

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 04-cv-00638-ZLW-MEH

WAYNE T. PALMER,

Plaintiff,

v.

KEN SALAZAR, Secretary, Department of the Interior,

Defendant.

ORDER OF RECUSAL

This matter has recently come to the Court's attention and is before the Court *sua sponte*. Previous to my appointment to the federal bench, I was employed as the Chief of the Civil Division in the United States Attorney's Office, which is counsel for Defendant in this case. In that capacity (through the end of 2005), I was the supervisor for every civil Assistant U.S. Attorney. Assistant United States Attorney J. Benedict Garcia defended this action while under my supervision. As his supervisor, I discussed the government's strategic position regarding the litigation and am, therefore, familiar with the factual allegations underlying this case.

Pursuant to 28 U.S.C. §455(b)(3), a Magistrate Judge shall disqualify himself under the following circumstances:

Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy.

Some case law has construed Section 455(b)(3) as requiring recusal of former supervisory Assistant U.S. Attorneys for cases that were handled by such supervisors' subordinates while such supervisors

held that office. Consistent with this case law, I hereby recuse myself from service in this matter. I direct the Clerk of the Court to cause this matter to be reassigned by random draw to another Magistrate Judge.

DATED at Denver, Colorado, this 10th day of July, 2009.

BY THE COURT:

s/ Michael E. Hegarty
Michael E. Hegarty
United States Magistrate Judge