ORDERED.

Dated: January 04, 2017

Karen S. Jennemann
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re	)	
	)	
HECTOR RAMBEL CUPRILL,	)	Case No. 6:16-bk-00196-KSJ
	)	Chapter 13
Debtor.	)	
	)	

ORDER DENYING DEBTOR'S MOTION TO DISQUALIFY AND MOTION FOR A CONTINUANCE

This case came before the Court without a hearing on the Debtor's Motion to Disqualify, Objection to Motion to Dismiss, and Renewed Motion to Continue.[1] After reviewing the pleadings and considering the positions of all interested parties, the Court will deny the request for disqualification and a continuance.

Debtor questions the Court's impartiality towards him and seeks my disqualification or recusal, and a further continuance. Mr. Cuprill argues the Court harbors a personal bias or prejudice against him based on statements and rulings from previous hearings in this Chapter 13 case. For example, the Debtor points to my statement made at a hearing that, given Mr. Cuprill's numerous prior bankruptcy filings, it appeared he was abusing the bankruptcy system.[2] Debtor, a

[1] Doc. No. 52.
[2] Doc. No. 52, ¶ 4.

lawyer, also notes I would not grant him a 150-day continuance,[3] he was not given an opportunity to object to the language in a written order following an oral ruling,[4] and that a hearing proceeded in September when it was supposed to be cancelled.[5]

Recusal of a federal bankruptcy judge is addressed in Bankruptcy Rule 5004,[6] which provides that disqualification decisions are governed by Section 455[7] of Title 28 of the United States Code.[8] The party seeking to recuse a judge must prove that disqualification is warranted by clear and convincing evidence.[9]

In the Eleventh Circuit, "[t]he test for determining whether a judge should disqualify himself [or herself] under section 455(a) is whether a reasonable person knowing all the facts would conclude that the judge's impartiality might reasonably be questioned."[10] "Stated another way, the question is whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality."[11] "Any alleged bias that arises from facts that are a matter of record,

---

[3] Doc. No. 52, ¶ 5.
[4] Doc. No. 52, ¶ 6.
[5] Doc. No. 52, ¶ 7.
[6] Bankruptcy Rule 5004 provides in relevant part as follows: A bankruptcy judge shall be governed by 28 U.S.C. § 455, and disqualified from presiding over the proceeding or contested matter in which the disqualifying circumstances arises or, if appropriate, shall be disqualified from presiding over the case.
[7] Section 455 of Title 28 provides in relevant part as follows: Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
[8] Where personal bias or prejudice is alleged, Section 144 of Title 28 may provide an additional statutory basis for disqualification if the alleging party completes and files an affidavit stating that the judge has a personal bias or prejudice either against him/her or in favor of any adverse party. However, since Bankruptcy Rule 5004 does not specifically reference Section 144, some courts have held that Section 144 does not apply in bankruptcy cases, *Hessen v. Beagan (In re Teltronics Servs., Inc.)*, 39 B.R. 446, 451 (Bankr. E.D.N.Y. 1984); *Matter of Pritchard & Baird, Inc.*, 16 B.R. 16, 18 (Bankr. D.N.J. 1981), while other courts have considered affidavits made pursuant to Section 144 when contemplating the disqualification of a bankruptcy judge. *See generally In re Clark*, 289 B.R. 193, 196-97 (Bankr. M.D. Fla. 2002) (citing *United States v. Carignan*, 600 F.2d 762 (9th Cir. 1979)); *In re Betts*, 165 B.R. 233 (Bankr. N.D. Ill. 1994)); *In re Gulph Woods Corp.*, 84 B.R. 961 (Bankr. E.D. Pa. 1988); *Scott v. Pryor (In re Chandler's Cove Inn, Ltd.)*, 74 B.R. 772 (Bankr. E.D.N.Y. 1987); *J.W. Kaempfer v. Brown (In re B & W Management, Inc.)*, 71 B.R. 987 (Bankr. D.D.C. 1987); *Johnson-Allen v. Crown Leasing Corp. (In re Johnson-Allen)*, 68 B.R. 812 (Bankr. E.D. Pa. 1987). Regardless, the standards applied under Section 144 and Section 455 are the same.
[9] *Williams v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 43 B.R. 765 (S.D.N.Y. 1984) (citing *United States v. IBM Corp. (In re Int'l Bus. Machines. Corp.)*, 618 F.2d 923, 931 (2d Cir. 1980)).
[10] *Byrne v. Nezhat*, 261 F.3d 1075, 1101 (11th Cir. 2001), abrogated on other grounds *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 128 S. Ct. 2131, 170 L.Ed.2d 2121 (2008) (internal quotation and citation omitted).
[11] *Id.* (internal quotation and citation omitted).

which a judge learned from his [or her] involvement in a case is not sufficient to warrant a recusal."[12] Rather, such bias must be one of a personal nature, "not one arising from a judge's view of the law … A judge's views on legal issues may not serve as a basis for motion to disqualify."[13] As explained by the Supreme Court of the United States in *Liteky*:

> [J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion. … Almost invariably, they are proper grounds for appeal, not for recusal. [O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of 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.[14]

Under the legal standard set forth above, the Debtor must show by clear and convincing evidence that the Court should recuse or disqualify itself from this case because a disinterested observer could have significant doubts about the Court's impartiality or could conclude that the Court is biased against the Debtor.

