

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

HARLEY McNEIL,  
  
Plaintiff,  
  
v.  
  
COMMISSIONER OF SOCIAL  
SECURITY,  
  
Defendant.

**15-cv-1442-AWI GSA**

**ORDER FOR SUPPLEMENTAL  
BRIEFING**

On November 2, 2016, Plaintiff filed a request that the undersigned be disqualified “due to a conflict of interest because of proceedings and judgments involving [Plaintiff’s] deceased son, Levi Lingenfelter.” (Doc. 17). This is the only sentence Plaintiff articulated in support of his motion.

The Court believes that the Plaintiff’s son may have been a party in a state court proceeding that the undersigned presided over several years ago. Plaintiff is advised that a judge must disqualify himself if “his impartiality might be reasonably questioned,” 28 U.S.C. § 455(a), or if “he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding,” 28 U.S.C. § 455(b)(1). “[J]udicial rulings or information acquired by the court in its judicial capacity will rarely support recusal.” *United*

1 *States v. Johnson*, 610 F.3d 1138, 1147 (9th Cir. 2010) (citing *Litkey v. United States*, 510 U.S.  
2 540, 555, 114 S.Ct. 1147 (1994)). The objective test for determining whether recusal is required  
3 is whether a reasonable person with knowledge of all the facts would conclude that the judge's  
4 impartiality might reasonably be questioned. *Johnson*, 610 F.3d at 1147 (quotation marks and  
5 citation omitted); *Pesnell v. Arsenault*, 543 F.3d 1038, 1043 (9th Cir. 2008). "Adverse findings  
6 do not equate to bias," and prior rulings in the proceeding, or another proceeding are ordinarily  
7 insufficient to establish that recusal is required. *Johnson*, 610 F.3d at 1147-1148. Thus,  
8 Plaintiff's disagreement with the Court's judicial rulings in a case does not constitute a valid basis  
9 for a bias or partiality motion. *In re Focus Media, Inc.*, 378 F.3d 916, 930 (9th Cir. 2004) (citing  
10 *Litkey v. United States*, 510 U.S. 540, 555, 114 S.Ct. 1147 (1994)).

11 Given the above, the fact that the undersigned presided over prior proceedings involving  
12 the Plaintiff or his son is not by itself a basis for the Court's recusal. However, given the limited  
13 information in the motion, the Court will give Plaintiff an opportunity to supplement his pleading  
14 if he so desires. Plaintiff shall file any additional pleading no later than **December 6, 2016**.

15 ***Failure to file a supplemental brief may result in denial of this motion.***

16 IT IS SO ORDERED.

17 Dated: November 14, 2016

18 /s/ Gary S. Austin  
19 UNITED STATES MAGISTRATE JUDGE