

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
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY FREDIANELLI,
Plaintiff,
v.
STEPHAN JENKINS, *et al.*,
Defendants.

No. C-11-3232 EMC

**ORDER RE PLAINTIFF’S MOTION TO
DISQUALIFY**
(Docket No. 193)

Plaintiff Anthony Fredianelli has moved for a disqualification of Judge Corley, the settlement judgment in this case. Mr. Fredianelli has moved to disqualify based on 28 U.S.C. § 455, which provides in relevant part that “[a]ny justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned” and that the same “shall also disqualify himself . . . [w]here he has a personal bias or prejudice concerning a party.” 28 U.S.C. § 455(a), (b)(1).

Although § 455 is a “self-enforcing” obligation upon a judge, a party may raise a § 455 issue by motion. *See Bernard v. Coyne (In re Bernard)*, 31 F.3d 842, 843 n.1 (9th Cir. 1994) (noting that “[n]o motion is required to precipitate a judge’s recusal under section 455” but that “[p]arties may . . . raise the issue by motion”) (emphasis in original). The motion, however, should be decided by the judge whom the party asserts should be disqualified. *See id.* at 843 (noting the § 455 decision is to be made by the judge whose impartiality is being questioned), Commentary to Civil Local Rule 3-15 (recusal request under § 455 normally undertaken by judge whose recusal is sought). Accordingly,

1 the Court hereby refers the motion to disqualify to Judge Corley. The Court notes that the referral is
2 *not* one seeking a report and recommendation. Judge Corley is the judge who will issue the
3 dispositive order on the § 455 motion.

4
5 IT IS SO ORDERED.

6
7 Dated: December 10, 2012

8
9 
EDWARD M. CHEN
United States District Judge