

NO. 25-_____

October Term, 2025

In The
Supreme Court of the United States

FRANK POLO (Pro Se),

Applicant,

v.

SCOTT BERNSTEIN, et al.,

Respondents.

XVI. APPENDIX

Frank Polo

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MIAMI, FL. 33135

Frank.Polo@msn.com

PETITIONER

11th CIRCUIT CASE NO.: 25-10016-B /

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APPENDIX A

**Opinion of the United States Court of Appeals for the Eleventh Circuit
(Oct. 1, 2025)**

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10016
Non-Argument Calendar

FRANK E. POLO, SR.,

Plaintiff-Appellant,

versus

SCOTT M. BERNSTEIN,

in his Personal and Official Capacity, et al.,

Defendants-Appellees,

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:23-cv-21684-RNS

Before ROSENBAUM, GRANT, and ABUDU, Circuit Judges.

PER CURIAM:

Frank Polo, proceeding pro se, appeals the district court's orders declining to recuse and dismissing his fifth amended

complaint. He argues that he could not receive a fair adjudication from the district court because it repeatedly ruled against him, did not advise him of the relevant law, had affiliations with his political adversaries, and previously worked in the same building as a defendant. And he argues that, contrary to the district court's holding, he did not file a shotgun pleading. Disagreeing on all fronts, we affirm.

I.

In May 2023, Polo filed a 147-page complaint against thirty defendants, asserting various claims under state and federal law. He challenged (among many other things) state-court custody decisions and his expulsion from St. Thomas University College of Law. After finding the complaint's 747 paragraphs replete with conclusory allegations, the district court struck it as a shotgun pleading and gave him a chance to amend. Polo took that chance, but the court again found his complaint insufficient. So he tried again. The cycle continued until Polo filed his fifth amended complaint.

Polo managed to reduce his fifth amended complaint to forty pages and 280 paragraphs. While his prior complaint had whittled the defendants down to two, this time, he *added* several claims and defendants back in. So the district court dismissed the complaint as a "wholly problematic" shotgun pleading, with no opportunity to amend.

Meanwhile, Polo had moved for the district judge to recuse, claiming that the judge had personal relationships with interested

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parties, had ruled against Polo several times, and failed to direct Polo to relevant caselaw. The district court rejected the motion. Polo appealed.

II.

The deferential abuse-of-discretion standard applies to a district court's decision to deny a motion to recuse and dismiss a complaint as a shotgun pleading. *See Jenkins v. Anton*, 922 F.3d 1257, 1271–72 (11th Cir. 2019); *Barmapov v. Amuial*, 986 F.3d 1321, 1324 (11th Cir. 2021).

III.

Polo argues that the district court abused its discretion when it rejected his recusal motion. A district court judge must recuse when a fully informed, disinterested lay observer would seriously doubt the judge's impartiality. *Christo v. Padgett*, 223 F.3d 1324, 1333 (11th Cir. 2000); *see* 28 U.S.C. § 455. The alleged grounds for disqualification must rest on more than “unsupported, irrational, or highly tenuous speculation.” *United States v. Greenough*, 782 F.2d 1556, 1558 (11th Cir. 1986).

Polo's first two arguments relate to the way the district judge handled his case. He points to the district judge's repeated rulings against him and failure to direct him to relevant caselaw. But adverse judicial rulings most often form the “proper grounds for appeal, not for recusal.” *Liteky v. United States*, 510 U.S. 540, 555 (1994). And failing to give a pro se litigant legal advice does not show that the judge is biased. Quite the opposite. Requiring courts to “advise a pro se litigant” about the relevant law “would undermine

district judges' role as impartial decisionmakers." *Pliler v. Ford*, 542 U.S. 225, 231 (2004) (emphasis added). These arguments have no merit.

Polo's next two arguments relate to the district judge's personal connections. He argues that the district judge cannot be impartial because he previously worked as a state-court judge in the same building as one of the defendants. But an allegation that a district judge is merely acquainted with a defendant falls short of demonstrating partiality. See *Parrish v. Bd. of Comm'rs of Ala. State Bar*, 524 F.2d 98, 102 (5th Cir. 1975) (en banc).¹ The same goes for Polo's argument that the district judge had impermissible connections with his "political adversaries." As one example, he flags that then-Senator Marco Rubio recommended that the Senate approve the judge's nomination to the federal bench. But that allegation is "highly tenuous speculation," to say the least. *Greenough*, 782 F.2d at 1558. No reasonable lay person would seriously doubt the district court judge's impartiality on these grounds. See *Christo*, 223 F.3d at 1333. The district court did not abuse its discretion in denying Polo's recusal motion.

IV.

Polo also challenges the district court's decision to dismiss his complaint as a shotgun pleading. Federal Rule of Civil Procedure 8(a)(2) requires a complaint to contain "a short and plain

¹ This Court adopted as binding precedent all decisions of the former Fifth Circuit issued before October 1, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

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statement” that shows that the plaintiff is entitled to relief. And Rule 10(b) requires the plaintiff to state claims in paragraphs “limited as far as practicable to a single set of circumstances.” Shotgun pleadings often flout these rules. See *Barmapov*, 986 F.3d at 1324. They commonly present the claims in a confusing manner and are “replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action.” *Weiland v. Palm Beach Cnty. Sheriff’s Off.*, 792 F.3d 1313, 1322 (11th Cir. 2015).

Once a district court classifies a complaint as a shotgun pleading, it must give the litigant a chance to remedy its shortcomings. *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1295 (11th Cir. 2018). But one chance is generally enough. The district court may dismiss the amended pleading with prejudice if it fails to remedy the errors the court identified. See *id.*; *Jackson v. Bank of Am., N.A.*, 898 F.3d 1348, 1358 (11th Cir. 2018).

