APPENDIX

The United States District Court
For The Western District Of New York

Montgomery Blair Sibley,

Plaintiff,

vs.

Frank Paul Geraci Jr., Mary C. Loewenguth, and Catherine O'Hagan Wolfe,

Defendants.

_____/

DECISION AND ORDER

Case No.: 20-CV-6310 EAW

INTRODUCTION

Pro se plaintiff Montgomery Blair Sibley ("Plaintiff") filed this action against defendants the Honorable Frank P. Geraci Jr., Chief District Judge, United States District Court for the Western District of New York ("Judge Geraci"), Mary C. Loewenguth, Clerk of Court, United States District Court for the Western District of New York ("Clerk Loewenguth"), and Catherine O'Hagan Wolfe, Clerk of Court, United States Court of Appeals for the Second Circuit ("Clerk Wolfe") (collectively "Defendants"), asserting claims in connection with his filings in *Sibley v. Watches*, No. 6:19-CV-06517 (the "Watches Action"), a civil action over which Judge Geraci is presiding. (Dkt. 1).

Currently before the Court is Plaintiff's motion seeking to disqualify all sitting judges in this District from presiding over the instant matter. (Dkt. 2). For the reasons that follow, the Court denies Plaintiff's motion and sua sponte dismisses Plaintiff's Complaint.

BACKGROUND

The following facts are taken from Plaintiff's Complaint. (Dkt. 1). As is required at this stage of the proceedings, the Court treats Plaintiff's factual claims as true.

On or about July 9, 2019, Plaintiff filed a complaint and a motion for leave to proceed *in forma pauperis* (the "IFP Motion") in the Watches Action "with agents of

Defendant Loewenguth." (Dkt. 1 at ¶ 8). The case was assigned to Judge Geraci. (Id.). That same day, Plaintiff "presented to agents of Defendant Loewenguth a properly completed Summons for signature and seal" but "Defendant Loewenguth, by and through her agents, refused to issue the necessary summons," preventing Plaintiff from serving the complaint. (Id. at ¶ 9 (emphasis omitted)).

On August 8, 2019, because Judge Geraci had not decided Plaintiff's IFP Motion for thirty days, Plaintiff "filed his Motion *Procedendo Ad Justicium* which requested that Defendant Geraci *procedendo ad justicium* upon [Plaintiff's] [IFP motion]." (Id. at ¶ 10). At the time the Complaint in this action was filed, the IFP Motion and motion procedendo ad justicium remained pending. (See id.).

On September 9, 2019, Plaintiff sought "appellate relief from Defendant Geraci's refusal" to decide the IFP Motion. (Id. at ¶ 11). Plaintiff "filed with agents of Defendant Wolfe": (1) a "Petition for Writs of *Procedendum Ad Justicium* and Mandamus seeking Orders directing" Judge Geraci to rule on the IFP Motion, and (2) a motion to proceed in forma pauperis before the Second Circuit. (Id.).

After it became "apparent to [Plaintiff] that Defendant Geraci was not going to rule upon his [IFP Motion], Plaintiff tendered the filing fee of $400.00." (Id. at ¶ 12 (emphasis omitted)). "Only then did Defendant Loewenguth, by and through her agents, issue the Summons. . . ." (Id.). On December 13, 2019, "representing that she was acting 'For The Court,'" Clerk Wolfe issued a "putative Order" striking Plaintiff's motion to proceed in forma pauperis before the Second Circuit because it did "not comply with the Court's prescribed filing requirements." (Id. at ¶ 13). On January 18, 2020, Clerk Wolfe "issued the Mandate of the Court dismissing [Plaintiff's] Petition for *Writs of Procedendum Ad Justicium* and *Mandamus*." (Id. at ¶ 14).

Plaintiff commenced the instant action on May 13, 2020, and paid the filing fee. (Dkt. 1). Summonses were issued on May 13, 2020. On May 20, 2020, Plaintiff filed his motion for disqualification. (Dkt. 20).

DISCUSSION

I. Plaintiff's Motion for Disqualification

Plaintiff seeks an order disqualifying all judges in this District from further involvement in this matter pursuant to 28 U.S.C. §§ 144 and 455(a). These statutory provisions govern the recusal of a judge assigned to a matter. See 28 U.S.C. §§ 144, 455(a). To the extent that Plaintiff seeks recusal of the undersigned, Plaintiff's motion is denied for the reasons discussed below.

