IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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NATHANIEL ALLEN LINDELL,

Petitioner,

v.

MATTHEW J. FRANK, STEPHEN CASPERSON, STEPHEN PUCKETT, RICHARD SCHNEITER, J. HRUDKRA, GARY BOUGHTON, PETER HUIBREGTSE, JOHN DOE #1, JOHN DOE #2, JOHN DOE #3, RICK RAEMISCH, SANDRA HAUTAMAKI, ELLEN RAY, CATHERINE BEERKIRCHER, KELLY TRUMM, GERALD BERGE, CAPTAIN JILL HORNER, CAPTAIN TIMOTHY HAINES, VICKI SEBASTIAN, BRIAN KOOL, CAPTAIN GARY BLACKBOURN, CAPTAIN BOYLE, CAPTAIN GARDNER, T. CRAVENS, MS. HARPER, MS. WALTERS, MS. TRACY GERBER, C. O. FRIEDRICK, C.O. JUERGENS, C. O. MORRIS, C. O. KARNOPP, SGT. WRIGHT and JOHN RAY,

Respondents.

OPINION and ORDER

06-C-608-C

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Plaintiff Nathaniel Lindell has filed a document titled "Notice & Motion for Clarification of Judge Crabb's 11-16-07 Order & Renewed Motion to Compel Discovery." In the motion, plaintiff seeks reconsideration of my order of November 16, 2007, in which

I upheld the magistrate judge's decision of October 23, 2007, denying plaintiff's motion to compel discovery. Nothing in plaintiff's newest motion convinces me that I made errors of law or fact in the November 16 order. Therefore, plaintiff's "Notice & Motion for Clarification . . ." will be denied.

Also, plaintiff has filed a motion for my recusal in this case. That motion, too, 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.

Plaintiff has not filed an affidavit stating the facts and reasons for the belief that bias or prejudice exists. Plaintiff simply contends in his motion that I "did not note or consider Reeves [v. Sanderson Plumbing, 530 U.S. 133, 149 (2000)] or any of the relevant legal authority" he cited in his previous motion for reconsideration, and that he has noted in previous motions how the magistrate judge and I "have refused to apply the law or used derogatory language towards him." Plaintiff does not explain which motions he is referring to or discuss any actual language in any orders where I have used what he believes to be

derogatory language or refused to apply the law, instead simply urging me to "look up" the unidentified motions. He suggests that because in my opinion I did not cite or discuss cases I am "push[ing my] personal political or social agenda." Plaintiff does not suggest what personal beliefs those might be.

Plaintiff has failed to present compelling evidence of bias or prejudice. Even if plaintiff had filed an affidavit stating what he has stated in his motion, his bald assertions of bias and prejudice relate only to rulings that were adverse to him and unidentified opinions in which he believes I used "derogatory" language or ignored the law. These assertions 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 Nathaniel Lindell's motion for "clarification" of my order dated November 6, 2007, renewed motion to compel discovery and motion for recusal

are DENIED.

Entered this 30th day of November, 2007.

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