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FILED

FEB 23 2024

Clerk of the Court
Superior Court of CA County of Santa Clara
BY  DEPUTY
R. GUEVARA

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

KOSTIANTYN MARS, } Case No.: 22FL003144
Petitioner, }
v. } ORDER STRIKING: PETITIONER'S
HANNA MARS, } 1) NOTICE OF MOTION AND MOTION
Respondent. } TO RECUSE JUDICIAL OFFICER FOR
CAUSE (AMENDED);
 } 2) CHALLENGE TO RECUSE JUDICIAL
OFFICER FOR CAUSE; AND
 } 3) DECLARATION IN SUPPORT OF
MOTION TO RECUSE JUDICIAL
OFFICER FOR CAUSE;"

On February 3, 2023, Petitioner Kostiantyn Mars filed 1) Notice of Motion and Motion to Recuse Judicial Officer for Cause; 2) Challenge to Recuse Judicial Officer for Cause; and 3) Declaration in Support of Motion to Recuse Judicial Officer for Cause (hereinafter, collectively, "Statement of Disqualification.") under CCP section 170.1(a)(6)A(iii), CCP section 170.1(a)(3)A and CCP section 170.3.

There are no facts which constitute grounds for disqualification of the undersigned judicial officer pursuant to Code of Civil Procedure section 170.1. Where, as here, the statement

1 of disqualification does not reveal any grounds for disqualification on its face, the judge can
2 strike the statement of disqualification. (Code Civ. Proc. §170.4(b); *Neblett v. Pacific Mutual*
3 *Life Ins. Co.* (1943) 22 Cal.2d 393, 401.)

4 Petitioner's subjective belief regarding bias is irrelevant and not controlling in a motion to
5 disqualify for cause, as the test applied is an objective one. (*United Farm Workers of America v.*
6 *Superior Court* (1985) 170 Cal.App.3d 97, 104; *Stanford University v. Superior Court* (1985) 173
7 Cal.App.3d 403, 408 ("the litigant's necessarily partisan views do not provide the applicable frame
8 of reference.")) "In the context of judicial recusal, '[p]otential bias and prejudice must clearly be
9 established by an objective standard.'" (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 389;
10 *Roitz v. Coldwell Banker Residential Brokerage Co.* (1998) 62 Cal.App.4th 716, 724 ("Potential
11 bias and prejudice must clearly be established.")) "[T]he partisan litigant emotionally involved
12 in the controversy underlying the lawsuit is not the disinterested objective observer whose doubts
13 concerning the judge's impartiality provide the governing standard." (*Haworth*, at p. 389.)

14 Further, "[t]o show bias or prejudice...there must be declarations showing indications of
15 personal bias or the existence of some fixed anticipatory prejudgment." (*In re the Marriage of*
16 *Fenton* (1982) 134 Cal.App.3d 451, 457.) No such showing was made by petitioner here.

17 As stated in *People v. Ford* (1914) 25 Cal.App. 388, 395:

18 It is not sufficient in a case of this kind, to allege in the affidavit simply that the
19 defendant believes that he cannot have a fair and impartial trial, etc., but it must be
20 made to appear by the affidavit or affidavits on file that a fair and impartial trial
21 cannot be had before the judge about to try the case, by reason of the bias and
22 prejudice of such judge. (Citation.) The affidavit or affidavits must not only state
23 facts, but the facts stated must establish to the satisfaction of a reasonable mind that
24 the judge has a bias or prejudice that will in all probability prevent him from dealing
25 fairly with the defendant.

26 Additionally, the court in *Ensher, Alexander & Barsoom, Inc. v. Ensher* (1964) 225
27 Cal.App.2d 318, 322-323, stated:

28 Bias or prejudice consists of a 'mental attitude or disposition of the judge towards
29 a party to the litigation . . .' (Citation.) In order for the judge to be disqualified,
30 the prejudice must be against a particular party ... and sufficient to impair the

1 judge's impartiality so that it appears probable that a fair trial cannot be held.
2 (Citations.)

3 (See also, *Flier v. Superior Court* (1994) 23 Cal.App.4th 165, 171 ("[T]he challenge must be to
4 the effect that the judge would not be able to be impartial toward a particular party.").)

5 "To disqualify a judge, the alleged bias must constitute 'animus more active and deep-
6 rooted than an attitude of disapproval toward certain persons because of their known conduct.'" "
7 (*U.S. v. Wilkerson* (9th Cir. 2000) 208 F.3d 794, 799.)

