

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

NATHANIEL L. FITZGERALD

PLAINTIFF

v.

Case No. 3:10-cv-46-DPM-JJV

DICK BUSBY; TERESA BONNER;
SCHRADER; and LINDSEY PETERSON

DEFENDANTS

ORDER

The Court denies that part of Fitzgerald's motion, *Document No. 54*, that this case be assigned to another District Judge. The Court requests that Magistrate Judge Joe J. Volpe rule on that part of the motion seeking his recusal.

First, Fitzgerald's motion is based in part on his disagreement with recent rulings by the undersigned and Judge Volpe. Adverse rulings, however, are not an adequate basis for disqualification. *Lefkowitz v. Citi-Equity Group, Inc.*, 146 F.3d 609, 611-12 (8th Cir. 1998) (internal citation omitted).

Second, Fitzgerald's motion asserts that Defendants' counsel "is the attorney for Judge D.P. Marshall family." *Document No. 54, at 1*. This is not correct. As I disclosed to all parties by letter in late January, my sister hired

Rainwater, Holt & Sexton, P.A. to represent her in a social security matter. She did so without my knowledge or involvement. Even though I did not think her relationship with the Rainwater firm presented a basis for my disqualification in this case, I wanted all the parties to know about it and consider it. I also set a two-week period in which any party could get this case randomly reassigned to another District Judge simply by asking the Clerk to make the change. *Document No. 33*. I directed that I not be informed who sought a new judge. *Ibid*. No party requested reassignment.

The Rainwater firm has never represented me. The firm has never been lawyers for my family in general. In any event, my sister passed away 17 February 2011. And her death ended her relationship with the firm.

The Court's impartiality would not reasonably be questioned by an average person on the street apprised of all the relevant facts. 28 U.S.C.A. § 455(a) (West 2006); *Scenic Holding, LLC v. New Board of Trustees of the Tabernacle Missionary Baptist Church, Inc.*, 506 F.3d 656, 662-65 (8th Cir. 2007). Fitzgerald's motion, *Document No. 54*, is denied as to me.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

15 April 2011