

1 The motion came on regularly for hearing on November 13, 2006,
2 and was thereafter taken under submission.

3 The timing of plaintiffs' motion is of some curiosity,
4 inasmuch as the adversary proceeding was filed and assigned to
5 this Court on June 30, 2006, and because the grounds asserted in
6 support of the motion, to the extent they exist at all, have
7 allegedly existed for years. On September 11, 2006, defendants
8 filed their motion to dismiss or for summary judgment, and a
9 motion to strike pendent state law claims pursuant to
10 California's Anti-SLAPP provisions. The motions were noticed for
11 hearing for October 10. Because of the Court's schedule, the
12 hearing was changed to October 23. Meanwhile, pursuant to the
13 court's Local Rules, opposition to the moving papers was due on
14 or about September 28, as the docket reflected. On or about that
15 date, counsel for plaintiffs filed an *ex parte* application
16 requesting a 90 day continuance of the hearing and an extension
17 of time to respond. The ground offered in support of the request
18 was the size of the defendants' motions. Defendants filed
19 opposition to the *ex parte* motion.

20 Meanwhile, on or about September 25, plaintiffs Keenan,
21 appearing *pro se*, filed a lawsuit against this judge in the
22 United States District Court. On October 13, in the pending
23 adversary, plaintiffs asked for reconsideration on the request
24 for the 90 day continuance. They also filed the instant motion
25 to disqualify.

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1 The motion to disqualify was based on both 28 U.S.C. § 144
2 and 455. At the hearing, the Court and counsel for plaintiffs
3 had a colloquy about § 144 and its statutory requirements of an
4 affidavit, and a certificate of good faith by counsel, neither of
5 which had been submitted in support of the motion. The Court and
6 counsel also discussed briefly the authorities that make clear
7 that § 144 is not applicable to bankruptcy judges.

8 The complaint against this judge filed in the district court
9 alleges this Court's orders in all the underlying proceedings are
10 void because: 1) the judge did not take the required oath upon
11 reappointment in 2002; and 2) the judge was prejudiced against
12 plaintiffs and biased in favor of the trustee. They also alleged
13 various deprivations of constitutional rights and
14 unconstitutional exercises of authority.

15 What is puzzling to the Court is the significance, if any
16 there is, in the fact that in the pending adversary against
17 Mr. Pyle and his attorneys, the same allegations are made against
18 this judge, although no relief is requested. On the one hand, if
19 the allegations were contained in moving papers and declarations
20 in support of the motion to disqualify, they could be addressed
21 in that context and the motion ruled upon. Does it change
22 anything that the allegations are contained in the body of the
23 complaint that the Court would be called to rule on? Another
24 facet of the issue is that the complaint charges Mr. Pyle and
25 others of conspiring in various ways, and the district court
26 complaint charges this Court with being one of the conspirators.

1 May this Court properly rule on the allegations against Mr. Pyle
2 and his attorneys when the Court is charged with the same
3 conduct?

4 In light of the foregoing questions, the Court feels close
5 enough to the situation to request an independent and *de novo*
6 assessment of plaintiffs' motion to disqualify, out of an
7 abundance of caution, and even though § 455 does not require
8 another judge to hear the challenge.

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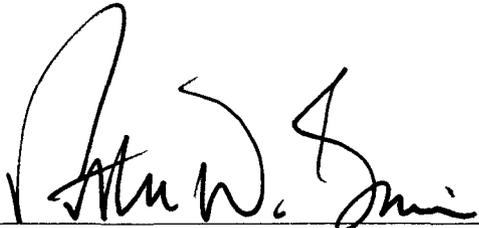
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1 Accordingly, by copy of this Order, the Court requests the
2 Clerk of Court or his deputy conduct a random draw among the
3 three other judges of this Court to determine who will be
4 assigned to hear and resolve plaintiffs' motion to disqualify.
5 That Court shall be free to schedule a new argument, ask for
6 supplemental briefing, and proceed in any manner it deems
7 appropriate. If that court determines this Court is
8 disqualified, then the adversary proceeding shall be reassigned
9 in accordance with the established procedure in this district.
10 If it is determined that this Court is not disqualified, then
11 upon receipt of any such ruling this Court will reschedule the
12 hearing on defendants' motions to dismiss and to strike. In the
13 meantime, absent further order of this or another court with
14 jurisdiction, all prior orders and filing deadlines remain in
15 force and effect.

16 IT IS SO ORDERED.

17 DATED: NOV 20 2006

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PETER W. BOWIE, Chief Judge
United States Bankruptcy Court