

CAUSE NO. 2017-39002

WADE, ALEX MELVIN (JR),	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff(s),</i>	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
BANK OF AMERICA N A,	§	151st JUDICIAL DISTRICT
<i>Defendant(s).</i>	§	

**ORDER ADJUDICATING ALEX MELVIN WADE, JR. A VEXATIOUS LITIGANT**

On June 12, 2017, Plaintiff, Alex Melvin Wade, Jr. (Wade), filed a pro se Complaint and Injunction against Bank of America, N.A. (Bank of America) in the above numbered case. On June 14, 2017, he filed a motion to proceed in forma pauperis because he “has been imprisoned for ten (10) years continuously since 07/27/07 thru (sic) 03/03/2017,” been unemployed, and “has not assets with which to pay attorney’s fees or the costs of this litigation.”

As the basis of his claims against Bank of America, Mr. Wade alleges that he deposited two “drafts” “into the Company Account held with BANK OF AMERICA, N.A. drawn upon a claim against Tudor Insurance Company, claim number 32688T, filed on Policy issued in number GLO-000-4688.” He claims the first draft was for \$150,000.00 and the second draft was for \$51,485.10. Mr. Wade further argues that he had provided Bank of America with instructions “as to what method was to be executed to send the draft for collection and how the proceeds were to be handled upon collecting the item.”

Mr. Wade claimed Bank of America’s action in failing “to handle the instrument[s] (the drafts) in accordance with banking laws”: (1) deprived him of income; (2) caused him to be “confined for over a period of 18 months, with the use of the drafts to cause a criminal conviction[] in indictments 1116861 and 11116862; (3) violated Uniform Commercial Code Section 4.402(a)”; (4) deprived him “of the right to engage in the business of commercial collection agency”; (5) denied him “of his due process of law and discrimination”; (6) deprived him “of ordinary care in the collection process in handling of the item. UCC Section 4.103”(sic); (7) caused him to be illegally confined in the Harris County Jail from 07/27/07 thru (sic)

03/05/09 on criminal offense that was without merit”; and (8) “falsely imprisoned based on the wrongful dishonor of” Bank of America.

As damages, Mr. Wade asks the Court to Order bank of America to issue a cashier’s check to him in the amount of \$256,122.50 “plus interest for ten years at 19% Apr. (sic), forthwith and further ado.”

In support of his claims, Mr. Wade filed a copy of an “Insurance Draft” made out to AMERICAN CONSULTANT drawn on “Western World Insurance Group” and dated 03/05/2007 as proof of payment. This exhibit indicates that this “Insurance Draft” was also an exhibit *Wade v. Thaler*, a case in the United States District Court for the Southern District of Texas filed on August 29, 2012 in case number 4:11-cv-03514<sup>1</sup>. The copy of the draft also indicates that it was an exhibit in the 284<sup>th</sup> District Court, Montgomery County, Texas in cause No. 07-01-00312-CV.

#### *Show Cause Order*

On March 20, 2018, this Court issued a show cause order directing Mr. Wade to appear before the Court to show cause why he should not be adjudicated as a vexatious litigant. In that Order, the Court gave him notice of what criteria a tribunal would use in determining whether a litigant was vexatious. The Order also advised him of the implications of such a finding by the Court.

#### *The Vexatious Litigant Statute*

The Court’s Order also informed Mr. Wade that Chapter 11 of the Texas Civil Practice and Remedies Code governs suits brought by vexatious litigants and specifies that a Court, on defendant’s motion or sua sponte, may designate a party as a vexatious litigant. *See* TEX. CIV. PRAC. & REM. CODE § 11.101.

