

STATE OF VERMONT
BENNINGTON COUNTY, SS.

Scott Huminski)	Bennington Superior Court
v.)	Docket No. 199-7-97 Bncv
Michael Ryan)	
Scott Huminski)	
v.)	Docket No. 437-12-98 Bncv
Town of Bennington)	
Factory Point Nat'l Bank)	
v.)	Docket No. 248-8-96 Bncv
Eastern Equipment & Serv. Corp.)	
Town of Bennington)	
v.)	Docket No. 126-4-96 Bncv
Eastern Equipment and Serv. Corp.)	
Scott Huminski, et al.)	
v.)	Docket No. 115-4-98 Bncv
Robert Northrup, et al.)	
Scott Huminski)	
v.)	Docket No. 219-7-97 Bncv
United Parcel Serv., et al.)	
Scott Huminski, et al.)	
v.)	Docket No. 335-10-98 Bncv
John Lavoie, et al.)	
Scott Huminski)	
v.)	Docket No. 187-7-97 Bncv
Betsy Greenawalt)	
Duane Greenawalt)	
v.)	Docket No. 87-3-96 Bncv
Scott Huminski, et al.)	

MEMORANDUM OF DECISION

This matter is before the court on Mr. Huminski's "Motion for Recusal of Judge Wesley" which was filed on July 22, 1999 in Docket No. 199-7-97 Bncv. The Movant is appearing pro se. In his Motion, Movant referred to "several other matters pending before Bennington Superior Court." (Pl.'s Mot. for Recusal of J.

Wesley at 1.)

On August 20, 1999, Judge Wesley referred the Motion to the Administrative Judge for Trial Courts on all the cases referenced above. The Administrative Judge for Trial Courts has designated responsibility to the undersigned for the Motions in each of the above referenced cases, pursuant to V.R.C.P. 40(e)(3).

Background

Movant claims, as the basis for his recusal request, that the "Opinion and Order" of July 20, 1999 in Docket No. 199-7-97 Bncv is evidence of a deep animosity and bias on the part of Judge Wesley toward Mr. Huminski. Movant also refers to "the previous recusal motions" and claims a long pattern of bias and animosity. He further alleges that Judge Wesley: has shown him harsh treatment as a pro se party; has failed to allow hearings on issues; and has deliberately ignored filings of Mr. Huminski when deciding summary judgment motions.

Discussion

Each of these claims will be addressed in turn. As a preliminary matter, the undersigned has concluded that a hearing on Movant's Motion is not warranted. An evidentiary hearing need not be provided if the court concludes that there is no genuine issue of material fact, and the court may decide motions on questions of law without oral argument. See V.R.C.P. 78(b)(2). No hearing is needed because, for the reasons set forth hereafter, the court rules as a matter of law that the movant has not set forth sufficient grounds for a claim.

I.

Movant's first claim is that the "Opinion and Order" of July 20, 1999 "evidences a deep animosity, bias, and desire to ignore pleadings and existing law." (Pl.'s Mot. for Recusal of J. Wesley at 1.) This Court has reviewed the "Opinion and Order", and does not find a basis for this claim. Bias and prejudice are not apparent in Judge Wesley's opinion, which addresses issues of law and fact in a detailed, thorough, and evenhanded manner. Any claim of bias or prejudice must be "clearly and affirmatively shown" by a moving party. *State v. Pellerin*, 164 Vt. 376, 379 (1995) (citing *Cliche v. Fair*, 145 Vt. 258, 261-62 (1984)). Judge Wesley addressed each issue on its merits in detail. Some of the rulings were unfavorable to Mr. Huminski, and one of the rulings was favorable to his position. See *Gallipo v. City of Rutland*, 163 Vt. 83, 96 (1994) ("it is not enough merely to show the existence of adverse rulings.") There is no need for either an evidentiary

hearing or oral argument because Mr. Huminski has not identified the particular basis for his claim that the "Opinion and Order" shows bias or prejudice. He has made a conclusory statement without specific explanation. See *Eddins v. O'Neil*, 145 Vt. 364, 366 (1985) (The movant "merely alleges bias and fails to demonstrate affirmatively and clearly that any bias existed.") The Movant has not shown minimum grounds for a claim of bias or prejudice.

II.

The second claim is that the "Opinion and Order" must be viewed in the context of a long pattern of bias and animosity as shown in prior recusal motions. The Court is familiar with Movant's "Motion for Recusal of Judge Wesley" filed on October 28, 1998 in four of the above referenced cases, and its outcome, having presided over the hearing and rehearing, and having issued the decision on December 17, 1998. The Court has also reviewed the "Motion for Recusal Hon. Judge Wesley" filed in dockets 126-4-96 Bncv and 248-8-96 Bncv on December 29, 1998, but has no information regarding any responses or the disposition of the motion. Otherwise, no records have been supplied by Movant in support of his motion, and no other records have been reviewed.

While Movant has made repeated claims of bias and prejudice, the documents provided by Movant do not support a claim of bias and prejudice. As set forth above, neither does the complaint about the "Opinion and Order" of July 20, 1999. Therefore, there is not a sufficient basis for a complaint of a pattern of bias and prejudice to support the Motion. There is no need for the court to convene a hearing. See V.R.C.P. 78(b)(2).

III.

Movant next claims that Judge Wesley has treated Mr. Huminski, a pro se party, harshly. Movant makes this general claim without giving any supporting details or facts. This level of generality does not meet the requirement to make an affirmative and clear showing of bias or prejudice. See *Pellerin*, 164 Vt. at 379.

IV.

The fourth claim is that Judge Wesley has failed to allow "hearing on the issues." As set forth in Vermont Civil Rule 78(b)(2) cited above, hearings need not be held for legal issues, and the standard for a hearing on factual issues is whether there is a genuine issue as to a material fact. There are some matters for which a hearing is required, and denial of the right to a hearing could possibly support a claim of bias or prejudice. Movant, however, does not identify the issues on which Judge Wesley declined to hold a hearing.

Without more specific information, the court cannot determine the merits of this claim. It is the responsibility of the Movant, as the party seeking recusal, to identify affirmatively and clearly the basis for his claim of bias or prejudice. See *Pellerin*, 164 Vt. at 379. This standard has not been met with respect to this claim.

V.

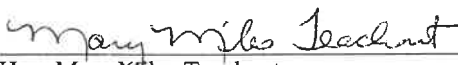
Movant's final claim is that Judge Wesley deliberately ignored filings of the Movant that would have precluded summary judgment. The "Opinion and Order" of Judge Wesley of July 20, 1999 does not demonstrate that he ignored the Movant's filings. On the contrary, it shows that he took Movant's arguments and positions seriously, and engaged in detailed and respectful analysis on each of the issues before him.

Mr. Huminski's claims are general and non-specific. They appear to be based primarily on the fact that Judge Wesley has ruled against Mr. Huminski on some of his claims, but an adverse ruling in a case is not sufficient to show that a judge has a bias or prejudice against a party. See *Gallipo v. City of Rutland*, 163 Vt. 83, 96 (1994) ("it is not enough merely to show the existence of adverse rulings."); see also *Pettengill v. New Hampshire Insurance Company*, 129 Vt. 23, 33 (1970). Even a series of adverse rulings is not sufficient to show bias and prejudice, particularly where the grounds for the rulings have been set forth in a detailed analysis, as they have been in Judge Wesley's Opinion of July 20, 1999. The Motion does not contain even an identification of specific facts to support a claim of bias or prejudice on the part of Judge Wesley. The claims are at such a broad level of generality that they do not show that Movant can identify a basis for an "affirmative and clear showing of bias" required by *Cliche v. Fair*, 145 Vt. 258, 261-62 (1984).

ORDER

Based on the foregoing reasons, Movant's "Motion for Recusal of Judge Wesley" is DENIED without hearing. This ruling applies to all of the cases referenced above.

Dated at Montpelier, Vermont this 28th day of September 1999.


Hon. Mary Miles Teachout
Acting Administrative Judge for Trial Courts