8 No such showing was made here. Petitioner has not clearly established that the
9 undersigned judicial officer is biased against him. Nor has petitioner clearly established that a
10 person aware of the facts might reasonably entertain a doubt that the Court would be fair and
11 impartial in this case. The test for such a determination is an objective one; "whether a reasonable
12 member of the public at large, aware of all the facts, would fairly entertain doubts concerning the
13 judge's impartiality." (*Briggs v. Superior Court* (2001) 87 Cal.App.4th 312, 319.)

14 The 'reasonable person' is not someone who is 'hypersensitive or unduly
15 suspicious,' but rather is a 'well-informed, thoughtful observer.' (Citation.) '[T]he
16 partisan litigant emotionally involved in the controversy underlying the lawsuit is
17 not the *disinterested objective observer* whose doubts concerning the judge's
18 impartiality provide the governing standard.' (Citations.)

19 (*Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 391.)

20 The disinterested objective observer would not have doubts as to whether the court would
21 be fair and impartial in this case because the entirety of petitioner's challenge is based upon his
22 dissatisfaction with the Court's decisions and rulings issued during the hearings in this case. Like
23 in the present case, in *Haldane v. Haldane* (1965) 232 Cal.App.2d 393, 395, one of the parties
24 claimed that the judge was biased against him. The court stated that even if the court makes
25 comments which are "critical or disparaging," if they are made in furtherance of the court's duties,
26 they are not grounds for disqualification. (*Ibid.*) "[J]udicial remarks during the course of a trial
27 that are critical or disapproving of, or even hostile to the parties or their cases, ordinarily do not
28 support a bias or partiality challenge." (*Liteky v. United States* (1994) 510 U.S. 540, 555; *see also*,
Marr v. Southern California Gas Co. (1925) 195 Cal. 352, 354.)

1 [O]pinions formed by the judge on the basis of facts introduced or events occurring
2 in the course of the current proceedings, or of prior proceedings, do not constitute
3 a basis for a bias or partiality motion unless they display a deep-seated favoritism
4 or antagonism that would make fair judgment impossible.

5 (*Liteky*, 510 U.S. at 555; *see also, Marr v. Southern California Gas Co.* (1925) 195 Cal. 352, 354.)

6 “[A] judge will normally and properly form opinions on the law, the evidence and the
7 witnesses, from the presentation of the case. These opinions and expressions thereof may be
8 critical or disparaging to one party’s position, but they are reached after a hearing in the
9 performance of the judicial duty to decide the case, and do not constitute a ground for
10 disqualification.”” (*Haldane v. Haldane, supra*, 232 Cal.App.2d at p. 395.) “When making a
11 ruling, a judge interprets the evidence, weighs credibility, and makes findings. In doing so, the
12 judge necessarily makes and expresses determinations in favor of and against parties. How could
13 it be otherwise? We will not hold that every statement a judge makes to explain his or her reasons
14 for ruling against a party constitutes evidence of judicial bias.” (*Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1219.)

15 Code of Civil Procedure section 170.2, subdivision (b), makes clear that it is *not* grounds
16 for disqualification that a judge “[h]as in any capacity expressed a view on a legal or factual issue
17 presented in the proceeding....” A party’s remedy for an erroneous ruling is not a motion to
18 disqualify, but rather review by appeal or writ. (*McEwen v. Occidental Life Ins. Co.* (1916) 172
19 Cal. 6, *McEwen v. Occidental Life Ins. Co.* (1916) 172 Cal. 6, 11; *see also, Ryan v. Welte* (1948)
20 87 Cal.App.2d 888, 893, “[A] wrong opinion on the law of a case does not disqualify a judge, nor
21 is it evidence of bias or prejudice.”.) Otherwise, “no judge who is reversed by a higher court on
22 any ruling or decision would ever be qualified to proceed further in the particular case.” (*Ryan v. Welte*, at p. 893.) The proper remedy is an appeal from the erroneous ruling. (*Ibid.*)

23 Code of Civil Procedure section 170 states that it is the duty of the judge to hear matters
24 assigned to him or her. Indeed, the Court of Appeal has stated that it is the court’s *obligation* not
25 to recuse itself where there are no grounds for disqualification.