Pursuant to § 144:

> Whenever a party to any proceeding in a district court makes and 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, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding. The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists. . . . It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

28 U.S.C. § 144. "Notwithstanding the wording of Section 144, the 'mere filing of an affidavit of prejudice does not require a judge to recuse [herself].'" *Thorpe v. Zimmer, Inc.*, 590 F. Supp. 2d 492, 498 (S.D.N.Y. 2008) (quoting *Nat'l Auto Brokers Corp. v. Gen. Motors Corp.*, 572 F.2d 953, 958 (2d Cir. 1978)). "[T]he judge must accept the facts asserted in the affidavit as true." *Id.* However, a "judge may disregard speculative and conclusory assertions." *Utsey v. Am. Bible Soc'y*, No. 02 Civ. 3995(LAK), 2004 WL 551201, at *1 (S.D.N.Y. Mar. 22, 2004). "The Second Circuit has articulated a standard for legal sufficiency under Section 144: an affidavit must show the objectionable inclination or disposition of the judge; it must give fair support to the charge of a bent of mind that may prevent or impede impartiality or judgment." *Williams v. N.Y.C. Hous. Auth.*, 287 F. Supp. 2d 247, 249 (S.D.N.Y. 2003) (internal quotation marks and citations omitted).

"In addition to reviewing the affidavit for legal sufficiency, the Court must strictly scrutinize the form of the affidavit." *Id.* "Deficiencies in form alone can be grounds for denying a party's motion." *Id.* (citations omitted). Section 144 requires that an affidavit be accompanied by a certificate of counsel of record "stating that it is made in good faith." 28 U.S.C. § 144. "[T]he certificate provides a safeguard that counsel of record can attest to the facts alleged by the affiant as being accurate." *Williams*, 298 F. Supp. 2d at 249. "[A] disqualification request that is not accompanied by a certificate of counsel of record may fail solely for that reason." Id. (citations omitted).

Pursuant to § 455(a), a judge must disqualify herself "in any proceeding in which [her] impartiality might reasonably be questioned." 28 U.S.C. § 455(a). "This provision governs circumstances that constitute an appearance of partiality, even though actual partiality has not been shown." *Chase Manhattan Bank v. Affiliated FM Ins. Co.*, 343 F.3d 120, 127 (2d Cir. 2003) (citing *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988)). "Section 455 is broader in its application, and thus courts use the same analysis and standards for both sections [455 and 144]." *Hoffenberg v. Hoffman & Pollok*, No. 00 Civ. 3151(RWS), 2002 WL

31444994, at *2 (S.D.N.Y. Oct. 31, 2002) (citations omitted). "The bias and/or prejudice asserted under both provisions must stem from extrajudicial sources, i.e., outside the judicial proceeding at hand." *Id.* (citing *Litkey v. United States*, 510 U.S. 540, 540 (1994)). "Since the judge is presumed to be impartial, the movant has a stringent burden of proof." *Id.* (citations omitted).

As an initial matter, the Court notes that Plaintiff misunderstands § 144. (See Dkt. 2 at 3 ("Congress has imposed a one-time obligatory disqualification under 28 U.S.C. § 144. The instant verified Motion has met the requirements of § 144 and thus the Court has no discretion but must grant this Motion to Disqualify." (emphasis omitted)). As discussed above, the mere filing of the affidavit does not require recusal of the undersigned. *See Thorpe*, 590 F. Supp. 2d at 498; see also *Williams*, 287 F. Supp. 2d at 248 ("Though the language of Section 144 appears to indicate otherwise, submitting an affidavit to the Court under this provision does not yield automatic recusal of the judge on the matter."). The Court must determine whether the affidavit is both procedurally and legally sufficient, *Williams*, 287 F. Supp. 2d at 249, and the decision to grant or deny recusal is a matter left to the discretion of the Court, *Apple v. Jewish Hosp. & Med. Ctr.*, 829 F.2d 326, 333 (2d Cir. 1987).

Further, Plaintiff's motion for recusal pursuant to § 144 is procedurally deficient and subject to denial on that basis. Plaintiff is proceeding pro se and his motion is not accompanied by a certificate of counsel of record confirming that the motion is made in good faith. *See Sea Gate Ass'n v. Krichevsky*, No. 18-CV-3408(KAM)(SMG), 2019 WL 8587287, at *4 (E.D.N.Y. June 21, 2019) ("As defendant is proceeding pro se . . . he realistically could not have submitted the certification of counsel required by the statute. . . . Although defendant's noncompliance with this statutory requirement can be explained in light of his pro se status, it may nonetheless render his affidavit deficient under § 144."); *Longi v. Cty. of Suffolk*, No. CV 02-5821(SJF)(WDW), 2006 WL 3403269, at *1 (E.D.N.Y. Nov. 22, 2006) ("[Section 144] requires a good faith certification from counsel and as such, may not be available to pro se litigants."); *Williams*, 287 F. Supp. 2d at 249 ("A pro se party cannot supply a certificate of counsel . . . [The plaintiff's] affidavit which is submitted pro se and without a certificate of counsel of record, fails on this threshold matter.").

