

1 U.S.C. § 144:

2 Whenever a party to any proceeding in a district court makes and files a timely and
3 sufficient affidavit that the judge before whom the matter is pending has a personal
4 bias or prejudice either against him or in favor of any adverse party, such judge shall
5 proceed no further therein, but another judge shall be assigned to hear such proceeding.

6 The legal sufficiency of the motion is determined by the judge against whom recusal is sought.

7 *United States v. Azhocar*, 581, F.2d 735, 738 (9th Cir. 1978). Only after the legal sufficiency of the
8 affidavit is determined does it become the duty of the judge to “proceed no further” in the case. *Id.*
9 (citations omitted). The affidavit must “state facts and reasons which tend to show personal bias
10 and prejudice regarding justiciable matter pending and must give support to the charge of a bent of
11 mind that may prevent or impede impartiality or judgment.” *Hussein v. University and Community*
12 *College System of Nevada*, 2010 WL 3385298 (D. Nev.) (citation omitted). The facts alleged must
13 be “sufficient to convince a reasonable man” of the judge’s actual bias or prejudice. *Id.* (citation
14 omitted). Here, Plaintiff has not submitted the required affidavit of prejudice and, therefore, any
15 request for recusal under section 144 is improper. *See United States v. Perry*, 1990 WL 43730 (D.
16 Nev.) (the affidavit filed pursuant to section 144 must allege specific facts that fairly support the
17 contention that the judge exhibits bias or prejudice that stems from an extrajudicial source).

18 Section 455, unlike section 144, sets forth no procedural requirements. It is directed to the
19 judge rather than the parties and is self-enforcing on the part of the judge who must recuse himself
20 if a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality
21 might reasonably be questioned. *See United States v. Sibla*, 624 F.2d 864, 867-68 (9th Cir. 1980).
22 Section 455 (a) and (b) provide separate, but overlapping bases for recusal. Subsection (a) is broad,
23 requiring recusal “in any proceeding in which [a judge's] impartiality might reasonably be
24 questioned.” 28 U.S.C. § 455(a). In contrast, subsection (b) is narrower, requiring recusal only
25 under specific, identifiable circumstances. 28 U.S.C. § 455(b)(1-5).¹

26 ¹ These circumstances include when a judge: (1) has a personal bias or prejudice concerning a party, or
27 personal knowledge of disputed evidentiary facts concerning the proceeding; (2) has served as a lawyer in the
28 matter in controversy when in private practice; (3) has served in government employment and in such capacity
participated in the case; (4) knows that he or a family member has a financial interest in the case; or (5) when he
or a family member is a party to the suit.

1 Under either subsection, recusal is appropriate when “a reasonable person with knowledge
2 of all the facts would conclude that the judge's impartiality might reasonably be questioned.”
3 *Pesnell v. Arsenault*, 543 F.3d 1038, 1044 (9th Cir .2008) (quotation omitted). The source of any
4 alleged bias must be extrajudicial. *Liteky v. United States*, 510 U.S. 540 (1988). Unless the judge's
5 actions “display a deep-seated favoritism or antagonism that would make fair judgment
6 impossible,” judicial bias or prejudice formed during current or prior proceedings is insufficient for
7 recusal. *Id.* at 541; *Pesnell*, 543 F.3d at 1044. Judicial rulings will only support a motion for
8 recusal “in the rarest of circumstances.” *Liteky*, 510 U.S. at 555; *United States v. Chischilly*, 30
9 F.3d 1144, 1149 (9th Cir.1994).

10 As with Plaintiff’s claim under section 144, there is no factual basis to question the
11 undersigned’s impartiality in this case. Thus, the Court concludes that recusal is not warranted
12 under either section 455(a) or section 455(b).

13 Based on the foregoing and good cause appearing therefore,

14 **IT IS HEREBY ORDERED** that Plaintiff’s Motion for Reassignment of Complaint (#8) is
15 **denied.**

16 DATED this 31st day of May, 2012.

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19 
20 **C.W. Hoffman, Jr.**
21 **United States Magistrate Judge**