

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TERRANCE JON IRBY,

Plaintiff,

V.

STATE OF WASHINGTON, *et al.*,

CASE NO. C16-5052-RBL-JRC

ORDER ON REVIEW OF REFUSAL TO RECUSE

Defendants.

Plaintiff has filed a Motion for Recusal. Dkt. #84. In his Motion, Plaintiff alleges that U.S. Magistrate Judge J. Richard Creatura is biased against him apparently because Judge Creatura issued an Order directing Plaintiff to use the mandatory e-filing system to file documents with the Court rather than filing them by mail. *See* Dkts. #79 and #84. Although not entirely clear, Plaintiff to argue that he was unaware of the mandatory e-filing procedure. *See* Dkt. #84 at 1, and that Judge Creatura has demonstrated bias by failing to accept documents that he attempted to file by mail.¹ Judge Creatura has declined to recuse himself and the matter has been referred to this Court in accordance with our Local Rules, LCR 3(e). Dkt. #94.

This Court concurs with Judge Creatura that Plaintiff has failed to produce any objective evidence of his alleged bias or that he has any reason to be partial to any party in this matter.

²³ ²⁴ ¹ Judge Creatura notes that Plaintiff has been warned about his failure to use the e-filing procedure on at least six prior occasions. Dkt. #79 at 1.

1 Dkt. #94 at 3. Pursuant to 28 U.S.C. § 455(a), a judge of the United States shall disqualify
2 himself in any proceeding in which his impartiality “might reasonably be questioned.” Federal
3 judges also shall disqualify themselves in circumstances where they have a personal bias or
4 prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the
5 proceeding. 28 U.S.C. § 455(b)(1).

6 Under both 28 U.S.C. §144 and 28 U.S.C. § 455, recusal of a federal judge is appropriate
7 if “a reasonable person with knowledge of all the facts would conclude that the judge’s
8 impartiality might reasonably be questioned.” *Yagman v. Republic Insurance*, 987 F.2d 622, 626
9 (9th Cir.1993). This is an objective inquiry concerned with whether there is the appearance of
10 bias, not whether there is bias in fact. *Preston v. United States*, 923 F.2d 731, 734 (9th
11 Cir.1992); *United States v. Conforte*, 624 F.2d 869, 881 (9th Cir.1980). But there must be a
12 reasonable basis upon which to question a judge’s ability to be impartial. Plaintiff has provided
13 no evidence of bias or prejudice on the part of Judge Creatura, and therefore the judge is not
14 required to recuse himself. Likewise, this Court finds no evidence upon which to reasonably
15 question Judge Creatura’s impartiality and therefore AFFIRMS his denial of Plaintiff’s request
16 that he recuse himself.

17 The Clerk SHALL provide copies of this order to all counsel of record and to Plaintiff.

18 Dated this 30th day of March, 2017.

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21 RICARDO S. MARTINEZ
22 CHIEF UNITED STATES DISTRICT JUDGE
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