Nonetheless, because the impartiality of the Court has been brought into question pursuant to § 455(a), the Court turns to the merits of Plaintiff's allegations. Plaintiff alleges that the undersigned has a personal bias or prejudice in favor of Judge Geraci and Clerk Loewenguth for the following reasons:

> [Judge Geraci] is the Chief United States District Judge for the Western District of New York. As such, [Judge] Geraci . . . is the

> functional management superior of each and every member of the bench of the District Court for the Western District of New York. Upon information and belief, and after a reasonable opportunity for discovery which I hereby request, I will establish that [Judge] Geraci has close personal relationships with each member of the bench of the District Court for the Western District of New York;
>
> As Chief Judge, [Judge] Geraci has significant discretion in deploying his financial, procurement, and personnel management authorities that the Administrative Office has delegated to district courts. Such discretion impacts the quality of life of the other judges of this Court. This discretion presumably includes the ability to approve attendance so-called "judicial junkets"; [and]
>
> [Clerk Loewenguth] is the functional subordinate of each and every member of the bench of the District Court for the Western District of New York and, upon information and belief, and after a reasonable opportunity for discovery which I hereby request, has close personal relationships with each member of the bench of the District Court for the Western District of New York.

(Dkt. 2 at 3).[1]

"[R]ecusal cases are very fact-specific" and "[j]udges need not always recuse when a fellow judge is somehow involved in case." *King v. Deputy Atty. Gen. Del.*, 616 F. App'x 491, 495 (3d Cir. 2015) (citations omitted). See *Whitnum v. Town of Woodbridge*, No. 3:17-CV-1362 (JCH), 2019 WL 3024865, at *3 (D. Conn. July 11, 2019) ("[That the plaintiff] complains of rulings, actions, or inactions of one or more of the undersigned's colleagues, cannot be a basis for recusal. No reasonable person would conclude, in this case, that because a colleague of the undersigned has been criticized by a litigant, that the undersigned could not fairly preside over her case."); *Meyer v. Foti*, 720 F. Supp. 1234, 1238 n.5 (E.D. La. 1989) ("The court

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[1] Plaintiff's request for discovery is denied as "a party may not seek discovery from any source prior to the Rule 26(f) conference, absent the parties' agreement or a Court order setting a discovery schedule." W.D.N.Y. L. R. Civ. P. 26(b). Here, Plaintiff has cited no authority for the proposition that he is entitled to discovery into the personal lives of the judges and staff of this District and the Court does not find it appropriate to allow such discovery. Moreover, as discussed further below, the undersigned's relationships with Judge Geraci and Clerk Loewenguth are irrelevant, because the Court has no authority to review their actions of which Plaintiff complains.

disagrees with plaintiff's argument that a reasonable man would question this court's impartiality merely because it would be required to pass on upon the conduct of fellow district judges."). Instead, the Court must make a fact specific inquiry as to whether "a reasonable person with knowledge of the facts and circumstances might question a judge's impartiality." *McGraw v. Moody*, No. 4:10CV01846-WRW, 2010 WL 5089761, at *1 (E.D. Ark. Dec. 7, 2010) (finding recusal not warranted where plaintiff sued fellow district judge for having allegedly improperly dismissed a prior lawsuit).

In this case, Plaintiff's allegations in support of recusal are centered on the undersigned's personal and professional relationships with Judge Geraci and Clerk Loewenguth. Plaintiff misapprehends the nature of these relationships, particularly with respect to the professional relationship between Judge Geraci and undersigned. For example, Plaintiff alleges that because Judge Geraci "has significant discretion in deploying his financial, procurement, and personnel management authorities," he "impacts the quality of life of" the undersigned. (Dkt. 2 at 3). As an Article III judge, the undersigned holds office "during good behavior" and, once appointed, her compensation "shall not be diminished." U.S. Const. art. III, § 1. Put simply, Judge Geraci's administrative role as Chief Judge of this District does not give him the authority over his fellow district judges that Plaintiff imagines.

More importantly, the specific facts of this case render the relationships between the undersigned and Defendants irrelevant, because a reasonable person would understand that Plaintiff complains of actions that are unreviewable in this forum and seeks relief that no court or judge has the authority to grant. As discussed further below, Plaintiff's claims against each Defendant in this matter are barred by absolute judicial immunity, and cannot be maintained in this or any court. Moreover, Plaintiff asks the Court to remove Judge Geraci from his office, a power constitutionally reserved to Congress. See *Smith v. Scalia*, 44 F. Supp. 3d 28, 43 (D.D.C. 2014) (rejecting argument that "the 'Good Behavior' clause of Article III gives private individuals the right to bring suit to remove federal judges from the bench," explaining that "no less an authority than the Supreme Court has held that the 'Good Behaviour' Clause guarantees that Art. III judges shall enjoy life tenure, subject only to removal by impeachment." (quotation and alteration omitted)), *aff'd*, No. 14-5180, 2015 WL 13710107 (D.C. Cir. Jan. 14, 2015).

