Petitioner argues that the Circuit Clerk's refusal to reinstate the Petitioner's appeal on his motion seeking to reinstate his appeal was entered with a deliberate purpose to (1) deny his motion and (2) *in order to* or which caused, prevented or delayed Circuit judge Barbara Lagoa from ruling on his motion to disqualify Judge Lagoa. Arnold asserts that these assertions can be easily determined by looking at "what acts and omissions" of the clerk's office were contrary to the 11th Circuit Rules, their experience and presumption to know what the law demanded when ruling on Arnold's Motion to Reinstate his appeal and **what it operated to do**. The Petitioner contends that each act and omission operated to prevent or delay judge Lagoa from ruling on his

motion to disqualify because with the clerk's dismissal and failure to reinstate his appeal, Arnold's motion(s) for review and to disqualify judge Lagoa was in fact delayed or prevented.

As more fully alleged below, Arnold's appeal should have been reinstated due to the clerk's failure to provide Arnold a deficiency notice and a notice as to a fixed time period to pay any filing fees. Because the circuit court clerk's office were confronted with these rules, are presumed and have the experience to know Arnold's appeal should have been reinstated, an *intent* to reach a decision adverse to Arnold can be inferred along with its motives – to prevent or delay Circuit judge Barbara Lagoa from ruling on his motion to disqualify.

C. Petitioner was entitled to Notice of a Fixed Time to Pay a Filing Fee.

On July 17th, 2024, the Eleventh Circuit Court clerk dismissed Petitioner's appeal for want of prosecution on the grounds that Petitioner failed to pay the filing and docketing fees within the time fixed by the rules. (App. D. pp. 14). However, the Petitioner never got notice of any fixed time period as to pay any filing fees. Some district courts have adopted a local rule that specifies the time in which a plaintiff must pay filing fees after an IFP motion has been denied.

See Scary v. Philadelphia Gas Works, 202 F.R.D. 148 (E.D. Pa. 2001) ([stating] Local Rule 11D in the Northern District of Illinois gives a plaintiff 15 days to pay the docket fee following denial of an application for leave to proceed IFP. Local Rules of the Eastern District of Pennsylvania do not address this issue, and for that reason, the Court holds that the plaintiff is entitled to a "reasonable" time). Similarly, the 11th Circuit nor does the Northern District court's local rules address this issue. Instead of a fixed time to pay filing and docketing fees to the district court provided by local rule, it is the Eleventh Circuit Court Clerk's Office or the Circuit judge who provides **notice** of a fixed time to pay filing fees to a litigant after a Circuit Judge denies an IFP motion. Arnold assumes so because notice was provided in a separate appellate case by Arnold

by the Clerks. (See App. H). As such, Arnold contends because no fixed time was provided, he was then entitled to a "reasonable" time to pay the filing fee – which he assumed was 30 days.

This court said in *Link* that "[T]he adequacy of notice... respecting proceedings that may affect a party's rights turns, to a considerable extent, on the knowledge which circumstances show such party may be taken to have of the consequences of his own conduct." *Link v Wabash R. Co.*, 370 U.S. 626 (1962) In the circuit clerk's performance of judicial functions, they, alike "[T]rial judges are presumed to know the law and to apply it in making their decisions."

Anderson v. Osh Kosh B'Gosh, 255F. App'x 345 (11th Cir. 2006) Appellate court rules have the force of law. Because no notice was given to the Petitioner of a fixed time to pay a filing fee, this is a case in which the failure to pay filing and docketing fees "[W]as due to inability fostered neither by... petitioner's own conduct nor by circumstances within [his] control," [*Societe Internationale v. Rogers*, 357 U.S. 197, 357 U.S. 211 (1958)] but rather, the court's failure to provide Arnold notice of a fixed time period as to when the filing and docketing fees were due. Moreover, this is not a circumstance where Arnold assumed that filing fees would never become due. Arnold in fact presumed that the filing fee would be due within 30 days (a reasonable time) as it was the time required to file an IFP motion in the court of appeals following a denial of such IFP motion in the district court. Even if any notice was provided, the clerk's subsequently failed to give Petitioner a required deficiency notice before dismissing his appeal.

