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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 William Kenneth Qualls,  
10 Petitioner,  
11 v.  
12 Charles L. Ryan, et al.,  
13 Respondents.

No. CV-13-01288-PHX-JAT

**ORDER**

14 Pending before the Court is Petitioner's "Objection to Magistrate Duncan's Order  
15 (10/27/14) and Motion for Reconsideration Complaint Request for Investigation." The  
16 Court overrules Petitioner's objection.

17 **I. PROCEDURAL BACKGROUND**

18 On July 24, 2013, Plaintiff filed a habeas corpus petition under 28 U.S.C. § 2254  
19 as a pro se litigant. (Doc. 29). Subsequently, Plaintiff filed a multitude of motions. The  
20 motions at issue include a motion for ruling on the evidence in the record, (Doc. 73), a  
21 motion for an order for Respondent to produce proof of subject matter jurisdiction, (Doc.  
22 76), a motion for leave to proceed *in forma pauperis*, (Doc. 78), a motion for certification  
23 of Arizona statutes as valid constitutional state laws, (Doc. 80), three motions for  
24 correction of error, (Docs. 87, 110, 116), three motions for an order to have Respondents  
25 produce the entire record, (Docs. 89, 91, 115), a motion to appoint counsel, (Doc. 96),  
26 two motions for an evidentiary hearing, (Docs. 107, 113), a motion for ruling without  
27 subject matter jurisdiction being proved, (Doc. 108), a motion to disqualify the  
28 Magistrate Judge, (Doc. 109), and two motions requesting leave to file excess pages,

1 (Docs. 94, 98). On October 27, 2014, the Magistrate Judge issued an order, (Doc. 20),  
2 granting Petitioner’s motions requesting leave to file excess pages, (Docs. 94, 98), and  
3 denying Petitioner’s other motions (Docs. 73, 76, 78, 80, 87, 89, 91, 96, 107, 108, 109,  
4 110, 113, 115, 116). Petitioner objects to the Magistrate Judge’s order denying these  
5 motions.

6 **II. DISCUSSION**

7 **A. Appealing a magistrate judge’s order**

8 Within 10 days after being served with a copy of [a]  
9 magistrate judge’s order, a party may serve and file  
10 objections to the order . . . . The district judge to whom the  
11 case is assigned shall consider such objections and shall  
12 modify or set aside any portion of the magistrate judge’s  
13 order found to be clearly erroneous or contrary to law.

14 Fed. R. Civ. P. 72(a). Here, Plaintiff seeks to overturn the Magistrate Judge’s order, (Doc.  
15 120). (Doc. 123).

16 **1. Motion to appoint counsel**

17 The Magistrate Judge denied Petitioner’s motion to appoint counsel. (Doc. 120 at  
18 1–2). The Magistrate Judge reasoned that:

19 Indigent state prisoners applying for habeas corpus relief are  
20 not entitled to appointed counsel unless the circumstances  
21 indicate that appointed counsel is necessary to prevent due  
22 process violations. *Chaney v. Lewis*, 801 F.2d 1191, 1196  
23 (9th Cir. 1986), cert. denied, 481 U.S. 1023 (1987); *Kreiling*  
24 *v. Field*, 431 F.2d 638, 640 (9th Cir. 1970) (per curiam);  
25 *Eskridge v. Rhay*, 345 F.2d 778, 782 (9th Cir. 1965), cert.  
26 denied, 382 U.S. 996 (1966). The Court has discretion to  
27 appoint counsel when a judge “determines that the interests of  
28 justice so require.” *Terrovona v. Kincheloe*, 912 F.2d 1176,  
1181 (9th Cir. 1990), cert. denied, 499 U.S. 979 (1991)  
(quoting 18 U.S.C. § 3006A(a)(2)(B)). “In deciding whether  
to appoint counsel in a habeas proceeding, the district court  
must evaluate the likelihood of success on the merits as well  
as the ability of the petitioner to articulate his claims pro se in  
light of the complexity of the legal issues involved.”  
*Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983). Qualls  
has not shown that he is more likely to succeed on the merits  
of his claims than any other habeas petitioner before this  
Court, nor has he shown that his claims are complex.

(Doc. 120 at 1–2).

Petitioner requests the Court to reverse the Magistrate Judge arguing that the

1 failure to appoint counsel has caused Petitioner’s “grounds and documents not to be  
2 presented in court.” (Doc. 123 at 5). Petitioner further contends that he has produced  
3 exhibits demonstrating the complexity of his claims and his need for appointed counsel.  
4 (*Id.* at 6). Petitioner asserts that the Magistrate Judge “did not even look at this evidence”  
5 and failed “to personally review [his] petition, evidence, exhibits and affidavits . . . .”  
6 (*Id.*) However, Petitioner does not present any evidence supporting his assertion.  
7 Moreover, the undersigned has previously denied one of Petitioner’s motions for  
8 appointment of counsel. (Doc. 67 at 3). For these reasons and the reasons stated in the  
9 Magistrate Judge’s order, which are not clearly erroneous nor contrary to law,  
10 Petitioner’s objections to the Magistrate Judge’s order are overruled.

## 11 **2. Motion to disqualify the Magistrate Judge**

12 The Magistrate Judge also denied Petitioner’s motion to disqualify the magistrate  
13 judge. The Magistrate Judge explained:

14 Section 455(a) of title 28 provides that a United States judge  
15 or magistrate judge “shall disqualify” himself in any  
16 proceeding in which his “impartiality might reasonably be  
17 questioned.” Section 455(b)(1) provides that a judge must  
18 also disqualify himself, where he “has a personal bias or  
19 prejudice concerning a party, or personal knowledge of  
20 disputed evidentiary facts concerning the proceeding[.]”  
21 Recusal pursuant to § 455(b) is required only if the bias or  
22 prejudice stems from an *extra-judicial* source, not from  
23 conduct or rulings during the course of the proceedings. *See*  
24 *Hasbrouck v. Texaco, Inc.*, 842 F.2d 1034, 1046 (9<sup>th</sup> Cir.  
25 1987), *aff’d*, 496 U.S. 543 (1990); *United States v. Studley*,  
26 783 F.2d 934, 939 (9<sup>th</sup> Cir. 1986) (judge’s prior adverse  
27 rulings are insufficient cause for recusal). “[J]udicial rulings  
28 alone almost never constitute [a] valid basis for a bias or  
partiality motion.” *Liteky v. United States*, 114 S.Ct. 1147,  
1157 (1994). Adverse rulings should be appealed; they do not  
form the basis for a recusal motion. Further, where the judge  
forms opinions in the courtroom, either in the current  
proceeding or in a prior proceeding, these opinions “do not  
constitute a basis for a bias or partiality motion unless they

1 display a deep-seated favoritism or antagonism that would  
2 make fair judgment impossible.” *Id.*

3 Qualls seeks disqualification solely based on rulings in  
4 this case. As discussed above, that is not a basis upon which  
5 the Court’s impartiality might reasonably be questioned for  
6 purposes of § 455(a). Further, the Court does not have a  
7 personal bias or prejudice concerning Qualls or other  
8 potential parties to this action or personal knowledge of  
9 disputed evidentiary facts at issue in this proceeding. The  
10 Court also discerns no appearance of impropriety by  
11 presiding over the instant case.

12 (Doc. 120 at 230).

13 Petitioner requests the Court to disqualify the Magistrate Judge. He argues that the  
14 Magistrate Judge has “personal knowledge of disputed facts,” his “rulings are based on  
15 misinformation that the court refuses for whatever reason to correct,” and he has allowed  
16 “statements by the assistant attorney general to . . . prejudice his ruling.” (Doc. 123 at 9).  
17 Again, Petitioner has not provided any evidence to support his allegations. Additionally,  
18 Petitioner previously moved to disqualify the undersigned, and this Court applied the  
19 same legal standard to evaluate that motion; thus, the Magistrate Judge did not commit  
20 any legal error. (Doc. 67 at 5). For these reasons and the reasons stated in the Magistrate  
21 Judge’s order, which are not clearly erroneous nor contrary to law, Petitioner’s objections  
22 to the Magistrate Judge’s order are overruled.

### 18 3. Petitioner’s dispositive motions

19 The Magistrate Judge denied Petitioner’s dispositive motions including a motion  
20 for ruling on the evidence in the record, (Doc. 73), motion for an order for Respondent to  
21 produce proof of subject matter jurisdiction, (Doc. 76), motion for certification of  
22 Arizona statutes as valid constitutional state laws, (Doc. 80), motion for ruling without  
23 subject matter jurisdiction being proved, (Doc. 108), and motions for correction of error,  
24 (Docs. 87, 110, 116). The Magistrate Judge noted that only a district court judge can  
25 grant habeas relief based on the grounds in the Petition and Petitioner cannot obtain  
26 habeas relief in this case through a motion seeking a ruling on the merits of his Petition.  
27 (Doc. 120 at 1). Petitioner requests the Court to overturn the Magistrate Judge’s ruling.

28 Consistent with 28 U.S.C. § 636 and Local Rule of Civil Procedure 72.2(a)(2), the

1 Magistrate Judge cannot rule on the merits of this case or dispose of the case by granting  
2 a dispositive motion. The Magistrate Judge will issue a report and recommendation and  
3 the undersigned will make the final ruling on the merits. LRCiv 72.2(a)(2). Accordingly,  
4 Petitioner's objections to the denial of his dispositive motions are overruled.

5 **4. Other motions**

6 The Magistrate Judge denied Petitioner's motion for leave to proceed *in forma*  
7 *pauperis*, (Doc. 78), as moot because Petitioner paid the required \$5.00 filing fee. (Doc.  
8 120 at 1). The Magistrate Judge also denied Petitioner's motions for an order to have  
9 Respondents produce the entire record, (Docs. 89, 91, 115), and motions for an  
10 evidentiary hearing (Docs. 107, 113), as premature because the Magistrate Judge had not  
11 yet issued a report and recommendation. (Doc. 120 at 2). Petitioner has not made a  
12 discernable argument regarding the Magistrate Judge's denial of these motions.  
13 Accordingly, any objection to these rulings is overruled.

14 **B. Subject Matter Jurisdiction**

15 Petitioner seems to assert that the Magistrate Judge and the Federal District Court  
16 lack subject matter jurisdiction over Petitioner's claims. (Doc. 123 at 6, 8). The Federal  
17 District Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2254, the Magistrate  
18 Judge has subject matter jurisdiction under 28 U.S.C. § 636 and Local Rule of Civil  
19 Procedure 72.2(a)(2). Additionally, Petitioner voluntarily filed his Petition in this Court.  
20 Accordingly, the Federal District Court and the Magistrate Judge have subject matter  
21 jurisdiction over Petitioner's claims.

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**III. CONCLUSION**

Based on the foregoing,

**IT IS ORDERED** that Plaintiff’s “Objection to Magistrate Duncan’s Order (10/27/14) and Motion for Reconsideration Complaint Request for Investigation,” (Doc. 123) is overruled and denied.

Dated this 17th day of December, 2014.

  
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James A. Teilborg  
Senior United States District Judge