Resolution of the instant action is thus a straightforward matter of law and does not require inquiry by the Court into the propriety of any actions taken by Defendants. Under these circumstances, no reasonable observer could conclude that partiality towards Judge Geraci or Clerk Loewenguth would influence the undersigned's assessment of the matter. *See McMurray v. Smith*, No. CIV 08-0805 JB/KBM, 2008 WL 8836074, at *1 n.1 (D.N.M. Sept. 29, 2008) ("[T]he Court notes

that it need not recuse itself, even though the Defendants in this case are fellow judges from the District. . . . The Compendium of Selected Ethics Opinions states that a judge need not recuse from a case involving a party that filed suit against the judge, where the judicial immunity will be a complete defense to the action against the judge." (citation and quotation omitted)); see also *Jones v. City of Buffalo*, 867 F. Supp. 1155, 1163 (W.D.N.Y. 1994) (finding that district judges are not required to "automatically recuse themselves simply because they or their fellow judges on the court are named defendants in a truly meritless lawsuit" (citation omitted)). For all these reasons, the Court denies Plaintiff's motion for disqualification.

II. Plaintiff's Complaint

A. Legal Standard

The Second Circuit has held that a court has the inherent authority to dismiss frivolous claims sua sponte "even if the plaintiff has paid the filing fee." *Fitzgerald v. First E. Seventh St. Tenants Corp.*, 221 F.3d 362, 363 (2d Cir. 2000); see also *Preacely v. City of New York*, 622 F. App'x 14, 15 (2d Cir. 2015) ("A district court has the inherent authority to dismiss a frivolous complaint sua sponte even when the plaintiff has paid the required filing fee."). The Second Circuit has upheld the *sua sponte* dismissal of complaints as frivolous where the claims are barred by absolute judicial immunity. *See Heath v. Justices of Supreme Court*, 550 F. App'x 64, 64 (2d Cir. 2014) (affirming sua sponte dismissal of complaint where "[b]ecause all the actions taken by the judicial defendants and complained of . . . were actions taken in their judicial capacity and in connection with [plaintiff's] federal and state court proceedings, [plaintiff's] claims [were] foreclosed by absolute immunity").

B. Claims against Judge Geraci

Judges are absolutely immune from suit for any actions taken within the scope of their judicial responsibilities. *See, e.g., Mireles v. Waco*, 502 U.S. 9, 12 (1991). "Such judicial immunity is conferred in order to insure 'that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself.'" *Bliven v. Hunt*, 579 F.3d 204, 209 (2d Cir. 2009) (quoting *Bradley v. Fisher*, 80 U.S. 335, 347 (1871)). "Thus, even allegations of bad faith or malice cannot overcome judicial immunity." *Id.* Indeed, a "judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the clear absence of all jurisdiction." *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978) (quotation omitted).

The Supreme Court has developed a two-part test for determining whether a

judge is entitled to absolute immunity. *See Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978). First, "[a] judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" *Id.* at 356-57 (quoting *Bradley*, 80 U.S. (13 Wall.) at 351); see also *Maestri v. Jutkofsky*, 860 F.2d 50 (2d Cir. 1988) (finding no immunity where town justice issued arrest warrant for conduct which took place within neither his town nor an adjacent town, thereby acting in the absence of all jurisdiction).

Here, Plaintiff alleges that Judge Geraci's refusal to decide Plaintiff's IFP motion for 79 days denied Plaintiff "his absolute right to access court for redress of his grievances and to seek protection of his fundamental, constitutional and statutory rights, including, without limitation, the right to petition the government." (Dkt. 1 at ¶ 24). Plaintiff makes no allegation that Judge Geraci acted in the clear absence of all jurisdiction, nor would any such allegation be plausible given the substance of Plaintiff's claims.

Second, a judge is immune for actions performed in his judicial capacity. C.f., *e.g., Gregory v. Thompson*, 500 F.2d 59, 62 (9th Cir. 1974) (finding no immunity where judge assaulted litigant). Plaintiff complains of precisely that: actions that Judge Geraci performed in his judicial capacity. Therefore, absolute judicial immunity bars Plaintiff's claims against Judge Geraci and, thus, Plaintiff's claims against Judge Geraci must be dismissed with prejudice.

C. Claims against Clerks Loewenguth and Wolfe

Absolute judicial immunity extends to persons other than a judge "who perform functions closely associated with the judicial process." *Cleavinger v. Saxner*, 474 U.S. 193, 200 (1985). Court clerks are entitled to immunity "for [the] performance of tasks which are judicial in nature and an integral part of the judicial process." *Rodriguez v. Weprin*, 116 F.3d 62, 66 (2d Cir. 1997). "Thus, a clerk's acts that implement judicial decisions or that are performed at the direction or under the supervision of a judicial officer come under the ambit of judicial immunity." *McKnight v. Middleton*, 699 F. Supp. 2d 507, 252 (E.D.N.Y. 2010) (citing *Bliven*, 418 F. Supp. 2d at 138); see also *Olivia v. Heller*, 839 F.2d 37, 39 (2d Cir. 1988) (court clerks are afforded absolute immunity where their acts are of a judicial nature). Court clerks also enjoy absolute immunity for administrative functions taken "pursuant to the established practice of the court." *Humphrey v. Court Clerk for the Second Circuit*, No. 508-CV-0363 (DNH)(DEP), 2008 WL 1945308, at *2 (N.D.N.Y. May 1, 2008) (citation omitted).