D. Petitioner was entitled to a Deficiency Notice before dismissal of his appeal.

Pursuant to 11th Cir. R. 42-1(b), "when appellant fails to file a brief or other required papers within the time permitted, or otherwise fails to comply with the applicable rules, the clerk shall issue a notice to counsel, or to pro se appellant, that upon expiration of 14 days from the date thereof the appeal will be dismissed for want of prosecution if the default has not been

remedied by filing the brief or other required papers and a motion to file documents out of time." Arnold was required to pay the filing fee and to provide notice to the circuit clerk that the filing had been paid. (See App. G. pp. 2) However, on July 17th, 2024, the circuit court clerk's office skipped this step entirely and dismissed Petitioner's appeal. This failure to provide any deficiency notice was in fact stated in Arnold's Motion to Reinstate his appeal. "[E]veryone, it is said, is presumed to know the law. Hence the clerk must have known, [*State ex Rel. St. Louis v. Priest, 348 Mo. 37 (Mo. 1941)*] that they failed to give Arnold the required deficiency notice according to its own court rules and that the dismissal of his appeal was dismissed not only without notice of a fixed time to pay the filing fee, but without any deficiency notice that would have alerted Petitioner that a filing fee was required within such time to keep his appeal active.

E. The Circuit Court Clerk's Intervened in Arnold's request for a panel review of Judge Lagoa's order and the Circuit Court Clerk's Office dismissal of his appeal.

Following the Circuit Court Clerk's dismissal of Arnold's appeal, Arnold filed a motion for "panel" review of the denial of Judge Lagoa's order denying his IFP motion on July 18th, 2024, and a motion for "panel" review of the Circuit Court Clerk's refusal to reinstate Arnold's dismissed appeal on August 5th, 2022, hereinafter ("Motions for Panel Review"). The Circuit Court clerk's reasoning for refusing to present both motions for review to a panel of the court was because, as the clerk(s) stated, "This case is closed" (See App. G) and the "The deficiencies that caused this case to be dismissed have not been remedied. This case is CLOSED." (See App. H). The deficiency which caused Arnold's appeal to be dismissed and appeal to become "closed" was due to his failure to pay the filing fees and failure to file provide notice to the Circuit court clerk of his payment. However, as alleged above, the deficiencies were based on no fault of Arnold's, rather, the failure of the Circuit court to provide proper "Notice" of a fixed time period

to pay the filing fee and a deficiency notice to cure his failure to pay the filing fee within a fixed time in which he could not have possibly known. These failures should have too resulted in the reinstatement of Arnold's appeal.

F. The Circuit Clerk(s) were obliged to disqualify themselves.

The Petitioner contends that Circuit court clerks were obliged to disqualify when ruling on the Petitioner's Motion to Reinstate his appeal because the facts and all of the surrounding circumstances show an actual or appearance of a prerequisite intent to obstruct or reach a decision adverse to him evidencing bias, partiality, prejudice and antagonism. This is because "[E]veryone, it is said, is presumed to know the law. Hence the clerk must have known, [State ex Rel. St. Louis v. Priest, 348 Mo. 37 (Mo. 1941)] that the failure to provide notice of a required default according to its own court rules and failure to provide notice of a fixed time to pay the filing fee would cause the deficiencies they utilized against Arnold in refusing to reinstate his appeal or presenting his motions for panel review to the court. This must carry with it an intent to reach a decision adverse to Arnold because the very fruits of the clerk's office's reasoning for failure to reinstate his appeal or present his motions for panel review to the court were due to their acts being contrary to what the Circuit rules clearly required. This act was the equivalent of intervening in the court's review of Arnold's motion for panel review. "[B]ecause there is no way of fathoming or scrutinizing the operations of the human mind... you may infer from the [facts and] circumstances surrounding." United States v Kozminki, 487 U.S. 931 (1988) One may infer that the Clerk's Court Clerk(s) impartiality can reasonably be questioned because the *facts* show that the clerk's departed so far from their experience as clerks and the 11th Circuit Rules in dismissing, failing to provide notice of a fixed time to pay filing fees and refusing to reinstate Arnold's appeal that an evil mind can be inferred as to attach their obligations to disqualify.

