

1 time. A party may file only one such affidavit in any case. It shall
2 be accompanied by a certificate of counsel of record stating that it
is made in good faith.

3 28 U.S.C. § 144.

4 The standard for recusal under 28 U.S.C. § 144 is “whether a reasonable person with
5 knowledge of all the facts would conclude that the judge’s impartiality might reasonably be
6 questioned.” Mayes v. Leipziger, 729 F.2d 607, 607 (9th Cir. 1984) (quoting United States v.
7 Nelson, 718 F.2d 315, 321 (9th Cir. 1983)). To provide adequate grounds for recusal, the
8 prejudice must result from an extrajudicial source since a judge’s previous adverse ruling alone is
9 not sufficient for recusal. See id.

10 Section 144 expressly conditions relief upon the filing of a timely and legally sufficient
11 affidavit. A judge who finds the affidavit legally sufficient must proceed no further under Section
12 144 and must assign a different judge to hear the matter. See 28 U.S.C. § 144; United States v.
13 Sibla, 624 F.2d 864, 867 (9th Cir. 1980). Nevertheless, where the affidavit is not legally
14 sufficient, the judge at whom the motion is directed can determine the matter. See United States
15 v. Scholl, 166 F.3d 964, 977 (9th Cir. 1999) (citing Toth v. Trans World Airlines, Inc., 862 F.2d
16 1381, 1388 (9th Cir. 1988) (holding that only after determining the legal sufficiency of a Section
17 144 affidavit is a judge obligated to reassign decision on merits to another judge)). If the affidavit
18 is legally insufficient, then recusal can be denied. See United States v. \$292,888.04 in U.S.
19 Currency, 54 F.3d 564, 566 (9th Cir. 1995).

20 ANALYSIS

21 Plaintiff’s motion for recusal in this case is substantively insufficient under Section 144
22 because it fails to allege facts that would support the contention that the undersigned has
23 exhibited bias or prejudice directed towards plaintiff from an extrajudicial source. See Sibla 624
24 F.2d at 868 (“An affidavit filed pursuant to [Section 144] is not legally sufficient unless it
25 specifically alleges facts that fairly support the contention that the judge exhibits bias or prejudice
26 directed toward a party that stems from an extrajudicial source.”). The motion alleges partiality
27 and bias by the undersigned because plaintiff is “a convict.” (See ECF No. 16). It further asserts
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1 that because the undersigned is also presiding over a second case of plaintiff's,¹ this creates a
2 conflict of interest. (Id.). Implicit in these statements is the contention that the decisions made in
3 plaintiff's other case will affect the decisions the undersigned will make in this matter.

4 The issues raised by plaintiff in his motion for recusal are not proper grounds to disqualify
5 a judge for bias and prejudice. As the United States Supreme Court has noted, "judicial rulings
6 alone almost never constitute a valid basis for a bias or partiality motion." Liteky v. United
7 States, 510 U.S. 540, 555 (1994). Instead, the judicial rulings are a basis for appeal, not recusal.
8 See id. ("In and of themselves . . . [judicial rulings] cannot possibly show reliance upon an
9 extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or
10 antagonism required . . . when no extrajudicial source is involved. Almost invariably, they are
11 proper grounds for appeal, not for recusal."); Leslie v. Grupo ICA, 198 F.3d 1152, 1160 (9th Cir.
12 1999) ("Leslie's allegations stem entirely from the district judge's adverse rulings. That is not an
13 adequate basis for recusal.") (citations omitted). Furthermore, recusal based upon the fact that a
14 judge has presided over other cases of a movant, without more, is not warranted. See §292,
15 888.04 in U.S. Currency, 54 F.3d at 567; see also Barnes v. United States, 241 F.2d 252, 253-54
16 (9th Cir. 1956) (stating judge's decision against litigant in one case does not preclude judge from
17 sitting in another case of litigant's).

18 For these reasons, IT IS HEREBY ORDERED that plaintiff's motion for to disqualify the
19 undersigned magistrate judge (ECF No. 16) is denied.

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21 Dated: 4/10/2018

22 /s/ DEBORAH BARNES
23 UNITED STATES MAGISTRATE JUDGE

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27 DLB:13
DB/ORDERS/ORDERS/PRISONER.CIVIL RIGHTS/ford1928.recuse

28 ¹ The undersigned also presides over Ford v. Jahangiri, No. 2:15-cv-2588 GEB DB P.