The district court did not abuse its discretion in dismissing Polo’s fifth amended complaint. Polo had *four* chances to amend his pleading. Each time, the court explained the complaint’s deficiencies and how to correct them. Yet Polo repeatedly failed to comply with those instructions. See *Jackson*, 898 F.3d at 1357–59. In fact, the last time around, he *added* several claims and nine new defendants. And he “replicate[d] all the pleading mistakes” the court had repeatedly cautioned against. On this record, we cannot say that the district court abused its discretion in dismissing Polo’s fifth amended complaint as a shotgun pleading.

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We **AFFIRM** the district court's judgment.

APPENDIX B

**Eleventh Circuit Order Denying Panel Rehearing and Rehearing
En Banc (Nov. 21, 2025)**

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10016

FRANK E. POLO, SR.,

Plaintiff-Appellant,

versus

SCOTT M. BERNSTEIN,

in his Personal and Official Capacity,

MARCIA DEL REY,

in her Personal and Official Capacity,

SPENCER MULTACK,

in his Personal and Official Capacity

JUDGE THOMAS LOGUE,

MANUEL A SEGARRA, III,

in his Personal and Official Capacity, et al.,

Defendants-Appellees,

BERTILA SOTO,

in her official capacity, et al.,

Defendants.

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Order of the Court

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Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:23-cv-21684-RNS

ON PETITION FOR REHEARING AND PETITION FOR
REHEARING EN BANC

Before ROSENBAUM, GRANT, and ABUDU, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. FRAP 40. The Petition for Panel Rehearing also is DENIED. FRAP 40.

APPENDIX C

**Order of the United States District Court denying motion for recusal
(July 22, 2024)**

United States District Court
for the
Southern District of Florida

Frank Polo, Sr., Plaintiff,)
)
v.)
) Civil Action No. 23-21684-Civ-Scola
Scott Marcus Bernstein, in both)
his individual and official)
capacities, and others, Defendants.)

Order Denying Motion to Recuse

This matter is before the Court on pro se Plaintiff Frank Polo, Sr.'s motion for disqualification. (Pl.'s Mot., ECF No. 41.) 28 U.S.C. § 455(a) requires a judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned," and § 455(b) requires recusal in certain specifically enumerated circumstances. Although Polo references only § 455(a), it appears his grievances may also be based on § 455(b)(1) as well. Polo's allegations of impartiality stem, partly, from the undersigned's having presided over family law matters in Florida's Eleventh Judicial Circuit as a judge in that court. Of particular concern to Polo is that Defendant Judge Scott M. Bernstein and the undersigned's tenures, at one point, overlapped in that same family court. Recognizing that this relationship alone is insufficient to give rise to the appearance of impropriety, Polo identifies two adverse rulings against him and the Court's failure to advise him that he may not proceed, on a pro se basis, on behalf of his minor children, to further support his motion. Polo says that the combination of these factors together warrants the undersigned's recusal. The Court disagrees and therefore **denies** his motion (**ECF No. 41**).

Under § 455, recusal is required when a district judge's "impartiality might reasonably be questioned" or when the district judge "has a personal bias or prejudice concerning a party." 28 U.S.C. § 455(a), (b)(1). "Under § 455, the standard is whether an objective, fully informed lay observer would entertain significant doubt about the judge's impartiality." *Regions Bank v. Leg. Outsource PA*, 800 F. App'x 799, 800 (11th Cir. 2020).

Polo's reliance on two of the Court's orders (one approving Polo's motion to proceed in forma pauperis and the other vacating that order, at his request, and administratively closing this case) along with the Court's failure to advise him that he may not, as a pro se litigant, represent the interests of his minor children, do not support disqualification. "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v.*

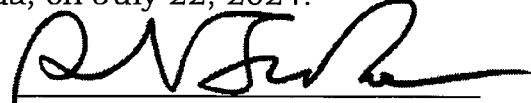
United States, 510 U.S. 540, 555 (1994). This is so regardless of how Polo himself characterizes the orders: “the standard is whether an objective, fully informed lay observer would entertain significant doubt about the judge’s impartiality.” *Thomas v. Tenneco Packaging Co., Inc.*, 293 F.3d 1306, 1329 (11th Cir.2002). In other words, in evaluating a motion for disqualification, the Court considers “how things appear to the well-informed, thoughtful and objective observer, rather than the hypersensitive, cynical, and suspicious person.” *U.S. v. Jordan*, 49 F.3d 152, 156 (5th Cir. 1995). So Polo’s unsupported conjecture about the undersigned’s motives—that the Court granted Polo’s motion to proceed *in forma pauperis* with the “sole objective” of using that status to dismiss his complaint (Pl.’s Mot. at 3); that the Court denied his request to appoint the Marsal’s office for service of process “knowing Mr. Polo was incapable of paying for service” (*id.*); and that the Court has “intentionally fail[ed] to apply the correct principles of law to the facts” (*id.*)—is not relevant. Similarly unavailing is Polo’s complaint that the Court failed to advise him that he may not proceed pro se on behalf of his minor children. First, it is not the Court’s responsibility to identify for a litigant every conceivable defect in his case—especially so when his pleading is not yet in a viable form. Further, even if that was the Court’s responsibility, Polo has failed to supply any link between the purported failure to flag an issue for a party and the Court’s alleged impartiality. Ultimately, to rely on the Court’s rulings (or lack thereof) to support disqualification, Polo would have to show that the Court’s orders and decisions “demonstrate such pervasive bias and prejudice that it constitutes bias against a party.” *Anderson v. Vanguard Car Rental USA Inc.*, 427 F. App’x 861, 864 (11th Cir. 2011). Polo’s submission falls far short of this standard.

Polo’s speculation that the undersigned’s prior professional relationship with Judge Bernstein triggers impartiality is similarly unavailing. Lacking is any objective support for Polo’s cursory contention that, because of this association, the Court is “intentional[ly] fail[ing] to apply the correct principles of law to benefit the opposing party.” (Pl.’s Mot. at 3.) Simply identifying an association, and a weak one at that, between the undersigned and another judge, well over a decade in the past, is insufficient to raise doubts about the Court’s impartiality in this case or otherwise implicate a personal bias or prejudice.

In sum, Polo has not identified any extrajudicial sources that demonstrate a bias, and has failed to demonstrate that the undersigned’s judicial actions raise concerns.

