

FILED

AUG 29 2011

PATRICK E. DUFFY, CLERK

By _____
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

MICHAEL E. SPREADBURY,)	CV 11-64-M-DWM-JCL
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
BITTERROOT PUBLIC LIBRARY,)	
CITY OF HAMILTON,)	
LEE ENTERPRISES, INC., and)	
BOONE KARLBERG P.C.)	
)	
Defendants.)	
_____)	

Plaintiff Michael E. Spreadbury, proceeding pro se, filed a Motion for Substitution/Recusal of Judges (dkt # 17). Spreadbury moved to disqualify United States Magistrate Judge Jeremiah C. Lynch and the undersigned, United States District Judge Donald W. Molloy, on the basis of perceived impartiality. Judge Lynch issued an Order denying Plaintiff's motion as it applies to him (dkt # 46). This Order pertains to Plaintiff's motion as it applies to me. Upon considering

Plaintiff's motion, the Court has found it does not establish a legitimate basis for disqualification under 28 U.S.C. § 455. Accordingly, Spreadbury's motion is denied.

The grounds alleged for my disqualification now stem from a prior lawsuit brought by Plaintiff, Spreadbury v. Hoffman et al., CV 10-49-M-DWM-JCL (Spreadbury I). That case was assigned to Magistrate Judge Lynch pursuant to Local Rule 1.10 and Standing Order No. DWM-47 (January 8, 2007). As the Article III Judge presiding over the case, I was responsible for reviewing and deciding whether to adopt the proposed findings and recommendations of Judge Lynch. I adopted his findings and recommendations by Order on November 2, 2010. (Dkt. # 9.) One of the defendants in Spreadbury I, Angela Wetzsteon, had previously served as a student intern in Judge Lynch's chambers at the Court. Plaintiff's claims against her arose out of her actions as a student at the University of Montana School of Law serving a student internship with the Ravalli County Attorney's office. At the time, I served (and continue to serve) on the Board of Visitors for the University of Montana School of Law.

Plaintiff proposes two reasons that I should have recused myself from presiding in Spreadbury I and should be disqualified in this case. I considered and rejected the first reason—that Ms. Wetzsteon's prior student internship at the Court created a conflict of interest—in an Order entered November 2, 2010 in

Spreadbury I (dkt # 9). Now, Plaintiff alleges a perceived financial conflict of interest. Plaintiff asserts that my membership on the School of Law's Board of Visitors, which he characterizes as a paid position pursuant to Montana Code Annotated § 2-18-501, created a financial interest in violation of 28 U.S.C. § 455(b)(4).

Section 455(b)(4) requires disqualification where a judge “knows that he, individually or as a fiduciary... 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.” A “financial interest” includes “ownership of a legal or equitable interest, however small, or a relationship as director, adviser or other active participant in the affairs of a party.” 28 U.S.C. § 455(d)(4).

Here, Plaintiff has alleged no facts to support his contention that I have a financial interest “in the subject matter in controversy.” The facts he alleges relate to a perceived financial interest in the subject matter at issue in Spreadbury I. The defendants in the current case, Spreadbury vs. Bitterroot Public Library, et al., are the Bitterroot Public Library, the City of Hamilton, Lee Enterprises, Inc., and Boone Karlberg, P.C. and the subject matter does not concern the University of Montana or the School of Law. Neither the subject matter nor parties in the current litigation are related to my membership on the School of Law's Board of

Visitors and I see no other reason to disqualify myself from this case.

Accordingly, IT IS HEREBY ORDERED that the Defendant's motion for recusal is DENIED.

Dated this 29th day of August, 2011.

By: _____

Donald W. Molloy, District Judge
United States District Court