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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Demetrius Antwon Wilson,
Petitioner,
v.
Joseph M Arpaio,
Respondent.

No. CV-16-03012-PHX-JAT (DMF)
ORDER

Pending before the Court is Plaintiff Demetrius A. Wilson's "Notice of Change of Magistrate Judge Deborah M. Fine and Requesting She Be Removed" ("Motion"), filed on September 21, 2016. (Doc. 4). As the title of the motion suggests, Plaintiff seeks to remove Magistrate Judge Fine from presiding over the instant Writ of Habeas Corpus proceeding.¹ Plaintiff contends that she has a "conflict of interest," stemming from her presence in another matter in which Plaintiff is a litigant, 2:16-CV-2096-JAT-DMF.² (Id. at 1). Having considered Plaintiff's filing, the Court now rules on the motion.

I.

Two statutes govern whether a federal judge must recuse in a particular case, Title

¹ Plaintiff's motion also asks that Magistrate Judge Fine be removed from 2:14-CV-1613-JAT-DMF. The Court's Order only addresses Plaintiff's request with respect to the instant action.

² Plaintiff also filed a similar motion in 2:16-CV-2096-JAT-DMF that is adjudicated by separate order.

1 28 U.S.C. §§ 144 and 455 (2012). The Court is unclear as to which statute Plaintiff
2 moves under, and will address both with respect to Plaintiff's claims.³

3 Section 144 applies when a party to a proceeding believes that the judge "has a
4 personal bias or prejudice either against him or in favor of any adverse party," 28 U.S.C.
5 § 144, and "expressly conditions relief upon the filing of a timely and legally sufficient
6 affidavit." *United States v. Sibla*, 624 F.2d 864, 867 (9th Cir. 1980) (citations omitted).

7 Specifically, the statute provides:

8 The affidavit shall state the facts and the reasons for the belief
9 that bias or prejudice exists, and shall be filed not less than
10 ten days before the beginning of the term [session] at which
11 the proceeding is to be heard, or good cause shall be shown
12 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.

13 28 U.S.C. § 144. When a party files a timely and legally sufficient affidavit pursuant to
14 section 144, the judge "shall proceed no further therein, but another judge shall be
15 assigned to hear such proceeding." *Id.*; *Sibla*, 624 F.2d at 867. But "if the motion and
16 affidavit required by section 144 [are] not presented to the judge, no relief under section
17 144 is available." *Sibla*, 624 F.2d at 868.

18 Having reviewed Plaintiff's motion, the Court finds that it does not comply with
19 the requirements set forth in 28 U.S.C. § 144. Plaintiff has not attached any affidavit to
20 his motion, let alone one that alleges sufficient facts to satisfy the statute's demands.
21 Thus, to the extent Plaintiff's motion is brought under section 144, it will be denied, with
22 prejudice.
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25 ³ See *Franklin v. Murphy*, 745 F.2d 1221, 1235 (9th Cir. 1984) (citation omitted)
26 (courts must "liberally construe" the pleadings of pro se litigants); see also *Boag v.*
27 *MacDougall*, 454 U.S. 364, 365 (1982) (per curiam) (courts should liberally construe the
28 "inartful pleading" of pro se litigants); *Ashelman v. Pope*, 793 F.2d 1072, 1078 (9th Cir.
1986) (courts in this Circuit should hold "pro se pleadings to a less stringent standard
than formal pleadings prepared by lawyers").

1 Considering Plaintiff’s motion under 28 U.S.C. § 455,⁴ it argues that Magistrate
2 Judge Fine must be removed due to a “conflict of interest” with a separate, ongoing
3 matter. (Doc. 4 at 1). Reading Plaintiff’s motion liberally, as the Court must, the Court
4 finds that Plaintiff’s argument is best characterized as one under 28 U.S.C. § 455(a),
5 where a judge must “disqualify himself in any proceeding in which his impartiality might
6 reasonably be questioned.” See also *United States v. Hernandez*, 109 F.3d 1450, 1453
7 (9th Cir. 1997) (quoting *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986)),
8 cert. denied, 513 U.S. 1171, 115 S. Ct. 1147.⁵

9 To be disqualifying, the judge’s bias, partiality, or prejudice must stem from an
10 extrajudicial source, as the Supreme Court has held that “judicial rulings alone almost
11 never constitute a valid basis for a bias or partiality motion.” *Liteky v. United States*, 510
12 U.S. 540, 554 (1994). In *Liteky*, the Supreme Court went on to explain that “opinions
13 formed by a judge on the basis of facts introduced or events occurring in the course of
14 judicial proceedings do not provide a basis for recusal unless they indicate that the judge
15 has ‘a deep-seated favoritism or antagonism that would make fair judgment impossible.’”
16 *Reed v. Barcklay*, No. CV-11-01339-PHC-JAT (JFM), 2012 U.S. Dist. LEXIS 87988, at
17 *11 (D. Ariz. June 25, 2012) (quoting *Liteky*, 510 U.S. at 555).

18 Here, Plaintiff’s motion fails for two reasons. First, the motion is accompanied by
19 absolutely no facts or evidence in support of Plaintiff’s claim of partiality/conflict of
20 interest. Thus, no “reasonable person with knowledge of all the facts would conclude the

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22 ⁴ Section 455 is broader than Section 144 and may be triggered by a party sua
23 sponte without the filing of an affidavit.

24 ⁵ Section 455 contains two subsections that arguably hew more closely to
25 Plaintiff’s claim of “conflict of interest.” Section 455 (b)(2),(3) speak to disqualification
26 where the presiding judge has a conflict of interest stemming from prior, personal
27 involvement in the case in either the private or public sector. Plaintiff’s motion, however,
28 alleges absolutely no facts that would support removal under either “conflict of interest”
provision. Thus—despite Plaintiff’s asserted basis—the Court finds that under a liberal
reading of the motion, Plaintiff in fact alleges partiality or bias on the part of Magistrate
Judge Fine, which falls under 28 U.S.C. § 455(a).

1 judge's impartiality might reasonably be questioned." Taylor v. Regents of Univ. of Cal.,
2 993 F.2d 710, 712 (9th Cir. 1993) (citation omitted); see also United States v.
3 \$292,888.04 U.S. Currency, 54 F.3d 564, 566 (9th Cir. 1995) (noting that allegations of
4 bias or partiality that are conclusory in nature are legally insufficient to support
5 recusal/removal). Second, the only alleged source of Magistrate Judge Fine's alleged
6 partiality/conflict of interest is the fact that she was assigned to 2:16-CV-2096-JAT-DMF
7 and has issued a number of "judicial rulings," expressly foreclosed as an appropriate
8 basis for removal by the Supreme Court.⁶ Liteky, 510 U.S. at 554.

9 In light of these realities, Plaintiff has failed to carry his burden under either 28
10 U.S.C. §§ 144 or 455(a), and his motion will be denied.

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12 **II.**

13 For the reasons discussed previously,

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26 ⁶ Plaintiff makes no effort to argue that Magistrate Judge Fine's prior rulings
27 establish that she "has 'a deep-seated favoritism or antagonism that would make fair
28 judgment impossible.'" Reed, 2012 U.S. Dist. LEXIS 87988, at *11 (quoting Liteky, 510
U.S. at 555).

