IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-00512-LTB

JEFFREY T. MAEHR,

Plaintiff,

v.

JOHN KOSKINEN, Commissioner of Internal Revenue,
JOHN VENCATO, Revenue Agent,
GINGER WRAY, Revenue Agent,
JEREMY WOODS, Disclosure Specialist,
WILLIAM SOTHEN, Revenue Agent,
GARY MURPHY, Revenue Agent,
THERESA GATES, Program Manager,
SHARISSE TOMPKINS, Disclosure Manager,
CAROLYN COLVIN, SSA Acting Administrator,
WELLS FARGO BANK, NA, and
JOHN AND JANE DOES 1-100,

Defendants.

ORDER DENYING MOTION

Plaintiff, Jeffrey T. Maehr, has filed *pro se* a "Motion to Reconsider Evidence of Record, En Banc, for Clarification, and Motion for Recusal if Necessary" (ECF No. 14). Mr. Maehr asks the Court to recuse and he seeks reconsideration of the Order of Dismissal (ECF No. 12) and the Judgment (ECF No. 13) entered in this action on May 5, 2016. The Court must construe the motion liberally because Mr. Maehr is not represented by an attorney. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). For the reasons discussed below, the motion will be denied.

The Court dismissed the instant action as legally frivolous. The Court noted that Mr. Maehr failed to allege specific facts supporting an arguable claim for relief challenging the manner in which his unpaid federal income taxes are being collected and, to the extent he is challenging the validity of his tax liability, those arguments repeatedly have been deemed frivolous. Mr. Maehr contends in the motion to reconsider that the Court did not require a response from Defendants, his claims are not frivolous, and the Court is biased and prejudiced against him.

The Court first will address Mr. Maehr's request to recuse, which is based on his allegation that the Court is biased and prejudiced against him. The Court construes the allegation of bias and prejudice as a motion to recuse pursuant to 28 U.S.C. § 144 and 28 U.S.C. § 455. Title 28 U.S.C. § 144 provides a procedure whereby a party to a proceeding may request the judge before whom the matter is pending to recuse himself or herself based upon personal bias or prejudice either against the moving party or in favor of any adverse party. Section 144 requires the moving party to submit a timely and sufficient affidavit of personal bias and prejudice. *See Green v. Branson*, 108 F.3d 1296, 1305 (10th Cir. 1997). "The affidavit must state with required particularity the identifying facts of time, place, persons, occasion, and circumstances." *Hinman v. Rogers*, 831 F.2d 937, 939 (10th Cir. 1987). Although the Court must accept the facts alleged in the supporting affidavit under § 144 as true, the affidavit is construed strictly against the moving party. *See Glass v. Pfeffer*, 849 F.2d 1261, 1267 (10th Cir. 1988). The moving party has a substantial burden "to demonstrate that the judge is not impartial." *United States v. Burger*, 964 F.2d 1065, 1070 (10th Cir. 1992).

Title 28 U.S.C. § 455(a) provides that a judge "shall disqualify himself in any

proceeding in which his impartiality might reasonably be questioned." The goal of this provision is to avoid even the appearance of partiality. *See Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988). Pursuant to § 455, the Court is not required to accept all factual allegations as true "and the test is whether a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality." *Glass*, 849 F.2d at 1268 (internal quotation marks omitted). The standard is completely objective and the inquiry is limited to outward manifestations and reasonable inferences drawn therefrom. *See United States v. Cooley*, 1 F.3d 985, 993 (10th Cir. 1993).

Mr. Maehr has not submitted a timely and sufficient affidavit of personal bias and prejudice and he fails to make any reasoned argument that would demonstrate an appearance of partiality. Mr. Maehr merely disagrees with the Court's order dismissing this action. However, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994). Therefore, the motion will be denied to the extent Mr. Maehr is asking the Court to recuse.

Mr. Maehr also seeks reconsideration of the order dismissing this action. A litigant subject to an adverse judgment, and who seeks reconsideration by the district court of that adverse judgment, may "file either a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e) or a motion seeking relief from the judgment pursuant to Fed. R. Civ. P. 60(b)." *Van Skiver v. United States*, 952 F.2d 1241, 1243 (10th Cir. 1991). A motion to alter or amend the judgment must be filed within twenty-eight days after the judgment is entered. *See* Fed. R. Civ. P. 59(e). The Court will consider the motion to reconsider pursuant to Rule 59(e) because it was filed within twenty-eight days after the Judgment was entered in this action. *See Van Skiver*, 952 F.2d at 1243 (stating that

motion to reconsider filed within ten-day limit for filing a Rule 59(e) motion under prior version of that rule should be construed as a Rule 59(e) motion).

A Rule 59(e) motion may be granted "to correct manifest errors of law or to present newly discovered evidence." *Phelps v. Hamilton*, 122 F.3d 1309, 1324 (10th Cir. 1997) (internal quotation marks omitted). Relief under Rule 59(e) also is appropriate when "the court has misapprehended the facts, a party's position, or the controlling law." *Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000).

Upon consideration of the motion to reconsider and the entire file, the Court finds that Mr. Maehr fails to demonstrate any reason why the Court should reconsider and vacate the order dismissing this action. The Court is authorized to dismiss a complaint filed *in forma pauperis* at any time if the complaint is frivolous. *See* 28 U.S.C. § 1915(e)(2)(B)(i). Therefore, the Court was not required to obtain a response from Defendants. Mr. Maehr also fails to demonstrate that the Court erred in determining his claims in the amended complaint are legally frivolous. Thus, the motion to reconsider will be denied. Accordingly, it is

ORDERED that the "Motion to Reconsider Evidence of Record, En Banc, for Clarification, and Motion for Recusal if Necessary" (ECF No. 14) is DENIED.

DATED at Denver, Colorado, this 12th day of May, 2016.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court