A Court may declare a party to be a vexatious litigant if there is not a reasonable probability that he will prevail in litigation and the party has a history of filing or repeatedly re-litigating unsuccessful or frivolous suits. TEX. CIV. PRAC. & REM. CODE § 11.054. In making its determination, the Court will look at the seven-year period preceding the filing of the litigation, to determine whether the plaintiff has “commenced, prosecuted, or maintained at least five litigations as a pro se litigant” that have been “finally determined adversely to the plaintiff,” or

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<sup>1</sup> This was a petition for habeas corpus arising from Mr. Wade’s conviction in *State v. Wade*, (tc# 1222385, 185<sup>th</sup> District Court, Harris County), see also *Wade v. State*, 01-10-0463-CR (Tex. App. – Houston [1<sup>st</sup> Dist.] 2010, dismissed).

have been determined “by a trial or appellate court to be frivolous or groundless under state or federal law or rules of procedure.” *See Id.* A Court may also find a plaintiff to be a vexatious litigant if state or federal court has previously declared the plaintiff a vexatious litigant in an action or proceeding based on the same or substantially similar facts, transaction, or occurrence. *See Id.*

#### ***No Reasonable Probability of Prevailing in the Cause of Action***

On January 29, 2018, this Court, after reviewing the record, the pleadings, and the arguments of counsel granted an interlocutory motion to dismiss. *See* TEX. R. CIV. P. 19a (7). Bank of America’s motion for attorney’s fees remains pending before the Court.

On February 20, 2018, the Acting Presiding Judge of the Eleventh Administrative Judicial Region denied Mr. Wade’s February 7, 2018 motion to recuse filed in this matter without a hearing. On March 8, 2018, the 14<sup>th</sup> Court of Appeals issued its memorandum opinion denying Mr. Wade’s petition for writ of mandamus in this case.

After reviewing the record, the pleadings and the evidence in the case, the Court has determined that there is no reasonable probability that Mr. Wade will prevail in this cause.

#### ***Previous Litigation History against Bank of America***

In 2005, Mr. Wade purchased a new motor vehicle and financed the transaction with Bank of America. After Mr. Wade defaulted on the loan and refused to surrender possession of the vehicle, Bank of America filed suit against him in the 23<sup>rd</sup> District Court sitting in Brazoria County, Texas. That court granted Bank of America’s motion for summary judgment, entered a final judgment against Mr. Wade, and issued a turnover order for return of the vehicle.

In response, Mr. Wade filed suit against Bank of America on October 2, 2009, in the U.S. District Court for the Southern District of Texas – Houston Division, trial court cause number H-09-3198. On December 19, 2010, Judge David Hittner signed an order granting Bank of America’s motions for summary judgment and dismissed Mr. Wade’s action against Bank of America with prejudice.

Mr. Wade appealed, and on June 1, 2012, the United States Fifth Circuit Court of Appeals issued an unpublished opinion in *Wade v. Bank of America, N.A.*, affirming the trial court’s dismissal. The United States Supreme Court denied his petition for certiorari on February 19, 2013. *See Wade v. Bank of America, N.A.* 568 U.S. 1172 (2013).

The current case arises from same transaction previously litigated in or addressed by the 23<sup>rd</sup> District Court, the U.S. District Court for the Southern District of Texas-Houston Division, the United States Fifth Circuit Court of Appeals, and the United States Supreme Court.

Mr. Wade clearly has a long, well-documented history of filing or repeatedly re-litigating unsuccessful or frivolous suits against Bank of America and other parties. TEX. CIV. PRAC. & REM. CODE § 11.054.

### ***Mr. Wade's Litigation History Against Other Defendants***

During the seven-year period immediately preceding the filing of this suit, Mr. Wade has “commenced, prosecuted, or maintained at least five litigations as a pro se litigant.” *Id.* These cases have been “finally determined adversely” to him or have been determined “by a trial or appellate court to be frivolous or groundless under state or federal law or rules of procedure.” *Id.*

A review of public records reveals that on January 29, 2014, in *Wade v. Bradley*, H-3-0765, United States District Judge, Sim Lake issued an order discussing Alex Melvin Wade, Jr.’s extensive criminal and civil litigation history. This recitation of the facts bears repeating:

[Mr.] Wade has a long history of convictions for forgery and theft with nearly two dozen judgments against him in Harris County. []

Wade's most recent conviction for attempted theft involved a scheme to obtain goods from the Best Buy appliance store using a payment instrument drawn on Western World Insurance Group. *See* Indictment (Docket Entry No. 5-3). The payment instrument allegedly submitted to the District Court for the payment of the filing fees in H-II-4131 is also drawn on Western World Insurance Group (Docket Entry No. I, p. 2, and Exhibit A).