Debtor first questions the Court's statements made at a hearing on July 12, 2016, that the Debtor was receiving the benefit of the automatic stay without doing anything substantive to move his case forward. This case was filed on January 11, 2016.[15] Yet, by July 2016, Debtor had done little to obtain a confirmed plan. Debtor received a Notice of Deficient Filing on January 12, 2016,[16] and filed an amended petition with a Chapter 13 Plan on January 25, 2016.[17] The Court granted the Debtor's Motion to Extend the Automatic Stay on March 2, 2016.[18] Debtor filed a Motion for Referral to Mortgage Modification Mediation in July,[19] which the Court

[12] *In re Clark*, 289 B.R. 193, 196-197 (Bankr. M.D. Fla. 2002).
[13] *Id.* (internal citations omitted).
[14] *Liteky v. United States*, 510 U.S. 540, 555, 114 S. Ct. 1147, 1157, 127 L. Ed. 2d 474 (1994).
[15] Doc. No. 1.
[16] Doc. No. 4.
[17] Doc. Nos. 12, 13.
[18] Doc. No. 28.
[19] Doc. No. 34.

granted in September.[20] In September, the Court had cancelled the Debtor's confirmation hearing, but mistakenly went forward with the hearing.[21] The Court dismissed the Debtor's case.[22] When the Debtor moved to set aside the orders entered at the September hearing, the Court heard that Motion and vacated its Order Dismissing Case.[23] The Trustee has recently filed another Motion to Dismiss Case for Failure to Maintain Timely Plan Payments.[24] The Debtor has not replied within the 21-day negative notice period.[25] The Trustee's spreadsheet shows that the Debtor stopped making plan payments in October.[26]

At the July hearing, the Court also observed that in addition to this case, the Debtor had filed two prior unsuccessful Chapter 13 cases and one prior Chapter 7 case in which he received a discharge:

- Case No. 6:14-bk-06455-KSJ, a Chapter 13 case filed on June 2, 2014, and dismissed on June 17, 2014, when the Debtor failed to file the proper information.
- Case No. 6:15-bk-04813-KSJ, a Chapter 13 case filed on June 1, 2015, and dismissed on September 2, 2015, when the Debtor failed to make plan payments.
- Case No. 6:14-bk-10754-KSJ, a Chapter 7 case filed on September 22, 2014, with a standard discharge issued on March 2, 2015.

The Court reluctantly granted the Debtor's requested continuance, but stated there would be no further continuances. The Court also noted that, if the case was dismissed, an injunction would issue preventing the Debtor from filing yet another bankruptcy case. These two statements later were incorporated in the Court's Order vacating the dismissal entered on November 9, 2016.[27]

---

[20] Doc. No. 38.
[21] Doc. Nos. 37, 40.
[22] Doc. No. 42.
[23] Doc. Nos. 44, 48.
[24] Doc. No. 51.
[25] *Id.* There are no responses to the Motion to Dismiss on the docket.
[26] *Id.* at Exh. A.
[27] Doc. No. 47.

When the Debtor asked the Court for a further continuance at the November hearing, his only stated reason was that he was a *pro se* party and needed time to figure out the process. The Court's decision to grant no further continuances has nothing to do with the Debtor being an attorney. This is true even in light of the Court's statement that because the Debtor was an attorney so the Court believed he could "figure it out." While courts typically give *pro se* pleadings and filings the benefit of liberal construction, this does not translate into granting *pro se* parties multiple continuances for no other reason than they are appearing *pro se*. All of the Court's statements made on the record when presented with these facts would not lead a disinterested observer to have any significant doubts about the Court's impartiality.

On the Debtor's arguments about the cancellation of the September 12 hearing, the Court already has addressed those issues. The Debtor is correct that the hearing on September 12 should not have gone forward.[28] The Court granted some relief to parties at the September 12 hearing. It dismissed the Debtor's case and granted an *ore tenus* Motion to Disburse Funds.[29] However, when presented with the Debtor's Motion to Set Aside,[30] it promptly heard and resolved that Motion in the Debtor's favor. The Court vacated its Order Dismissing Case,[31] but noted that the Order Granting Motion to Disburse Funds would remain valid and enforceable.[32]

Again, judicial rulings alone rarely constitute a basis for recusal or disqualification.[33] All of the Debtor's arguments relate to rulings and statements about those rulings made on the record in open court. The Court has had no contact or knowledge of Mr. Cuprill's actions other than in this and his prior bankruptcy cases. Any opinions of Mr. Cuprill's ability to confirm a Chapter 13 Plan are based entirely on actions and rulings taken in these cases. This is not a basis for recusal,

[28] Doc. No. 37.
[29] Doc. Nos. 40, 41, 42.
[30] Doc. No. 44.
[31] The Order Dismissing Case is Doc. No. 42.
[32] Doc. Nos. 41, 47.
[33] *Liteky*, 510 U.S. at 555.

even though the Court understands that Mr. Cuprill would like a new judge and more time. The Debtor has failed to clearly and convincingly demonstrate that a reasonable person knowing all the facts would conclude that the Court's impartiality might be questioned.

Accordingly, it is

ORDERED:

1. The Motion to Disqualify (Doc. No. 51) is **DENIED.**

2. No further continuances will be granted.

###

The Clerk is directed to serve a copy of this order on all interested parties.