

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

16 Before the Court is Plaintiff's Motion to Disqualify District Judge for Bias and
17 Prejudice. (Doc. # 14.) The Motion is based on Plaintiff's dissatisfaction with prior
18 rulings of the Court. That is no basis whatever for disqualification of a judge. A motion
19 for recusal ordinarily may not be based on "prior rulings in the proceeding, or any
20 proceeding, solely because they were adverse." " *Clemens v. United States District Court*
21 *for the Central District of California*, 428 F.3d 1175, 1178-79 (9th Cir. 2005). When no
22 extrajudicial source is involved, judicial rulings may serve as the basis for disqualification
23 only "in the rarest of circumstances" where they "evidence the degree of favoritism or
24 antagonism" which would "make fair judgment impossible." *Liteky v. United States*, 510
25 U.S. 540, 555 (1994).

26 While the Court in *Liteky* did not discuss what showing a party would have to
27 make in order to meet this burden, it is clear that he must show something more than a

1 disproportionate number of decisions in the opponent's favor. Litigation is not egalitarian
2 to the extent that courts must allocate rulings equally in favor of each side, regardless of
3 the merits. "A trial judge must be free to make rulings on the merits without the
4 apprehension that if he makes a disproportionate number in favor of one litigant, he may
5 have created the impression of bias. Judicial independence cannot be subservient to a
6 statistical study of the calls he has made during the contest." *In re International Business*
7 *Machines Corp.*, 618 F.2d 923, 929 (2d Cir. 1980). Therefore, the Court's prior rulings
8 do not give rise to any cause for recusal.

9 IT IS THEREFORE ORDERED that Plaintiff's Motion to Disqualify District
10 Judge for Bias and Prejudice (doc. # 14) is denied.

11 DATED this 20th day of April, 2009.

Neil V. Wake
Neil V. Wake
United States District Judge