Accordingly, after considering the motion, the record, and the relevant legal authorities, the Court **denies** Polo's motion for recusal (**ECF No. 41**), for the reasons set forth above.

Done and ordered, in Miami, Florida, on July 22, 2024.

A handwritten signature in black ink, appearing to read "R. N. Scola, Jr.", written over a horizontal line.

Robert N. Scola, Jr.
United States District Judge

APPENDIX D

Final judgment dismissing the complaint (July 22, 2024)

United States District Court
for the
Southern District of Florida

Frank Polo, Sr., Plaintiff,)
)
v.)
) Civil Action No. 23-21684-Civ-Scola
Scott Marcus Bernstein, in both his)
individual and official capacities,)
and others, Defendants.)

Second Omnibus Order

Pro se Plaintiff Frank Polo, Sr., seeks damages and injunctive relief, in what is now his fifth attempt to plead his claim, against various Defendants, including state-court judges, a university, a law firm, two state courts, the mother of his children, and her boyfriend, based on alleged violations of Polo’s federal and state constitutional rights and various state common laws. (5th Am. Compl., ECF No. 38.)¹ The Court struck Polo’s first four complaints, explaining each time that they were shotgun pleadings, leaving the Court unable to readily discern the nature of or basis for his claims. (ECF Nos. 6, 10, 22, 29.) After dismissing Polo’s case based on defects in his third amended complaint, and based on the screening provisions of 28 U.S.C. § 1915(e)(2)(B), Polo asked the Court to reconsider. (Pl.’s Mot. for Recons., ECF No. 27.) One of Polo’s objections was the Court’s application of the screening provisions to his complaint based on his request to proceed *in forma pauperis*. (*Id.* at 3–4.) Polo complained that although the Court had granted his request to proceed *in forma pauperis*, it was improper for the Court to apply the screening provisions when he had in fact paid the Court’s filing fee in full. (*Id.*) Finding some merit to the point, and in recognition of Polo’s representation that he would be engaging an attorney to help him (*id.* at 8), the Court then vacated its order granting Polo *in forma pauperis* status (Order, ECF No. 29 at 1). In doing so, the Court agreed that it would be improper for Polo’s case to be dismissed under § 1915 screening and therefore afforded him one more chance to amend his complaint. (*Id.* at 2.) Since then, Polo has filed a fourth amended complaint (ECF No. 34), followed by a fifth amended complaint (to fix a formatting issue) (ECF No. 38). Because Polo has once again failed to comply with the Court’s orders, as outlined below, the Court dismisses this case.

¹ Although this is Polo’s sixth pleading, there were no substantive changes between the fourth amended complaint and the fifth.

Polo's initial complaint named dozens of Defendants and spanned 147 pages, containing over 700 numbered paragraphs. (Compl., ECF No. 1.) After the Court struck that complaint as a shotgun pleading, affording Polo a chance to replead his claims, Polo filed an amended complaint this time against twenty Defendants, comprised of a subset of the Defendants named in the initial complaint. (Am. Compl., ECF No. 9.) While the Court generously construed Polo's second attempt as marginally better than his first, the amended complaint did not even come close to remedying the defects identified in the Court's first order. Accordingly, the Court struck the amended complaint as well. (2nd Order, ECF No. 10 (noting that Polo's complaint continued to be "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action".)) But, affording Polo the benefit of the doubt, based on his pro se status and on the incremental improvement of his second effort, the Court granted Polo "one final chance to replead his case," warning him that his failure to comply would "result in the dismissal of his case." (2nd Order at 1, 3.)

In response, Polo then filed his second amended complaint, now lodged against only two Defendants: state-court Judge Scott Marcus Bernstein and St. Thomas University, Inc. (2nd Am. Compl., ECF No. 18.) Shortly thereafter, he also sought leave to change course and proceed *in forma pauperis* so that the Court could appoint the United States Marshal's Office to effect service. (Pl.'s IFP Mot., ECF No. 20; Pl.'s Mot. to Appoint, ECF No. 19.) The Court granted Polo's *in forma pauperis* request and then proceeded to screen his complaint under § 1915, before burdening the U.S. Marshal with effecting service. (3rd (Omnibus) Order, ECF No. 22.) Upon screening, the Court dismissed the second amended complaint, under § 1915(2)(B), finding Polo's claims appeared time barred, as well as barred by various forms of immunity and for a failure to state a claim. (3rd Order at 3.) Because that dismissal was, at least in part, under § 1915(2)(B)(ii), the Court, in an abundance of caution, afforded Polo yet another chance to produce a viable complaint. (3rd Order at 3.)

With that, Polo filed his third amended complaint, again against only Judge Bernstein and St. Thomas. (3rd Am. Compl., ECF No. 25.) While Polo provided facts that could possibly salvage the untimeliness of some of his claims, he failed to meaningfully embrace the Court's shotgun-pleading admonishments and additionally "failed [to] establish that he is entitled to relief on his federal claims or that the Court has jurisdiction over his state-law claims." (4th Order, ECF No. 26, 3.) Accordingly, the Court dismissed his case, albeit without prejudice, under § 1915, but without further leave to amend. (4th Order at 3.) At the same time, the Court noted that, even if the Court had not dismissed Polo's complaint under § 1915, it would have dismissed it regardless

“based on his repeated failure to comply with the Court’s orders regarding the shotgun nature of his pleading.” (4th Order at 3.)

Although the Court then administratively closed the case, denying any other pending motions as moot, that was not the end of this matter. Instead, Polo sought reconsideration. (Pl.’s Mot. for Recons., ECF No. 27.) In his motion, Polo pointed out that it would be unfair for the Court to dismiss his case under § 1915 screening, based on his *in forma pauperis* status, when he had initially paid the full filing fee. (Pl.’s Mot. for Recons. at 4.) Recognizing the inherent inconsistency, the Court agreed, vacating its order granting Polo’s motion to proceed *in forma pauperis* and, as a result, denying Polo’s request that the U.S. Marshal be appointed to effect service. (5th Order, ECF No. 29.) At the same time, the Court found no reason to disturb that part of its previous order finding Polo’s third amended complaint noncompliant with Federal Rule of Civil Procedure 8(a)(2), still amounting to a shotgun pleading. (5th Order at 2.) However, Polo, in his motion for reconsideration, advised that, if given one more chance to amend, he would engage counsel to assist him with formulating a proper pleading. (Pl.’s Mot. for Recons. at 8.) Based on this representation, combined with construing Polo’s efforts very liberally, because of his pro se status (combined with his expenditure of the filing fee), the Court once again generously, perhaps overly so, afforded Polo all benefit of the doubt, noting that each iteration of his complaint suggested that he was “at least *trying*, albeit unsuccessfully, to address some . . . of the Court’s concerns.” (5th Order at 2.) Accordingly, the Court acquiesced to Polo’s demand for one more chance at amendment, at the same time warning him that his case would be dismissed if that fifth attempt—his fourth amended pleading—failed to comply with the federal rules or any of the Court’s previous orders. (5th Order at 2.)

Upon review, the Court finds Polo’s latest amended pleading (ECF No. 38) is still wholly problematic. Most bewildering is Polo’s *addition* of nine new defendants back into this case: three other state-court judges, a lawyer, that lawyer’s law firm, the mother of Polo’s children, her boyfriend, and two state courts. The Court directed Polo to amend his complaint in order to bring it into compliance with rule 8(a)(2) and 10(b) and the Court’s orders; he was not given leave to add new parties and claims. This is particularly troubling considering that these new counts replicate all the pleading mistakes that the Court, through several iterations of the complaint, has previously brought to Polo’s attention. Counts four and five are particularly illustrative of Polo’s repeated failures to comply with the Court’s orders.

Court four, for example, titled a “Petition for Prospective Declaratory Judgment under 28 U.S.C. § 2201 and Fed. R. Civ. P. 57,” spanning over almost forty paragraphs, is lodged against four Florida state-court judges and

two Florida courts, one a trial-level court and the other an appellate court. Within in this one count, Polo references several different rights, under both the United States constitution as well as the Florida constitution, that he says were violated: his right to access the courts; his right to be free from governmental retaliation for engaging in political speech; his right to be free from governmental retaliation for petitioning the government for redress of his grievances; the deprivation of his property rights without due process; and the deprivation of his liberty rights without due process. Furthermore, to the extent there are any relevant factual allegations, it is impossible for the Court (or the Defendants) to discern which allegations could possibly correspond which claims. And, despite being repeatedly warned to avoid doing so, Polo relies almost exclusively on vague and conclusory assertions in trying to state a claim. To provide but a small sample: “The Defendants’ actions described in this Count were taken to harass Mr. Polo as retaliatory responses to the Plaintiff’s engagement in these Protected Activities and not for other reasons.” (5th Am. Compl. ¶ 134); Judge Bernstein “buil[t] a case against Mr. Polo to destroy Mr. Polo[’s] career in law without due process of law.” (*id.* ¶ 137); “Judge Del Rey retaliated against the Plaintiff by continuing to retain jurisdiction over the Plaintiff’s family case after the Court lost jurisdiction to adjudicate attorney’s fees with the intent of creating financial harm on Mr. Polo by granting attorney’s fees not supported by fact and law in retaliation for Mr. Polo’s engagement in the Protected Activities.” (*id.* ¶ 146); “Judge Multack deprived the Plaintiff of his right to access the court by issuing an order that restricted his ability to file motions, limiting them to just one motion.” (*id.* ¶ 148). “Judge Logue,” along with others, was “involved in fabricating and adopting false facts without any evidence in the record to support those facts,” “repeatedly and maliciously declined to apply the correct legal principles to the admitted facts of the Plaintiff’s family case, despite being fully aware of them,” and “issued a Per Curiam Affirm order, with the intent of preventing the Plaintiff from appealing [the] orders to the Florida Supreme Court.” (*id.* ¶¶ 151, 152, 156.) Defendants faced with such allegations would be left thoroughly unable to discern the contours of the claims against them, leaving them hamstrung in their abilities to defend against Polo’s suit. *See Weiland v. Palm Beach Cnty. Sheriff’s Off.*, 792 F.3d 1313, 1322 (11th Cir. 2015) (describing one of the quintessential types of shotgun pleadings as being “replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action”). This is exactly what the Court has repeatedly ordered Polo, over the course of several orders, not to do.

The pleading deficiencies of count five further highlight Polo’s noncompliance. This count, labeled “Conspiracy under § 1983,” is brought

against, again, the four state-court judges, along with a lawyer, the mother of Polo's children, and her boyfriend. This count spans nearly 50 paragraphs and aside from alleging that these Defendants all "agreed" to deprive Polo of various rights there is not a single actual fact proffered to support the claim. Instead, Polo relies on repeatedly insisting that the "co-conspirators" all agreed amongst themselves to violate his due process rights and retaliate against him for his engagement in certain protected activities. (*E.g.*, 5th Am. Compl. ¶¶ 169 ("There was an agreement . . ."), 171 (describing one Defendant as having "ratified the actions of" the other Defendants"); 174 (alleging some of the Defendants as having "agreed" with a guardian ad litem "to fabricate a false emergency," using that fabrication "as justification to remove the children from Mr. Polo's custody without providing him the opportunity to access the court before suffering this deprivation"); 178 (contending that some of the Defendants "agree[d] to build a case against Mr. Polo to justify giving [the children's mother] custody that was not justified, otherwise, by fact or law"); 204–210 (complaining that Judge Logue, "acting in concert with [St. Thomas] management, influenced other [Florida appellate] judges to" "intentionally fabricat[e] and adopt[] false facts," "intentionally and repeatedly decline[] to apply the correct legal principles," and "cite irrelevant laws with the malicious intent of depriving the Plaintiff of the opportunity to appeal".) In doing so, Polo shows how thoroughly he disregards the Court's multiple orders that he set forth allegations that are "simple, concise, and direct," "presented with such clarity and precision that the defendants will be able to readily discern what he is claiming and frame a responsive pleading." (5th Order at 2 (cleaned up) (citing *Embree v. Wyndham Worldwide Corp.*, 779 F. App'x 658, 663 (11th Cir. 2019).)