26 Judicial responsibility does not require shrinking every time an advocate asserts the
27 objective and fair judge appears to be biased. The duty of a judge to sit where not
28 disqualified is equally as strong as the duty not to sit when disqualified. (Citation.)

1 (Briggs v. Superior Court (2001) 87 Cal.App.4th 312, 319.)

2 Accordingly, because the Petitioner's Statement of Disqualification discloses no legal
3 grounds for disqualification on its face, it is ordered stricken pursuant to Code of Civil Procedure
4 section 170.4, subdivision (b).

5 The parties are reminded that this determination of the question of disqualification is not
6 an appealable order and may be reviewed only by a writ of mandate from the Court of Appeal
7 sought within 10 days of notice to the parties of the decision. (Code of Civ. Proc., § 170.3, subd.
8 (d).) In the event that a timely writ is sought, and an appellate court determines that an answer
9 should have been timely filed, such an answer is filed herewith.

10 GOOD CAUSE APPEARING THEREFORE, It is so ordered.

11 Date: February 23, 2024

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14 Stephen P. Lowney
15 Judge of the Superior Court

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VERIFIED ANSWER OF JUDGE STEPHEN P. LOWNEY

I, Stephen P. Lowney, do declare as follows:

3 1. I am a Judge of the Superior Court of California, County of Santa Clara. I have
4 been assigned to preside over the instant action. If called upon as a witness, I would competently
5 testify as to the matters stated herein.

6 2. On February 20, 2024, petitioner Kostiantyn Mars filed his Statement of
7 Disqualification in which he claims that I am biased against him such that he cannot have a fair
8 and impartial hearing in this case. Petitioner bases his claim of bias on the Court's statements,
9 decisions and rulings at the hearings held in this case on February 1, 2024 and February 7, 2024.
10 Petitioner contends that I demonstrated a bias against him because I continued petitioner's nine
11 requests for orders to a half day hearing which was held on February 7, 2024. Additionally,
12 petitioner contends that I denied petitioner's request for orders without due consideration of the
13 evidence presented at the hearings. Petitioner also claims that the Court's rulings and orders were
14 erroneous, prejudicial, and likely the result of a bribe from the respondent's attorney.

15 3. I deny petitioner's claims. I deny petitioner's claim that my rulings were the result
16 of "bribes" purportedly paid to me by or on behalf of the respondent's attorney. At no time have
17 I ever taken a "bribe" in this or any other case over which I have presided. I deny that any ground
18 for disqualification exists in this case.

19 4. I deny petitioner's claim that I am biased against him such that he cannot have a
20 fair and impartial hearing in this case. I am not biased or prejudiced against or in favor of the
21 petitioner. I am not biased or prejudiced against or in favor of the respondent. I am not biased or
22 prejudiced against or in favor of any party or attorney in this case. I know of no reason why I
23 cannot be fair and impartial.

24 5. I deny petitioner's claims that I denied petitioner's request for orders without due
25 consideration of the evidence presented at the hearings. At the hearing held on February 7, 2024,
26 petitioner asked the court to reconsider nine previous orders. However, petitioner failed to state
27 any change in circumstances that would justify reconsideration other than the fact that the previous
28 orders were decided by another judge. Thus, petitioner's requests were denied.

1 6. I deny petitioner's claim that I threatened to punish him by "jail through contempt
2 and vexatious litigant pre-filing order."

3 7. I deny petitioner's claim that I did not consider the evidence and arguments that he
4 presented during the hearings in this case. I deny petitioner's claim that my orders have been
5 erroneous and the product of bias. I considered all evidence and arguments presented to me by
6 petitioner and respondent during the hearings. In every case over which I preside, including the
7 present case, all rulings made by me are based upon the facts and arguments officially presented
8 to me, upon my understanding of the law, and my experience in handling similar cases. My
9 statements and rulings are set forth in the records and in the files herein, which are the best evidence
10 thereof. To the extent the moving party's statement of my statements and rulings are inconsistent
11 therewith, they are denied.

12 7. All statements made, and all actions taken by me in this case have been done in
13 furtherance of what I believe were my judicial duties. I am not now, nor have I ever been,
14 predisposed to rule in any particular manner in the instant action.

15 8. I know of no facts or circumstances which would require my disqualification or
16 recusal in this case.

17 9. I do not believe that my recusal would serve the interests of justice.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed February 23, 2024.



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21 Stephen P. Lowney
22 Judge of the Superior Court
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