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APPENDIX A

In the United States Court of Appeals

For the Eleventh Circuit

No. 23-13013

In re: MOLIERE DIMANCHE, JR.,

Petitioner.

On Petition for Writ of Prohibition to the

United States District Court for the

Middle District of Florida

D.C. Docket No. 6:22-cv-02073-CEM-DCI

ORDER:

Molieré Dimanche, proceeding pro se, petitions this Court for writ of prohibition arising out of a civil rights case he filed in the U.S. District Court for the Middle District of Florida. He also moves for leave to proceed in forma pauperis ("IFP"). In his mandamus petition, Dimanche asks this Court to prohibit the district court judge and magistrate judge assigned to his case from presiding over it because he alleges they are involved in the underlying conspiracy to violate his civil rights. He also asks this Court to order that the case be reassigned to a judge in the Tampa division because, he asserts, the "Orlando

legal community collectively extorted him for personal gain.”

Dimanche seeks to file his petition IFP pursuant to 28 U.S.C. § 1915(a). Section 1915(a) provides that a United States court may authorize the commencement of any proceeding, without prepayment of fees, by a person who submits an affidavit that includes a statement of assets that he possesses, and indicates that he is unable to pay such fees. This Court, however, may dismiss an action at any time if it determines that the allegation of poverty is untrue or the action or appeal is frivolous. 28 U.S.C. § 1915(e)(2). Assuming that Dimanche has satisfied § 1915(a)'s poverty requirement, his IFP motion is nevertheless due to be denied, as his petition is frivolous.

Writs of prohibition and mandamus, both authorized under 28 U.S.C. § 1651, are “two sides of the same coin with interchangeable standards.” *United States v. Pleau*, 680 F.3d 1, 4 (1st Cir. 2012) (*en banc*) (persuasive authority). They are available only in drastic situations, when no other adequate means are available to remedy a clear usurpation of power or abuse of discretion. *United States v. Shalhoub*, 855 F.3d 1255, 1259 (11th Cir. 2017); *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1004 (11th Cir. 1997) (quotation marks omitted). “[A] writ of mandamus may issue only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.” *In re Smith*, 926 F.2d 1027, 1030 (11th Cir. 1991) (quotation omit-

ted). That is, a writ of mandamus will issue only for "a duty exacted by law" and not "to correct a duty that is to any degree debatable." *Steering Comm. v. Mead Corp. (In re Corrugated Container Antitrust Litig.)*, 614 F.2d 958, 962 (5th Cir. 1980) (quotations omitted). The petitioner has the burden of showing that she has no other avenue of relief, and that her right to relief is clear and indisputable. See *Mallard v. U.S. Dist. Court*, 490 U.S. 296, 309 (1989); see also *In re Wainwright*, 678 F.2d 951, 953 (11th Cir. 1982) (applying the same standard to writs of prohibition.). When an alternative remedy exists, even if it is unlikely to provide relief, mandamus relief is not proper. See *Lifestar Ambulance Serv., Inc. v. United States*, 365 F.3d 1293, 1298 (11th Cir. 2004).

Under 28 U.S.C. § 455(a), a judge must "disqualify himself in any proceeding in which his impartiality might reasonably be questioned" or in any circumstances "[w]here he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." 28 U.S.C. § 455(a), (b)(1). Similarly, under § 144, a judge must recuse himself if a party to the proceeding makes a timely and sufficient showing by affidavit that the judge "has a personal bias or prejudice" against him. *Id.* § 144. Disqualification is only required when the alleged bias is personal in nature, that is, stemming from an extra-judicial source. *Loranger v. Stierheim*, 10 F.3d 776, 780 (11th Cir. 1994). 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). Likewise, "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.* This Court has held that "a judge, having been assigned to a case, should not recuse himself on unsupported, irrational, or highly tenuous speculation." *In re Moody*, 755 F.3d at 895 (quoting *United States v. Greenough*, 782 F.2d 1556, 1558 (11th Cir. 1986)).

Upon issuance of a final judgment in the district court, this Court reviews on direct appeal a district court's decision regarding recusal. *Corrugated Container*, 614 F.2d at 960-62. A recusal decision will not be addressed on appeal until the litigation is final, but a writ of mandamus may issue to correct such a decision in "exceptional circumstances amounting to a judicial usurpation of power." *Id.* at 960-62 & n.4 (quotation marks omitted); see *id.* at 961-62 (declining to grant mandamus relief relating to district court judge's refusal to recuse himself where full review of the issue was available on appeal); see also *In re Moody*, 755 F.3d 891, 897 (11th Cir. 2014) (explaining that review of district court judge's refusal to recuse under mandamus authority is "even more stringent" than the ordinary abuse-of-discretion standard applicable to review on appeal of recusal issue, because the drastic remedy of mandamus is available only in exceptional circumstances). Where a judge's

duty to recuse himself either is debatable or non-existent, a writ of mandamus will not issue to compel recusal. *Corrugated Container*, 614 F.2d at 962.

Here, Dimanche is not entitled to prohibition or mandamus relief because he has the adequate alternative remedy of moving the judges for disqualification and, if necessary, appealing the judges' failure to do so after final judgment. See *Shalhoub*, 855 F.3d at 1259; *Jackson*, 130 F.3d at 1004; *Corrugated Container*, 614 F.2d at 960-62.

Further, Dimanche has not shown that either the district court judge or magistrate judge had "a duty exacted by law," that is not "to any degree debatable," to recuse himself. See *Mallard*, 490 U.S. at 309; *Smith*, 926 F.2d at 1030; *Corrugated Container*, 614 F.2d at 962. Instead, Dimanche relies on the court's adverse rulings against him to make speculative assertions that the judges within Orlando are involved in a conspiracy against him. Accordingly, Dimanche has not shown any "exceptional circumstances" to warrant a recusal challenge through mandamus, rather than waiting for a final order in the district court and pursuing an appeal, because he is merely challenging unfavorable judicial rulings and relying on speculations as to the district court's and magistrate's judges involvement in the alleged conspiracy with other Orlando judges, which is insufficient to support a disqualification request in a mandamus petition. See *Corrugated Container*, 614 F.2d at 960-62 & n.4; *Loranger*, 10 F.3d at 780; *Liteky*, 510 U.S. at 555. Accordingly,

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he has not shown that he has a clear and indisputable right to relief. *See Mallard*, 490 U.S. at 309; see also *In re Wainwright*, 678 F.2d at 953.

Accordingly, because Dimanche has an adequate alternative remedy and has not shown that he has a clear and indisputable right to relief, his request for prohibition relief is frivolous, and his IFP motion is hereby DENIED.

/s/Adalberto Jordan

UNITED STATES CIRCUIT JUDGE

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APPENDIX B

In the United States Court of Appeals

For the Eleventh Circuit

No. 23-13013

In re: MOLIERE DIMANCHE, JR.,

Petitioner.

On Petition for Writ of Prohibition to the

United States District Court for the

Middle District of Florida

D.C. Docket No. 6:22-cv-02073-CEM-DCI

Before JORDAN and JILL PRYOR, Circuit Judges.

BY THE COURT:

Moliere Dimanche, proceeding pro se, moves for reconsideration of our order denying his motion for leave to proceed in forma pauperis ("IFP") in relation to his previously filed petition for a writ of prohibition. Dimanche's petition concerned a pending civil rights action he filed in the Orlando Division of the U.S. District Court for the Middle District of Florida. Dimanche asked us to prohibit the district court judge and magistrate judge assigned to the case from presiding over it because he alleged they

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were involved in the underlying conspiracy to violate his civil rights. He also asked us to order that the case be reassigned to a judge in the Tampa division because, he asserted, the "Orlando legal community collectively extorted him for personal gain."

We denied Dimanche's motion for leave to proceed IFP, as his prohibition petition was frivolous. We assumed that Dimanche satisfied 28 U.S.C. § 1915(a)'s poverty requirement but held that that he was not entitled to prohibition or mandamus relief because he has the adequate alternative remedy of moving the judges for disqualification and, if necessary, appealing the judges' failure to do so after final judgment. Further, we held that Dimanche had not shown that he had a clear and indisputable right to relief because he was merely challenging unfavorable judicial rulings and relying on speculations as to the judges' involvement in an alleged conspiracy against him.

A party seeking rehearing or reconsideration must specifically allege any point of law or fact that we overlooked or misapprehended. See Fed. R. App. P. 40(a)(2). A reconsideration motion is analogous to a petition for a panel rehearing, which must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended." Fed. R. App. P. 40(a)(2). In the district court context, we have held that "[a] motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Wilchombe v. TeeVee Toons, Inc.*,

555 F.3d 949, 957 (11th Cir. 2009) (quotation omitted).

Under 28 U.S.C. § 1915(a), a United States court may authorize the commencement of any proceeding, without prepayment of fees, by a person who submits an affidavit that includes a statement of assets that he possesses, and indicates that he is unable to pay such fees. We, however, may dismiss an action at any time if we determines that the allegation of poverty is untrue or the action or appeal is frivolous. 28 U.S.C. § 1915(e)(2).

