

**IN THE UNITED STATES DISTRICT  
COURT FOR THE WESTERN DISTRICT  
OF TENNESSEE WESTERN DIVISION**

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Dennis Michael Philipson	)	
	)	
Plaintiff	)	
	)	No. 2:26-cv-02123-TLP-atc
v. Mid-America Apartment	)	Judge Thomas L. Parker
Communities, Bass, Berry &	)	Magistrate Judge Annie T.
Sims PLC, et al.	)	Christoff
	)	
Defendant	)	

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**PLAINTIFF’S OBJECTIONS UNDER FED. R. CIV. P. 72(a) AND 28 U.S.C. § 636(b)(1)(A) TO ORDER DENYING MOTION FOR JUDICIAL DISQUALIFICATION / RECUSAL (DKT 14) AND MEMORANDUM OF FACTS AND LAW IN SUPPORT**

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Plaintiff Dennis Michael Philipson (“Plaintiff”), proceeding pro se, submits timely objections under Fed. R. Civ. P. 72(a) and 28 U.S.C. § 636(b)(1)(A) to the Order entered February 11, 2026 denying Plaintiff’s motion to disqualify/recuse Magistrate Judge Charmiane G. Claxton (the “Order,” Dkt 14). Plaintiff respectfully requests that the assigned District Judge modify or set aside Dkt 14 as **contrary to law** and/or **clearly erroneous**, grant disqualification/recusal under 28 U.S.C. § 455(a), and, as applicable, § 455(b)(1), and direct reassignment of all magistrate-referral duties to a different magistrate judge.

## **I. RELEVANT PROCEDURAL POSTURE (RECORD FACTS)**

1. The Clerk's assignment reflects that Magistrate Judge Claxton is the referral magistrate judge in this action. (See Doc. 10.)
2. The originally assigned district judge entered an Order of Recusal directing reassignment to a different United States District Judge. (See Doc. 11.)
3. Plaintiff moved for disqualification/recusal of Magistrate Judge Claxton under 28 U.S.C. § 455(a) and § 455(b)(1). (See Doc. 13.)
4. On February 11, 2026, Magistrate Judge Claxton denied that motion by Order (Dkt 14). Plaintiff now objects under Rule 72(a) and 28 U.S.C. § 636(b)(1)(A).
5. The related TNWD action giving rise to the recusal concern is Case No. 2:23-cv-02186-SHL-cgc (W.D. Tenn.) (the "Underlying Action"). The TNWD docket report for the Underlying Action identifies it as "Referred to: Magistrate Judge Charmiane G. Claxton," and the docket reflects filings directed to Magistrate Judge Claxton (including a notice of submission of

correspondence to Judge Claxton). Plaintiff's recusal request is grounded on these record facts, not on mediation proceedings before any other judicial officer.

## **II. STANDARD OF REVIEW (RULE 72(a); § 636(b)(1)(A))**

Under Fed. R. Civ. P. 72(a), upon timely objection to a magistrate judge's nondispositive order, the district judge must consider timely objections and must modify or set aside any part of the order that is clearly erroneous or is contrary to law. See Fed. R. Civ. P. 72(a). Section 636(b)(1)(A) provides the same "clearly erroneous or contrary to law" standard for reconsideration by the district judge. See 28 U.S.C. § 636(b)(1)(A).

## **III. OBJECTIONS**

**Objection 1: Dkt 14 is contrary to law to the extent it treats § 455 disqualification as categorically requiring an "extrajudicial source," thereby collapsing § 455(a)'s appearance inquiry into an extrajudicial-only rule.**

Section 455(a) requires disqualification in any proceeding in which a judge's impartiality might reasonably be questioned. The statute is concerned with public confidence and the appearance of impartiality as viewed by an objective observer.

Dkt 14 denies recusal largely because Plaintiff did not identify "bias stemming from an extrajudicial source," and because the Order states (in substance) that § 455 disqualification "must be predicated upon extrajudicial conduct rather than judicial conduct."

That framing is legally incomplete for § 455(a). The Supreme Court in *Liteky* explained that the "extrajudicial source" concept is better understood as a factor, not a universal gatekeeper: the presence of an extrajudicial source does not necessarily establish disqualifying bias, and the absence of an extrajudicial source does not necessarily preclude disqualification. *Liteky v. United States*, 510 U.S. 540, 554–56 (1994). The controlling inquiry under § 455(a) remains whether impartiality might reasonably be questioned (i.e., whether there is an appearance of partiality).

Accordingly, Dkt 14 should be set aside or modified to the extent it treats the absence of an "extrajudicial source" as dispositive of § 455(a), without applying

the required objective appearance analysis.

**Objection 2: Dkt 14 does not apply the § 455(a) objective “appearance” test to the actual record posture presented—i.e., the Underlying Action’s referral relationship to Judge Claxton and the docketed submissions directed to Judge Claxton.**

Plaintiff’s motion did not rely on mediation proceedings before any other judicial officer. Instead, Plaintiff identified the Underlying Action as a factual predicate for this case and pointed to Judge Claxton’s referral relationship to that action, together with docketed submissions directed to Judge Claxton, as the source of an objective appearance concern.

Dkt 14 resolves the motion primarily by labeling Plaintiff’s showing “speculation,” stating that the Underlying Action docket indicates the undersigned did not preside over hearings or enter orders deciding disputes, and then returning to the extrajudicial-source concept. Even if the Court accepts for purposes of review that the Underlying Action docket reflects no hearings or dispute-deciding orders by Judge Claxton, § 455(a) still requires an objective appearance-of-impartiality

analysis anchored in the circumstances presented. A record-based referral relationship and docketed submissions directed to the assigned magistrate judge are relevant to the objective “might reasonably be questioned” inquiry and cannot be dismissed as speculation solely because they are not “extrajudicial.”

Dkt 14 should therefore be modified or set aside and the § 455(a) issue decided under the correct objective appearance framework.

**Objection 3: Dkt 14 does not squarely analyze § 455(b)(1)’s “personal knowledge of disputed evidentiary facts” prong raised in Plaintiff’s motion.**

Plaintiff invoked both § 455(a) and § 455(b)(1). Section 455(b)(1) separately requires disqualification where a judge has “personal knowledge of disputed evidentiary facts concerning the proceeding.” 28 U.S.C. § 455(b)(1).

Dkt 14 does not provide a focused analysis of § 455(b)(1) as raised, and instead denies recusal by returning to “extrajudicial source” case law addressing bias. At minimum, the Order should be modified or set aside to apply § 455(b)(1) as written and to address whether the docketed submissions directed to Judge Claxton in the

Underlying Action—and the centrality of Underlying Action events to this case—create a disqualifying risk under § 455(b)(1) and/or an objective appearance problem under § 455(a).

#### **IV. RELIEF REQUESTED**

**For the foregoing reasons, Plaintiff respectfully requests that the District Judge:**

A. SUSTAIN these objections under Fed. R. Civ. P. 72(a) and 28 U.S.C. § 636(b)(1)(A);

B. MODIFY OR SET ASIDE the February 11, 2026 Order (Dkt 14) as contrary to law and/or clearly erroneous;

C. GRANT disqualification/recusal under 28 U.S.C. § 455(a), and, as applicable, § 455(b)(1);

D. DIRECT the Clerk to reassign the magistrate referral in this action to a different United States Magistrate Judge; and

E. HOLD IN ABEYANCE magistrate-managed deadlines and proceedings pending reassignment and resolution of these objections.

Respectfully submitted this 11th day of February, 2026.

Respectfully submitted,  
/s/ Dennis Michael Philipson



Dennis Michael Philipson  
Defendant - Appellant, Pro Se  
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**CERTIFICATE OF CONSULTATION (L.R. 7.2)**

Pursuant to Local Rule 7.2(a)(1)(B), Plaintiff certifies that consultation is not feasible because no defendant has entered an appearance in this matter and the relief requested concerns docket administration and the Clerk's ability to accept non-PDF exhibits absent a Court order.

Executed on February 11, 2026.

Respectfully submitted,

/s/ Dennis Michael Philipson

A handwritten signature in blue ink, appearing to read 'Dennis Michael Philipson', with a long, sweeping horizontal stroke extending to the right.

Dennis Michael Philipson

Defendant - Appellant, Pro Se

## **NOTICE REGARDING SERVICE**

As of February 11, 2026, Defendants have not yet been formally served with process in this newly filed action and no counsel has appeared. Plaintiff files this Motion to preserve the issue and requests early administrative relief. Plaintiff will serve this Motion and any Order entered promptly upon completion of service of process and will file proof of such service.

Courtesy Notice (Not Service): Separately and solely as a courtesy notice, Plaintiff transmitted a copy of this Motion and supporting materials to Mid-America Apartment Communities, Inc.'s Board of Directors and senior executives, including the following executives: Robert J. Delpriore; Leslie Wolfgang; A. Bradley Hill; Melanie Carpenter; Amber Fairbanks; A. Clay Holder; Timothy Argo; Joseph Fracchia; and the following directors: Deborah H. Caplan; Tamara D. Fischer; Claude B. Nielsen; David P. Stockert; Alan B. Graf Jr.; John P. Case; Edith Kelly-Green; Sheila K. McGrath; Gary S. Shorb.

Plaintiff further states that, after multiple direct communications and three separate preservation notices sent to the parties named above, which were not substantively acknowledged, Plaintiff is also submitting the same materials and allegations through MAA's internal whistleblower/ethics hotline portal

(<https://www.whistleblowerservices.com/maa/>) as an open whistleblower complaint for intake, preservation, and independent routing.

These courtesy transmissions are not intended to constitute service of process and are in addition to formal service that will be completed and proven on the docket.

Executed on February 11, 2026.

Respectfully submitted,

/s/ Dennis Michael Philipson

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Dennis Michael Philipson  
Defendant - Appellant, Pro Se