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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

GORDON E. STROPE,)	
A.K.A. Michael Lee Strobe)	
)	
Plaintiff,)	
)	
vs.)	Case No. 03-3383-JAR
)	
ELLEN PETTIS, et al.,)	
)	
Defendants.)	
)	

ORDER DENYING DEFENDANT’S MOTION FOR RECUSAL

This matter comes before the Court on plaintiff’s Motion for Recusal (Doc. 61). Plaintiff seeks to disqualify this judge from presiding over this case on the basis that the Court has taken no action to ensure the service of a defendant due to plaintiff’s status as a prisoner. For the reasons stated below, plaintiff’s motion is denied.¹

The grounds for a judge’s recusal are set out in Title 28, United States Code, which mandates recusal when:

- 455. Disqualification of justice, judge, or magistrate judge
 - (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
 - (b) He shall also disqualify himself in the following circumstances:
 - (1) Where he has a personal bias or prejudice concerning a party, or personal

¹In his Motion, plaintiff also seeks recusal of this judge from Case No. 03-3310. Plaintiff has filed an interlocutory appeal from a Order denying a temporary injunction, staying Case No. 03-3310. As such, the Court expresses no opinion on plaintiff’s attempt to disqualify this judge from Case No. 03-3310, and limits this Order solely to plaintiff’s motion for recusal in Case No. 03-3383.

knowledge of disputed evidentiary facts concerning the proceeding²

This Court has no personal bias or prejudice concerning a party in this case, nor personal knowledge of any disputed evidentiary facts in this case, such that recusal on this basis is not appropriate.

In addition to mandatory recusal for personal bias or prejudice or knowledge, the Court must be mindful of whether there is an appearance of partiality. The Supreme Court explained that "[t]he goal of section 455(a) is to avoid even the appearance of partiality. If it would appear to a reasonable person that a judge has knowledge of facts that would give him an interest in the litigation then an appearance of partiality is created even though no actual partiality exists because the judge does not recall the facts, because the judge actually has no interest in the case or because the judge is pure in heart and incorruptible."³ Thus, recusal is warranted when there is the appearance of bias, regardless of whether there is actual bias.⁴ "The test is whether a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality."⁵

Plaintiff suggests that this judge's bias is born out by her failure to timely order the service of process on a defendant, which plaintiff attributes to his status as a prisoner. The Court notes that on July 29, 2004, it entered an order on plaintiff's motions for service and ordered service upon the remaining defendant who had not yet been served. Moreover, even if the Court had not yet acted on

²28 U.S.C. § 455.

³*Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860 (1988) (quoting *Hall v. Small Business Admin.*, 695 F.2d 175, 179 (5th Cir. 1983)).

⁴*Nichols v. Alley*, 71 F.3d 347, 351 (10th Cir. 1995).

⁵*Hinman v. Rogers*, 831 F.2d 937, 939 (10th Cir. 1987) (citation omitted).

plaintiff's motion, this alone would not suggest to a reasonable person that this judge is impartial. As previously explained by the Court in its order denying plaintiff's motion for reassignment, no plaintiff, prisoner or otherwise, is entitled to contemporaneous rulings on filed motions because at any one time the Court has many matters pending before it.

IT IS THEREFORE ORDERED BY THE COURT that plaintiff's Motion for Recusal (Doc. 66) from Case No. 03-3383 is DENIED.

IT IS SO ORDERED.

Dated this 19th day of August 2004.

S/ Julie A. Robinson
Julie A. Robinson
United States District Judge