Here, the complained of actions by Clerks Loewenguth and Wolfe were taken in the course of the performance of their official duties as clerks of their respective

courts. For example, Plaintiff alleges that Clerk Loewenguth refused to issue Plaintiff a summons (Dkt. 1 at ¶ 32), and that Clerk Wolfe rejected certain of his filings before the Second Circuit (id. at ¶¶ 35, 38). "Because these actions were all integral to the judicial process, it is clear that [Clerks Loewenguth and Wolfe] ha[ve] absolute immunity, and that Plaintiff's claims must be dismissed." *Lipin v. Hunt*, No. 14-cv-1081 (RJS), 2014 WL 12792367, at *2 (S.D.N.Y. Sept. 18, 2014), *reconsideration denied*, 2014 WL 12792361 (S.D.N.Y. Nov. 19, 2014); see also *Hudson v. Forman*, No. 19-CV-1830 (CS), 2019 WL 1517581, at *3 (S.D.N.Y. Apr. 8, 2019) (finding defendant court clerk entitled to judicial immunity for refusing to issue the plaintiff a summons and to certify the plaintiff's record on appeal); *Humphrey*, 2008 WL 1945308, at *2 ("In this case, plaintiff's allegations arise out of and relate to actions taken by court personnel which were in accordance with the established practice of the Second Circuit, and pursuant to the direction of a judicial officer as articulated in the relevant appellate mandates; accordingly, these actions constitute an integral part of the judicial process and are shielded from liability by judicial immunity."). Accordingly, Plaintiff's claims against Clerks Loewenguth and Wolfe must be dismissed with prejudice.

III. Leave to Amend

The Second Circuit has advised that a pro se complaint should not be dismissed without an opportunity to amend unless such amendment would be futile. *Cuoco v. Moritsugu*, 222 F.3d 99, 122 (2d Cir. 2000). The Court has considered whether to grant Plaintiff leave to amend, but finds that because the defects in Plaintiff's Complaint are substantive, "better pleading will not cure [them]." Id. Accordingly, Plaintiff's Complaint is dismissed with prejudice.

CONCLUSION

For the reasons set forth above, the Court denies Plaintiff's motion for disqualification (Dkt. 2) and sua sponte dismisses Plaintiff's Complaint (Dkt. 1) with prejudice as frivolous. The Clerk of Court is directed to close the case.

Although Plaintiff has paid the filing fee to commence the instant action, should he seek leave to appeal in forma pauperis, the Court hereby certifies, pursuant to 28 U.S.C. § 1915(a), that any appeal from this Order would not be taken in good faith and leave to appeal to the Court of Appeals as a poor person is denied. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). Any request to proceed on appeal in forma pauperis should be directed on motion to the United States Court of Appeals for the Second Circuit in accordance with Rule 24 of the Federal Rules of Appellate Procedure.

SO ORDERED

/s/ Elizabeth A. Wolford
United States District Court Judge

Dated: June 3, 2020
Rochester, N.Y.

The United States District Court
For The Western District Of New York

Montgomery Blair Sibley,

Plaintiff, **DECISION AND ORDER**

vs. Case No.: 20-CV-6310 EAW

Frank Paul Geraci Jr., Mary C. Loewenguth, and Catherine O'Hagan Wolfe,

Defendants.
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INTRODUCTION

Pro se plaintiff Montgomery Blair Sibley ("Plaintiff") filed this action against defendants the Honorable Frank P. Geraci Jr., Chief District Judge, United States District Court for the Western District of New York ("Judge Geraci"), Mary C. Loewenguth, Clerk of Court, United States District Court for the Western District of New York ("Clerk Loewenguth"), and Catherine O'Hagan Wolfe, Clerk of Court, United States Court of Appeals for the Second Circuit ("Clerk Wolfe") (collectively "Defendants"), asserting claims in connection with his filings in Sibley v. Watches, No. 6:19-CV-06517 (the "Watches Action"), a civil action over which Judge Geraci is presiding. (Dkt. 1). Plaintiff further filed a motion to disqualify the undersigned and all other sitting district judges in the Western District of New York from presiding over the instant matter. (Dkt. 2).

On June 3, 2020, the Court issued a Decision and Order denying Plaintiff's disqualification motion and sua sponte dismissing Plaintiff's claims as frivolous. (Dkt. 3) (the "June 3rd D&O"). Judgment in favor of Defendants was entered that same day. (Dkt. 4).

