

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

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NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

CINDY O'DONNELL, RICK RAEMISCH,  
SANDRA HAUTAMAKI, JOHN RAY,  
STEVEN CASPERSON, JEFF HAEN,  
STEVEN SPANBAUER, KATHLEEN BELLAIRE,  
CAPT. KURT LINJER, C.O. DEAVER, ELLEN RAY,  
CAPT. GILBERG, PETER HUIBREGTSE, GERALD  
BERGE, RICHARD SCHNEITER,  
SGT. S. GRONDIN, BRIAN KOOL, C.O. D. ESSER,  
C.O. A. JONES, GARY BOUGHTON, JOHN SHARPE,  
KELLY TRUMM, C.O. JOHNSON, TIMOTHY HAINES,  
LT. J. GRONDIN, C.O. BELL, SGT. BARTELS,  
LT. BRUDAS, CPT. JULIE BIGGAR,  
C.O. SCHNEIDER, and C.O. KORTMANN,

Defendants.

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ORDER

05-C-04-C

Plaintiff has filed a "Notice and Motion with Affidavit and Brief in Support," which I construe as a motion for the magistrate judge's and 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). 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. Balistreri, 779 F.2d 1191, 1199 (7th Cir. 1985).

They must be definite as to times, places, persons and circumstances. Id. Only those facts that 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 complains that in another of his cases, Lindell v. Casperson, 02-C-273-C, the magistrate judge and I made rulings adverse to him and characterized his comments in an earlier submission in that case as “pathetic.” In addition, plaintiff complains that the magistrate judge “yelled” at him during the scheduling conference in case no. 02-C-273-C. Plaintiff made the identical complaint in a motion for recusal he filed in case no. 02-C-273-C in December of 2004. In an order entered in that case on December 27, 2004, I told plaintiff that these incidents did not require recusal or disqualification under 28 U.S.C. §§144 and 455. Liteky v. United States, 510 U.S. 540, 555 (1994) (judicial rulings alone almost never constitute a valid basis for a bias or partiality motion); United States v. Slaughter, 900 F.2d 1119, 1126 n.5 (7th Cir. 1990) (bias and prejudice must be personal, not based on particular judicial proceeding; judge's unfavorable impressions of a party or belief that a party is dishonest not grounds for recusal); Rosen v. Sugarman, 357 F.2d 794, 798 (2d Cir. 1966) (occasional display of irritation does not

suffice to show personal bias or prejudice, whether irritation was justified or not). Plaintiff's assertions in his affidavit are based on nothing more than his opinion that the magistrate judge and I disfavor him. They and are devoid of compelling evidence of bias or prejudice and insufficient to convince a reasonable person of bias against plaintiff. Because plaintiff's averments do not raise a reasonable question of my impartiality or the impartiality of the magistrate judge, his motion for disqualification or recusal will be denied.

ORDER

IT IS ORDERED that plaintiff's motion for my recusal or disqualification and the recusal or disqualification of the magistrate judge is DENIED.

Entered this 6th day of July, 2005.

BY THE COURT:

*Barbara B. Crabb*

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BARBARA B. CRABB  
District Judge