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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 BANK OF NEW YORK, MELLON,

9 Plaintiff,

10 v.

11 SCOTT STAFNE, *et al.*,

12 Defendants.

CASE NO. C16-0077TSZ

ORDER ON REVIEW OF REQUEST  
TO RECUSE

13 This action, requesting money judgment and foreclosure in connection to a promissory  
14 note executed for the purchase of real property, was filed in January 2016. Dkt. #1. Defendant  
15 Scott Stafne<sup>1</sup> filed a Motion for Recusal on May 26, 2017. Dkt. #134. The Presiding Judge, the  
16 Honorable Thomas S. Zilly, has declined to recuse himself and, in accordance with the Local  
17 Rules of this District, referred the matter to the Undersigned for further review. Local Rules  
18 W.D. Wash. LCR 3(e); Dkt. #136.

19 Pursuant to 28 U.S.C. § 455(a), a judge of the United States shall disqualify himself in  
20 any proceeding in which his impartiality “might reasonably be questioned.” Federal judges also

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22 <sup>1</sup> Although Mr. Stafne is proceeding *pro se* in this action, it is worth noting that he is an  
23 attorney with Stafne Trumbull LLC, and is admitted to practice in Washington State and before  
24 this Court. Thus, he is presumed to be familiar with not only the substantive law pertaining to  
the issues in the case against him, but also with Court Rules, procedures and statutory  
provisions relevant to the assertions he makes in connection with this case.

1 shall disqualify themselves in circumstances where they have a personal bias or prejudice  
2 concerning a party or personal knowledge of disputed evidentiary facts concerning the  
3 proceeding. 28 U.S.C. § 455(b)(1).

4 Under both 28 U.S.C. §144 and 28 U.S.C. § 455, recusal of a federal judge is appropriate  
5 if “a reasonable person with knowledge of all the facts would conclude that the judge’s  
6 impartiality might reasonably be questioned.” *Yagman v. Republic Insurance*, 987 F.2d 622, 626  
7 (9th Cir.1993). This is an objective inquiry concerned with whether there is the appearance of  
8 bias, not whether there is bias in fact. *Preston v. United States*, 923 F.2d 731, 734 (9th  
9 Cir.1992); *United States v. Conforte*, 624 F.2d 869, 881 (9th Cir.1980). In *Liteky v. United*  
10 *States*, 510 U.S. 540 (1994), the United States Supreme Court further explained the narrow basis  
11 for recusal:

12 [J]udicial rulings alone almost never constitute a valid basis for a bias or  
13 partiality motion. . . . [O]pinions formed by the judge on the basis of facts  
14 introduced or events occurring in the course of the current proceedings, or  
15 of prior proceedings, do not constitute a basis for a bias or partiality motion  
16 unless they display a deep seated favoritism or antagonism that would make  
17 fair judgment impossible. Thus, judicial remarks during the course of a trial  
18 that are critical or disapproving of, or even hostile to, counsel, the parties, or  
19 their cases, ordinarily do not support a bias or partiality challenge.

20 *Id.* at 555. Rather than focus on these applicable standards, Defendant instead asserts multiple  
21 other grounds upon which he argues that Judge Zilly should recuse himself. All of his bases for  
22 recusal are without merit.

23 First, without a scintilla of evidence in support, Defendant questions Judge Zilly’s  
24 competency based on his alleged age (which Defendant has not actually correctly calculated).  
Tacking together a series of generic quotes about deficits related to aging, Defendant attempts to  
fashion an argument that equates Judge Zilly’s age with his fitness to discharge his duties. The

1 fact that Defendant fails to offer a shred of evidence from the record tending to indicate any  
2 impairment on Judge Zilly's part speaks for itself.

3         Second, Defendant attacks Judge Zilly's fitness to preside over his case on the basis of  
4 his "senior status," which he alleges is a feature of the federal judicial system which allows  
5 judges who meet the qualifications to "retire," receive their pension and continue to serve the  
6 courts in a voluntary capacity.<sup>2</sup> Notably, Defendant fails to cite a single legal precedent tending  
7 to establish that the fact of a presiding judge's "senior status" has ever been held (in and of itself)  
8 to constitute a proper basis for recusal.

9         Setting aside the complete lack of evidentiary or legal support for Judge Zilly's age or  
10 senior status as a basis for recusal, Defendant's request is noteworthy for its lack of relevance to  
11 the statute under which he might properly advocate for recusal. The statutory basis for recusal  
12 exists only if "a reasonable person with knowledge of all the facts would conclude that the  
13 judge's impartiality might reasonably be questioned." *Yagman*, 987 F.2d at 626; *see* 28 U.S.C.  
14 §144 and 28 U.S.C. § 455. Defendant does not propound any evidence-based rationale which  
15 ties Judge Zilly's age or senior status to an issue of "impartiality" or "bias;" he simply wants to  
16 argue – via innuendo and stereotype – that Judge Zilly is unfit to preside over his case. The law  
17 requires more.

18         Lastly, it is clear that Defendant does not agree with a number of rulings made by Judge  
19 Zilly which have not been in his favor. A judge's rulings do not constitute the requisite bias  
20 under 28 U.S.C. § 144 or § 455 if prompted solely by information that the judge received in the

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22         <sup>2</sup> A simple internet search would have revealed the inaccuracy of Defendant Stafne's  
23 allegations. "Senior status" is a form of semi-retirement for United States federal judges that  
24 allows them to receive the full salary of a judge but have the option to take a reduced caseload  
(although many senior judges choose to maintain a full caseload).

1 context of the performance of his duties. Bias is almost never established simply because the  
2 judge issued adverse rulings against a party. If Defendant believes that Judge Zilly has  
3 committed legal error in his rulings, he is entitled to make that argument on appeal to the Ninth  
4 Circuit Court of Appeals. He is not entitled to claim “bias” on that basis, nor is he entitled to  
5 recusal of the judge who made the rulings.

6 Accordingly, the Court finds no evidence upon which to reasonably question Judge  
7 Zilly’s impartiality and AFFIRMS his denial of Defendant’s request that he recuse himself.

8 The Clerk SHALL provide copies of this order to Defendants and to all counsel of record.  
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10 Dated this 2<sup>nd</sup> day of June, 2017.

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12 RICARDO S. MARTINEZ  
13 CHIEF UNITED STATES DISTRICT JUDGE  
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