

1 petition for habeas corpus relief with the California Supreme Court raising the same federal
2 constitutional claims. On November 28, 2000, the Court issued an order directing the Respondent
3 Warden of San Quentin State Prison in the Federal Habeas Action (the “Warden”) to show cause why
4 abeyance of federal proceedings should not be ordered. Based on the Warden’s response that he did not
5 intend to file a return to the order to show cause, the Court ordered abeyance of federal proceedings on
6 December 15, 2000 for the duration of exhaustion proceedings before the California Supreme Court.
7 On December 29, 2000, Bolin (through counsel) lodged an amended petition for habeas corpus which
8 would be deemed filed when the California Supreme Court denied his exhaustion petition. The amended
9 petition is a 240-page pleading which alleges 32 claims and 60 sub-claims.

10 On January 19, 2005 the California Supreme Court summarily denied Bolin’s state petition on
11 the merits, and additionally found several claims procedurally barred for Bolin’s failure to raise them
12 in the first instance on direct appeal. On the same day, the earlier lodged amended petition (from
13 December 29, 2000) was deemed filed. After a change in counsel, the Warden filed an answer and both
14 parties commenced briefing the substantive issues in the petition. The Court specifically directed that
15 the issue of procedural default would not be litigated in advance of the merits of the claims presented
16 in the petition.

17 On April 27, 2012, the Court entered an order granting a limited evidentiary hearing on one of
18 Bolin’s claims, having found that the claim stated a valid claim for habeas relief and that if the facts
19 offered in support of the claim could be substantiated, Bolin would be entitled to relief. After evaluating
20 the Warden’s motion for reconsideration, the Court entered an amended order granting an evidentiary
21 hearing on August 21, 2012. The Warden filed a second motion for reconsideration on March 15, 2013,
22 which the Court denied on March 21, 2013. The evidentiary hearing is scheduled to commence on May
23 14, 2013.

24 **II. Overview of the Pro Se Petition in this Case**

25 The substance of Bolin’s pro se petition in this case is comprised largely of an excerpt from
26 another document which mentions condemned inmates Theodore Shove (“Shove”) and Spencer Brasure
27 (“Brasure”), plus a handwritten declaration of Bolin. There are 12 discernible claims in the 54-page
28 document applicable to Bolin (nine of which also are applicable to other condemned inmates). The three

1 claims specific to Bolin allege: the trial prosecutor committed prosecutorial misconduct by withholding
2 exculpatory evidence and inducing prosecution witnesses to perjure themselves; ineffective assistance
3 of trial counsel Charles Soria for failure to prepare the case, introduce exculpatory evidence, and
4 examine witnesses; and incompetence of Mr. Soria’s investigator, Bruce Binns for his intoxication,
5 failure to investigate, and overcharging for the tasks he did accomplish.

6 The claims universal to all California condemned inmates allege that the California litigation
7 process for capital cases is illegal. The petition alleges the problems with the California procedures have
8 been “certified” by Ninth Circuit Court of Appeals Judge Arthur Alarcón as well as by two independent
9 commissions studying the matter. The state system is said to be illegal because of the excessive delays
10 in adjudicating constitutional claims and because of the California Supreme Court’s resort to procedural
11 defaults, which in turn limit federal review.

12 **III. Grounds for Disqualification**

13 Bolin’s grounds for disqualification are pleaded in the petition and argued in his separate motion.
14 The petition recites that under 28 U.S.C. § 455(a) when a judge presiding over a case is named by a party
15 in that case as a defendant in another case, disqualification is warranted. The petition references D.C.
16 District Court case numbers CV-09-2316-UNA “or” CV-09-0656-RMW.

17 The motion relies on 28 U.S.C. § 455(b)(1)(2)(3)(4) and (5). In the body of the motion as well
18 as in Bolin’s supporting declaration under penalty of perjury, he claims that the undersigned is named
19 as a defendant in his submissions.

20 Bolin’s primary complaint is that the undersigned is not adjudicating his claims about the
21 California illegal capital case litigation process. He alleges the undersigned has denied him access to
22 the Court and committed fraud by not ruling on properly submitted and justiciable documents. The
23 undersigned also is charged with aiding and abetting state government agents in violating his federal
24 constitutional rights. He provides three examples.

1 (3) Where he has served in governmental employment and in such capacity participated
2 as counsel, adviser or material witness concerning the proceeding or expressed an
opinion concerning the merits of the particular case in controversy.

3 (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing
4 in his household, has a financial interest in the subject matter in controversy or in a party
to the proceeding, or any other interest that could be substantially affected by the
5 outcome of the proceeding;

6 (5) He or his spouse, or a person within the third degree of relationship to either of them,
or the spouse of such person:

7 (i) Is a party to the proceeding, or any officer, director, or trustee to a
party;

8 (ii) Is acting as a lawyer in the proceeding;

9 (iii) Is known by the judge to have an interest that could be substantially
affected by the outcome of the proceeding;

10 (iv) Is to the judge's knowledge likely to be a material witness in the
proceeding.

11 Under this statute, the standard for evaluating recusal or disqualification is whether “a reasonable
12 person with knowledge of all the facts would conclude that the judge’s impartiality might reasonably
13 be questioned.” *Pesnell v. Arsenault*, 543 F.3d 1038, 1043 (9th Cir. 2008) (citations and internal
14 quotation marks omitted). The United States Supreme Court has explained that judicial rulings alone
15 almost never constitute a valid basis for a bias or impartiality motion, and almost invariably they are
16 proper grounds for appeal, not recusal. *Liteky v. United States*, 543 U.S. 540, 555 (1994). Opinions
17 formed by a judge on the basis of facts introduced or events occurring in the course of the current
18 proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they
19 display “a deep-seated favoritism or antagonism that would make fair judgment impossible.” *Id.*

20 Bolin’s offered basis for disqualification is that he has named the undersigned as a defendant in
21 other actions and submissions. The Court has taken judicial notice of the D.C. District Court cases
22 referenced in the petition. The docket for the D.C. District Court reveals that only one of the two cases,
23 1:09-cv-02316 UNA,³ includes Bolin as a plaintiff (along with Shove, Brasure, and other named
24 condemned inmates) and the undersigned as a defendant (along other California district judges from the
25 Central, Northern, and Eastern Districts of California).⁴ The D.C. District Court docket further reveals

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27 ³ This is the current format for case numbering. It is the same case as CV-09-2316-UNA.

28 ⁴ The other referenced case number, CV-09-0656 RMW, is attached to an unrelated plaintiff
concerning a different issue entirely.

1 that case number 1:09-cv-02316 UNA was dismissed on January 25, 2010 without prejudice.
2 Reconsideration was denied on May 3, 2010 and a notice of appeal was filed on May 19, 2010. The
3 plaintiffs' separate motions to proceed on appeal in forma pauperis were granted on July 29, 2010. The
4 district court's orders of January 25, 2010 and May 3, 2010 were affirmed by the D.C. Court of Appeals
5 on February 2, 2011 and the mandate was issued. The D.C. Court of Appeals denied plaintiffs' motion
6 to reopen the appeal on February 10, 2012. After that date, there are no further entries on the docket.

7 Separately from this D.C. District Court case, Bolin has made the Court aware that he has
8 registered a judicial complaint with the Ninth Circuit Court of Appeals about the undersigned. A copy
9 of this complaint, which is dated April 9, 2013, was submitted to the Court on April 15, 2013. The
10 complaint recounts many of the same wrongs alleged in the petition and motion for disqualification in
11 the present case.

12 Since the D.C. District Court case no longer is pending and no other pending actions, excepting
13 the Ninth Circuit judicial complaint, have been identified, the Court concludes that the judicial
14 complaint is the only viable pending action against the undersigned. Even if there were more cases,
15 however, Bolin cannot make an adequate showing of bias or prejudice under the applicable law.

16 There is no language in 28 U.S.C. § 455 mentioning disqualification because the presiding judge
17 in a particular case is named by a party in that case as a defendant in a separate case. This omission is
18 sensible. Otherwise, parties would be able to disqualify judges presiding over their cases
19 indiscriminately. Nor does the controlling case law support Bolin's position. The fact that a judge rules
20 in a case adversely to a party is not grounds for disqualification or recusal, in the same or even in a
21 subsequent case, in the absence of "a deep-seated favoritism or antagonism that would make fair
22 judgment impossible." *Liteky*, 543 U.S. at 555.

23 While the Court understand that Bolin feels aggrieved by the state court procedures and frustrated
24 that his grievances have not been addressed in a manner he believes appropriate, this does not change
25 the fact he has not shown grounds for disqualification. His arguments and allegations fall far short of
26 benchmark cited in *Liteky*.

1 **V. Order**

2 In light of the foregoing reasons, Bolin's motion for disqualify the undersigned is denied. The
3 Court will address the Bolin's motion to proceed in forma pauperis and the merits of his petition in a
4 later order.

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6 IT IS SO ORDERED.

7 Dated: April 29, 2013

8 /s/ Lawrence J. O'Neill
9 Lawrence J. O'Neill
10 United States District Judge
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