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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Isiah Romont Hill,	)	No. CV-10-1339-PHX-PGR (LOA)
Petitioner,	)	<b>ORDER</b>
vs.	)	
William White, et al.	)	
Respondents.	)	

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This matter is before the Court on Petitioner’s Petition for Disqualification or Recusal. (Doc. 44) After consideration of this matter, the motion for disqualification or recusal will be denied.

**I. Background**

On June 25, 2010, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, an application to proceed *in forma pauperis*, and a request to expedite his case. (Docs. 1, 3, 4) On July 29, 2010, Petitioner filed a Motion to Amend to add Ground Five. (Doc. 8) On September 1, 2010, the Court granted Petitioner *in forma pauperis* status and granted his motion to expedite his case to the extent that the State was required to answer the Petition within forty days. (Doc. 9) The Court also granted Petitioner leave to amend to add Ground Five to his Petition. (*Id.*) Between September 7 and 22, 2010, Petitioner filed a Motion for Release Order, Amended Motion for Release Order, Motion for Special Action, Motion for Summary Judgment, and a Motion to Expedite Motion for Summary Judgment. (Docs. 12, 14, 15, 16, and 17) On September 24, 2010, the Court

1 denied these motions, without prejudice, noting that they raised the same issues as his  
2 Petition for Writ of Habeas Corpus and advising Petitioner that it would consider the  
3 Petition after it was fully briefed. (Doc. 18)

4 On October 13, 2010, Respondents moved for an extension of time to file an Answer.  
5 (Doc. 21) On October 19, 2010, the undersigned granted the motion and extended the  
6 deadline for Respondents to file an Answer to November 24, 2010. (Doc. 25)

7 Petitioner, in the meantime, filed several more motions: Motion for Summary  
8 Judgment, Motion for Dismissal/Expedited release, Motion to Expedite, and Motion for  
9 Default Judgment. (Docs. 21, 22, 23, 24) On October 25, 2010, the undersigned  
10 recommended that the motions be denied on the grounds that Respondents were not in  
11 default, noting that motions practice is not favored in habeas corpus proceedings. (Doc. 27)  
12 The Report and Recommendation was adopted on November 3, 2010. (Doc. 29)

13 On November 24, 2010, Respondents filed an Answer to the Petition for Writ of  
14 Habeas Corpus. (Doc. 30) Petitioner filed a Reply on November 30, 2010. (Doc. 32)  
15 Despite having been advised that a motions practice is not favored in habeas corpus  
16 proceedings, between November 30, 2010 and March 1, 2011, Petitioner filed an additional  
17 ten motions. (Docs. 33-40, and 42) On February 23, 2011, the undersigned granted  
18 Petitioner's Motion for Status, doc. 40, advising him that a ruling on the Petition for Writ of  
19 Habeas Corpus would be issued as the Court's calendar allowed. (Doc. 41) On March 30,  
20 2011, the Court denied Petitioner's Motion to Strike/Suppress State's Answer and Motion to  
21 Deny State's Answer. (See Docs. 31, 36, 43)

22 On March 30, 2011, Petitioner filed yet another motion, the pending Motion for  
23 Disqualification/Recusal. (Doc. 44) Petitioner asserts that the undersigned's failure to rule  
24 on his unopposed motions for "summary judgment/default/suppress" in a "timely fashion"  
25 indicates judicial bias against him.<sup>1</sup> On April 4, 2011, the undersigned issued a Report and  
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27 <sup>1</sup> Although Petitioner does not specifically identify the motions at issue, he appears to refer  
28 to Doc. 33 - Motion for Default Judgment; Docs. 35, 37, 39 - Motion for Summary Judgment  
and Amended Motions for Summary Judgment; and Doc. 31 - Motion to Suppress State's

1 Recommendation, recommending that the Petition for Writ of Habeas Corpus and the  
2 remaining motions be denied. Thus, as of the date this Order is filed, there are no pending  
3 motions in this case. As discussed below, Petitioner's motion for recusal/disqualification  
4 will be denied.

## 5 **II. Analysis**

6 A party may move to disqualify, or recuse, a judge from presiding in a given case.  
7 Motions to disqualify a federal judge fall under two statutory provisions, 28 U.S.C. § 144  
8 and 28 U.S.C.  
9 § 455. Section 144 provides for recusal where a party files a timely and sufficient affidavit  
10 averring that the judge before whom the matter is pending has a personal bias or prejudice  
11 either against the party or in favor of an adverse party. The affidavit must state the facts and  
12 reasons for such belief. *See* 28 U.S.C. § 144.<sup>2</sup> A judge finding the motion timely and the  
13 affidavits legally sufficient must proceed no further and another judge must be assigned to  
14 hear the matter. *See id.*; *United States v. Sibla*, 624 F.2d 864, 867 (9th Cir. 1980).

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18 Answer. These motions were filed between November 30, 2010 and December 14, 2010.