Nor do the allegations in any of Polo's other federal claims fare any better. He repeatedly insists, in purely summary fashion, that he was falsely accused of ethical misconduct, that various findings against him (in both state court and St. Thomas's honor council proceedings) were all made in the absence of facts or legal basis, that the Defendants deprived him of various protected interests without due process, that the Defendants all acted under the color of law, that he was retaliated against, and that various of the Defendants conspired together to fabricate a pretext to get Polo expelled from law school. Further, the exceedingly sparse facts that Polo does provide are not logically tethered to any particular claim, rendering it nearly impossible to discern their import or applicability to any one cause of action. In sum, once again, any "defendant who reads the complaint would be hard-pressed to understand the grounds upon which each claim against him rests." *Barmapov v. Amuial*, 986 F.3d 1321, 1326 (11th Cir. 2021) (cleaned up).

Because Polo has repeatedly disregarded the Court's orders and because, after being afforded generous opportunities to amend, his complaint remains a shotgun pleading, his case is dismissed. As to Polo's *federal claims*, this dismissal is *with prejudice*, albeit on non-merits grounds. See *Arrington v. Green*, 757 F. App'x 796, 798 (11th Cir. 2018) (concluding that the district court did not abuse its discretion by dismissing a pro se plaintiff's complaint with prejudice, on shotgun-pleading grounds, where the plaintiff was given "at least one opportunity to re-plead the complaint"). As to Polo's remaining *state-law claims*, the Court exercises its discretion and declines to exercise supplemental jurisdiction over them, thus dismissing them *without prejudice*. See *Raney v. Allstate Ins. Co.*, 370 F.3d 1086, 1089 (11th Cir. 2004) ("We have encouraged district courts to dismiss any remaining state claims when, as here, the federal claims have been dismissed prior to trial."); *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1296 (11th Cir. 2018) (explaining that where a complaint is dismissed as a shotgun pleading, and a further sua sponte amendment is not offered, any remaining state-law claims should be dismissed "without prejudice as to refiling in state court").

The Court directs the Clerk to **close** this case. Any remaining pending motions are **denied as moot**.

Done and ordered, in Miami, Florida, on July 22, 2024



Robert N. Scola, Jr.
United States District Judge

APPENDIX E

Order Denying Rule 59(e) Motion (Dec. 4, 2024)

United States District Court
for the
Southern District of Florida

Frank Polo, Sr., Plaintiff,)
)
v.)
) Civil Action No. 23-21684-Civ-Scola
Scott Marcus Bernstein, in both his)
individual and official capacities,)
and others, Defendants.)

Third Omnibus Order

Previously, the Court dismissed this case based on pro se Plaintiff Frank Polo, Sr.'s repeated failures, through five amended complaints, to comply with the Court's orders to properly plead his case. (2d Omnibus Order, ECF No. 55.) As the Court noted, Polo continually replicated various pleading defects, in each iteration of his complaint, despite the Court's repeated instructions directing him to comply with the Federal Rules of Civil Procedure and the Court's orders. Shortly after issuing that dismissal order, the Court entered a final judgment in favor of the Defendants and against Polo. (Final J., ECF No. 56.) Leading up to the dismissal, the Court also denied Polo's motion for the Court to recuse itself from this case. (Order Denying Mot. for Disqual., ECF No. 54.) Since then, Polo has filed a series of motions: for reconsideration of the order denying disqualification (Pl.'s 1st Mot. for Recon., ECF No. 57); to join parties and amend the complaint (Pl.'s Mot. to Join, ECF No. 58); to reconsider the Court's order of dismissal and final judgment (Pl.'s 2d Mot. for Recon., ECF No. 62); and two motions for this case to be reassigned to another judge (Pl.'s Mots. to Reassign, ECF Nos. 69, 71). Some of the Defendants have responded to Polo's motion for reconsideration of the dismissal of his case (Univ. Defs.' Resp., ECF No. 64; Law Firm Defs.' Resp., ECF No. 65; Judge Defs.' Resp., ECF No. 67), to which Polo has replied (Pl.'s Reply to Univ. & Law Firm Defs., ECF No. 66; Pl.'s Reply to Judge Defs., ECF No. 68). None of the Defendants has responded to any of Polo's other motions. After careful review, the Court **denies** Polo's motions (**ECF Nos. 57, 58, 62, 69, 71**).

1. Legal Standard

"[I]n the interests of finality and conservation of scarce judicial resources, reconsideration of an order is an extraordinary remedy that is employed sparingly." *Gipson v. Mattox*, 511 F. Supp. 2d 1182, 1185 (S.D. Ala. 2007). A motion to reconsider is "appropriate where, for example, the Court has patently

misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension.” *Z.K. Marine Inc. v. M/V Archigetis*, 808 F. Supp. 1561, 1563 (S.D. Fla. 1992) (Hoeveler, J.) (citation omitted). “Simply put, a party may move for reconsideration only when one of the following has occurred: an intervening change in controlling law, the availability of new evidence, or the need to correct clear error or prevent manifest injustice.” *Longcrier v. HL-A Co.*, 595 F. Supp. 2d 1218, 1247 (S.D. Ala. 2008) (quoting *Vidinliev v. Carey Int’l, Inc.*, No. CIV.A. 107CV762-TWT, 2008 WL 5459335, at *1 (N.D. Ga. Dec. 15, 2008)). However, “[s]uch problems rarely arise and the motion to reconsider should be equally rare.” *Z.K. Marine Inc.*, 808 F. Supp. at 1563. Certainly, if any of these situations arise, a court has broad discretion to reconsider a previously issued order. Absent any of these conditions, as here, however, a motion to reconsider is not ordinarily warranted.

