



1 an unavoidable duty to recuse himself when facts are properly verified by affidavit supporting a claim  
2 of legally cognizable bias or prejudice. On the other hand, a judge has an equally unavoidable duty not  
3 to refuse to recuse himself when the facts verified by affidavit do not support an allegation of legally  
4 cognizable bias or prejudice.” Deal v. Warner, 369 F. Supp. 174, 176 (W.D. Mo. 1973). Here, Plaintiff  
5 alleges absolutely no facts in his affidavit (other than being a party to the case) and, instead, asserts  
6 merely—according to the standards permitted under California law<sup>2</sup>—that he believes the Court is  
7 prejudiced against him. (Doc. 37 at 5.) Plaintiff was obligated to set forth facts which give “fair  
8 support” to his claims of bias and prejudice. Berger v. United States, 255 U.S. 22, 41 S.Ct. 230, 65  
9 L.Ed. 481 (1921). Thus, the affidavit is not sufficient. Moreover, the affidavit is not timely in that  
10 Plaintiff filed it *only* after the Court has issued orders that were not favorable to him. The time for  
11 making such a disqualification motion was at the time the matter was assigned to the undersigned—  
12 three months ago. (Doc. 11) California law requires the same. Cal. Code Civ. P. 170.6(a)(1)(2).

13 Third, even assuming the motion was brought under 28 U.S.C. § 455, the fact that the  
14 undersigned was employed by the County of Kern nearly six years ago, presents no apparent or actual  
15 conflict. The events which give rise to the litigation, apparently, occurred during 2015 (*See “Mountain*  
16 *Meadows Community Services District meeting goes smoothly; GM Williford terminated,”* by Jill  
17 Barnes Nelson, Tehachapi News, June 7, 2015) and, therefore, the fact of my employment years ago—  
18 which ended in 2009—can have no bearing on this matter. Moreover, the undersigned *never* had any  
19 involvement with the community services district at issue while employed by the County of Kern and  
20 *never* represented Mr. Scrivner; indeed, Mr. Scrivner was not elected to his current job until after I left  
21 the County’s employ.<sup>3</sup> Nevertheless, even if I had represented either of these parties, the amount of  
22 time that has passed since the termination of my employment with the County of Kern, makes it  
23 patently unreasonable that even a hint of impartiality could result. Moreover, of course, the County of  
24 Kern is not a defendant in this action and, of course, the undersigned is not the presiding judge on this  
25 case. Instead, only District Judge Mueller may issue final judgment in this case.

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27 <sup>2</sup> Under California law, a party merely must state his belief the judge is biased against him to be entitled to recusal of the  
judge. Cal. Code. Civ. P. 170.6. He need not state any grounds for his belief. However, the federal law is different.

28 <sup>3</sup> The Court takes judicial notice that Mr. Scrivner was elected to the Kern County Board of Supervisors in 2010. F.R.E.  
201(b)(1), (2).

1 Finally, Cannon 3(C) of the Code of Conduct for United States Judges sets forth the  
2 circumstances of when a judge must recuse herself; none apply here. Though the standard for  
3 determining whether a judge should recuse herself includes circumstances where “the judge’s  
4 impartiality might reasonably be questioned,” a former government lawyer must recuse herself when  
5 the government is a defendant in a matter before her *only* when in her former capacity, “the judge . . .  
6 participated as a . . . counsel, advisor, or material witness concerning the proceeding or has expressed  
7 an opinion concerning the merits of the particular case in controversy.” Cannon 3(C)(1)(e); 28 U.S.C. §  
8 455(b)(2). Once again, none of these circumstances apply here. The mere fact that the undersigned was  
9 employed by the County of Kern years before the controversy arose and before the defendant became  
10 associated with the County of Kern, does not raise a reasonable question as to the Court’s impartiality.<sup>4</sup>  
11 Thus, the motion is **DENIED**.

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13 IT IS SO ORDERED.

14 Dated: August 13, 2015

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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<sup>4</sup> Indeed, any such concern—if one ever truly existed—should have been alleviated when *the Defendant refused to consent*  
to the undersigned’s jurisdiction. (Doc. 12)