

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 08-cv-02749-PAB-KMT

PHILIP ANDREW WOLF,

Plaintiff,

v.

JAMES PETROCK,

Defendant.

ORDER

This matter is before the court on “Plaintiff’s Affidavit of Prejudice to recuse U.S. magistrate Tafoya for cause” (Doc. No. 42) filed October 4, 2009. Plaintiff contends I should recuse myself because I am “conspiring with counsel and with the Defendant, James Petrock, to unlawfully obtain Plaintiff’s property and privacy, as has been proven.” (Mot., ¶ 1.2.)

Pursuant to 28 U.S.C. § 455(a), a Magistrate Judge shall disqualify herself “in any proceeding in which [her] impartiality might reasonably be questioned.” Plaintiff’s motion makes no allegations and states no facts regarding me in the motion. In addition,

judicial rulings alone almost never constitute valid basis for a bias or partiality motion. In and of themselves, (i.e., apart from surrounding comments or accompanying opinion), they cannot possibly show reliance on an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is involved Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute

a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.

Liteky v. United States, 510 U.S. 540, 555 (1994) (citation omitted). The test for recusal is an objective one. *United States v. Cooley*, 1 F.3d 985, 994 (10th Cir. 1993). Moreover, “[t]here is as much obligation for a judge not to recuse when there is no occasion for [her] to do so as there is for [her] to do so when there is.” *Hinman v. Rogers*, 831 F.2d, 937, 939 (10th Cir. 1987).

I find no reason why my impartiality might objectively or reasonably be questioned in this case. Therefore, Plaintiff’s motion (Doc. No. 42) is DENIED.

Dated this 13th day of October, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Kathleen M. Tafoya', written in a cursive style.

Kathleen M. Tafoya
United States Magistrate Judge