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

DAMIEN GREEN,

Plaintiff,

v.

DARCI BURRESON, *et al.*

Defendants.

ORDER

10-cv-485-slc

DAMIEN T. GREEN, TIMOTHY CROWLEY, and CURTIS SINGLETON,

Plaintiffs,

v.

GREGORY GRAMS, Warden, *et al.*,

Defendants.

10-cv-745-slc

In both of these lawsuits, plaintiff Damien Green has consented to my jurisdiction pursuant to 28 U.S.C. § 636(c)(1). Then, on June 21, 2011, I denied Green's third motion for appointment of counsel in Case Number 10-cv-485-slc. In response, Green sent me an angry letter accusing me of discriminating against him and asking that I no longer be the judge in his cases. I will construe Green's request as both a motion to withdraw his consent to my jurisdiction and as a motion to recuse or disqualify myself.

Once a party consents to the jurisdiction of a magistrate judge in his lawsuit, the consent cannot be withdrawn absent extraordinary circumstances. 28 U.S.C. § 636(c)(4). *See Lorenz v. Valley Forge, Ins. Co.*, 815 F. 2d 1095, 1097 (7th Cir. 1987); *Geras v. LaFayette Display Fixtures, Inc.*, 742 F. 2d 1037, 1038 (7th Cir. 1984). If the parties in a consent case could change their decision just because they didn't like a magistrate judge's ruling on a particular motion, then consent would be withdrawn in almost every case and consent jurisdiction would be a pointless exercise. So, the fact that I did not rule on his motion the way Green wanted is not an extraordinary circumstance. Therefore, he cannot withdraw his consent to my jurisdiction.

Although this will be no consolation to Green, magistrate judges have the power to rule on motions to appoint counsel in every case, even if the case is assigned to a district judge. One of my duties in this court is to rule on the motions to appoint counsel in prisoner cases for the other two judges. So, even if Green had never consented to my jurisdiction, I would have entered the same order denying his third request to appoint counsel.

Next, 28 U.S.C. §§ 144 and 455 apply to motions for recusal and disqualification of judges. Section 144 requires a federal judge to recuse himself 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 himself under § 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).

I am not biased or prejudiced against Green. Green's only suggestion of prejudice is that he disagrees with my ruling on his motion for appointment of counsel, which is not enough. *Liteky v. United States*, 510 U.S. 540 (1994). Therefore, I am denying Green's motion for my recusal or disqualification. As I have tried to make clear to Green, and as I try to make clear to every pro se prisoner plaintiff, the primary reason that I deny any motion for appointment of counsel is because this court does not have nearly enough lawyers available to handle to 200 or

so new prisoner lawsuits that get filed every year. If we had as large a pool of lawyers as the federal court in Chicago, then we probably could, and would, appoint an attorney in every prisoner lawsuit even if there was no legal obligation to do so, because that's better for everyone: for the prisoner plaintiff, for the assistant attorney general defending the DOC employees, *and* for the court. But this court has just a handful of attorneys who will take our cases, so we have to limit appointment of counsel to those few cases where it is clear from the legal test that the plaintiff must have an attorney. Denial of a motion to appoint counsel is never personal and it is never based on bias against a particular plaintiff or for a particular defendant or AAG; it's just the reality of prisoner litigation in this small, busy federal court. It's unfortunate that Green is angry about this, but he's in the same position as about 190 other Wisconsin prisoners who have filed or will file civil rights lawsuits in this court in 2011, about 50 of whom have consented or will consent to my jurisdiction over their claims.

ORDER

IT IS ORDERED that plaintiff Damien Green's motion to withdraw his consent or in the alternative for recusal or disqualification is DENIED.

Entered this 5th day of July, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge