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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MONTANA
 MISSOULA DIVISION

MICHAEL E. SPREADBURY,

Plaintiff,

v.

BITTERROOT PUBLIC LIBRARY,
 CITY OF HAMILTON, LEE
 ENTERPRISES, INC., and BOONE
 KARLBERG P.C.

Defendants.

Cause No. CV-11-064-M-DWM

**CITY AND LIBRARY
 DEFENDANTS' BRIEF IN
 OPPOSITION TO PLAINTIFF'S
 MOTION FOR RECUSAL**

INTRODUCTION

On behalf of Defendants Bitterroot Public Library, Dr. Robert Brophy, Trista Smith, Nansu Roddy, City of Hamilton, Jerry Steele, Steve Snavelly, Steven Bruner-Murphy, Ryan Oster, Kenneth S. Bell and Jennifer B. Lint, this responds to Plaintiff's Motion, dated May 2, 2011, seeking the recusal of U.S. Magistrate Judge Lynch and U.S. District Court Judge Molloy in these proceedings. It would be an abuse of discretion to grant Plaintiff's motion. Plaintiff has not demonstrated an adequate basis for recusal.

DISCUSSION

Judge Molloy's position, if any, on the University of Montana Law School's Board of Visitors or Judge Lynch's position, if any, as a Law School Clinic Director do not give rise to a reasonable factual basis for doubting their impartiality in this case or in *Spreadbury v. Hoffman, et al.*, Cause No. CV-10-49-M-DWM-JCL. See *U.S. v. Conforte*, 624 F.2d 869, 880-81 (9th Cir. 1980). In this connection, reimbursement for meals, travel and lodging, if any, does not make being on the Board of Visitors a paid position. MCA § 2-18-501. More importantly, neither the Board of Visitors nor being a Clinic Director has any connection to this lawsuit. Any suggestion of impartiality or bias in this case

based on those positions, if any, is remote, contingent and speculative. *Sensley v. Albritton*, 385 F.3d 591, 600 (5th Cir. 2004).

Next, the fact that Plaintiff is apparently seeking sanctions against Judge Molloy and Judge Lynch on appeal in Cause No. CV-10-49-M-DWM-JCL based on the above matters also does not give rise to a reasonable basis for doubting the impartiality of Judge Molloy or Judge Lynch in this case. *Conforte, supra*. Specifically, Plaintiff has not pointed to anything written or spoken by Judge Molloy or Judge Lynch which demonstrates an attitude or state of mind that belies an aversion or hostility of a kind or degree such that a fairminded person could not entirely set it aside when judging this case. *Conforte, id.*; *see also Preston v. U.S.*, 923 F.2d 731, 734 (9th Cir. 1991). Indeed, a review of the Findings and Recommendations, filed October 7, 2010, by Judge Lynch and the Order, filed November 2, 2010, by Judge Molloy in *Spreadbury v. Hoffman, et al.*, Cause No. CV-10-49-M-DWM-JCL, removes the foundation for any argument of alleged bias or impartiality.

CONCLUSION

A judge has an obligation not to recuse himself or herself when no adequate reason has been provided as to alleged impartiality. *U.S. v. Holland*, 519 F.3d 909, 912 (9th Cir. 2008). Here, Plaintiff has not provided an adequate basis to

require a recusal of Judge Lynch or Judge Molloy. As a result, Plaintiff's motion for recusal should be denied.

DATED this 5th day of May, 2011.

/s/ William L. Crowley
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Bitterroot Public Library, City of
Hamilton and Boone Karlberg P.C.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7(d)(2)(E), Local Rules of the United States District Court, District of Montana, I hereby certify that the textual portion of the foregoing brief uses a proportionally spaced Times New Roman typeface of 14 point; is double spaced; and contains approximately 447 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 5th day of May, 2011.

/s/ William L. Crowley
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CERTIFICATE OF SERVICE

I hereby certify that, on the 5th day of May, 2011, a copy of the foregoing document was served on the following persons by the following means:

 1 CM/ECF

 Hand Delivery

 2 Mail

 Overnight Delivery Service

 Fax

 E-Mail

1. Clerk, U.S. District Court
2. Michael E. Spreadbury
700 South Fourth Street
Hamilton, MT 59840

/s/ William L. Crowley
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