2. Reconsideration of the Court’s orders is not warranted.

First, rather than specifying any particular basis that would warrant reconsideration of the Court’s orders, Polo’s motions simply express his disagreement with the Court’s rulings. Indeed, aside from listing the three main grounds justifying reconsideration in one of his replies, Polo does not cite any legal authority, in either motion, that would support reconsideration in this case. Except for disagreeing with the Court’s analyses, in both its order denying recusal and its order dismissing his case, and rehashing arguments he has made previously, Polo fails to set forth any basis that would support the Court’s revisiting its decision. *See Jacobs v. Tempur-Pedic Intern., Inc.*, 626 F.3d 1327, 1344 (11th Cir. 2010) (recognizing 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”) (cleaned up).

Second, Polo continues to demonstrate a misapprehension of the Court’s orders. For example, Polo complains that the Court failed to assess his allegations of bias collectively, and instead improperly evaluated them in isolation only. That is, according to Polo, it is not only the Court’s association with one of the defendant state-court judges in this case, well over a decade ago, but that association in combination with several Court orders with which Polo disagrees. While the Court agrees that, certainly, all circumstances that bear on the issue of disqualification should be considered, that doesn’t mean that a series of circumstances, each insufficient on its own, would result in disqualification when combined. That is, nothing added to nothing, combined with nothing, is still nothing. *See Lindsey v. City of Beaufort*, 911 F. Supp. 962, 974 (D.S.C. 1995) (“[H]olding that these various circumstances in combination

require disqualification would be tantamount to holding that adding several zeroes together would produce something more than zero.”); *see also Postell v. City of Cordele Georgia*, No. 22-13636, 2023 WL 4364503, at *4 (11th Cir. July 6, 2023) (recognizing that mere “disagreements with [a judge’s] docket administration, timeliness, and judicial rulings and are . . . not valid bases for recusal” and that “[c]hallenges to adverse rulings are generally grounds for appeal, not recusal.”). Additionally, Polo repeatedly complains that the Court has failed to disclose any other possible conflicts involving, Polo says, a teaching position at St. Thomas University and relationships with several Florida political figures and judges. (See ECF Nos. 57, 69, 71 (complaining about potential conflicts of interest based on conjectured associations with various entities and people).) The Court has not disclosed any such purported associations or conflicts because there are none.

Polo’s arguments that the dismissal of his case was in error are similarly misplaced. For instance, Polo repeatedly claims that the Court failed to afford him sufficient leeway in light of his pro se status. A review of the record in this case, however, readily reveals the contrary. The Court repeatedly construed Polo’s efforts at repleading generously, affording him all benefit of the doubt that he was at least attempting to comply with the Court’s orders. Indeed, the Court erred well on the side of wasting scarce judicial resources, granting Polo multiple opportunities to present a compliant pleading to the Court. But each time, Polo filed a complaint that would have required the Court to “wade through hundreds of paragraphs of superfluous material in an effort to dig up a viable claim,” which, in turn, would have resulted in the Court’s “impermissibly giv[ing] the appearance of lawyering for [him].” *Barmapov v. Amuial*, 986 F.3d 1321, 1332 (11th Cir. 2021) (cleaned up) (Tjoflat, J., concurring). Polo similarly continues to complain about the Court’s treatment of his request to proceed *in forma pauperis*. At bottom, Polo’s grievance amounts to his seeking to have it both ways: the benefit of service on the Defendants by the United States Marshals but without the burden of mandatory Court screening of his complaint as is required under 28 U.S.C. § 1915. *See Thomas v. Clayton Cnty. Bd. of Commissioners*, No. 22-10762, 2023 WL 1487766, at *4 (11th Cir. Feb. 3, 2023) (noting that “dismissal under section 1915 is now mandatory once [a] district court determines [a] complaint fails to state a claim”). While the Court recognized it would not be fair to dismiss Polo’s complaint (even without prejudice), when he had in fact paid the Court’s initial filing fee; at the same time, Polo failed to convince the Court it should exercise its discretion to burden the Marshals with perfecting service of process of his shotgun complaint on the Defendants in this case.

Likewise, Polo's insistence that his complaint is not a shotgun pleading and that it presents at least one viable claim also misses the mark. While Polo believes he can cherry pick allegations, scattered throughout his complaint, that, to his mind, form at least one cogent claim, that is not enough. First, even the allegations that Polo himself highlights are nothing more than a jumble of conclusory statements, devoid of factual underpinnings. Second, as previously explained, it is improper for the Court to proactively hunt through a complaint on a plaintiff's behalf to see if there may possibly be a viable claim buried within a shotgun pleading. *See Dvoinik v. Rolff*, No. 23-14147, 2024 WL 2974475, at *4 (11th Cir. June 13, 2024) ("It is not the district court's job to parse out incomprehensible allegations from shotgun pleadings.") That was the whole point of allowing Polo so many do overs—to provide him the opportunity to shed the chaff in order to reveal the existence of any possible wheat.

Lastly, dismissal of Polo's case, with prejudice, was warranted for two alternative reasons. First: because after numerous attempts—well beyond the minimum required by Eleventh Circuit authority—Polo's complaint continued to be an impermissible shotgun pleading. *See Abdulla v. S. Bank*, No. 22-12037, 2023 WL 2988135, at *2 n. 2 (11th Cir. Apr. 18, 2023) ("[L]ike other litigants, if a pro se litigant files an amended complaint without substantially fixing the identified deficiencies in the original complaint, dismissal with prejudice may be warranted."). And second, the Court supplied repeated instructions to Polo, directing him with specificity as to how to remedy the deficiencies within his complaint. But, at every turn, whether by design or inadvertence, those orders went unheeded. Accordingly, the Court dismissed Polo's case on the alternative ground that, after consistently failing to comply with the Court's orders, and after being warned each time that his failure to comply could result in dismissal, it became readily apparent that anything less than dismissal would be inadequate to correct the conduct.