On June 16, 2020, Plaintiff filed a motion for reconsideration of the June 3rd D&O. (Dkt. 5). Plaintiff thereafter filed two motions for *procedendo ad justicium*, on August 31, 2020, and October 9, 2020. (Dkt. 6; Dkt. 7). For the reasons that follow, the Court denies Plaintiff's motion for reconsideration and denies his motions for procedendo ad justicium as moot.

FACTUAL BACKGROUND

Plaintiff's factual allegations are set forth in detail in the June 3rd D&O, familiarity with which is assumed for purposes of the instant Decision and Order. To briefly summarize, Plaintiff asserts claims based on: (1) Clerk Loewenguth's agents' failure to issue summonses in the Watches Action prior to Judge Geraci issuing a decision on Plaintiff's motion for leave to proceed in forma pauperis (the "IFP Motion") filed therein; (2) Judge Geraci's failure to decide the IFP motion for 79 days; and (3) Clerk Wolfe's issuance of an Order striking from the Second Circuit Court of Appeals' docket a defective motion for leave to proceed in forma pauperis filed with that court. (Dkt. 3 at 2-3).

DISCUSSION

I. Plaintiff's Motion for Reconsideration

Plaintiff seeks reconsideration of the June 3rd D&O on numerous grounds. Specifically, he argues that: (1) *nemo judex parte sua*, "a right reserved to [Plaintiff] under the Ninth and Tenth Amendment[s] and repeatedly recognized under due process considerations for an impartial tribunal," mandated a grant of his motion for disqualification; (2) the undersigned made herself a witness in this matter by stating in the June 3rd D&O that "Judge Geraci's administrative role as Chief Judge of this District does not give him the authority over his fellow district judges that Plaintiff imagines"; (3) the requirement set forth in 28 U.S.C. § 144 for a certificate of counsel of record violates equal protection guarantees; (4) failure to act, as opposed to the taking of an affirmative action, does not fall within the scope of absolute judicial immunity; (5) public policy considerations prohibit the application of absolute judicial immunity in this case; (6) absolute judicial immunity does not bar Plaintiff's claims against Clerks Loewenguth and Wolfe; (7) Judge Geraci's action in failing to decide Plaintiff's IFP motion in what Plaintiff considered an appropriately timely fashion was "without the scope of his judicial responsibilities" and thus not shielded by absolute judicial immunity; (8) this Court's conclusion that the power to remove a district judge from office is reserved to Congress is erroneous and Plaintiff's arguments to the contrary are not frivolous; (9) the Court failed to address Plaintiff's claim for a declaratory judgment, which is not barred by absolute judicial immunity; (10) Plaintiff's claims were not frivolous; and (11) Plaintiff is entitled to oral argument and for the Court to "declare its *ratio decidendi*." (Dkt. 5 at 2-21).

As explained by the Second Circuit, "[t]he standard for granting a [motion for reconsideration] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked - matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). "The major grounds justifying reconsideration are an intervening change of

controlling law, the availability of new evidence, or the need to correct a clear error or prevent a manifest injustice." *Virgin Atl. Airways v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992) (citations omitted). "With respect to the third of these criteria, to justify review of a decision, the Court must have 'a clear conviction of error on a point of law that is certain to recur.'" *Turner v. Vill. of Lakewood*, No. 11-CV-211-A, 2013 WL 5437370, at *3-4 (W.D.N.Y. Sept. 27, 2013) (quoting *United States v. Adegbite*, 877 F.2d 174, 178 (2d Cir. 1989)). "'These criteria are strictly construed against the moving party so as to avoid repetitive arguments on issues that have been considered fully by the court.'" *Boyde v. Osborne*, No. 10-CV-6651, 2013 WL 6662862, at *1 (W.D.N.Y. Dec. 16, 2013) (quoting *Griffin Indus., Inc. v. Petrojam, Ltd.*, 72 F. Supp. 2d 365, 368 (S.D.N.Y. 1999)).

Here, the vast majority of the arguments raised by Plaintiff fail on their face to satisfy the standard for reconsideration. The Court explained its reasons for denying Plaintiff's disqualification motion and for finding his claims frivolous in detail in the June 3rd D&O, and Plaintiff's disagreement therewith is not an appropriate basis for the Court to revisit its prior determinations. However, two of the arguments raised by Plaintiff merit further discussion.

First, as to Plaintiff's contention that absolute judicial immunity does not bar his claim for declaratory relief, it is true that "[w]hile absolute and qualified immunity foreclose all claims for damages, they do not necessarily preclude declaratory relief." *Franza v. Stanford*, No. 18-CV-10892 (KMK), 2019 WL 6729258, at *9 (S.D.N.Y. Dec. 11, 2019), *reconsideration denied*, 2020 WL 85228 (S.D.N.Y. Jan. 3, 2020). However, "where public official defendants are shielded by absolute or qualified immunity, purely retrospective declaratory relief is inappropriate." Id.; see also *Leathersich v. Cohen*, No. 18-CV-6363, 2018 WL 3537073, at *4 (W.D.N.Y. July 23, 2018) ("Absolute judicial immunity bars declaratory judgment claims that are retrospective in nature in that they seek a declaration that a judge's past behavior has violated the Constitution." (quotation omitted)), appeal dismissed, No. 18-2600, 2019 WL 994360 (2d Cir. Jan. 30, 2019). Here, Plaintiff seeks a declaratory judgment that Defendants' actions regarding his previously filed in forma pauperis motions violated his constitutional rights—notably, Plaintiff does not allege that he has any pending in forma pauperis motions. Accordingly, Plaintiff's request for declaratory relief falls within the scope of Defendants' absolute judicial immunity.

Second, as to Plaintiff's contention that he is entitled to oral argument, "busy district courts are by no means required to hold oral argument on every motion that is filed[.]" *Borden, Inc. v. Meiji Milk Prod. Co.*, 919 F.2d 822, 828 (2d Cir. 1990); see also *Lewis, Lewis & Van Etten Inc. v. MCI Telecommunications Corp.*, 138 F.R.D. 25, 26 (E.D.N.Y. 1991) ("[C]ourts have repeatedly held that there is no

constitutional right to present oral argument on motion." (collecting cases)). There is nothing about the instant matter that brings it outside the normal course or otherwise obligates the Court to hear oral argument on Plaintiff's request for reconsideration. The Court set forth in detail the reasoning behind its decision in the June 3rd D&O; to the extent necessary, it has expanded on that reasoning here. While Plaintiff may disagree with the Court's analysis, his remedy lies in the appellate process.

CONCLUSION

For the reasons set forth above and in the June 3rd D&O (Dkt. 3), the Court denies Plaintiff's motion for reconsideration (Dkt. 5). Further, because the Court has now resolved the motion for reconsideration, it denies Plaintiff's motions for *procedendo ad justicium* (Dkt. 6; Dkt. 7) as moot.

SO ORDERED

/s/ Elizabeth A. Wolford
United States District Court Judge

Dated: October 13, 2020
Rochester, N.Y.

United States Court of Appeals
for the Second Circuit

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term for the United States Court of Appeals, Second Circuit, held at the Thurgood Marshall Courthouse, 40 Foley Square, City of New York, on the 2nd Day of June, two thousand twenty one.

PRESENT:

Robert D. Sack
Gerald E. Lynch
Michael H. Park
Circuit Judges

Montgomery Blair Sibley,

Plaintiff/Appellant,

20-3608

vs,

Frank Paul Geraci Jr., Mary C. Loewenguth, and Catherine O'Hagan Wolfe,

Defendants.
_____/

For Plaintiff-Appellant

Montgomery Blair Sibley
pro-se, Corning, New York

For Defendant-Appellees

Karen Foster Lesperance
Assistant United States
Attorney for Antoinette T.
Bacon, Acting United States
Attorney for the Northern
District of New York
Albany, New York

Appeal from a judgment of the United States District Court for the Western District of New York (Wolford, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is AFFIRMED.

Montgomery Blair Sibley, pro se, sued the Western District of New York's Chief Judge, Frank P. Geraci, and Clerk of Court, Mary C. Loewenguth, and this Court's Clerk of Court, Catherine O'Hagan Wolfe, asserting that these Defendants violated his constitutional rights in a separate pro se action, Sibley v. Watches, W.D.N.Y. No. 19-cv-6517, over which Chief Judge Geraci is presiding. After filing his complaint, Sibley moved to disqualify all district judges of the Western District—including Judge Wolford, who presided over the case and entered judgment below—from further involvement in this matter pursuant to 28 U.S.C. §§ 144 and 455. The district court *sua sponte* dismissed Sibley's complaint as frivolous, denied leave to amend as futile, and denied Sibley's motion for reconsideration. The district court also denied the motion for disqualification as to Judge Wolford. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

I. Motion for Recusal or Disqualification

"We review a district court's decision to deny a recusal motion for abuse of discretion." *United States v. Carlton*, 534 F.3d 97, 100 (2d Cir. 2008). The only issue preserved on appeal is the district court's denial of Sibley's motion to disqualify Judge Wolford. *See Chevron Corp. v. Donziger*, 990 F.3d 191, 203 (2d Cir. 2021) ("Arguments not raised on appeal are deemed abandoned and need not be reviewed by this Court.").

Sibley sought Judge Wolford's recusal from this action under 28 U.S.C. §§ 144 and 455. Under Section 144, a district judge must recuse herself from a matter whenever a party "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 be sufficient[,] an affidavit must show

the objectionable inclination or disposition of the judge . . . [and] give fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment." *Rosen v. Sugarman*, 357 F.2d 794, 798 (2d Cir. 1966) (internal quotation marks omitted). Under Section 455, a judge should recuse herself "in any proceeding in which [her] impartiality might reasonably be questioned" and where a person "within the third degree of relationship" to her is a party[1]. 28 U.S.C. § 455(a), (b)(5)(i); see also *Apple v. Jewish Hosp. & Med. Ctr.*, 829 F.2d 326, 333 (2d Cir. 1987) (noting that the impartiality analysis is the same under Sections 144 and 455).

