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In the
United States Court of Appeals

For the Eleventh Circuit

No. 23-14241

JAMES TAYLOR,

Plaintiff-Appellant,

versus

MCCALLA RAYMER LEIBERT PIERCE,

LLC, Foreclosure Attorney,

Defendant-Appellee.

Appendix A

Appeal from the United States District
Court for the Southern District of
Georgia

D.C. Docket No. 1:23-cv-00008-JRH-BKE

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Opinion of the Court

23-14241

Before JORDAN, JILL PRYOR, and ABUDU, Circuit

Judges. PER CURIAM:

This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. The 30-day statutory time limit required James Taylor to file a notice of appeal from the district court's May 1, 2023 final judgment on or before May 31, 2023. *See* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A). However, Taylor did not file a notice of appeal until November 17, 2023.

Further, the record contains no basis for relief under Federal Rules of Appellate Procedure 4(a)(5) or 4(a)(6) because Taylor did not move to extend or reopen the

appeal period or indicate in his notice of appeal that he failed to receive formal notice of the entry of judgment. *See* Fed. R. App. P. 4(a)(5) (providing that a party may move to extend the time for filing a notice of appeal within 30 days of entry of final judgment); *id.* R. 4(a)(6)(A) (providing that the court may reopen the time to file an appeal for a period of 14 days where a party does not receive notice of the entry of the judgment). Accordingly, the notice of appeal is untimely and cannot invoke our appellate jurisdiction. *See Green v. Drug Enf't Admin.*, 606 F.3d 1296, 1300 (11th Cir. 2010).

No petition for rehearing may be filed unless it complies with the timing and other requirements of 11th Cir. R. 40-3 and all other applicable rules.

IN THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT
OF GEORGIA AUGUSTA DIVISION

IN RE: JAMES LAMONT)	CV 122-
)	
TAYLOR V. McCALLA)	154
RAYMER LEIBERT PIERCE,		CV 123-
LLC		002
		CV 123-
		003
)	CV 123-
		008

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R**

James Lamont Taylor, acting *pro se*, has filed four complaints in this Court since December 16, 2022. Upon screening the complaints, the Magistrate Judge identified numerous pleading deficiencies and ordered amended complaints in each case. In response, Plaintiff filed the same motion for recusal in each case. The Magistrate Judge has since recommended dismissal of CV 122-154 and CV 123-008 for failure to file an amended complaint and CV 123-002 and CV 123-003 for pleading deficiencies. Plaintiff has filed the same objection to each Report and Recommendation.

Appendix B

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Recusal is governed by 28 U.S.C. §§ 144 and 455. Jones v. Commonwealth
Land TitleIns. Co., 459 F. App'x 808, 810 (11th Cir. 2012) (*per curiam*).

Under § 144, a judge must recuse himself when a party to a district court proceeding

"files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party."

28 U.S.C. § 144.

"To warrant recusal under § 144, the moving party must allege facts that would convince a reasonable person that bias actually exists."

Christo v. Padgett, 223 F.3d 1324, 1333 (11th Cir. 2000).

Under 28 U.S.C. § 455, a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned," or under specifically enumerated circumstances, which include "personal bias or prejudice concerning a party." 28 U.S.C. § 455(a)-(b). The Eleventh Circuit has explained the party seeking recusal must allege facts in the affidavit which "show that the judge's bias is personal, as opposed to judicial, in nature." HeQPerle v. Johnston, 590 F.2d 609,613 (5th Cir. 1979) (citation omitted).¹ Furthermore, it is well-settled that allegations of personal bias and prejudice which would disqualify

¹In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir.1981) (*en bane*), the Eleventh Circuit adopted as binding precedent the decisions of the former Fifth Circuit handed down prior to October 1, 1981.

a judge under 28 U.S.C. § 455 must be based on an "extrajudicial source." Liteky v. United States, 510 U.S. 540, 553 (1994); see also Thomas v. Tenneco Packaging Co., 293 F.3d 1306, 1329 (11th Cir. 2002) (explaining bias necessary to disqualify judge "must stem from extrajudicial sources"). That is, the § 455 analysis should not rest on judicial conduct. Hepperle, 590 F.2d at 614 (citations omitted). As the Supreme Court explained,

"(J)udicial rulings alone almost never constitute a valid basis for a bias or partiality motion . . . and can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is involved."

Liteky, 510 U.S. at 555.

Plaintiff's motions are technically deficient in that he has not filed an affidavit in support, as is required under § 144. Aside from the missing affidavit, Plaintiffs motions also fail because they are based solely on his disagreement with the Magistrate Judge's legal opinion on the sufficiency of his original complaints in each case. As set forth above, judicial rulings alone are not a sufficient basis for recusal. Liteky, 510 U.S. at 555; see also Deems v. C.I.R., 426 F. App'x 839, 843 (11th Cir. 2011) (*per curiam*) (explaining disqualification not appropriate based on judge's ruling in the case). Therefore, the Court **DENIES** Plaintiffs

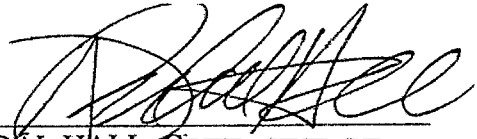
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motions for recusal. (CV 122-154, doc. no. 12; CV 123-002, doc. no. 8; CV
123-003, doc. no. 8; CV 123-008, doc. no. 8.)

Regarding his objections to the Magistrate Judge's Report and Recommendations, they are largely the same as his grounds for recusal. He disagrees with the Magistrate Judge's assessment that his complaints fail to state a claim under the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 *et seq.* His objections are unavailing and totally fail to address the basis for dismissal of CV 122-154 and CV 123-008 where he failed to file an amended complaint. Where he did file an amended complaint in CV 123-002 and CV 123-003, the Magistrate Judge correctly found each was a shotgun pleading and failed to provide sufficient factual support for any claim. If Plaintiff believes the details and arguments included in his objections merit a different result, he should have clearly included such in his complaints. See Bilal v. Geo Care, LLC, 981 F.3d 903, 911 (11th Cir. 2020) ("[W]e cannot act as de facto counsel or rewrite an otherwise deficient pleading to sustain an action."). Indeed, Plaintiff has repeatedly been warned of the consequences of failing to provide sufficient detail and arguments in the many complaints he has submitted to this Court over the past twelve months. See In re James Lamont Taylor Litig., 2022 WL 14800976 (S.D. Ga. Oct. 3, 2022), *adopted by* 2022 WL 14800798 (S.D. Ga. Oct. 25, 2022); see also Moon v. Newsome, 863 F.2d

Case 1:23-cv-00008-JRH-BKE Document 13 Filed 05/01/23 Page L of 835, 837 (11th Cir. 1989) ("[O]nce a pro se IFP litigant is in court, he is subject to the relevant law and rules of court . . .").

Accordingly, after a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendations, to which objections have been filed. The Court **ADOPTS** the Report and Recommendations of the Magistrate Judge as its opinion, **DISMISSES** the above-captioned cases without prejudice, and **CLOSES** all of these civil actions.

SO ORDERED this 1st day of May 2023, at Augusta, Georgia.


J. RANDALL HALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

JAMES LAMONT TAYLOR, Plaintiff,

v.

McCALLA RAYMER LEIBERT PIERCE, LLC, Defendant.

No. CV 123-008.

United States District Court, S.D. Georgia, Augusta Division.

March 29, 2023.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

BRIAN K. EPPS, Magistrate Judge.

Plaintiff is proceeding *pro se* and *in forma pauperis* ("IFP") in the above-captioned case. Because Plaintiff's complaint was filed IFP, it must be screened to protect potential Defendants. Phillips v. Mashburn, 746 F.2d 782, 785 (11th Cir. 1984). Upon conducting an initial screening of Plaintiff's complaint, the Court ordered Plaintiff on February 21, 2023, to amend his complaint within fourteen days to correct certain pleading deficiencies. (See doc. no. 5.) The Court cautioned Plaintiff that failing to submit a timely response would result in a presumption by the Court he desires to have this case voluntarily dismissed and would result in a

Appendix C

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recommendation for dismissal of this action, without prejudice. (Id. at 6-7.) Plaintiff moved for reconsideration, and the Court denied his motion on March 8, 2023, but extended the deadline to file an amended complaint, again explaining failure to do so will result in dismissal of this case. (Doc. nos. 6, 7.) The time to respond has passed, and Plaintiff has not submitted an amended complaint as required by the Court's February 21st and March 8th Orders.

A district court has authority to manage its docket to expeditiously resolve cases, and this authority includes the power to dismiss a case for failure to prosecute or failure to comply with a court order. Equity Lifestyle Props., Inc. v. Fla. Mowing & Landscape Serv., Inc., 556 F.3d 1232, 1240 (11th Cir. 2009) (citing Fed. R. Civ. P. 41(b)); see also Eades v. Ala. Dep't of Human Res., 298 F. App'x 862, 863 (11th Cir. 2008). ("District courts possess the ability to dismiss a case . . . for want of prosecution based on two possible sources of authority: Fed. R. Civ. P. 41(b) or their inherent authority to manage their dockets."). Moreover, the Local Rules of the Southern District of Georgia dictate that an

"assigned Judge may, after notice to counsel of record, *sua sponte* . . . dismiss any action for want of prosecution, with or without prejudice . . . [for] [w]illful disobedience or neglect of any order of the Court; or [a]ny other failure to prosecute a civil action with reasonable promptness."

Loc. R. 41.1(c). Finally, dismissal without prejudice is generally

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appropriate pursuant to Rule 41(b) where a plaintiff has failed to comply with a court order, "especially where the litigant has been forewarned." Owens v. Pinellas Cty. Sheriff's Dep't, 331 F. App'x 654, 655 (11th Cir. 2009) (citing Moon v. Newsome, 863 F.2d 835, 837 (11th Cir. 1989)); see also Loc. R. 41.1(b) (Court may dismiss an action *sua sponte* for "willful disobedience or neglect of any order of the Court").

Here, Plaintiff's failure to file an amended complaint, or even to provide the Court with an explanation for his failure to amend his complaint (other than simple disagreement with the Court's order), amounts not only to a failure to prosecute, but also an abandonment of his case. This is precisely the type of neglect contemplated by the Local Rules. The Court cautioned Plaintiff that a failure to respond would be an election to have his case voluntarily dismissed. Indeed, Plaintiff is no stranger to this Court and the consequences of failure to timely submit an amended complaint. See, e.g., Taylor v. Carvana, CV 122-107 (S.D. Ga. Oct. 25, 2022) (dismissed for failure to submit an amended complaint); Taylor v. Pay Pal, CV 122-115 (S.D. Ga. Oct. 25, 2022) (same). Further, because Plaintiff is proceeding IFP, the Court finds that the imposition of monetary sanctions is not a feasible sanction.

In sum, the time to respond has passed, and Plaintiff has not submitted

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an amended complaint as required by the Court's prior orders.

Therefore, the Court REPORTS and RECOMMENDS this case be
DISMISSED without prejudice and that this civil action be CLOSED.

SO REPORTED and RECOMMENDED.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 1:23-cv-00008-JRH-BKE

Before JORDAN, JILL PRYOR, and ABUDU, Circuit Judges.

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Order of the Court

23-14241

PER CURIAM:

The Petition for Panel Rehearing filed by James Taylor is DENIED.

Constitutional Provisions

The United States Constitution

Article III – Section 1: The Judicial Power of the United States, shall be vested in one supreme court, and in such inferior Courts as the Congress may from time to time ordain and establish.

Article III – Section 2: The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority to Controversies between Citizens or Subjects.

In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Appendix E