

FILED

MAY 11 2011

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIAPOSTED ON WEBSITE  
NOT FOR PUBLICATIONUNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re: ) Case No. 10-50583-D-7  
 )  
 JIMMIE EARL STEPHEN, )  
 )  
 Debtor. )

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM DECISION

On May 9, 2011, the debtor in this case, Jimmie Earl Stephen (the "debtor"), filed a motion to disqualify the undersigned as the judge in this case (the "Motion"). For the following reasons, the Motion will be denied.

I. BACKGROUND

The debtor complains of two actions taken by this court -- (1) an order signed by the undersigned denying the debtor's application for waiver of the filing fee, and (2) an order signed by a deputy of the clerk of the court dismissing the case.<sup>1</sup> Some background is in order.

The debtor filed the petition commencing this case on November 19, 2010. At the same time, the debtor filed an application for waiver of the filing fee; however, he did not

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1. This latter order was signed under the authority of the court's Special Order 10-02, In re Delegation of Authority to the Clerk of the Bankruptcy Court and his Deputies, September 2, 2010 ("Special Order 10-02").

1 file the following: Schedule A, Schedule C, Schedule D, Schedule  
2 H, Verification and Master Address List. Therefore, the clerk of  
3 the court, pursuant to Special Order 10-02, issued a Notice of  
4 Incomplete Filing and Notice of Intent to Dismiss Case If  
5 Documents Are Not Timely Filed (the "Notice"), which advised the  
6 debtor of the deadlines for filing the missing documents --  
7 November 29, 2010 for the Verification and Master Address List  
8 and December 3, 2010 for the missing schedules -- and cautioned  
9 the debtor that the failure to timely file the missing documents,  
10 to timely seek an extension of time, or to timely file a notice  
11 of hearing may "result in the automatic dismissal of this  
12 bankruptcy case without further notice." (Emphasis in original.)  
13 The Notice was served on the debtor by the Bankruptcy Noticing  
14 Center on November 24, 2010.

15 The Notice included the additional caution that "(if two  
16 dates are shown, two separate deadlines are established for each  
17 of the options described below; each date must be timely  
18 satisfied as to the documents governed by that date)." (Emphasis  
19 in original.) Thus, the Notice made clear that the deadline for  
20 filing the Verification and Master Address List (or for filing a  
21 request for extension or a notice of hearing) was November 29,  
22 and the deadline for filing Schedules A, C, D, and H was December  
23 3.<sup>2</sup>

24 The debtor did not by November 29, 2010 file a Verification  
25 and Master Address List, seek an extension of time, or file a  
26

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27 2. It appears from the Motion that the debtor understood  
28 that a single deadline -- December 3 -- applied for both the  
schedules and the Verification and Master Address List.

1 notice of hearing, and on November 30, 2010, a deputy of the  
2 clerk of the court, in accordance with the authority granted by  
3 Special Order 10-02, dismissed the case.

4 Earlier, on November 23, 2010, the undersigned had signed an  
5 order denying the debtor's application for waiver of the filing  
6 fee based on failure to file the schedules and statements  
7 required by 11 U.S.C. § 521(a) within the time required by Fed.  
8 R. Bankr. P. 1007(c). It appears this order was incorrect, as  
9 the time period for filing the schedules had not yet expired.  
10 However, the issue of the fee waiver became moot when the case  
11 was subsequently dismissed for failure to timely file the  
12 Verification and Master Address List.

13 II. ANALYSIS

14 This court has jurisdiction over the Motion pursuant to 28  
15 U.S.C. §§ 1334 and 157(b)(1). The Motion is a core proceeding  
16 under 28 U.S.C. § 157(b)(2)(A) & (0); In re Betts, 143 B.R. 1016,  
17 1018 (Bankr. N.D. Ill. 1992).

18 "A bankruptcy judge shall be governed by 28 U.S.C. § 455,  
19 and disqualified from presiding over the proceeding or contested  
20 matter in which the disqualifying circumstance arises, or, if  
21 appropriate, shall be disqualified from presiding over the case."  
22 Fed. R. Bankr. P. 5004(a).

23 A judge of the United States "shall disqualify himself in  
24 any proceeding in which his impartiality might reasonably be  
25 questioned" (28 U.S.C. § 455(a)), "[w]here he has a personal bias  
26 or prejudice concerning a party . . ." (§ 455(b)(1)), and in  
27 various other instances, such as where he has previously been a  
28 lawyer in the matter or where he has a financial interest in the

1 subject matter of the proceeding. § 455(b)(2)-(5).