(i) Facts Reasonably support motives of the Circuit Court Clerk's departure from the law, their experience and the Eleventh Circuit Rules.

Arnold further asserts cognizance of the Circuit Court Clerk's intent to refuse to reinstate Arnold's appeal and refusal to allow a panel review of appeal can be inferred based on what the refusal operated to do. The refusals to reinstate Arnold's dismissed appeal operated to prevent or delay Circuit judge Barbara Lagoa from ruling on his motion to disqualify because the clerk's dismissal and subsequent refusals to reinstate Arnold's appeal or present his motions for panel review to the court operated in a manner that Arnold's motions for panel review and to disqualify judge Lagoa would not come before the court or be presented to judge Lagoa. Arnold argues that the only plausible reason a clerk would depart from their experience as a clerk and disregard its own court rules is to gain some sort of advantage. Arnold asserts that facts reasonably support that these advantages were to delay or prevent the review of Judge Lagoa's order denying Arnold's IFP motion. In turn the Circuit Clerk's acts also ensured that a delay of the review of the merits of the district court order dismissing Arnold's complaint for lack of jurisdiction would be delayed because in engaging in their acts, in ensured that Judge Lagoa's denial of Arnold's IFP motion and the quid pro quo conditions set upon Arnold to "pay to proceed on appeal" would not be interfered with by presenting his motions for panel review to the court which could procure a vacating of the order creating such conditions. Thus, Arnold argues that because the Circuit clerk was obliged to disqualify, the circuit court clerk exceed its jurisdiction when dismissing Arnold's appeal for failure to prosecute, refusing to reinstate his appeal and refusing to present his motions for panel review to the "court" for review as provided by Eleventh Circuit rules.

VII. A WRIT OF CERTIORARI IS NOT AN ADEQUATE REMEDY.

Petitioner asserts that a Writ of Certiorari against Judge Lagoa's order denying his IFP motion is not an adequate remedy for the same reasons the acts evidencing the actual or the

appearances of obstructionist or deliberate delays of the merits of a district court's order justify the granting of a Writ. Arnold contends that a Writ of Certiorari would only further delays which are not "[O]casioned by appeal being delayed until after final judgment." *Bankers Life & Casualty Co v. Holland, 346 U.S. 379 (1953)* This is because the filing a Writ of Certiorari would not be the filing of a Certiorari reviewing the actual merits of the district court's order dismissing Petitioner's complaint but against the orders that Arnold contends unjustifiably frustrated this court's review of the merits of that district court order by deliberate acts or the appearances thereof. Although a Writ is a remedy, it is *inadequate* under the circumstances. *Ex Parte Fahey, 332 U.S. 258 (1947)* (These remedies should be resorted to only where appeal is clearly *inadequate* remedy). Nonetheless, Arnold has contemporaneously sought a Writ of Certiorari at the same time of the filing of this action and will bring this court's attention to such Writ upon docketing of both cases.

Arnold argues that if a circuit court judge and/or clerk can simply act to delay the review of the merits of any district court order by departing so from the law to do so and not be held subject to this court's Mandamus powers, then every federal circuit judge and clerk could simply deliberately delay, gain a tactical advantage by delay, or impede the review of the merits of all district orders subject to this court's appellate review until their unjust delays, advantages or impediments have been exhausted. This cannot stand as "[P]rotecting against abusive delays... an interest of justice." *Martel v. Clair, 132 S. Ct. 1276 (2012)* Thus, Arnold contends a Writ of Certiorari, even if filed, under the circumstances is not an adequate remedy.