Wade has previously filed eighteen complaints and petitions in the Southern District of Texas.<sup>2</sup> Some of these suits involved the use of drafts or checks generated by Wade that were rejected by businesses or financial institutions. *See, e. g., Wade d/b/a American Consultant v. Bank of America*, H-09-3198. All of Wade's suits were

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<sup>2</sup> *Wade v. Harris County District Attorney's Office*, H-11-4132 (dismissed for failure to comply); *Wade v. Best Buy*, H-11-4131 (dismissed as meritless); *Wade v. Thaler*, H-11-3S14 (habeas petition dismissed as procedurally and time-barred); *Wade v. Dominion at Woodland*, H-11-3243 (dismissed denying motion to proceed); *Wade v. Thaler*, H-10-S100 (habeas petition dismissed for failure to exhaust remedies); *American Consultants v. Capital One*, H-10-24S4 (dismissed on summary judgment, claims found to be frivolous); *Wade d/b/a American Consultant v. Bank of America*, H-09-3198 (dismissed on summary judgment); *Wade v. Thaler*, H-09-1900 (habeas petition dismissed on summary judgment); *Wade v. Quarterman*, H-06-4030 (habeas petition dismissed as successive and time-barred); *Wade v. Cockrell*, H-02-2828 (habeas petition dismissed as time barred); *Wade v. Thomas*, H-01-2087 (dismissed as frivolous); *Wade v. Johnson*, H-OO-2S01 (habeas petition denied for failure to exhaust); *Wade v. Texas Department of Criminal Justice*, M-OO-0023 (dismissed voluntarily); *Wade v. Texas Department of Criminal Justice*, C-OO-0014; *Wade v. Rowe*, H-99-1860 (dismissed as frivolous); *Wade v. Johnson*, H-97-3733 (habeas dismissed for failure to exhaust remedies); *Wade v. Farmer's Insurance*, H-96-3409 (diversity insurance contract dismissed for want of prosecution); *Wade v. Medical Care System*, H-92-02107 (civil rights claim dismissed for lack of jurisdiction)

unsuccessful, although extensive resources were expended by the defendants and the courts to resolve the actions. Other actions were more quickly dismissed because the pleadings were clearly groundless or time-barred.

While he was incarcerated Wade filed his complaint against Best Buy, and the suit was dismissed as time-barred. *Wade v. Best Buy*, H-11-4131. While the court in Best Buy dismissed the suit as untimely, the court also denied Wade's motion for leave to amend his pleadings because the proposed amendment would be futile since counsel for Western World Insurance Group stated under oath that the "Insurance Draft" Wade had submitted to Best Buy was not authorized []. Wade also filed a suit against Capital One that the court dismissed as frivolous. *Wade v. Capital One, N.A.*, H-IO-2454. In both cases the courts found that the payment instruments presented by Wade to the defendants were "counterfeit" and "fraudulent." *Id.*; Docket Entry No. 5-4, p. 3.

Wade also filed suit against TDCJ officials alleging that he had been denied due process and access to the courts. *Wade v. Thomas*, Civil Action No. H-01-2087 (S.D. Tex. 2002) []. He also alleged deliberate indifference, retaliation, and violations of the Americans with Disabilities Act. *Id.* In dismissing the complaint as frivolous, the court observed that Wade untruthfully asserted that in *Bounds v. Smith* the Supreme Court "specifically ordered that every prison have typewriters and copy machines for [the] use of offenders." *Id.* at 13. The district court held that such a statement "requires no discussion." *Id.* It is beyond dispute that prison inmates do not have a free-standing, federally protected right to use office equipment to carry out their litigation. *See Beck v. Lynaugh*, 842 F.2d 759, 762 (5th Cir. 1988) *see also In re Maxy*, 674 F.3d 658, 661 (7th Cir. 2012); *Taylor v. Coughlin*, 29 F.3d 39, 40 (2d Cir. 1994) (acknowledging that there is "no constitutional right to a typewriter as an incident to the right of access to the courts"); *Stubblefield v. Henderson*, 475 F.2d 26, 26-27 (5th Cir. 1973) ("no federally protected right to the use of typewriters")<sup>3</sup>

In *Wade v. Bradley*, Judge Lake granted the Defendants' motion to dismiss Mr. Wade's cause of action because it was frivolous. In part, the Order also (1) denied Mr. Wade's motions; (2) ordered Mr. Wade to pay a \$300.00 sanction for his continuing practice of filing frivolous and vexatious suits; (3) ordered Mr. Wade barred from filing any civil actions in the Southern District until he paid the sanction in full; and (4) instructed the Clerk to not docket and return all further actions filed by Wade unless his petitions were accompanied by proof that he had paid the sanction in full or by a notarized statement from a physician that Wade was in imminent physical danger because of the matters alleged in the proposed action.

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<sup>3</sup> Wade filed another access to courts claim that was dismissed as frivolous. *Wade v. Rowe*, Civil Action No. H-99-1860 (S.D. Tex. 2000). He also filed a prisoner civil rights action in the Eastern District of Texas that was dismissed as frivolous. *Wade v. Director, TDCJ-CID*, Civil Action No. 1:11ev00608 (E.D. Tex. 2012)

## THE MAY 14, 2018 HEARING

### *Motion for Extension*

After issuance of the Court's March 20, 2018, show cause order, Mr. Wade filed several pleadings and documents regarding the scheduled May 14, 2018, hearing. These pleadings included a May 4, 2018, "Motion Requesting Appointment of Counsel and an Extension of Time" and a May 11, 2018, "Motion for Extension of Time." Mr. Wade's pleadings do not demonstrate that it would be impossible to attend the scheduled hearing. Finding Mr. Wade had actual notice of the May 14, 2018, show cause hearing and did not provide the Court with evidence that it would be impossible for him to attend the hearing, the Court DENIES Mr. Wade's Motion to reset the hearing.

### *Appointment of Counsel*

Mr. Wade's pleadings provided the Court with no authority that would require it to appoint counsel to represent him in this proceeding. The Court DENIES Mr. Wade's Motion for Appointment of Counsel.

After reviewing the record, Mr. Wade's pleadings, and the applicable authorities, the Court FINDS that Alex Melvin Wade, Jr. meets the requirements of a vexatious litigant as detailed in Chapter 11 of the Civil Practice and Remedies Code.

## FINDINGS

### The Court FINDS:

- (1) Alex Melvin Wade Junior had actual notice of the Court's order directing him to appear before it on May 14, 2018, to show cause why he should not be adjudicated to be a vexatious litigant.
- (2) There **is not** a reasonable probability that Mr. Wade will prevail in the current litigation.
- (3) Mr. Wade has a history of filing or repeatedly re-litigating unsuccessful or frivolous suits.
- (4) During the past seven year period Mr. Wade has "commenced, prosecuted, or maintained at least five litigations as a pro se litigant" that have been "finally determined adversely to him."
- (5) In an Order issued January 29, 2014, in *Wade v. Bradley*, H-3-0765, United States District Judge, Sim Lake issued a preclusion order against Mr. Wade;<sup>4</sup> and

(6) Alex Melvin Wade, Jr. meets the criteria of a vexatious litigant.

**ORDER**

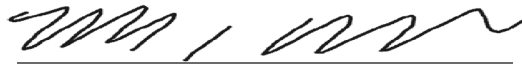
Accordingly, the Court **ORDERS** Alex Melvin Wade, Jr. adjudicated to be a vexatious litigant.

The Court **ORDERS** Alex Melvin Wade, Jr. prohibited from filing new litigation in a state court without first obtaining permission from the appropriate local administrative judge. *See* TEX. CIV. PRAC. & REM. CODE §11.101. The administrative judge will grant permission to file only if the litigation appears to have merit and is not filed for purposes of harassment or delay. The administrative judge may condition such permission on the furnishing of a security.

The Court also admonishes Alex Melvin Wade, Jr. that if he fails to obey this order, he may be sanctioned or found in contempt and subject to punishment.

The Court **ORDERS** the Harris County District Clerk to refuse the filing of any new litigation by Alex Melvin Wade, Jr. unless he first obtains written permission from the appropriate local administrative judge.

Signed May 15, 2018



Hon. MIKE ENGELHART  
Judge, 151st District Court

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<sup>4</sup> Federal preclusion orders are the functional equivalent of a state order declaring an individual to be a vexatious litigant.



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this May 16, 2018

Certified Document Number: 79950269 Total Pages: 7

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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