2 The standard for recusal is objective: "whether a  
3 reasonable person with knowledge of all of the facts would  
4 conclude that the judge's impartiality might reasonably be  
5 questioned.'" In re Georgetown Park Apartments, Ltd., 143 B.R.  
6 557, 559 (B.A.P. 9th Cir. 1992), quoting United States v. Nelson,  
7 718 F.2d 315, 321 (9th Cir. 1983), other citations omitted.

8 Cases applying recusal statutes apply a presumption of  
9 impartiality. See First Interstate Bank v. Murphy, Weir &  
10 Butler, 210 F.3d 983, 987 (9th Cir. 2000); In re Spirtos, 298  
11 B.R. 425, 431 (Bankr. C.D. Cal. 2003). Further, in general, "the  
12 alleged bias and prejudice to be disqualifying must stem from an  
13 extrajudicial source;" that is, "a source outside the judicial  
14 proceeding at hand." Liteky v. United States, 510 U.S. 540, 544-  
15 45 (1994), quoting United States v. Grinnell Corp., 384 U.S. 563,  
16 583 (1966).

17 Thus, significantly for this case,

18 [j]udicial rulings alone almost never constitute a  
19 valid basis for a bias or partiality motion.  
20 (Citation.) In and of themselves (. . .), they cannot  
21 possibly show reliance upon an extrajudicial source;  
22 and can only in the rarest circumstances evidence the  
degree of favoritism or antagonism required (. . .)  
when no extrajudicial source is involved. Almost  
invariably, they are proper grounds for appeal, not for  
recusal.

23 Liteky, 510 U.S. at 555; In re Focus Media, Inc., 378 F.3d 916,  
24 930 (9th Cir. 2004) [the argument that a ruling was erroneous  
25 does not support a recusal motion].

26 The only fact alleged here is that the debtor is  
27 dissatisfied with the order dismissing the case and the order  
28 denying the application for a fee waiver, which is not a proper

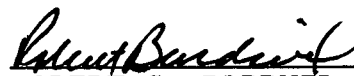
1 ground for disqualification. Further, the undersigned played no  
2 role at all in the order dismissing the case except as a member  
3 of the court and a signor of Special Order 10-02. The  
4 undersigned issued the order denying the application for a fee  
5 waiver as a routine matter with no knowledge of the debtor or his  
6 circumstances other than as set forth in the application.<sup>3</sup>

7 III. CONCLUSION

8 The debtor alleges no facts that would support a finding of  
9 bias or prejudice on the part of the undersigned or that would  
10 demonstrate that the impartiality of the undersigned might  
11 reasonably be questioned. In addition, the undersigned is  
12 satisfied that in issuing the order denying the debtor's  
13 application for a fee waiver, he acted without any bias or  
14 prejudice in favor of or against the debtor or any other party.  
15 The debtor's remedy, if any, lies with the appellate courts, a  
16 remedy he is pursuing.

17 For these reasons, the Motion will be denied. The court  
18 will issue an appropriate order.

19 Dated: May 11, 2011



20 ROBERT S. BARDWIL  
21 United States Bankruptcy Judge  
22  
23

24 3. The Motion refers to the case being remanded on April  
25 28, 2011 for a "wrongful ruling" of November 23, 2010 in regards  
26 to "forma pauperis." Thus, it appears the debtor believes the  
27 district court's order of April 28, 2011, a copy of which is  
28 attached to the Motion, pertains to this court's November 23,  
2010 order denying his application for fee waiver. That is  
incorrect. The district court's order pertains to the debtor's  
application to proceed with his appeal in forma pauperis. This  
court will address the district court's order in a separate  
decision.

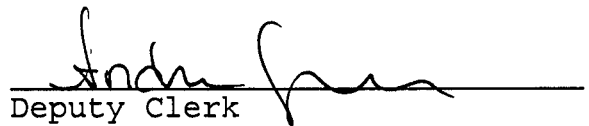
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2 **CERTIFICATE OF MAILING**

3 I, Andrea Lovgren, in the performance of my duties as Deputy  
4 Clerk to the Honorable Robert S. Bardwil, caused to be mailed by  
5 ordinary mail a true copy of the attached document to each of the  
6 parties listed below:

7 Jimmie Earl Stephen C56483  
8 P.O. Box 4000-22-H-3-L  
9 Vacaville, CA 95696

10 Alan Fukushima  
11 9245 Laguna Springs Dr., #200  
12 Elk Grove, CA 95758

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DATE: MAY 11 2011

  
Deputy Clerk