IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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EUGENE CHERRY,

Plaintiff,

v.

MATTHEW FRANK, GERALD BERGE,
PETER HUIBREGTSE, GARY BOUGTON,
BRAD HOMPE, JOAN GERL,
SGT. C. HANEY, THOMAS BELZ and
HENRY BRAY,

Defendants.

ORDER

03-C-129-C

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Plaintiff Eugene Cherry has filed a motion for my recusal or disqualification in this case. The motion will be denied.

28 U.S.C. §144 and §455 apply to motions for recusal and for disqualification of judges. Section 144 requires a federal judge to recuse herself for "personal bias or prejudice." Section 455(a) requires a federal judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned," and section 455(b)(1) provides that a judge shall disqualify himself if he "has a personal bias or prejudice concerning a party." Because the phrase "personal bias or prejudice" found in § 144 mirrors the language of § 455(b), they

may be considered together. Brokaw v. Mercer County, 235 F.3d 1000, 1025 (7th Cir. 2000).

In deciding whether a judge must disqualify herself under 28 U.S.C. § 455(b)(1), the question is whether a reasonable person would be convinced the judge was biased. Hook v. McDade, 89 F.3d 350, 355 (7th Cir. 1996) (internal quotation omitted). Recusal under § 455(b)(1) "is required only if actual bias or prejudice is proved by compelling evidence." Id. 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).

Section §144 provides that when a party makes and files a timely and sufficient affidavit alleging that the judge has a personal bias or prejudice either against him or in favor of the adverse party, the judge should proceed no further and another judge should be assigned to the proceeding. The affidavit is to "state the facts and the reasons for the belief that bias or prejudice exists." The factual statements of the affidavit must support an assertion of actual bias. United States v. Balistrieri, 779 F.2d 1191, 1199 (7th Cir. 1985). They must be definite as to times, places, persons and circumstances. Id. Only those facts which are "sufficiently definite and particular to convince a reasonable person that bias exists" need be credited. United States v. Boyd, 208 F.3d 638, 647 (7th Cir. 2000). "Simple conclusions, opinion or rumors are insufficient." Id. The court must assume the truth of the factual assertions even if it "knows them to be false." United States v.

Balistrieri, 779 F.2d at 1199.

In his affidavit, plaintiff avers that "from the moment" he filed his complaint, "this case has been subjected to rather suspect and bias rulings. . . ." He avers that I denied his motion for preliminary injunction on July 17, 2003, on the basis of my "personal beliefs," but he does not suggest what personal beliefs those might be. He states that I denied his motions for appointment of counsel and granted defendants' motion for in camera inspection. In addition, plaintiff contends that the magistrate judge ruled against him on various motions and in defendants' favor on other motions. In plaintiff's view, denial of his motions "no matter what they are" is "suspect, void of basis within law and condescending."

Plaintiff's bald assertions of bias and prejudice relate entirely to rulings that were adverse to him. These assertions are based on nothing more than his opinion that I disfavor him and favor the defendants and are devoid of compelling evidence of bias or prejudice. They are insufficient to convince a reasonable person that I am biased in this case. Because plaintiff's averments do not raise a reasonable question of my impartiality, his motion for disqualification or for recusal will be denied.

ORDER

IT IS ORDERED that plaintiff's motion for my recusal or disqualification is DENIED.

Entered this 2nd day of September, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge