James Chaffee
63 Stoneybrook Avenue
San Francisco, CA 94112
Telephone: (415) 584-8999

Plaintiff In Propria Persona
JAMES CHAFFEE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JAMES CHAFFEE,

Plaintiff,

v.

SAN FRANCISCO LIBRARY COMMISSION; CITY AND COUNTY OF SAN FRANCISCO, and DOES 1 through 20, inclusive,

Defendants.

Case No.: CV-10-4521-SBA

PLAINTIFF'S CERTIFICATE IN RESPONSE TO ORDER TO SHOW CAUSE RE DISMISSAL; MEMORANDUM TO THE FILE FOR THE SAKE OF HISTORY; OR WHAT YOU WILL

Dept.: Courtroom 1, 4th Fl.
Judge: Honorable Saundra Brown Armstrong

The court filed an Order Denying Plaintiff's Motion for Recusal; Second Order to Show Cause on March 1, 2011. A true and correct copy of that order is attached hereto as exhibit A.

The Order raises the following issues and we will address each of them in turn.

This case was filed in San Francisco. A plaintiff has the right to chose the venue. Code of Civil Procedure §395, et. seq. Under the law the plaintiff's choice of venue is presumptively correct. Buran Equipment Co. v. Superior Court (1987) 190 Cal.App.3d 1662, 1666. The plaintiff has properly chosen San Francisco County. The plaintiff's reasons for choosing a particular county are immaterial. Hamilton v. Superior Court (1974) 37 Cal.App.3d 418, 423.

The case was transferred to another venue on the court's own motion by way of a Reassignment Order dated December 6, 2010. The reassignment order states, "GOOD CAUSE APPEARING THEREFOR," but it does not state what the good cause is, nor does it state any

motivation for the reassignment at all. The reassignment order does not, on its face, cite any rule or other authority to make such a reassignment.

Once venue is changed out of the jurisdiction of the plaintiff, the inconvenience of the plaintiff becomes a factor. There is significant case law, particularly in equal treatment and civil rights cases, regarding protecting the right of the plaintiff to pursue legal action without the extra burden of pursuing the case in another venue. It should not be necessary to quote that case law here. A good example would be the venue provisions of the California Fair Employment and Housing Act, California Government Code §12940, et seq., See, Brown v. Superior Court (C.C. Myers, Inc.) (1984) 37 Cal.3d 477.

The salient point is that having been subjected to the burden of a remote jurisdiction the failure to provide e-filing for the plaintiff while the defendant has access to e-filing destroys any contention of a level playing field. Being able to e-file is essential to create a level playing field when the venue of the case has been changed, as the following will amply demonstrate.

My Motion for Leave to E-file that had been filed on January 14, 2011, was denied on January 31, 2011. I received notice of that denial on February 2, 2011. I found this utterly shocking. There was no indication that e-filing was not offered as a convenience to the litigant. Any denial of access to that convenience must be an example of some sort of extreme prejudice and I recognized that the only reasonable chance to save my case was to recuse the judge.

This notice was received the day before the Initial Case Management Conference of February 3, 2011, at 2:30 p.m.

On that same afternoon of February 2, 2011, I called the court and opposing counsel to inform them that I would not be appearing by telephone at the Initial Case Management Conference the following day.

I knew that a judge had no power to rule on a motion once a motion to recuse was filed. Although I had no ability to draft a motion to recuse and get it filed in less than twenty-four hours it would not be reasonable to be subjected to a scheduling order from a judge who had already denied my motion and who I intended to recuse. I knew that any failure to complete the Initial Case Management Conference would be rendered moot when the motion to recuse was granted.

Once a motion to recuse is filed, a judge is powerless to make any rulings, even a scheduling order. It is clear that at least part of the reason that I was not able to file a motion to recuse in time to have the Initial Case Management Conference taken off-calendar is because I have been denied leave to e-file in the first place. Of course, the reason I did not have more timely notice of the order denying leave to e-file was that I was not part of the e-filing system, so perhaps the un-level playing field of not being allowed to e-file was the only reason the motion to recuse was not filed before the conference.

On February 4, 2011, I filed and served the Motion for Disqualification to recuse Judge Armstrong.

On February 7, 2011, I received the Order to Show Cause re Dismissal ("OSC") which the court had served by mail on February 4. This OSC required me to respond with my reasons for failing to appear by phone at the Initial Case Management Conference and ordering me not to file any other motions. Obliviously, my motion to recuse and this order had crossed in the mail.

On February 10, I responded to the OSC stating that a motion to recuse had been filed.

(It should be mentioned parenthetically that on February 10, 2011, the defendant filed its own response to the OSC which was not directed to it and can only be described as a highly prejudicial attempt at a defacto summary judgment motion outlining purported reasons the case should be dismissed.)

The court ascribed to me the responsibility for violating the order against filing any other motions while the OSC is pending. In fact the order and my motion to recuse passed in the mail. It is clear that the only reason I was not timely informed of the court's order was that I was not part of the e-filing system.

Thus, in two separate situations I am charged with violating orders of the court that are in fact both illustrations of how the denial of the right participate in the e-filing system is effectively a denial of a level playing field.

The Order cited as aggravation of the failure to appear at the Initial Case Management Conference that "Although Plaintiff responded that he would initiate the call, he failed to do so." This is an egregious misrepresentation. On the morning of February 3, 2011, I was awoken from

a sound sleep. The caller stated that she was calling from Judge Armstrong's chambers, that I could not cancel a conference that the court had scheduled and that if I did not appear at the telephone conference my case would be placed on the Order to Show Cause list. My only response was, "That's fine." At that point the caller hung up and I hung up. At which point I checked the clock and it was 7:14 a.m. My meaning was that I was content to have the case placed on the OSC list. There is not one person in a hundred who would interpret "That's fine" in that circumstance as a promise to participate in the phone conference. It is evidence of another sort of prejudice to call someone at 7:14 in the morning, and then use his response against him. No one considering treating the plaintiff fairly would even contemplate such a tactic.

It hardly needs to be mentioned that the Motion for Disqualification was brought pursuant to 28 U.S.C. §144 and under that section the judge being recused may only review the affidavit to determine if it is legally sufficient. United States v. Montecalvo 545 F.2d 684, 685 (9th Cir. 1976). Also, after making that determination the judge can proceed no further and the motion must be assigned to another judge for determination of its merit. United States v. Sibla 624 F.2d 864, 869 (9th Cir. 1980). While making no contention that the motion was legally insufficient the judge proceeded to rule on the merits and issued an Order Denying the Plaintiff's Motion for Recusal on March 1, 2011 (exhibit A).

There are some First Amendment public forum issues that will only arrive before the court from a pro se litigant and this is arguably one of those cases. There are any number of public forum cases where the courts have proscribed differential treatment of "invitees." By refusing to treat pro se litigants fairly the court is effectively obliterating whole sections of Constitutional interpretation. This loss is a loss to our entire nation and its democratic institutions across the board.

Will some historian in the future look back on this case and come to the conclusion that this court treats pro se litigants fairly? Somehow, I don't think so.

Dated: March 5, 2011

James Chaffee, Plaintiff

Exhibit A

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

JAMES CHAFFEE, Plaintiff, vs. SAN FRANCISCO LIBRARY COMMISSION, et al., Defendants.	Case No: C 10-4521 SBA **ORDER DENYING PLAINTIFF'S MOTION FOR RECUSAL; SECOND ORDER TO SHOW CAUSE** Dkt. 20

On October 6, 2010, Plaintiff filed a *pro se* complaint against Defendants the San Francisco Library Commission ("Library Commission") and the City and County of San Francisco challenging the Library Commission's decision to prohibit members of the public from using computerized graphic displays, such as PowerPoint, during the public comment portion of Library Commission meetings. Dkt. 1. Plaintiff asserts that the First Amendment and Equal Protection Clause of the United States Constitution entitle him to use such displays, and thus the Library Commission's restrictions violate his constitutional rights. Id.

An initial Case Management Conference was scheduled in this matter for February 3, 2011 at 2:30 p.m. On or about February 2, 2011, Plaintiff left a voicemail message for the Court's Clerk stating that he was unilaterally cancelling the CMC. The Clerk returned Plaintiff's telephone call early the following morning (using the telephone number listed in the docket) and informed him that he could not cancel a hearing scheduled by the Court. The Clerk further informed Plaintiff that if he failed to initiate the call as previously ordered, the Court would issue an Order to Show Cause why the instant action should not be dismissed. Although Plaintiff responded that he would initiate the call, he failed to do so. Therefore, on

February 4, 2011, the Court issued an Order to Show Cause re Dismissal, directing the parties to file by February 10, 2011 a Certificate of Counsel to explain why this case should not be dismissed under Federal Rule of Civil Procedure 41(b). Dkt. 19. The Court also ordered that "Plaintiff may not file any motions or other requests with the Court until he files his response to this Order." Id. at 2.