3. Conclusion

As set forth above, the Court **denies** Polo's motions for reconsideration (**ECF Nos. 57, 62**). Based on the denial of Polo's motion for reconsideration of the Court's dismissal of his case and the entry of final judgment, in favor of the Defendants, the Court also **denies** Polo's motion to join parties and for leave to file yet another amended complaint (**ECF No. 58**). *See Lee v. Alachua Cnty., FL*, 461 F. App'x 859, 860 (11th Cir. 2012) ("Rule 15 has no application . . . once the district court has dismissed the complaint and entered final judgment for the defendant."). Finally, the Court also **denies** Polo's motions for reassignment of this case to another judge. (**ECF Nos. 69, 71**.) The motions are procedurally improper as well as lacking in merit. Not only did Polo fail to confer with any

other parties before filing those motions, as required by the Court's Local Rules, the motions are meritless and simply rehash the arguments Polo has presented in his motions for reconsideration.

This case is to remain closed and any other pending motions are denied as moot.

Done and ordered, in Miami, Florida, on December 3, 2024.

A handwritten signature in black ink, appearing to read "R. N. Scola, Jr.", written over a horizontal line.

Robert N. Scola, Jr.
United States District Judge

APPENDIX F

**Petitioner's Motion for Judicial Recusal
(filed May 24, 2024)**

**IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH
CIRCUIT**

FRANK E. POLO, SR.

Plaintiff/Appellant,

v.

SCOTT BERNSTEIN, et al.

Defendants/Appellees,

On Appeal from the Southern District of Florida
Case No. 1:23-cv-21684-RNS
Miami-Dade County Division;
The Hon. Robert N. Scola, Jr.

AMENDED APPELLANT'S INITIAL BRIEF

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JURISDICTIONAL STATEMENT

District Court's Subject Matter Jurisdiction: Jurisdiction is proper under 42 U.S.C. §§ 1983, and federal question jurisdiction exists under 28 U.S.C. §§ 1331 and 28 U.S.C. § 1343. The District Court may grant declaratory relief under 28 U.S.C. § 2201, injunctive relief and damages under 28 U.S.C. § 1343(a), and attorneys' fees under 42 U.S.C. § 1988. The Court also has supplemental jurisdiction over all related claims under 28 U.S.C. § 1367.

Appellate Jurisdiction: This Honorable Court has jurisdiction pursuant to 28 U.S.C. § 1291, as this is an appeal from a final decision of the United States district court for the Southern District of Florida, which is within the Eleventh Circuit. Furthermore, on **July 24, 2024**, the United States District Court for the Southern District of Florida entered judgment (**VOL 2- ECF: 56**) in the lower court case. The plaintiff filed a timely Rule 59(e) motion, which the lower court disposed of on **December 4, 2024 (VOL 2- ECF: 72)**. The plaintiff has since filed a timely notice of appeal on **January 3, 2025**, seeking a review of the district court's decision by this Honorable Court, thereby conferring jurisdiction over this appeal.

STATEMENT OF THE ISSUES ON APPEAL

ISSUE No. 1: Whether the district judge's failure to recuse himself—despite his professional and political connections to parties involved—violated the Appellant's constitutional rights to access to the court and to a fair and just

proceeding under the First and Fifth Amendments and constituted an abuse of discretion under 28 U.S.C. § 455, thereby requiring vacatur of the final judgment and reassignment to a different judge.

ISSUE No. 2: Whether the lower court erred in failing to apply the correct legal standard in determining whether the pro se pleading was “informative enough to permit a court to readily determine if it states a claim upon which relief can be granted,” as established in Downing v. MIDLAND FUNDING, LLC, No. 2: 15-cv-00737-RDP (N.D. Ala. Jan. 12, 2016), and derived from Weiland v. Palm Beach Cty. Sheriff's Office, 792 F.3d 1313 (11th Cir. 2015).

ISSUE No. 3: Whether the court failed to apply the correct principle of law by ignoring the long-standing principle in the 11th Circuit that states, "a dismissal with prejudice, whether on motion or sua sponte, is an extreme sanction that may be properly imposed only when: (1) a party engages in a clear pattern of delay or willful contempt (contumacious conduct); and (2) the district court specifically finds that lesser sanctions would not suffice[.]" (Weiland, 792 F. 3d 1313 at 1331. Fn. 10).

STATEMENT OF THE CASE

1. PROCEDURAL HISTORY

1. On **May 4, 2023**, Appellant filed suit in the U.S. District Court for the Southern District of Florida, alleging violations of the First and Fourteenth

assessed the complaint, it would have found plausible claims that warrant further review under § 1983.

36. The dismissal with prejudice was an extreme and improper sanction, as it failed to meet the criteria outlined in Weiland, requiring a pattern of delay or willful contempt. The Appellant had made significant efforts to improve the complaint, reducing it from 140 pages to 40, organizing facts, and removing irrelevant details. The classification of the complaint as a "shotgun pleading" was incorrect, as it was organized and specific. The dismissal with prejudice would unfairly harm the Appellant, forcing him to litigate in a biased state court system. Therefore, the dismissal should be reversed.

ARGUMENT

4. ISSUE No. 1

(A) STANDARD OF REVIEW IS DENOVO AND ABUSE OF DISCRETION

37. This honorable Court reviews "a district court's denial of a motion to recuse or a motion to disqualify for abuse of discretion." Crawford v. MARRIOTT INTERNATIONAL, INC. (11th Cir, 2021) (citing United States v. Bailey, 175 F.3d 966, 968 (11th Cir. 1999); Giles v. Garwood, 853 F.2d 876, 878 (11th Cir. 1988).

38. However, constitutional claims, involving fundamental legal principles, are reviewed de novo. See Ornelas v. United States, 517 U.S. 690 (1996) (de novo

review applied to 4th Amendment reasonable suspicion and probable cause challenges).

(B) The Judge's Failure to Recuse Violated the Fifth Amendment right to Due Process, the First Amendment Access to the Court, and an abuse of Discretion under 28 U.S.C. § 455.

