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28IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ASTARTE DAVIS-RICE,

No. C 11-3203

Plaintiff,

**ORDER DENYING MOTION TO RECUSE**

v.

UNITED STATES OF AMERICA, et al.,

Defendants.  

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Before the Court is plaintiff Astarte Davis-Rice's ("Davis-Rice") "Motion to Recuse United States District Judge Maxine M. Chesney by Verified Affidavit" (hereinafter "Motion"), filed October 4, 2011, pursuant to 28 U.S.C. § 144 and 28 U.S.C. § 455. (See Mot. at 1:19-23.) Defendant United States has filed opposition thereto. Having read and considered the papers filed in support of and in opposition to the Motion, the Court deems the matter suitable for decision on the parties' respective written submissions and rules as follows.

The affidavit filed in support of the Motion references earlier cases filed by Davis-Rice and heard by the undersigned judge. In the affidavit, Davis-Rice purports to describe the rulings made in said prior actions (see Mot. at 3:24-8:28), and asserts said rulings show the undersigned is "personally biased and prejudiced against [her]." (See id. at 1:23.) Contrary to Davis-Rice's contentions, however, the affidavit, as a matter of law, fails to

1 provide sufficient grounds for recusal under either statute.

2 **DISCUSSION**

3 A. Recusal Under 28 U.S.C. § 144

4 Pursuant to 28 U.S.C. § 144, a judge shall recuse himself or herself when a party  
5 makes and files a “timely and sufficient affidavit” that the judge “has a personal bias or  
6 prejudice either against him or in favor of any adverse party.” See 28 U.S.C. § 144. The  
7 challenged judge must determine in the first instance whether the affidavit is legally  
8 sufficient and, if so, must refer the motion to another judge for determination. See id.; see  
9 also United States v. Montecalvo, 545 F.2d 684, 685 (9th Cir. 1976) (holding district judge  
10 did not err in refusing to recuse himself where affidavit was legally insufficient). Here, the  
11 Motion is both procedurally and substantively insufficient under §144.

12 First, as a procedural matter, Davis-Rice’s affidavit is insufficient, because Davis-  
13 Rice has not provided a “certificate of counsel of record stating that [the affidavit] is made in  
14 good faith.” See 28 U.S.C. § 144; Robinson v. Gregory, 929 F. Supp. 334, 337-38 (S.D.  
15 Ind. 1996) (holding certification by member of the bar is necessary to prevent abuse of  
16 recusal procedures); see also United States v. Bennett, No. SACR 03-25 AHS, 2008 WL  
17 2025074, at \*2 (C.D. Cal. May 5, 2008) (same).<sup>1</sup>

18 Second, as a substantive matter, the affidavit is insufficient, because it contains no  
19 facts that would support a finding that the Court’s rulings were based on bias “stem[ming]  
20 from an extrajudicial source” rather than on “what [the Court] learned from [the Court’s]  
21 participation in the case.” See United States v. Grinnell Corp., 384 U.S. 563, 583 (1966).<sup>2</sup>  
22 Davis-Rice’s repeated conclusory assertion that the undersigned is “personally biased  
23 against [her] as a convicted felon” (see, e.g., Mot. at 1:23, 4:6, 5:24) is unsupported by

24 \_\_\_\_\_  
25 <sup>1</sup> Even assuming Davis-Rice could make the required certification herself, she has  
26 not done so here.

27 <sup>2</sup> Contrary to Davis-Rice’s assertion, the Court’s “extraneous research” (see Mot. at  
28 5:11-12), specifically, the Court’s reference in one of Davis-Rice’s habeas cases to the  
Third Circuit’s published opinion on her direct appeal (see Mot. Ex. E at 1 n.1), does not  
constitute an extrajudicial source.

1 “specifically allege[d] facts,” and, consequently, provides no legally cognizable support for  
2 the motion. See United States v. Sibla, 624 F.2d 864, 867 (9th Cir. 1980) (holding “[a]n  
3 affidavit filed pursuant to [§ 144] is not legally sufficient unless it specifically alleges facts  
4 that fairly support the contention that the judge exhibits bias or prejudice directed toward a  
5 party that stems from an extrajudicial source”).

6 In sum, the affidavit is, as a matter of law, insufficient to support recusal under  
7 § 144.

8 B. Recusal Under 28 U.S.C. § 455


9 Davis-Rice’s affidavit likewise is insufficient to support recusal under § 455.  
10 Pursuant to § 455, a judge “shall disqualify himself in any proceeding in which his  
11 impartiality might reasonably be questioned.” See 28 U.S.C. § 455(a). As noted above,  
12 Davis-Rice’s motion is based on rulings made in judicial proceedings. For purposes of  
13 § 455, however, “judicial rulings alone almost never constitute a valid basis for a bias or  
14 partiality motion . . . and can only in the rarest circumstances evidence the degree of  
15 favoritism or antagonism required.” See Liteky v. United States, 510 U.S. 540, 555 (1994).  
16 A judge’s rulings and decisions are, “[a]lmost invariably, . . . proper grounds for appeal, not  
17 for recusal.” See id. Indeed, even “judicial remarks during the course of a [proceeding]  
18 that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases”  
19 ordinarily will not suffice to support a motion for recusal. See id. Here, the affidavit does  
20 no more than describe ordinary “judicial rulings” and “routine trial administration,” see id. at  
21 556, and the Court is unaware of any circumstances that otherwise would require  
22 disqualification or recusal.

23 **CONCLUSION**

24 For the reasons stated above, Davis-Rice’s Motion is hereby DENIED.

25 **IT IS SO ORDERED.**

26  
27 Dated: October 19, 2011

28  
  
MAXINE M. CHESNEY  
United States District Judge