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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 United States of America,

10 Plaintiff,

11 v.

12 Michael A Bigley, et al.,

13 Defendants.  
14

No. CV-14-00729-PHX-HRH

**ORDER**

15 Pursuant to Judge Holland's Order (Doc. 323) this matter was referred to the  
16 undersigned for the limited purpose of determining whether the Defendant parties<sup>1</sup> have  
17 stated a basis in various motion papers for Judge Holland to either recuse himself, or to be  
18 disqualified pursuant to 28 U.S.C. § 455(a). In his referral order Judge Holland cites to  
19 four docket entries, three filed by the Bigley Defendants, and a fourth filed by the Kelso  
20 Defendants, that should be considered to determine whether the filings provide possible  
21 grounds for Judge Holland's disqualification under 28 U.S.C. § 455(a). (Docs. 318-20,  
22 322).

23 Also pending before this Court is the more recently filed motion of the Kelso  
24 Defendants for the Disqualification of Chief Judge Murray Snow and Demand for Trial of  
25 Fact by Jury (Doc. 324). It, obviously, must be considered prior to the undersigned  
26 determining whether there is a basis for Judge Holland's recusal. For the reasons that

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28 <sup>1</sup> The Defendants in this action include Michael A. Bigley and Carolyn E. Bigley  
(collectively "the Bigleys" or "Bigley Defendants") Robert B. Kelso and Raeola D. Kelso  
(collectively "the Kelsos" or "Kelso Defendants"), and ISA Ministries.

1 follow, the Kelsos' motion for disqualification of the undersigned is denied, and the Court  
2 determines that there is no reason among the various assertions and positions taken by the  
3 Defendants that would merit the disqualification of Judge Holland or suggest that he should  
4 otherwise recuse. This case, therefore, is referred back to Judge Holland.

## 5 DISCUSSION

### 6 I. The Law

7 The Kelso Defendants move for the disqualification of both the undersigned and  
8 Judge Holland on the authority of 28 U.S.C. § 455(a). That statute specifies that “[a]ny . . .  
9 judge . . . of the United States shall disqualify himself in any proceeding in which his  
10 impartiality might reasonably be questioned.” An objective standard applies to  
11 disqualification under § 455(a) which contemplates whether “a reasonable person with  
12 knowledge of all the facts would conclude the judge’s impartiality might reasonably be  
13 questioned.” *Taylor v. Regents of Univ. of Cal.*, 993 F.2d 710, 712 (9th Cir. 1993).

14 Subsection (b), although not explicitly relied upon by the Kelsos enumerates  
15 specific situations that require a judge to disqualify himself, regardless of whether the  
16 conflict of interest creates an appearance of impropriety. The Defendants do not allege  
17 that any basis enumerated in subsection (b) applies here. However, without citing or  
18 relying on § 455(b)(1), they do seemingly assert the personal bias of the various judges at  
19 issue here. 28 U.S.C. § 455(b)(1) requires disqualification when the judge “has a personal  
20 bias or prejudice concerning a party.” Recusal for actual bias pursuant to subsection (b)(1)  
21 is required only if the moving party can prove by “compelling evidence” that a reasonable  
22 person would be convinced the judge was biased in a way that may prevent a fair decision  
23 on the merits. *United States v. Balistrieri*, 779 F.2d 1191, 1201 (7th Cir. 1985); *see also*  
24 *Liteky v. United States*, 510 U.S. 540, 553–56 (1994) (defining bias as animus or malice of  
25 a kind that a fair-minded person could not entirely set aside when judging certain persons  
26 or causes). The party seeking recusal carries a “substantial burden” of overcoming the  
27 presumption that a district court is free from bias. *United States v. Denton*, 434 F.3d 1104,  
28 1111 (8th Cir. 2006). Generally, in considering whether recusal is appropriate under § 455,

1 “the judge is free to make credibility determinations, assign to the evidence what he  
2 believes to be its proper weight, and to contradict the evidence with facts drawn from his  
3 own personal knowledge.” *Balistrieri*, 779 F.2d at 1202. Although a court must recuse  
4 when the provisions of § 455 are implicated, it also has an obligation to hear all cases  
5 assigned to it when there is no legitimate reason to recuse. *Clemens v. U.S. Dist. Ct. for*  
6 *Cent. Dist. of Cal.*, 428 F.3d 1175, 1179 (9thCir. 2005); (quoting *Nichols v. Alley*, 71 F.3d  
7 347, 351 (10thCir. 1995); *see also United States v. Holland*, 519 F.3d 909, 912 (9th Cir.  
8 2008).

## 9 **II. Analysis**

### 10 **A. The Kelsos Present No Basis on Which The Undersigned Should Disqualify** 11 **Himself.**

12 Because the Kelsos move for this Court to disqualify itself from the consideration  
13 of whether Judge Holland should recuse or be disqualified, the Court will take up that  
14 matter first. Movants bear the burden of overcoming the presumption that the Court is  
15 impartial. *See Denton*, 434 F.3d at 1111. The only involvement this Court has in this case  
16 is to determine whether there is a basis on which Judge Holland should recuse or otherwise  
17 be disqualified. The Kelsos’ first argument for disqualification of the undersigned is  
18 apparently based upon their reading of Judge Holland’s referral order to this Court. The  
19 Kelsos apparently read the order as stating that this Court had already determined, without  
20 explanation, that there was no appearance of impropriety in Judge Holland continuing to  
21 preside over this case. The Kelsos thus state that this Court “has demonstrated abuse of  
22 discretion on the record with respect to providing an impartial and ‘independent evaluation’  
23 as to whether or not senior judge Holland should be disqualified from the case.” (Doc. 324  
24 at 1.) This argument is premature.

25 This Court had yet to make such a determination, and only first does so in this order.  
26 In this order it sets forth its reasoning and case authority for concluding that there is no  
27 basis on which “a reasonable person with knowledge of all the facts would conclude Judge  
28 Holland’s impartiality might reasonably be questioned.” It, however, had not issued any

1 previous orders in this case, and, to the extent the Defendants understood otherwise, it was  
2 a misunderstanding. Further, to the extent the Kelsos attempt to preemptively assert that  
3 this Court's ruling demonstrates bias, judicial rulings are not a valid basis for a bias or  
4 partiality motion "unless they display a deep-seated favoritism or antagonism that would  
5 make fair judgment impossible." *Liteky*, 510 U.S. at 555. The undersigned does not do so  
6 here. Thus, the Kelsos provide no basis for reasonably questioning the impartiality of this  
7 Court. If the Kelsos believe this Court's ruling that Judge Holland is not required to  
8 disqualify is in error, they may seek to preserve the right to appeal the question to the Ninth  
9 Circuit, to the extent they may properly do so. But, for the reasons stated in *Liteky*, this  
10 Court's ruling on the question does not provide a basis for disqualification.

11 Second, the Kelsos apparently assert, based upon a general order of this Court that  
12 the undersigned has a personal bias against unrepresented litigants. That general order,  
13 executed in 2018 by the undersigned as the Chief Judge of this Court requires self-  
14 represented litigants to apply to the judge to whom their case is assigned prior to being  
15 issued subpoenas. (General Order 18-19.) Thus, in this district, self-represented litigants  
16 need to attach a copy of the proposed subpoena setting forth the name and address of the  
17 witness to be subpoenaed, and further state with particularity the reasons for seeking the  
18 testimony and documents, prior to obtaining the subpoena. This order—one of general  
19 applicability throughout the district—does not prevent self-represented litigants from  
20 obtaining appropriate subpoenas, but it does prevent self-represented litigants who may be  
21 unfamiliar with the limits set on obtaining discovery from third parties, from abusing the  
22 subpoena power of the Court by having subpoenas issued in blank to the self-represented  
23 litigant. To the extent that the Kelsos believe this district-wide order may be in violation  
24 of the federal rules of civil procedure or other statutory authority, they, of course, maintain  
25 the right to seek to have the rule overturned assuming that they appropriately raise and  
26 pursue the matter.

27 But, that does not mean that a local rule pertaining to self-represented litigants  
28 provides a basis to disqualify the undersigned, or all other members of this Court, as

1 reflecting bias, or an appearance of bias as to the merits of the various causes asserted by  
2 self-represented litigants. The general order applies to all judges of this court and to all  
3 self-represented litigants, and there is nothing in the order that would establish that the  
4 undersigned has a personal bias against the Kelsos by the compelling evidence standard  
5 required. *Balistrieri*, 779 F.2d at 1201; *see also Liteky*, 510 U.S. at 553–56 (defining bias  
6 as animus or malice of a kind that a fair-minded person could not entirely set aside when  
7 judging certain persons or causes). The party seeking recusal carries a “substantial burden”  
8 of overcoming the presumption that a district court is free from bias. *Denton*, 434 F.3d at  
9 1111. Nor would the order provide a basis for “a reasonable person with knowledge of all  
10 the facts” to “conclude the judge’s impartiality might reasonably be questioned.” After a  
11 review of the Kelsos’ arguments and documents, this Court determines that they present  
12 no basis for its recusal or disqualification.

13 **B. None of the Other Motion Papers Provide a Basis on Which Judge Holland**  
14 **Should Disqualify Himself.**

15 As Judge Holland’s referral order notes, in Docket numbers 318, 319, and 322,  
16 Mr. Bigley purports to speak for a common law court of record, and makes substantive  
17 legal arguments that are not infrequently made by those who seek to challenge the authority  
18 of the United States to tax and the United States District Court for the District of Arizona,  
19 or its colleagues designated by the Ninth Circuit from the United States District Court for  
20 the District of Alaska to sit on this Court, to enforce such taxes.

21 In Docket 318, Mr. Bigley, or the Court for which he purports to speak, takes issue  
22 with Judge Holland’s order (Doc. 310) not to enter default judgment against Suzy Taylor  
23 who is a non-party to the action. In the order Judge Holland explained that the Court  
24 entered judgment against all defendants on May 10, 2017 and that judgment was affirmed  
25 by the Ninth Circuit with that court issuing its mandate affirming the dismissal on May 6,  
26 2019. (*See* Doc. 310.) Thereafter the Bigley Defendants sought to add Ms. Taylor as a  
27 counter-defendant to this case which, by then, according to Judge Holland’s order, had long  
28 passed the point at which it was appropriate to add parties. He thus declined to enter default

1 against Ms. Taylor. Defendant Bigley, in Docket 318, suggests that this determination  
2 evinces pro-government bias and a lack of competence on the part of Judge Holland.

3 In Docket 319, Mr. Bigley filed what is docketed as an objection to the Court's  
4 Order (Doc. 317) denying what the Court had earlier treated as a motion for  
5 reconsideration. That motion, however, was also entitled by Mr. Bigley as a Writ of Error  
6 Quae Coram Nobis Residant; Orders to Restore; Order to Show Cause (Doc. 315). In that  
7 objection Mr. Bigley again raised the same points on the merits as those he raises in Docket  
8 318. To the extent that any of the allegations could be considered to raise an appearance  
9 of impropriety, it would be, again, an allegation that Judge Holland's rulings indicate he  
10 has a pro-government bias and lack of suitability for the position he fills.

11 Docket 320, is brought by the Kelsos as a 60(b) motion as to Judge Holland's order  
12 docketed at 316. But, having lost a previous motion the Kelsos' move for Judge Holland  
13 to disqualify himself from the consideration of the motion, because "the record reflects"  
14 his "audacious partiality in favor of the Plaintiff . . ." and because he ignores the law, the  
15 Constitution and the holdings of the Supreme Court. (Doc. 320 at 1.)

16 As they relate to any assertion that Judge Holland should recuse himself for an  
17 appearance of impropriety, the documents filed at docket 318-320 all make a common  
18 complaint—that Judge Holland's rulings demonstrate that he has a pro-government bias.  
19 Nevertheless, motions brought pursuant to § 455 are subject to the extrajudicial source rule,  
20 meaning that the disqualifying bias or prejudice must generally stem from something other  
21 than a Judge's rulings in a case or the "information and beliefs" the judge "acquired while  
22 acting in his or her judicial capacity." *United States v. McTiernan*, 695 F.3d 882, 891  
23 (9thCir. 2012) (quoting *United States v. Frias-Ramirez*, 670 F.2d 849, 853 n. 6 (9th Cir.  
24 1982)); accord *United States v. Wilkerson*, 208 F.3d 794, 799 (9thCir. 2000) ("To  
25 disqualify a judge, the alleged bias must constitute animus more active and deep-rooted  
26 than an attitude of disapproval toward certain persons because of their known conduct."  
27 (internal quotation marks omitted)). Thus, a judge's adverse rulings during the course of  
28 proceedings in which disqualification is sought, or in related proceedings, do not constitute

1 a valid basis for the judge's disqualification under § 455. *See Liteky*, 510 U.S. at 555; *In*  
2 *re Marshall*, 721 F.3d 1032, 1043 (9thCir. 2013).

3 In Docket 322, filed as a third party declaration of claims (verified), the Bigleys  
4 apparently purport to file a claim against Judge Holland for compensatory and punitive  
5 damages for his role in the determination that they owed taxes to the United States and his  
6 role in the levying of the surplus proceeds from sale of the Kelso property held in the court  
7 registry. They do not file the document as a request to amend the complaint, but, in any  
8 event, no response has yet been filed and the Court has not ruled or otherwise responded  
9 to the motion. Nevertheless, it has been decided over and over again that a judge is not  
10 disqualified merely because a litigant before him sues or threatens to sue him. "Baseless  
11 personal . . . suits against the judge by a party . . . [or] attempt to intimidate the judge" will  
12 not suffice to trigger the Court's disqualification. *Clemens v. U.S. Dist. Ct. for Cent. Dist.*  
13 *of Cal.*, 428 F.3d 1175, 1179 (9thCir. 2005) (quoting *Nichols v. Alley*, 71 F.3d 347, 351  
14 (10thCir. 1995), *see also United States v. Grismore*, 564 F.2d 929, 933 (10thCir. 1977).

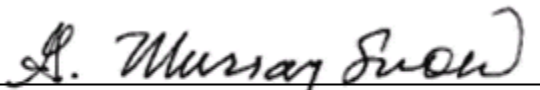
### 15 CONCLUSION

16 In short, none of the Defendants filings relating to Judge Holland or purportedly  
17 seeking to bring a claim against him provide a basis for his disqualification or recusal.

18 **IT IS HEREBY ORDERED** that the Kelso Defendants' Motion for  
19 Disqualification of Chief Judge Murry Snow (Doc. 324) is denied.

20 **IT IS FURTHER ORDERED** that Kelso Defendants' 2<sup>nd</sup> Motion for Relief from  
21 Order (Doc. 320) is denied and this case is referred back to Judge Holland for ruling on the  
22 pending motions (Docs. 318, 319, 322) and (Doc. 325) recently filed.

23 Dated this 23rd day of October, 2019.

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25 \_\_\_\_\_  
26 G. Murray Snow  
27 Chief United States District Judge  
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