39. The Due Process Clause of the Fifth Amendment guarantees litigants the fundamental right to a fair and impartial tribunal. A judge's failure to recuse when impartiality is in question constitutes a violation of both procedural and substantive due process. As the U.S. Supreme Court has recognized, due process ensures that litigants receive "a reasonably adequate opportunity to raise constitutional claims before impartial judges." **Woodford v. Ngo**, 548 U.S. 81, 91 (2006) (citing **Lewis v. Casey**, 518 U.S. 343, 351 (1996)).

40. The U.S. Supreme Court has repeatedly emphasized that the right to access the courts is a *fundamental* constitutional right protected by the U.S. Const. 1st Amend. As the Court held in **Woodford v. Ngo**, 548 U.S. 81 (2006):

"[T]he right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances." (citing **Bill Johnson's Restaurants, Inc. v. NLRB**, 461 U.S. 731, 741 (1983)).

41. Rights that are "deeply rooted in this Nation's history and tradition" like access to the court, receive Constitutional Protection. See **Washington v. Glucksberg**, 521 U.S. 702, 720-721 (1997).

42. **Bounds v. Smith**, 430 US 817 (1977) the U.S. Sup. Ct. held that access to the court should be “meaningful and effective.”

43. Moreover, as the U.S. Supreme Court recognized in **Bounds**, 430 U.S. 817 “[T]here is a ‘fundamental constitutional right to access the courts’...”

44. Fed. R. Civ. P. 4(c)(3) creates a mandatory duty upon the court by stating that “[a]t the plaintiff’s request, the court ... must so order [that service be made by a United States marshal or deputy marshal] if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. §1915.”

45. In **Liljeberg v. Health Services Acquisition Corp.**, 486 U.S. 847 (1988) The Supreme Court emphasized that even the appearance of partiality can undermine public confidence in the judiciary and warrants vacatur. Moreover, the U.S. Sup. Ct. Stated:

[P]roviding relief in cases such as this will not produce injustice in other cases; to the contrary, the Court of Appeals’ willingness to enforce § 455 may prevent a substantive injustice in some future case by encouraging a judge or litigant to more carefully examine possible grounds for disqualification and to *promptly disclose* them when discovered.

Id., at 868.

46. Under 28 U.S.C. § 455(a), a judge “shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” The statute mandates recusal when a judge has personal bias or prejudice concerning a party or has a close connection to a party involved in the litigation.

47. The district judge's actions demonstrate a lack of impartiality, violating the Appellant's right of court access. This includes: (1) inconsistently applying procedural rules, dismissing the case as a "shotgun pleading" without merit screening; (2) obstructing service by closing the case for a "non-viable complaint," then reopening it eight months later and ordering service of a similar defective complaint; (3) failing to disclose relationships with a party and Appellant's political rival; (4) closing the case and dismissing related motions; (5) later approving the renewed motion to proceed in forma pauperis but not ruling on service; (6) misleading Appellant about Judge Bernstein's immunity despite acknowledging his lack of subject matter jurisdiction when interfering with Appellant's property rights; (7) misleading Appellant about the sufficiency of facts establishing Judge Bernstein's deprivation of federal rights; (8) ignoring Appellant's legal brief supporting Fed. R. Civ. P. 59(e) motion; (9) knowing all along that the Appellant was suing on behalf of his children, which is prohibited in the 11th Circuit, but remaining silent about it; and (10) using 28 U.S.C. § 1915(e)(2)(B) as a pretext for dismissal, evidenced by denying Appellant's mandatory requested relief.

48. Arbitrary application of rules, preventing service, and misleading statements suggest bias, denying the Appellant a fair hearing and court access. Judge Scola's undisclosed 16-year work relationship with Defendant Judge Bernstein, and ties to Appellant's political rival, raise conflict of interest concerns and undermine

supporting details. Classifying it as a "shotgun pleading" was an error, as the complaint was focused and organized, contrary to typical shotgun complaints. I cannot be said that the Complaint fails to state a cause of action.

111. There was no claim of confusion from the Appellees, nor did they request a more definite statement, indicating the complaint was sufficiently clear. Dismissing with prejudice was an extreme sanction, as there was no evidence of willful contempt or bad faith. The Appellant's efforts to comply with court instructions should not have been disregarded. The dismissal with prejudice unjustly harms the Appellant, forcing litigation in a biased state court system that has infringed on his rights, and should be reversed.

CONCLUSION

112. The judge's failure to recuse himself violated the Appellant's due process rights under the Fifth Amendment, as well as his First Amendment right to access the courts, constituting an abuse of discretion under 28 U.S.C. § 455. His failure to disclose a relationship with a political rival and his inconsistent rulings necessitate vacating the lower court's judgment and reassignment to preserve judicial integrity.

113. The lower court improperly dismissed the complaint without applying the correct legal standard for shotgun pleadings and without addressing the pending motion to dismiss. The Appellant's complaint clearly stated a cause of action and

put the defendants on notice. The dismissal with prejudice is unjust, as the Appellant made significant efforts to comply with court directives, and no evidence of willful misconduct exists to justify such a severe sanction. The case involves political retaliation, and the Appellant cannot expect a fair trial in the biased state court system.

WHEREFORE: Appellant respectfully asks this court to:

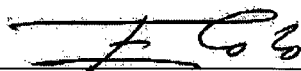
114. Remand this case to the District Court with instruction to assign a new judge to this case,

115. Vacate the final judgment with instruction to allow this case to continue into the discovery stage without any further delay, or/and

116. other and further relief as the court may deem to be just and proper.

Respectfully submitted,

By: /s/



Frank Polo Sr.

United States District Court
for the
Southern District of Florida

Frank Polo, Sr., Plaintiff,)
)
v.)
) Civil Action No. 23-21684-Civ-Scola
Scott Marcus Bernstein, in both his)
individual and official capacities,)
and others, Defendants.)

Judgment in a Civil Action

The Court has dismissed this case. (Order, ECF No. 55.) The Court now enters judgment in favor of the Defendants, and against the Plaintiff, as required by Federal Rule of Civil Procedure 58. The Court directs the Clerk to **close** this case.

Done and ordered at Miami, Florida on July 23, 2024.



Robert N. Scola, Jr.
United States District Judge

