

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7
8 ELLEN M. McCracken

Plaintiff,

v.

9
10 SHAPIRO & SUTHERLAND, LLC, *et*
11 *al.*

12 Defendants.

CASE NO. C17-1596 RBL

ORDER ON REVIEW OF
REFUSAL TO RECUSE

13
14 THIS MATTER came before the Court on *pro se* Plaintiff Ellen McCracken's Motion to
15 Recuse, which was contained within her proposed Amended Complaint filed in support of her
16 motion for leave to proceed *in forma pauperis*. Dkt. #19. Ms. McCracken filed the proposed
17 Amended Complaint in response to the Court's prior Order denying her motion for leave to
18 proceed *in forma pauperis*. In her proposed Amended Complaint, she names the presiding Judge,
19 the Honorable Ronald B. Leighton, as a Defendant, and demands that he recuse himself. *Id.* After
20 review of the document, Judge Leighton declined to recuse himself. Dkt. #20. In accordance with
21 the Local Rules of this District, the matter was then referred to the Undersigned for review. LCR
22 3(e).

23 In her Amended Complaint, Plaintiff sets forth a lengthy "Notice of Disqualification" of
24 Judge Leighton, wherein she asserts that Judge Leighton is working to delay justice and "confuse"

1 her. Dkt. #19-2. She appears to take issue with Judge Leighton’s Order asking her to amend her
2 complaint. She argues that she has head injuries that do not allow her to edit her complaint because
3 to do so would ruin the integrity of “her story,” and that it would cause her too much emotional
4 distress. She then asks that the Court “return” her case to Judge Pechman in Seattle. *Id.*

5 Pursuant to 28 U.S.C. § 455(a), a judge of the United States shall disqualify himself in any
6 proceeding in which his impartiality “might reasonably be questioned.” Federal judges also shall
7 disqualify themselves in circumstances where they have a personal bias or prejudice concerning a
8 party or personal knowledge of disputed evidentiary facts concerning the proceeding. 28 U.S.C.
9 § 455(b)(1).

10 Under both 28 U.S.C. §144 and 28 U.S.C. § 455, recusal of a federal judge is appropriate
11 if “a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality
12 might reasonably be questioned.” *Yagman v. Republic Insurance*, 987 F.2d 622, 626 (9th
13 Cir.1993). This is an objective inquiry concerned with whether there is the appearance of bias, not
14 whether there is bias in fact. *Preston v. United States*, 923 F.2d 731, 734 (9th Cir.1992); *United*
15 *States v. Conforte*, 624 F.2d 869, 881 (9th Cir.1980). In *Liteky v. United States*, 510 U.S. 540
16 (1994), the United States Supreme Court further explained the narrow basis for recusal:

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

21 *Id.* at 555.

22 Plaintiff cites no evidence which would support a finding of impartiality, prejudice or bias
23 on Judge Leighton’s part. It is clear she believes that Judge Leighton’s directive to amend her
24

1 | complaint has caused her some harm. Plaintiff is entitled to appeal any rulings she believes to be
2 | in error, but she may not properly seek recusal of the presiding judge on those grounds. A judge's
3 | conduct in the context of pending judicial proceedings does not constitute the requisite bias under
4 | 28 U.S.C. § 144 or § 455 if it is prompted solely by information that the judge received in the
5 | context of the performance of his duties. Bias is almost never established simply because the judge
6 | issued adverse rulings against a party.

7 | In order to overcome this presumption, Plaintiff would have to show that facts outside the
8 | record influenced decisions, or that the judge's rulings were so irrational that they must be the
9 | result of prejudice. Plaintiff does not allege any facts outside the record that improperly influenced
10 | the decisions in this matter. Accordingly, the Court finds no evidence upon which to reasonably
11 | question Judge Leighton's impartiality and AFFIRMS his denial of Plaintiff's request that he
12 | recuse himself.

13 | The Clerk SHALL provide copies of this Order to Petitioner, all counsel of record, and to
14 | Judge Leighton.

15 | Dated this 21st day of December 2017.

16 | 

17 | RICARDO S. MARTINEZ
18 | CHIEF UNITED STATES DISTRICT JUDGE