We have carefully considered Dimanche's motion for reconsideration and the arguments raised therein, and we conclude that he has not shown that we overlooked or misapprehended any finding of fact or point of law in denying his IFP motion. Fed. R. App. P. 40(a)(2); *Wilchombe*, 555 F.3d at 957.

Accordingly, Dimanche's reconsideration motion is hereby **DENIED**.

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APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 23-13013-J

In re: MOLIERE DIMANCHE, JR.

Petitioner.

On Petition for Writ of Prohibition to the

United States District Court for the

Middle District of Florida

ORDER: Pursuant to the 11th Cir. R. 42-1(b), this petition is hereby DISMISSED for want of prosecution because the Petitioner Moliere Dimanche, Jr. failed to pay the filing and docketing fees to the clerk of this court within the time fixed by the rules.

Effective March 01, 2024.

DAVID J. SMITH

Clerk of Court of the United States Court

of Appeals for the Eleventh Circuit

FOR THE COURT - BY DIRECTION

APPENDIX D

**42 U.S. Code § 1983 - Civil action for
deprivation of rights**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX E

The Florida Statutes, Chapter 27, 27.181
Assistant state attorneys; appointment; powers
and duties; compensation.—

(1) Each assistant state attorney appointed by a state attorney shall serve during the pleasure of the state attorney appointing him or her. Each such appointment shall be in writing and shall be recorded in the office of the clerk of the circuit court of the county in which the appointing state attorney resides. No such appointee shall perform any of the duties of assistant state attorney until he or she shall have taken and subscribed to a written oath that he or she will faithfully perform the duties of assistant state attorney and shall have caused the oath to be recorded in the office of the clerk of the circuit court of the county in which the appointing state attorney resides. Upon the recordation of such appointment and oath, the appointing state attorney shall promptly cause certified copies thereof to be transmitted to the Secretary of State. When any such appointment shall be revoked, the revocation thereof shall be made in writing and shall be recorded in the office of the clerk of the circuit court of the county in which the appointment is recorded, and the state attorney executing the revocation shall forthwith cause a certified copy thereof to be transmitted to the Secretary of State. If any such appointee dies or

resigns, the appointing state attorney shall promptly give written notice of such death or resignation to the Secretary of State.

(2) Each assistant state attorney appointed by a state attorney shall have all of the powers and discharge all of the duties of the state attorney appointing him or her, under the direction of that state attorney. No such assistant state attorney may sign informations unless specifically designated to do so by the state attorney. He or she shall sign indictments, informations, and other official documents, as assistant state attorney, and, when so signed, such indictments, informations, and documents shall have the same force and effect as if signed by the state attorney.

(3) Until otherwise provided by law, each assistant state attorney appointed by a state attorney under the authorization of this section shall receive the allowances for expenses provided by law at the time of appointment, to be paid in accordance with such law. The salary for each assistant state attorney shall be set by the state attorney of the same judicial circuit in an amount not to exceed 100 percent of that state attorney's salary and shall be paid from funds appropriated for that purpose. However, the assistant state attorneys who serve in less than a full-time capacity shall be compensated for services performed in an amount in proportion to the salary allowed for full-time services.

May 2nd, 2024

To: Honorable Scott S. Harris

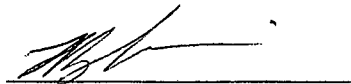
From: Moliere Dimanche

Dear Clerk,

Please find enclosed the following:

1. 40 copies of the Petition for Writ of Certiorari
2. 40 copies of the Jurisdictional Statement
3. A money order for the \$300.00 filing fee
4. One 8 1/2 x 11 copy of the Petition for Writ of Certiorari
5. The Certificate of Word Compliance
6. The Certificate of Service
7. The copy of *BALUBHAI PATEL, DTWO & E, INC, STUART UNION, LLC v. JULIE SU, INDIVIDUALLY AND AS LABOR COMMISSIONER OF THE STATE OF CALIFORNIA* you sent to me.

Thank you for your guidance on how to properly format the Petition. As you saw with the initial batch that I sent up, I wished to make a good impression on the Court, and I believe it served me well as you trusted me with the properly formatted sample. I kept it safe and would not even let anyone touch it. After a few weeks you will find that it is in the same condition in which you entrusted it to me, and it served as a great guide. Thank you. It is greatly appreciated.



Moliere Dimanche