The district court did not abuse its discretion by denying Sibley's motion for recusal on these grounds. In his motion, Sibley declared under penalty of perjury that "[u]pon information and belief" and given the opportunity for discovery, he would establish that Chief Judge Geraci and Clerk Loewenguth had a close personal relationship with Judge Wolford and that the chief judge had discretion over financial and employment matters that impacted Judge Wolford's "quality of life." D. Ct. Dkt. 2 at 3. Apart from these speculative assertions, Sibley did not allege, let alone demonstrate, that Judge Wolford was biased against him nor did he allege any facts suggesting that her impartiality could be questioned. We find that Sibley's speculations were not "sufficient" to require recusal under Section 144 or to demonstrate lack of impartiality under Section 455(a). See *Rosen*, 357 F.2d at 798.

II. Complaint

District courts have inherent authority to dismiss a frivolous complaint sua sponte. *Fitzgerald v. First E. Seventh St. Tenants Corp.*, 221 F.3d 362, 364 (2d Cir. 2000). A claim is frivolous if it presents an "indisputably meritless legal theory" or "factual contentions [that] are clearly baseless." *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). We review the dismissal *de novo*. *Milan v. Wertheimer*, 808 F.3d 961, 963 (2d Cir. 2015).

The complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although all factual allegations

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[1] A "person within the third degree of relationship" includes only those with a familial relationship, not colleagues. See 28 U.S.C. § 455(d)(2) ("the degree of relationship is calculated according to the civil law system"); Code of Conduct for U.S. Judges, Canon 3(C)(3)(a) (listing familial relatives who satisfy this definition according to the civil law). Sibley did not allege that the two judges were relatives.

in the complaint are assumed to be true, this tenet does not apply to legal conclusions. *Id.*

Sibley's complaint contained many legal conclusions but only a few factual allegations, all of which related to his separate pro se action, *Sibley v. Watches*, W.D.N.Y. No. 19-cv-6517 ("Watches"). He alleged that: Chief Judge Geraci delayed decision on his motion to proceed in forma pauperis ("IFP") in Watches for 79 days, Clerk Loewenguth refused to issue a summons in the absence of either a paid filing fee or a grant of IFP status, and Clerk O'Hagan Wolfe dismissed his petition in this Court because Sibley did not file a financial affidavit per Federal Rule of Appellate Procedure 24(a)(1) and Local Rule 24.1. Sibley also alleged that Chief Judge Geraci, as of the date he filed his complaint in this action in May 2020, had refused to rule on his IFP motion or motion for a *writ of procedendo* filed in Watches. However, the docket attached to Sibley's complaint contradicts this allegation, as it shows those motions were dismissed as moot in October 2019.

These factual allegations were the grounds for "indisputably meritless" legal claims, *Neitzke*, 490 U.S. at 327, because the only actions complained of were those taken by a federal judge within the scope of his judicial responsibilities and by two court clerks as part of the judicial process, and any legal claim arising out of such actions is barred by absolute judicial immunity. See *Bliven v. Hunt*, 579 F.3d 204, 209 (2d Cir. 2009) (describing judicial immunity); *Rodriguez v. Weprin*, 116 F.3d 62, 66-67 (2d Cir. 1997) (describing circumstances under which court clerks enjoy judicial immunity). We have held that "[a] court's inherent power to control its docket is part of its function of resolving disputes between parties. This is a function for which judges and their supporting staff are afforded absolute immunity." *Rodriguez*, 116 F.3d at 66 (dismissing due process claim against court clerk as barred by absolute judicial immunity). All of Sibley's factual allegations concerned the district court's and this Court's control of their respective dockets. The district court thus correctly dismissed his complaint as frivolous.

We have considered all of Sibley's remaining arguments and find them to be without merit.

Accordingly, we **AFFIRM** the judgment of the district court.

For The Court
Andrew P. Barnes, Chief Deputy Clerk
/s/ Andrew P. Barnes

United States Court of Appeals
for the Second Circuit

At a stated term for the United States Court of Appeals, Second Circuit, held at the Thurgood Marshall Courthouse, 40 Foley Square, City of New York, on the 6th Day of July, two thousand twenty one.

Montgomery Blair Sibley,

Plaintiff/Appellant,

vs,

Order
Docket No.: 20-3608

Frank Paul Geraci Jr., Mary C. Loewenguth, and Catherine O'Hagan Wolfe,

Defendants.
_____/

Appellant, Montgomery Blair Sibley, filed a petition for panel rehearing, or, in the alternative, rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED, that the petition is denied.

For The Court
Andrew P. Barnes, Chief Deputy Clerk
/s/ Andrew P. Barnes