

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

ROGER D. MOSBY,  
ADC #63018

PLAINTIFF

V.

5:13CV00328 BSM/JTR

RAY HOBBS, Director,  
Arkansas Department of Correction; and  
WILLIAM STRAUGHN, Warden,  
Maximum Security Unit

DEFENDANTS

**ORDER**

Plaintiff, Roger D. Mosby, is a prisoner proceeding *pro se* in this § 1983 action. He has recently filed a Motion, an Amended Motion, and a supporting Affidavit arguing that I should recuse from this case. *Docs. 8, 9, & 12.*

A judge must "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Because a judge is presumed to be impartial, the "party seeking disqualification bears the substantial burden of proving otherwise." *Am. Prairie Constr. Co. v. Hoich*, 594 F.3d 1015, 1022 (8th Cir. 2010); *U.S. v. Denton*, 434 F.3d 1104, 1111 (8th Cir. 2006).

Plaintiff argues that I should recuse from this case because I did not promptly rule on his: (1) November 5, 2013 Request for an Order for An Examination by an Outside Doctor; (2) November 7, 2013 Motion for Appointment of Counsel; and (3)

November 18, 2013 Second Motion for Appointment of Counsel. I did not do so because, at that time, I was waiting for Plaintiff to comply with my October 24, 2013 Order directing him to file an Amended Complaint. *Doc. 3*. The Amended Complaint is needed to determine whether Plaintiff, who is a well established three striker, may proceed *in forma pauperis* pursuant to the imminent danger exception in 28 U.S.C. § 1915(g). Plaintiff filed his Amended Complaint on November 25, 2013, and the Court is in the process of reviewing that document, as well as the other Motions Plaintiff has filed. Thus, I have not unnecessarily delayed in ruling on any matters in this case.

Plaintiff also alleges that I am biased against him because I entered unfavorable rulings against him in *Mosby v. Kelley*, 5:11CV00301 SWW/JTR. Unfavorable rulings in a prior proceeding "do not constitute a basis for a bias or partiality" unless the rulings "display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Am. Prairie Constr. Co.*, 594 F.3d at 1021-22; *Denton*, 434 F.3d at 1111. On appeal, the Eighth Circuit found that neither I, nor the District Judge assigned to *Mosby v. Kelley*, 5:11CV00301 SWW/JTR, committed any reversible errors. Further, I did not and do not have any antagonism against Plaintiff that would prevent me from being fair and impartial in this case.

IT IS THEREFORE ORDERED THAT Plaintiff's Motion and Amended

Motion for Speedy Recusal (Docs. 8 & 12) are DENIED.

Dated this 11th day of December, 2013.

  
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UNITED STATES MAGISTRATE JUDGE