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

BERLAN LYNELL DICEY,

Plaintiff,

No. CIV S-06-0482 CMK (TEMP) P

vs.

S. PICKEN, et al.

Defendants.

ORDER

Plaintiff is a state prisoner proceeding through counsel with an action under 42 U.S.C. § 1983. On November 30, 2010, trial proceedings commenced before Magistrate Judge Kimberly J. Mueller. The trial ended December 2, with the jury returning a verdict for the defendants. Judgment for the defendants was entered on December 6.

On January 3, 2011, plaintiff filed a motion for new trial. Three days later, this action was reassigned to the undersigned, due to the elevation of Judge Mueller to the position of District Judge. However, the undersigned presided over the parties' mediation and settlement negotiations prior to trial, during which both sides submitted confidential settlement information to him. Local Rule 270 specifically divides the duties of the presiding judge in a case from the duties of the judge who conducts a settlement conference in the same case. Plaintiff has now moved that the undersigned recuse himself from this case on the basis of this requirement in Local Rule 270. The motion is well taken and will be granted.

1 IT IS THEREFORE ordered that:

2 1. Plaintiff's motion for recusal (Docket No. 132) is granted.

3 2. The ex parte motion for continuance of the hearing date on the motion for a  
4 new trial (Docket No. 130) is moot.

5 3. The Clerk of Court is directed to reassign this case to another magistrate judge  
6 in the Sacramento division.

7 4. Plaintiff, acting through counsel, shall have seven days after receiving notice of  
8 the reassignment in which to set a date for hearing on the motion for new trial before the newly  
9 assigned judge.

10  
11 DATED: February 2, 2011

12   
13 **CRAIG M. KELLISON**  
14 UNITED STATES MAGISTRATE JUDGE

15 /hm  
16 dice0482.recuse