IN THE UNITED STATES COURT OF FEDERAL CLAIMS
No. 05-451 & 05-452

(Filed: July 28, 2005)

LAZAR S. KOVACHEVICH, *pro se*,	)
Plaintiff,	)
v.	)
UNITED STATES,	)
Defendant.	)

ORDER

The plaintiff, Lazar S. Kovachevich, acting *pro se*, filed a "Request for Judge Disqualification" directed to the Chief Judge of this court on May 17, 2005. This request was interpreted by the Chief Judge as a motion for recusal pursuant to 28 U.S.C. § 455(a) and § 455(b)(1), and it was referred to the undersigned as the judge assigned randomly to hear this case. *See* Order of June 6, 2005. The plaintiff contends that the undersigned judge should not preside over this matter because ethnic, religious, and associational attributes create a conflict of interest. Specifically, Mr. Kovachevich contends that the undersigned judge "should be replaced by the other Judge or Judges who might be of any ethnic origin or nationality except of the Jewish." Request for Judge Disqualification ("Recusal Mot.") at 1. Mr. Kovachevich also associates the undersigned with "the armada of Jewish judges throughout the NYS Supreme Court System." *Id*. For the reasons stated below, Mr. Kovachevich's motion is denied.

Recusal is appropriate when a judge's "impartiality might reasonably be questioned." 28 U.S.C. § 455(a) (2005). Judges should also recuse themselves where they have a "personal bias or prejudice concerning a party." 28 U.S.C. § 455(b)(1) (2005). These provisions require judges to recuse themselves "only when a reasonable person with knowledge of all the facts" would harbor doubts about the judge's ability to act impartially. *Baldwin Hardware Corp. v. Franksu Enter. Corp.*, 78 F.3d 550, 557 (Fed. Cir. 1996) (quoting *United States v. Winston*, 613 F.2d 221, 223 (9th Cir. 1980)). Thus, Section 455(a) establishes an objective standard for recusal. *See Liteky v. United States*, 510 U.S. 540, 548 (1994) (Subsection (a) covers "both 'interest or relationship' and 'bias or prejudice'" and requires "evaluat[ion] on an *objective* basis"). Conclusory statements or a party's "unsupported beliefs or assumptions" made in a motion to recuse are insufficient to meet this objective standard. *Maier v. Orr*, 758 F.2d 1578, 1583 (Fed. Cir. 1985).

Plaintiff does not offer proof to substantiate his allegations, nor does he explain how the undersigned's ethnic or religious background or associations with other persons would bias or prejudice plaintiff's case. The few documents proffered by plaintiff would not lead a reasonable person to question the impartiality of the assigned judge. Notably also, as a factual matter, plaintiff is wholly in error in his assertions about the undersigned's ethnic and religious background and associations. Thus, the plaintiff has failed to meet the standard set forth in Section 455. Because this standard set out in Section 455 has not been met, the assigned judge has a duty to deny the motion. *Raitport v. United States*, 33 Fed. Cl. 155, 158 (1995), *aff'd*, 74 F.3d 1259 (Fed. Cir. 1996)(Table).

Much more importantly, a judge's background and prior associations, including his religion, "should not be considered as grounds for disqualification." *Oliver v. Freeman*, 507 F. Supp. 706, 729 (D. Idaho 1981); *see also Macdraw Inc. v. CIT Group Equip. Fin. Inc.*, 994 F. Supp. 447 (S.D.N.Y. 1997) ("Judges cannot recuse themselves solely on the basis of their race or religion or the race or religion of the attorneys or parties who come before them"), *aff'd* 138 F.3d 33, 37 (2d Cir. 1998) ("Courts have repeatedly held that matters such as race or ethnicity are improper bases for challenging a judge's impartiality."). In sum, putting aside plaintiff's error about the undersigned's ethnic background and religious beliefs, plaintiff has not and could not put forward grounds for recusal.

Accordingly, the plaintiff's motion to recuse is DENIED.

It is so ORDERED.

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Charles F. Lettow
Judge