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## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

## LUFKIN DIVISION

THEODORE STREATER §

VS. § CIVIL ACTION NO. 9:15-CV-68

SHARON ALLEN, ET AL. §

## MEMORANDUM OPINION AND ORDER

Plaintiff Theodore Streater, an inmate proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed a second motion for recusal. Plaintiff alleges the magistrate judge is biased because he allegedly authorized plaintiff's transfer to a more restrictive prison unit.

Title 28 U.S.C. § 144 allows a party to make and file "a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party . . . ." 28 U.S.C. § 144. In such a case, another judge shall be assigned to hear further proceedings. *Id.* If an affidavit filed under §144 is timely and technically correct, the factual allegations must be taken as true, and the trial judge may only consider the legal sufficiency of the affidavit. *United States v. Merkt*, 794 F.2d 950, 960 (5th Cir. 1986). An affidavit is legally sufficient if: (1) the facts are material and stated with particularity; (2) the facts, if true, would convince a reasonable person that bias exists; and (3) the facts show that the bias is personal in nature. *Id.* at n. 9. A party may file only one affidavit in a case. 28 U.S.C. § 144. Absent surrounding comments or accompanying opinion, judicial rulings alone will rarely constitute a valid basis for a motion to recuse or disqualify. *Liteky v. United States*, 510 U.S. 540, 555 (1994); *Andrade v. Chojnacki*, 338 F.3d 448, 455 (5th Cir. 2003).

The court may not pass on the truth of plaintiff's assertion that the magistrate judge authorized his transfer to another prison unit. *Phillips v. Joint Legislative Committee on Performance &* 

Expenditure Review of State of Miss., 637 F.2d 1014, 1019 (5th Cir. 1981). The court may only

consider whether the affidavit is legally sufficient. Id. In this case, because plaintiff previously filed

an affidavit for recusal, he is barred from filing a second one. Therefore, the motion to recuse should

be denied. It is accordingly

**ORDERED** that plaintiff's motion for recusal of the magistrate judge (document no. 97) is

DENIED.

So ORDERED and SIGNED this 27th day of March, 2017.

Ron Clark, United States District Judge

Pm Clark

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