VIII. THE DELAYS ARE NOT THE DECISIONS OF THE DISTRICT COURT.

Petitioner asserts that it may be contended by Respondent's that the district court's order denying Petitioner pauper status on appeal is the reason he is was required to pay the filing fees

and that Petitioner did not appeal that order. To the extent it is asserted that the circuit court's order is not the reason he is required to pay filing fees, Arnold asserts that such a claims forgets the fact that, "[S]uch certification is not final in the sense... Of course, certification by the judge presiding at the trial carries great weight but, necessarily, it cannot be conclusive. Upon a proper showing a Court of Appeals has a **duty to displace** a District Court's certification." *Johnson v. United States*, 352 565, 566, *Supreme Court (1957)*. "[M]oreover, a district court order denying leave to proceed on appeal is not a final appealable order. See Fed. R. App. P. 24(a)(5); *Gomez v. United States*, 245 F.2d 346, 347 (5th Cir. 1957) (indicating that the correct procedure is to renew the motion in the appellate court)."

IX. ALTERNATIVELY, THIS COURT MAY GRANT AN ALTERNATIVE WRIT OF MANDAMUS.

"[T]he court may, in its discretion, grant an alternative mandamus, if it deems it more conducive to public justice, and to prevent delays." *Life and Fire Insurance Company v. Adams*, 34 U.S. 571 (1835). Although the Petitioner contends that this court has jurisdiction to prevent "abusive delays not occasioned by appeal being delayed until after final judgment", in any event, this court also has jurisdiction to issue an alternative Writ if it is more conducive to public justice to prevent delays of the review of the merits of a district court's order arising from extreme judicial impartiality. This court said in *Liteky*, "[W]e can, however, enforce society's legitimate expectation that judges maintain, in fact and appearance, the conviction and discipline to resolve those disputes with detachment and impartiality." *Liteky v. United States*, 510 U.S. 540 (1994). There is a great principle in that of a public interest in ensuring the integrity of the judiciary. *See Williams-Yulee v. Fla. Bar*, 575 U.S. 433 (2015) In fact, "[T]his principle dates back at least eight centuries to Magna Carta, which proclaimed, "To no one will we sell, to no one will refuse or delay, right or justice." *Williams-Yulee v. Fla. Bar*, 575 U.S. 433 (2015). This

court further stated, "[T]he party may be interested only that his particular suit should be justly determined; but the state, the community, is concerned not only for that, but that the judiciary shall enjoy an elevated rank in the estimation of mankind." *McClaughry v. Deming*, 186 U.S. 49 (1902). In *Baker*, it stated nearly a century ago that "[T]he legal profession is found wherever Christian civilization exists... Its character depends upon the conduct of its members. They are officers of the law, as well as the agents of those by whom they are employed. Their fidelity is guaranteed by the highest considerations of honor and good faith, and to these is superadded the sanction of an oath. The slightest divergence from rectitude involves the breach of all these obligations." *Baker v. Humphrey*, 101 U.S. 494 (1879). As such, this court has authority to issue an alternative Writ because the facts of this action demonstrate a detachment of impartiality in judicial proceedings contrary to public justice in the courts of law.

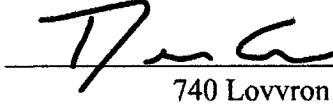
CONCLUSION

For all the reasons stated above, the Petitioner respectfully requests that this Honorable Court GRANT the writ of mandamus and direct the Respondent, Circuit Judge Barbara Lagoa, to vacate all orders entered in by her on and after June 25th, 2024, and to assign consideration of Petitioner's IFP motion to another circuit judge. The Petitioner also respectfully requests that this court GRANT the writ of mandamus and direct Respondent David J. Smith, to vacate all orders entered in by his under clerk's on and after July 17th, 2024 and replace such assigned clerk's.

I declare under Federal Penalty of Perjury that the foregoing is true and correct.
28 U.S.C. 1746.

Date: 9/24/2024

Respectfully submitted,


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