

June 24, 2009

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

MONTGOMERY CARL AKERS,

Plaintiff–Appellant,

v.

ZITA L. WEINSHIENK; BOYD N.
BOLAND; ROBERT M.
BLACKBURN; RON WILEY; JACK
FOX; CHRISTOPHER SYNSVOLL;
DIANA J. CRIST; MICHELLE
BOND; WENDY HEIM; RICK
MARTINEZ; C/O ROY; C/O
HERMAN; MARK COLLINS; TENA
SUDLOW; GEORGE KNOX,

Defendants–Appellees.

No. 08–1471

(D.C. No. 08–CV–02572–ZLW)

(D. Colo.)

ORDER AND JUDGMENT*

Before **HARTZ, McKAY, and O’BRIEN**, Circuit Judges.

This *Bivens* action was dismissed *sua sponte* by a district court judge named as a defendant. Under 28 U.S.C. § 455(b)(5), a judge must recuse when

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

After examining the briefs and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2). Therefore, this case is ordered submitted without oral argument.

named as a party to a proceeding. Accordingly, we **REVERSE** and **REMAND** this case for reassignment to a judge not named as a party in the complaint. This order neither makes nor implies any view about the appropriate disposition after reassignment.

We **GRANT** Plaintiff's motion to proceed without prepayment of fees and remind him of his continuing obligation to make partial payments until the filing fee has been paid in full. We **DENY** all other pending motions.

Entered for the Court

Monroe G. McKay
Circuit Judge