Despite that Order, Plaintiff filed on February 7, 2011 the instant "Motion for Disqualification." Dkt. 20. The Court liberally construes this motion as a motion for recusal. Thereafter, on February 11, 2011, Plaintiff filed a Certificate of Counsel, stating: "[t]here is currently a motion to recuse pending before the court ... dismissal is not appropriate at this time while the motion to recuse is pending." Dkt. 22.[1]

Plaintiff bases his motion for recusal exclusively on the Court's denial of his request for permission to participate in the Court's e-filing program. Specifically, Plaintiff asserts: "[t]his action is so unconscionably, mind-bogglingly unreasonable that it is unthinkable without postulating the most egregious bias against pro se litigants." Id. at 3.

Title 28, United States Code, section 455(a), states that "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." In analyzing a § 455(a) disqualification motion, the test is an objective one: "whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned." Clemens v. U.S. Dist. Court for Cent. Dist. of Cal., 428 F.3d 1175, 1178 (9th Cir. 2005) (per curiam) (internal quotation marks omitted). Recusal also is authorized under 28 U.S.C. § 144, which provides that if "the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further . . . ." Under both recusal statutes, the salient question is whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned. Pesnell v. Arsenault, 543 F.3d 1038, 1043 (9th Cir. 2008).

[1] Defendants filed a timely Certificate of Counsel in response to the Order to Show Cause, arguing that this case should be dismissed under Rule 41(b). Dkt. 21.

Here, Plaintiff has failed to provide any legitimate grounds upon which a reasonable person with knowledge of the action would question the Court's impartiality. With regard to the Court's denial of Plaintiff's request for permission to e-file documents, the Court has inherent discretion in managing its docket. See Landis v. N. Am. Co., 299 U.S. 248, 254 (1936); see also Liteky v. U.S., 510 U.S. 540, 555 (1994) ("judicial rulings alone almost never constitute a valid basis for a bias or partiality motion"). Accordingly,

IT IS HEREBY ORDERED THAT:

1. Plaintiff's motion for recusal is DENIED.

2. Plaintiff shall show cause why the instant action should not be dismissed under Rule 41(b) for Plaintiff's repeated failures to comply with Orders of the Court. Within seven (7) days of the date this Order is filed, Plaintiff shall file a Certificate of Counsel to explain why the case should not be dismissed. The Certificate shall set forth the nature of the cause, its present status, the reason it has not been brought to trial or otherwise terminated, any basis for opposing dismissal and its expected course if not dismissed. FAILURE TO FULLY COMPLY WITH THIS ORDER WILL BE DEEMED SUFFICIENT GROUNDS TO DISMISS THE ACTION, WITHOUT FURTHER NOTICE. Plaintiff may not file any motions or other requests with the Court until he files his response to this Order.

3. This Order terminates Docket 20.

IT IS SO ORDERED.

Dated: 3/1/11

SAUNDRA BROWN ARMSTRONG
United States District Judge

PROOF OF SERVICE BY MAIL

Chaffee v. City and County of San Francisco, et al.

I, Linda Chaffee, am employed in the City and County of San Francisco, State of California. I am over the age of 18 and not a party to the within action, my business address is: 63 Stoney brook Avenue, San Francisco, California 94104.

On March 5, 2011, I served the foregoing document described as:

"PLAINTIFF'S CERTIFICATE IN RESPONSE TO ORDER TO SHOW CAUSE RE DISMISSAL"

in the above entitled matter, in the U.S. District Court, Northern District of California, Case No. 10-04521 SBA

on the persons interested in said action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Wayne Snodgrass, Tara Steeley
SF City Attorney
City Hall, Room 234
Civic Center
San Francisco, CA 94102

Said envelopes I then caused to be deposited in the United States Mail, postage prepaid.

Executed on March 5, 2011, at San Francisco, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Linda Chaffee

Linda Chaffee

James Chaffee
63 Stoneybrook Avenue
San Francisco, CA 94112

Clerk, US District Court
1301 Clay St. #400S
Oakland, CA 94612-5212