

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

MICHAEL T. HAYES,

Plaintiff,

v.

IDAHO DEPARTMENT OF  
CORRECTION; ALBERTO  
RAMIREZ; TERRI JO KIRTLEY;  
TIMOTHY REED McKAY; BRETT  
PHILLIPS; BRET R. KIMMEL;  
ARVEL DEWAYNE SHEDD;  
DERRIK GOVERNOR; FELIX DIAZ;  
TRAVIS COWAN; DAVID RANCK;  
MARC ANTHONY AIELLO; and  
KLINTON R. HUSK,

Defendants.

Case No. 1:17-cv-00275-EJL

**MEMORANDUM DECISION AND  
ORDER**

Plaintiff Michael T. Hayes is a prisoner in the custody of the Idaho Department of Correction, currently incarcerated at Idaho State Correctional Center. Pending before the Court in this civil rights matter is Plaintiff's Motion for Case Reassignment to Chief Judge B. Lynn Winmill, in which Plaintiff requests that the undersigned recuse himself from this case. (Dkt. 8.)

Having fully reviewed the record, the Court finds that the facts and legal arguments are adequately presented in the briefs and record and that oral argument is unnecessary. *See* D. Idaho Loc. Civ. R. 7.1. Accordingly, the Court enters the following Order granting in part Plaintiff's Motion.

**MEMORANDUM DECISION AND ORDER - 1**

## 1. Standard of Law

The standard for recusal is set forth in 28 U.S.C. § 455. Section 455 provides as follows:

- (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
- (b) He shall also disqualify himself in the following circumstances:
  - (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
  - (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
  - (3) 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;
  - (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
  - (5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
    - (i) Is a party to the proceeding, or an officer, director, or trustee of a party;
    - (ii) Is acting as a lawyer in the proceeding;
    - (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

- (iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

Recusal is not required where only vague allegations of bias and prejudice are asserted, or where those allegations arise from the adjudication of claims or cases by the Court during the course of litigation. Such alleged errors are “the basis for appeal, not recusal.” *In re Focus Media, Inc.*, 378 F.3d 916, 930 (9th Cir. 2004).

## 2. Discussion

Plaintiff has not established that the Court is actually biased against him or that any of the other grounds set forth in § 455(b) apply. *See id.* (describing bias requiring recusal as “deep-seated favoritism or antagonism that made fair judgment impossible”) (internal citation and punctuation omitted). However, because Plaintiff alleges that he has a judicial misconduct complaint currently pending against the undersigned, the undersigned concludes that recusal is appropriate pursuant to 28 U.S.C. § 455(a).

## ORDER

**IT IS ORDERED** that Plaintiff's Motion for Case Reassignment to Chief Judge B. Lynn Winmill (Dkt. 8) is GRANTED IN PART. The Clerk of Court shall randomly reassign this action to a different United States District Judge.



Dated: August 16, 2017

A handwritten signature in blue ink, appearing to read "Edward J. Lodge".

Honorable Edward J. Lodge  
United States District Judge