

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

NATHANIEL FITZGERALD,
ADC #084210

PLAINTIFF

v.

3:10-cv-00046-DPM-JJV

DICK BUSBY, *et al.*

DEFENDANTS

ORDER

Plaintiff, Nathaniel Fitzgerald, filed a Motion to Reassign Case (Doc. No. 54) whereby he seeks that the undersigned Magistrate Judge “step down” from further proceedings in this matter. In support of the Motion, Mr. Fitzgerald states, “I also ask the court to ask Judge Volpe to step down, for a racist reason. I feel I was subjected to a civil right[s] violation by Judge Volpe on [a] couple occasions [*sic*].” Mr. Fitzgerald goes on to explain that the bailiff “snatched” and “nearly tore” some documents he had and that the undersigned had ruled against him in previous cases.

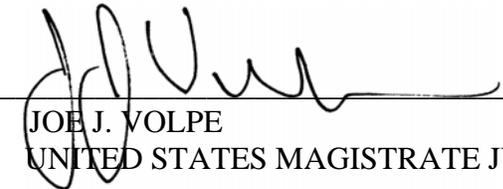
A judge is required to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Congress amended this law "to clarify and broaden the grounds for judicial disqualification and to conform with the recently adopted [American Bar Association] Code of Judicial Conduct, Canon 3C (1974)." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 858 n.7 (1988). “The question is ‘whether the judge’s impartiality might reasonably be questioned by the average person on the street who knows all the relevant facts of a case.’” *United States v. Dehghani*, 550 F.3d 716, 721 (8th Cir. 2008) (citation omitted). “A party introducing a motion to recuse carries a heavy burden of proof; a judge is presumed to be impartial and the party seeking disqualification bears the substantial burden of proving otherwise.” *Pope v. Fed. Express Corp.*, 974 F.2d 982, 985 (8th Cir. 1992).

Plaintiff brings no proof whatsoever to merit recusal in this case. Plaintiff's Motion reveals he mainly seeks recusal because of adverse rulings, but this is no basis for recusal. *Lefkowitz v. Citi-Equity Group, Inc.*, 146 F.3d 609, 611-12 (8th Cir. 1998).

The undersigned took a sacred oath to administer justice without respect to persons, giving equal right to the poor and to the rich, and swore to faithfully and impartially discharge and perform the duties of United States Magistrate Judge under the Constitution and laws of the United States. This Court will faithfully and impartially make decisions based on the law and facts. If Plaintiff believes this Court's decisions are incorrect, his remedy is appealing to United States Court of Appeals for the Eighth Circuit, not filing a recusal motion.

IT IS, THEREFORE, ORDERED that Plaintiff's Motion to Reassign Case (Doc. No. 54) is DENIED as to me.

DATED this 18th day of April, 2011.



JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE