

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

EARL D. PHIFFER,

ORDER

Petitioner,

10-cv-400-slc¹

v.

GREGORY GRAMS, Warden,
Columbia Correctional Institution,

Respondent.

Petitioner Earl D. Phiffer has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 that is being briefed by the parties. Now before the court is petitioner's motion for recusal or disqualification. I will deny the motion.

28 U.S.C. §§ 144 and 455 apply to motions for recusal and 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 herself if she "has a personal bias or prejudice concerning a party." Because

¹ For the purpose of issuing this order, I am assuming jurisdiction over this case.

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. (citation and quotation omitted).

Petitioner contends that recusal is warranted because I denied his motion requesting a ruling on the merits of his petition for a writ of habeas corpus, even though respondent Gregory Grams failed to file a reply within the deadline set by the court’s September 13, 2010 show cause order. Petitioner contends that denial of his motion shows that I am partial to respondent and biased against petitioner. However, as I explained in the order denying petitioner’s motion, the court’s most recent briefing schedule, set on October 28, 2010, gave respondent until December 29, 2010 to file a brief in opposition to the petition. My decision to adhere to the schedule did not show impartiality, bias or prejudice.

ORDER

IT IS ORDERED that petitioner Earl Phiffer’s motion for disqualification, dkt. #24,

is DENIED.

Entered this 30th day of December, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge