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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EUGENE ROBINSON,

FILED

CIVIL ACTION

v.

JOHN M. HUME, DR. M.D.J.D,  
ET AL.,

SEP 21 1995  
CLERK OF COURT  
NO. 95-2350

ORDER

AND NOW, this 27<sup>TH</sup> day of September 1995, upon consideration of motion to disqualify trail (sic) judge (docket entry no. 5), it is **ORDERED** that the Motion is **DENIED**. The Clerk is **DIRECTED** to mail to plaintiff together with this Order, a copy of the Court's Order-Memorandum of August 17, 1995 (docket entry no. 3).

AND IT IS SO ORDERED.<sup>1</sup>

  
EDUARDO C. ROBRENO, J.

1. The instant case was dismissed as frivolous by Order-Memorandum dated August 17, 1995 (docket entry no 3). In footnote 1 of the Court's August 17, 1995 Order-Memorandum the Court discussed the reasons why recusal or disqualification was not warranted in this case. The reasoning set forth therein is equally applicable to this motion. In the interest of completeness, the Court must also note that the proceeding identified by plaintiff in paragraph 4 of the motion was dismissed as frivolous and that the undersigned does not now nor has he ever belonged to a masonic fraternity. For the benefit of plaintiff, the Clerk is directed to mail to plaintiff a copy of the Court's August 17, 1995 Order-Memorandum.

9/29/95  
E. Robinson  
L. A. ...  
Q.M. Hume

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EUGENE ROBINSON

CIVIL ACTION  
NO. 95-2350

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v.

DR. JOHN M. HUME M.D.J.D.  
DR. LARRY A. ROTENBERG M.D.

AUG 18 1995

MICHAEL E. KUNZ, Clerk  
By [Signature] Dep. Clerk

ORDER-MEMORANDUM

EDUARDO C. ROBRENO, J.

August 17, 1995

Plaintiff has filed a pro se 42 U.S.C. § 1983 civil rights complaint against two court-appointed psychiatrists. He alleges that the defendants violated his constitutional rights because they testified, at his criminal trial, that he suffers from paranoid schizophrenia.

Plaintiff also filed a request for leave to proceed in forma pauperis. Since he appears to be unable to pay the cost of commencing this action, leave to proceed in forma pauperis will be **GRANTED**.

Plaintiff alleges that the defendants made a false diagnosis and gave false testimony at his criminal trial. The United States Supreme Court has held that persons who function as integral parts of the judicial process are immune from liability under § 1983. Burns v. Reed, 111 S. Ct. 1934, 1942 (1991). Plaintiff alleges that the defendants were appointed by the Court to conduct psychiatric evaluations. The defendants were, therefore, acting as integral parts of the judicial process and are protected by the absolute judicial immunity that shields the Court from liability in § 1983 actions. McArdle v. Tronetti, 961

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F.2d 1083, 1085 (3d Cir. 1992); Moses v. Parwatikar, 813 F.2d 891, 892 (8th Cir.), cert. denied, 108 S. Ct. 108 (1987).

Moreover, as witnesses at plaintiff's criminal trial, the defendants are also protected by absolute witness immunity.

Briscoe v. LaHue, 103 S. Ct. 1108, 1115 (1983).

Finally, plaintiff requests injunctive relief to have the defendants' diagnoses removed from his prison files. It appears that this request is based upon the possibility that he could be forced to take psychotropic drugs because the defendants have diagnosed him as a paranoid schizophrenic. Plaintiff has failed to allege any facts that would allow this Court to find that the defendants are in a position to force him to take psychotropic drugs, or that they have any involvement in his medical treatment. Therefore, there is no basis upon which this Court may grant plaintiff's request for injunctive relief.

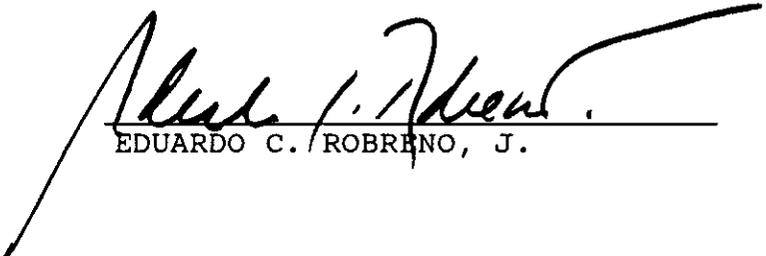
For the foregoing reasons, the complaint will be **DISMISSED** as legally frivolous pursuant to 28 U.S.C. § 1915(d).<sup>1</sup>

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1. In August, 1992, the plaintiff filed an action against a hearing officer and a number of prison guards. The Court allowed plaintiff to proceed in forma pauperis, and dismissed the claim against the hearing officer as frivolous. After discovery was completed, the Court granted summary judgment against all the remaining defendants. See Robinson v. Link, Civ. A. No. 92-4877, 1994 WL 463400 (E.D. Pa. Aug. 25, 1994). In June, 1994, plaintiff filed an action against the superintendent of a state correctional institution alleging that prison staff members were holding his relatives, friends and neighbors hostage and that he had been subjected to witchcraft and attempts to poison him with cyanide. The Court dismissed the action as frivolous pursuant to 28 U.S.C. § 1915(d). See Robinson v. Love, 155 F.R.D. 535 (E.D. Pa. 1994). In March, 1995, plaintiff filed a Section 1983 action against the undersigned. The undersigned recused himself from hearing the matter, and the case was transferred to another judge of this court who then dismissed the suit as frivolous. See Robinson v. Robreno, Civ. A. No. 95-1833, 1995 WL 217617 (E.D.

(continued...)

AND IT IS SO ORDERED.

  
EDUARDO C. ROBRENO, J.

1. (...continued)

Pa. Apr. 12, 1995) (Buckwalter, J.). In April, 1995, plaintiff filed the instant action against two court-appointed psychiatrists who interviewed him and testified against him in a criminal trial. In a letter dated August 1, 1995 to a clerk of the Court, the plaintiff advised the Court that he had previously written a letter to Chief Judge Edward Cahn requesting that the undersigned "refrain [sic] from presiding over any of my future litigation." The Court will construe plaintiff's letter to the clerk as a motion for disqualification pursuant to 28 U.S.C. § 455 (b)(1) (mandating disqualification where the judge has a personal bias or prejudice) or 28 U.S.C. § 455(a) (judge shall disqualify himself where his impartiality might reasonably be questioned). 28 U.S.C. § 144 is not applicable in this case because the plaintiff did not submit an affidavit with his request for disqualification. The Court finds that disqualification is not warranted under these circumstances. "[I]t is clear that a judge is not disqualified under 28 U.S.C. § 455 (or under 28 U.S.C. § 144 for that matter) merely because a litigant sues or threatens to sue him." U.S. v. Bertoli, 854 F. Supp. 975, 1119 (D.N.J.), aff'd in part, vacated in part on other grounds, 40 F.3d 1384 (3d Cir. 1994) (quoting In re Martin-Trigona, 573 F. Supp. 1237, 1243 (D. Conn. 1983) (Cabranes, J.) (bracketed material in original quote), appeal dismissed, 770 F.2d 157 (2d Cir. 1985)). If this were not the rule, a litigant would effectively be given the power to veto any judge not of his or her liking from hearing his or her case by the simple measure of filing a frivolous lawsuit against him or her. I have also considered all other matters involving plaintiff's conduct toward me which could be construed as giving rise to prejudice or bias on my part toward plaintiff, and for the same reasons set forth above, I find them not to warrant disqualification. Therefore the motion for disqualification is **DENIED**.