19 <sup>2</sup> Title 28 U.S.C. § 144 reads:

20 Whenever a party to any proceeding in a district court makes and files a timely  
21 and sufficient affidavit that the judge before whom the matter is pending has a  
22 personal bias or prejudice either against him or in favor of any adverse party,  
23 such judge shall proceed no further therein, but another judge shall be assigned  
24 to hear such proceeding.

25 The affidavit shall state the facts and the reasons for the belief that bias or  
26 prejudice exists, *and shall be filed not less than ten days before the beginning of*  
27 *the term at which the proceeding is to be heard, or good cause shall be shown for*  
28 *failure to file it within such time.* A party may file only one such affidavit in any  
case. It shall be accompanied by a certificate of counsel of record stating that it  
is made in good faith.

28 28 U.S.C. § 144 (emphasis added).

1           On the other hand, § 455 provides broader grounds for disqualification and is  
2 self-enforcing on the part of the judge. In particular, § 455 requires a judge to disqualify  
3 himself “in any proceeding in which his impartiality might reasonably be questioned,” 28  
4 U.S.C. § 455(a). The test for personal bias or prejudice is the same under §§ 144 and 455.  
5 *Sibla*, 624 F.2d at 868. Specifically, under both statutes recusal is appropriate where “a  
6 reasonable person with knowledge of all the facts would conclude that the judge’s  
7 impartiality might reasonably be questioned.” *Pesnell v. Arsenault*, 543 F.3d 1038, 1044  
8 (9th Cir. 2008) (quoting *United States v. Hernandez*, 109 F.3d 1450, 1453 (9th Cir. 1997)).  
9 Consequently, recusal will be justified either by actual bias or the appearance of bias. *Id.* In  
10 nearly all cases, the source of any alleged bias must be extrajudicial. *Liteky v. United States*,  
11 510 U.S. 540, 544-56 (1994). Judicial bias or prejudice formed during current or prior  
12 proceedings is insufficient for recusal unless the judge’s actions “display a deep-seated  
13 favoritism or antagonism that would make fair judgment impossible.” *Id.* at 541; *Pesnell*,  
14 543 F.3d at 1044. Judicial rulings will support a motion for recusal only “in the rarest of  
15 circumstances.” *Liteky*, 510 U.S. at 555; *United States v. Chischilly*, 30 F.3d 1144, 1149 (9th  
16 Cir. 1994); *Mayes v. Leipziger*, 729 F.2d 605, 607 (9th Cir. 1984) (stating that the alleged  
17 prejudice must result from an extrajudicial source; a judge’s prior adverse ruling is not  
18 sufficient cause for recusal).

19           As an initial matter, the undersigned finds that Petitioner’s affidavit does not comply  
20 with 28 U.S.C. § 144. *See Grimes v. U. S.*, 396 F.2d 331 (9th Cir. 1968). Section 144  
21 provides:

22           Whenever a party to any proceeding in a district court makes and *files a timely*  
23 and sufficient affidavit that the judge before whom the matter is pending has a  
24 personal bias or prejudice either against him or in favor of any adverse party,  
such judge shall proceed no further therein, but another judge shall be assigned  
to hear such proceeding.

25           The affidavit shall state the facts and the reasons for the belief that bias or  
26 prejudice exists, and shall be filed not less than ten days before the beginning  
27 of the term at which the proceeding is to be heard, or good cause shall be  
28 shown for failure to file it within such time. A party may file only one such  
affidavit in any case. It shall be accompanied by a certificate of counsel of  
record stating that it is made in good faith.

1 28 U.S.C. § 144 (emphasis added). “An affidavit filed pursuant to [28 U.S.C. § 144] is not  
2 legally sufficient unless it specifically alleges facts that fairly support the contention that the  
3 judge exhibits bias or prejudice directed toward a party that stems from an *extrajudicial*  
4 *source*.” *Sibla*, 624 F.2d at 868. (emphasis added). Section 144 “must be given the utmost  
5 of strict construction to safeguard the judiciary from frivolous attacks upon its dignity and  
6 integrity . . . and to prevent abuse and to insure orderly functioning of the judicial system . . .  
7 .” *Rademacher v. City of Phoenix*, 442 F.Supp. 27, 29 (D.Ariz. 1977) (internal citations  
8 omitted). Petitioner’s Affidavit merely states that:

9       Petitioner submits this as truth/fact to the best of his ability/knowledge  
10       and without bias[.] [I]t seems that Hill’s interests for life, limb, liberty  
11       is of no importance. State’s motion requesting [an extension] to answer  
12       Petitioner’s Petition was granted in less than a week. Than was suppressed  
13       was the answer (sic).

12 (Doc. 44 at 2) Petitioner does not present any facts indicating that the undersigned exhibited  
13 bias or prejudice toward Petitioner stemming from any extrajudicial source. Rather, when  
14 read in conjunction with Petitioner’s Motion, Petitioner suggests that because the Court  
15 ruled on Respondents’ motion for extension of time in less than a week, but took longer to  
16 rule on Petitioner’s motions for summary judgment, default judgment, and to suppress  
17 Respondents’ answer, the undersigned is biased against Petitioner. Petitioner’s arguments  
18 are based solely on the length of time, approximately four months, taken to issue rulings on  
19 several motions in this case. Judicial bias or prejudice formed during current or prior  
20 proceedings is insufficient for recusal unless the judge’s actions “display a deep-seated  
21 favoritism or antagonism that would make fair judgment impossible.” *Liteky*, 510 U.S. 540 at  
22 541.

23       Here, Respondents’ motion for extension of time was a simple request which did not  
24 concern any substantive issues. On the other hand, Petitioner’s motions raised many of the  
25 same issues asserted in his Petition for Writ of Habeas Corpus and, therefore, were  
26 appropriately considered in conjunction with the Petition itself. *See Gordon v. Duran*, 895  
27 F.2d 610, 612 (9<sup>th</sup> Cir. 1990) (noting that federal courts do not favor the use of default  
28 judgment to grant habeas relief without reaching the merits of the claims). Thus, the mere

1 difference in the length of time in issuing rulings on those motions and on Respondents’  
2 motion for extension of time does not indicate bias or impartiality against Petitioner, much  
3 less “deep-seated favoritism or antagonism.” *Id.* The undersigned recently issued a Report  
4 and Recommendation addressing the merits of Petitioner’s Petition for Writ of Habeas  
5 Corpus, recommending that the Petition be denied, and that Petitioner’s pending motions be  
6 denied as moot. Because Petitioner’s various motions concerned issues which were also  
7 raised in the Petition for Writ of Habeas Corpus, the undersigned addressed the motions and  
8 the Petition simultaneously to conserve judicial resources and because doing so was  
9 appropriate in view of the nature of habeas corpus proceedings. Because of the peculiar and  
10 unique nature of habeas proceedings, as a general rule, summary judgment motions under  
11 Rule 56 are not particularly appropriate. *See Cardenas v. Adler*, 2010 WL 1727923, \* 3  
12 (E.D.Cal., April 27, 2010) (citing *Anderson v. Butler*, 886 F.2d 111, 113 (5th Cir. 1989)  
13 (modern habeas corpus procedure has the same function as an ordinary appeal); *O’Neal v.*  
14 *McAnnich*, 513 U.S. 440, 442 (1995) (federal court’s function in habeas corpus proceedings  
15 is to “review errors in state criminal trials.”) (emphasis omitted)). Additionally, motions for  
16 summary judgment are unnecessary because petitions may be decided immediately by the  
17 Court following submission of the pleadings provided no material issues of fact exist.  
18 *Cardenas*, 2010 WL 1727923, at \* 3 (citing 1 *J. Liebman, Federal Habeas Corpus Practice*  
19 *and Procedure*, § 17.3 (1988)). Petitioner’s complaint regarding the several months he  
20 waited for the undersigned’s rulings on his motions does not indicate that the undersigned  
21 was biased or impartial.

22 In view of the foregoing, the undersigned finds Petitioner’s motion and affidavit  
23 insufficient to warrant forwarding this matter to another judge for further review pursuant to  
24 28 U.S.C. § 144. *See Sibla*, 624 F.2d at 867; 28 U.S.C. § 144. Likewise, the undersigned  
25 finds no basis for recusal under § 455. The undersigned cannot conclude that the grounds  
26 advanced by Petitioner for disqualification, waiting several months for rulings on motions  
27 pertaining to his habeas corpus petition, are such that would cause a reasonable person with  
28 knowledge of all the relevant facts to question the impartiality of the undersigned magistrate

1 judge. *See Pesnell v. Arsenault*, 543 F.3d 1038, 1044 (9th Cir. 2008) (quoting *United States*  
2 *v. Hernandez*, 109 F.3d 1450, 1453 (9th Cir. 1997)).

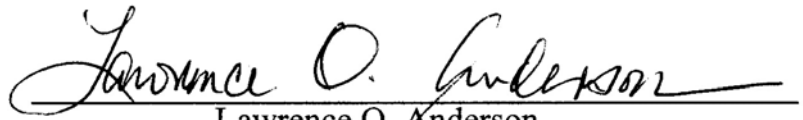
3 **III. Summary**

4 In summary, Petitioner is displeased with the amount of time he had to wait for  
5 rulings on several motions in his case. The time taken in this case was reasonable and does  
6 not provide a basis for recusal or disqualification. *See Liteky*, 510 U.S. at 555 (stating that  
7 judicial rulings will support a motion for recusal only “in the rarest of circumstances.”);  
8 *United States v. Chischilly*, 30 F.3d 1144, 1149 (9th Cir. 1994). The undersigned declines to  
9 recuse under 28 U.S.C. § 455, and finds Petitioner’s motion and affidavit insufficient to  
10 warrant forwarding this matter to another judge for further review pursuant to 28 U.S.C. §  
11 144. *See Sibla*, 624 F.2d at 867; 28 U.S.C. § 144.

12 Accordingly,

13 **IT IS ORDERED** that Petitioner’s Motion for Disqualification or Recusal, doc. 44,  
14 is **DENIED**.

15 DATED this 4<sup>th</sup> day of April, 2011.

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18 Lawrence O. Anderson  
19 United States Magistrate Judge  
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