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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 SAMUEL BERNARD JOHNSON III,

No. C 07-05756 SI

9 Plaintiff,

**ORDER DENYING WITHOUT  
PREJUDICE PLAINTIFF'S MOTION  
FOR RECUSAL AND REASSIGNMENT**

10 v.

11 CHEVRON CORPORATION, et al.,

12 Defendants.  
13 \_\_\_\_\_/

14 Plaintiff has filed a motion for recusal of the undersigned judge and reassignment of this action  
15 to another judge in this district. The motion is DENIED because the Court lacks jurisdiction to hear it.  
16 Plaintiff brings this motion while his action is pending on appeal to the Ninth Circuit. "As a general  
17 rule, the filing of a notice of appeal divests a district court of jurisdiction over those aspects of the case  
18 involved in the appeal." *Stein v. Wood*, 127 F.3d 1187, 1189 (9th Cir. 1997).<sup>1</sup> Moreover, both of the  
19 statutes under which plaintiff seeks recusal require that there be a "proceeding" pending before the judge  
20 sought to be recused. *See* 28 U.S.C. §§ 144, 455(a). As plaintiff's case is currently on appeal, there is  
21 no "proceeding" pending before this Court, and the Court thus lacks jurisdiction to consider the motion.

22 The motion for recusal and reassignment is therefore DENIED without prejudice to renewal after  
23 plaintiff's appeal is decided, in the event any portion of the case is remanded to this Court.

24 **IT IS SO ORDERED.**

25 Dated: August 4, 2010



26 \_\_\_\_\_  
SUSAN ILLSTON  
United States District Judge

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28 <sup>1</sup> This rule is subject to certain exceptions not applicable here, such as a request to correct or  
clarify a prior order entered by the district court. *Id.*