IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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DENNIS W. JACOBSON,

Plaintiff,

v.

MARK EVERSON,

Defendant.

ORDER

05-C-134-C

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Plaintiff has filed a motion asking for my recusal from this action or that I be disqualified from presiding over the proceedings. His motion will be denied.

28 U.S.C. §144 and §455 apply to motions for recusal and for disqualification of judges. They provide that a motion for disqualification is properly heard by the presiding district court judge and not the Chief Judge of the Court of Appeals. Section 455(a) states that I must disqualify myself as a judge "in any proceeding in which my impartiality might reasonably be questioned," and §455(b)(1) requires me to disqualify myself in a case in which I have a "personal bias or prejudice concerning a party." Section §144 provides that when a party makes a legally sufficient affidavit alleging that the judge has a personal bias or prejudice, the judge cannot proceed further and must assign the proceeding to a different

judge.

Because the grounds for disqualification in §455 and §144 are similar, they may be considered together. United States v. Faul, 748 F.2d 1204, 1210 (8th Cir. 1984). In determining whether an affidavit is legally sufficient under §144,

> the judge must assume that the factual averments it contains are true, even if he knows them to be false. An affidavit is sufficient if it avers facts that, if true, would convince a reasonable person that bias exists. The factual averments must give fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment. They must not, however, be mere conclusions, opinions, or rumors. . . . The factual averments must show that the bias is personal rather than judicial, and that it stems from an extrajudicial source - - - some source other than what the judge has learned through participation in the case.

United States v. Balistrieri, 779 F.2d 1191, 1199 (7th Cir. 1985) (citations omitted). The bias and prejudice must be personal, not based on a particular judicial proceeding; a judge's unfavorable impressions of a party or belief that a party is dishonest are not grounds for recusal. United States v. Slaughter, 900 F.2d 1119, 1126 n.5 (7th Cir. 1990). "[A]n occasional display of irritation . . . does not suffice to show personal bias or prejudice, whether the irritation was justified or not." Rosen v. Sugarman, 357 F.2d 794, 798 (2d Cir. 1966). Ordinarily, a judge's rulings in the same case are not sufficient grounds for a recusal motion. McWhorter v. City of Birmingham, 906 F.2d 674, 678 (11th Cir. 1990). The test for impartiality is whether "an objective, disinterested observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt that

justice would be done in the case." Pepsico Inc. v. McMillen, 764 F.2d 458, 460 (7th Cir. 1985)(cited in Union Carbide Corp. v. U.S. Cutting Service, Inc., 782 F.2d 710, 715 (7th Cir. 1986)).

Plaintiff has not submitted an affidavit in support of his motion. Instead, he has made simple allegations of bias and prejudice in his motion that are based entirely on rulings I have made in this action that were adverse to him. Such allegations are not legally sufficient under §144 and do not raise a reasonable question of my impartiality under §455. See United States v. Paul, 748 F.2d at 1211. Therefore, plaintiff's motion for disqualification or for recusal will be denied.

ORDER

IT IS ORDERED that plaintiff's motion for my recusal or disqualification to serve as the presiding judge in this action is DENIED.

Entered this 19th day of October, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge