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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 24-5119
D.C. No. 4:19-CV-00554-JDR-JFJ
[Filed November 26, 2024]

BO ZOU,
Plaintiff - Appellant,

v.

LINDE ENGINEERING NORTH AMERICA, INC.,
Defendant -.

ORDER

Before BACHARACH, MORITZ, and FEDERICO, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel or no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 24-5119
D.C. No. 4:19-CV-00554-JDR-JFJ
[Filed November 4, 2024]

BO ZOU,
Plaintiff - Appellant,

v.

LINDE ENGINEERING NORTH AMERICA, INC.,
Defendant -.

ORDER

Before BACHARACH, MORITZ, and FEDERICO, Circuit Judges.

Bo Zou has a pending discrimination lawsuit against his former employer, Linde Engineering North America, Inc. The case was reassigned to United States District Court John D. Russell shortly after he became a judge. Mr. Zou unsuccessfully moved in district court to disqualify Judge Russell. He now petitions for a writ of mandamus disqualifying him.[1]

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[1] Mr. Zou petitions for either a writ of mandamus or a writ of prohibition. We need not dwell on "the possible technical or historic differences between mandamus and prohibition." 16 Charles Alan Wright et al., Federal Practice and Procedure § 3932.2 (3d ed. Updated 2024). The mandamus and prohibition standards are the same. See Sangre de Cristo Cmty. Mental Health Serv. v. United States (In re Vargas), 723 F.2d 1461, 1468 (10th Cir. 1983). So it makes no difference whether we think about Mr. Zou's request in terms of mandamus (requiring Judge Russell's disqualification) or prohibition (restraining Judge Russell from continuing to sit). For brevity's sake, we discuss the request only in terms of mandamus.

A writ of mandamus is a dramatic remedy, available in extraordinary circumstances. *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1186 (10th Cir. 2009).

We will issue the writ only if the petitioner has no other way to obtain the desired relief; he has shown a clear and indisputable right to the writ; and we have determined, using our discretion, that the writ is appropriate under the circumstances.[2] *See id.* at 1187.

Several circumstances can require a judge's disqualification. *See* 28 U.S.C. § 455. Two are relevant here. First, a judge must disqualify himself if "his impartiality might reasonably be questioned." § 455(a). This standard is objective, requiring disqualification only if a reasonable person knowing all of the circumstances "would harbor doubts about the judge's impartiality." *In re McCarthey*, 368 F.3d 1266, 1269 (10th Cir. 2004). Second, a judge must disqualify himself if he has "personal knowledge of disputed evidentiary facts concerning the proceeding." § 455(b)(1).

Judge Russell's impartiality could not reasonably be questioned.

Mr. Zou thinks one could reasonably question

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[2] In appeals, we review recusal denials for an abuse of discretion. *Nichols v. Alley*, 71 F.3d 347, 350 (10th Cir. 1995). But Mr. Zou challenges the denial of his recusal motion through mandamus, so he must meet the higher mandamus standard. *See id.*

Judge Russell's impartiality for two reasons: Russell's former law firm represented Linde in other matters, and Judge Russell has shown antagonism toward him.[3] Mr. Zou has not presented circumstances, even taken together, that might cause a reasonable person to question Judge Russell's impartiality.

Judge Russell's prior employment does not disqualify him. He worked in private practice before taking the bench. His former firm has represented Linde over many years. But the firm does not represent Linde in Mr. Zou's case.[4] And Judge Russell himself never worked on Linde's behalf. Nor does he know "anyone associated with the company." Pet. App. 1 at 2–3. A reasonable person knowing these circumstances would not doubt Judge Russell's impartiality. *Cf. United States v. DeTemple*, 162 F.3d 279, 287 (4th Cir. 1998) (holding that a judge could preside over a bankruptcy-fraud prosecution even though he had previously represented a victim of the defendant's fraud).

We reject Mr. Zou's claim that Judge Russell has demonstrated a "high degree of antagonism" toward

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[3] In appeals, we review recusal denials for an abuse of discretion. *Nichols v. Alley*, 71 F.3d 347, 350 (10th Cir. 1995). But Mr. Zou challenges the denial of his recusal motion through mandamus, so he must meet the higher mandamus standard. *See id.*

[4] Mr. Zou represents himself, so we construe his filings liberally. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

him since taking over the case. Pet. at 9. As evidence of antagonism, Mr. Zou points to statements in Judge Russell's orders. In one order, for example, Judge Russell wrote that "Mr. Zou has a long history of refusing to confer" on discovery issues. *Id.* (italics and internal quotation marks omitted). Mr. Zou disputes that characterization. He also alleges that Judge Russell's rulings have not been "based on the facts and evidence." *Id.* at 10. But "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994). Mr. Zou's case is not one of the rare ones in which judicial rulings demonstrate the level of antagonism required for recusal. *See id.* And Mr. Zou has identified no statement from Judge Russell suggesting "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.*

Mr. Zou fails to show Judge Russell's personal knowledge of disputed facts.

Mr. Zou provides insufficient support for his contention that Judge Russell has "personal knowledge of disputed evidentiary facts." § 455(b)(1). Mr. Zou says that Judge Russell "should know" why his former firm is not representing Linde in this case. Pet. at 7. We will assume the reason behind Linde's choice of representation qualifies as a disputed evidentiary fact. Even so, Mr. Zou hypothesizes that Judge Russell knows the reason merely because he was a shareholder and director of his former firm. Judges should not recuse based on such unsupported speculation. *See Hinman v. Rogers*, 831 F.2d 937, 939 (10th Cir. 1987).

* * *

Mr. Zou has not shown a clear and indisputable right to relief. We deny his petition for a writ of mandamus, his request for an order staying the district-court proceedings, and all pending motions.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE NORTHER DISTRICT OF OKLAHOMA

No. 4:19-CV-00554-JDR-JFJ
[Filed September 25, 2024]

BO ZOU,
Plaintiff,

versus

LINDE ENGINEERING NORTH AMERICA, INC.,
Defendant.

ORDER

Plaintiff Bo Zou moves to disqualify the undersigned district judge, arguing that: (1) the undersigned has a conflict of the interest due to his previous work for a law firm that has represented Defendant; and (2) the undersigned has allegedly displayed a "high degree of antagonism against Plaintiff." Dkt. 223. For the reasons set forth below, recusal or disqualification would be improper, and Plaintiff's motion is DENIED.

Under the relevant provisions of 28 U.S.C. § 455, a judge is required to disqualify himself "in any proceeding in which his impartiality might reasonably be questioned," or "[w]here he has a personal bias or prejudice concerning a party." *Id.* At 455(a) and (b)(1).[1] But a judge need not, and should not, recuse simply because his impartiality is called into question: "There is as much an obligation for a judge not to recuse when there is no occasion for him to do so as there is for him to do so when there is." *Hinman v. Rogers*, 831 F.2d 937, 939 (10th Cir. 1987). The objective standard is "whether a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality." *United States v. Cooley*, 1 F.3d 985, 993 (10th Cir. 1993) (internal quotation marks and citations omitted).

[1] Other circumstances also require a judge to disqualify himself but they are inapplicable here. *Id.* at 455(b)(2)-(5).

Mr. Zou's first basis for disqualification is that the defendant, Linde Engineering North America, Inc. was a client of the undersigned's former law firm, Gable & Gotwals, during a time that the undersigned was a shareholder and director of the firm. Mr. Zou therefore asserts that the undersigned "should know Defendant" and "should have personal knowledge of [Defendant]." Dkt. 223 at 2.

The undersigned never worked on behalf of the Defendant when he was a shareholder at the fiem.[2] The undersigned therefore never received a direct financial benefit from the firm's work on behalf of the Defendant. Even if the undersigned had received such a benefit in the past, that would not be a basis for recusal now. Under § 455, a judge must disqualify himself if "he...his spouse or minor child residing in his household, ***has*** a financial interest in the subject matter in controversy or in a part to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding." 28 U.S.C. § 455(b)(4) (emphasis added). The statute plainly targets ***existing*** financial interests that could be affected by the outcome of the case, not ***past*** financial interests that bear no relationship to, and cannot be affected by, the case before the judge. Disqualify is therefore not appropriate under the plain language of § 455(b)(4).

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[2] The Court is entitled to consider this and other facts not presented by Plaintiff. *See Hinman*, 831 F.2d at 939 (recognizing that a judge is not "limited to those facts presented by the challenging party").

Disqualification is also not appropriate under the provisions requiring recusal where a judge "has a personal bias or prejudice concerning a party," *id.* § 455(b)(1), or where the judge's "impartiality might reasonably be questioned," *id.* § 455(a). The undersigned does not know any employee or owner of the Defendant, nor does the undersigned know anyone associated with the company. The undersigned therefore will not be acquainted with any potential witnesses who are or were employed by Defendant, not would the undersigned have any biases for or against those witnesses. *Id.* § 455(b)(1). In addition, the undersigned has no personal knowledge of the Defendant, its records, or its business practices, and the undersigned is therefore without "personal knowledge of disputed evidentiary facts" pertinent to this case. *Id.* Given the undersigned's lack of knowledge or familiarity with Defendant, recusal is not proper under § 455(b)(1), and there is no factual basis to support the conclusion that the undersigned's impartiality might reasonably be questioned.

Mr. Zou argues that the orders entered since the case was transferred to the undersigned are proof of partiality and bias. But Mr. Zou's complaints appear to be based on his disagreement with the outcome of the Court's decisions on motions or objections he has filed. For example, in its most recent ruling [Dkt. 222], the Court denied Mr. Zou's motion to extend the dispositive motion deadline or stay the case to permit a further interlocutory appeal to the U.S. Supreme Court [Dkt. 219]. The Court's decision was not the product of bias or animus. Instead, the decision simply recognized that Mr. Zou does not

have a valid basis for appellate jurisdiction of the interim discovery orders. In this and other orders, the undersigned has not been antagonistic to Plaintiff or his positions in the case. Rather, the undersigned has ruled on motions before him in accordance with applicable rules of procedure, statutes, and relevant caselaw. While Mr. Zou may disagree with the rulings, that is not a basis for asserting that unfavorable ruling are the result of bias or prejudice. *See Armstrong v. Bailey*, 101 F. App'x 780, 781 (10th Cir. 2004) (recognizing that "[p]revious adverse ruling are almost neve a bias for recusal").

For the reasons stated above, Mr. Zou has not asserted a proper basis for disqualification. Mr. Zou's motion to disqualify [Dkt. 223] is DENIED.

DATED this 25th day of September 2024.

John D. Russell
United States District Judge