

FILED

MAR 28 2024

Clerk of the Court  
SUPERIOR COURT OF CA COUNTY OF SANTA CLARA  
BY Parker DEPUTY

True Parker

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

Case No.: 22FL003144

KOSTIANTYN MARS,  
Petitioner,  
v.  
HANNA MARS,  
Respondent.

**ORDER STRIKING: PETITIONER'S  
1) NOTICE OF MOTION AND MOTION  
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 March 11, 2024, Petitioner Kostiantyn Mars filed 1) Notice of Petitioner's Verified Statement of Disqualification of Santa Clara County Superior Court Judge Stephen P. Lowney for Impermissible Conflict of Interest; 2) Request for His Disqualification; 3) Stay on all His Orders Until Final Judgment; and 4) Nullification Of All His Orders Retroactively Back to September 13, 2022 (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. Petitioner did not personally serve the Statement of Disqualification until March 26, 2024.

1       Petitioner previously filed a Statement of Disqualification on February 3, 2024 which  
2 was struck by the Court on February 23, 2024 for failing to state any legal grounds for  
3 disqualification. The current Statement of Disqualification contains the same factual allegations  
4 and legal conclusions contained in the previous Statement of Disqualification.

5       There are no facts which constitute grounds for disqualification of the undersigned  
6 judicial officer pursuant to Code of Civil Procedure section 170.1. Where, as here, the statement  
7 of disqualification does not reveal any grounds for disqualification on its face, the judge can  
8 strike the statement of disqualification. (Code Civ. Proc. §170.4(b); *Neblett v. Pacific Mutual*  
9 *Life Ins. Co.* (1943) 22 Cal.2d 393, 401.)

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

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

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

24       It is not sufficient in a case of this kind, to allege in the affidavit simply that the  
25 defendant believes that he cannot have a fair and impartial trial, etc., but it must be  
26 made to appear by the affidavit or affidavits on file that a fair and impartial trial  
27 cannot be had before the judge about to try the case, by reason of the bias and  
28 prejudice of such judge. (Citation.) The affidavit or affidavits must not only state  
facts, but the facts stated must establish to the satisfaction of a reasonable mind that

1 the judge has a bias or prejudice that will in all probability prevent him from dealing  
2 fairly with the defendant.

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

5 Bias or prejudice consists of a 'mental attitude or disposition of the judge towards  
6 a party to the litigation . . .' (Citation.) In order for the judge to be disqualified,  
7 the prejudice must be against a particular party ... and sufficient to impair the  
8 judge's impartiality so that it appears probable that a fair trial cannot be held.  
(Citations.)

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

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

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

19 The 'reasonable person' is not someone who is 'hypersensitive or unduly  
20 suspicious,' but rather is a 'well-informed, thoughtful observer.' (Citation.) '[T]he  
21 partisan litigant emotionally involved in the controversy underlying the lawsuit is  
22 not the *disinterested objective observer* whose doubts concerning the judge's  
23 impartiality provide the governing standard.' (Citations.)  
(*Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 391.)

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

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

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

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

21 Code of Civil Procedure section 170.2, subdivision (b), makes clear that it is *not* grounds  
22 for disqualification that a judge “[h]as in any capacity expressed a view on a legal or factual issue  
23 presented in the proceeding....” A party’s remedy for an erroneous ruling is not a motion to  
24 disqualify, but rather review by appeal or writ. (*McEwen v. Occidental Life Ins. Co.* (1916) 172  
25 Cal. 6, *McEwen v. Occidental Life Ins. Co.* (1916) 172 Cal. 6, 11; *see also*, *Ryan v. Welte* (1948)  
26 87 Cal.App.2d 888, 893, “[A] wrong opinion on the law of a case does not disqualify a judge, nor  
27 is it evidence of bias or prejudice.”) Otherwise, “no judge who is reversed by a higher court on  
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1 any ruling or decision would ever be qualified to proceed further in the particular case.” (*Ryan v.*  
2 *Welte*, at p. 893.) The proper remedy is an appeal from the erroneous ruling. (*Ibid.*)

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

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


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

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

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

18 GOOD CAUSE APPEARING THEREFORE, It is so ordered.

19 Date: March 28, 2024

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21   
22 Stephen P. Lowney  
23 Judge of the Superior Court  
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1                                    VERIFIED ANSWER OF JUDGE STEPHEN P. LOWNEY

2            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 March 11, 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 did not personally serve his Statement of  
9        Disqualification until March 26, 2024. Petitioner bases his claim of bias, in part, on the Court's  
10       statements, decisions and rulings at the hearings held in this case on February 1, 2024 and February  
11       7, 2024. Petitioner contends that I demonstrated a bias against him because I continued petitioner's  
12       nine requests for orders to a half day hearing which was held on February 7, 2024. Additionally,  
13       petitioner contends that I denied petitioner's request for orders without due consideration of the  
14       evidence presented at the hearings. Petitioner also claims that the Court's rulings and orders were  
15       erroneous, prejudicial, and likely the result of a bribe from the respondent's attorney.

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

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

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

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

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

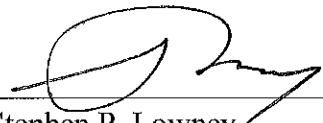
14 7. All statements made, and all actions taken by me in this case have been done in  
15 furtherance of what I believe were my judicial duties. I am not now, nor have I ever been,  
16 predisposed to rule in any particular manner in the instant action.

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

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

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

21 Executed March 28, 2024.

22   
23 Stephen P. Lowney  
24 Judge of the Superior Court  
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FOR COURT USE ONLY

**Superior Court Of California  
County of Santa Clara**

**FILED**

**Petitioner:  
Kostiantyn Mars**

**DATED: 03-28-2024**

CLERK OF THE COURT  
Superior Court of California

**Respondent:  
Hanna Mars**

County of Santa Clara

  
BY: True Parker  
Deputy Clerk

**PROOF OF SERVICE OF:  
ORDER STRIKING: PETITIONER'S  
1) NOTICE OF MOTION AND MOTION 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;"**

**CASE NUMBER:**

**22FL003144**

**CLERK'S CERTIFICATE OF MAILING:** I certify that I am not a party to this cause and that a true copy of this document was mailed first class postage fully prepaid in a sealed envelope addressed as shown below and the document was mailed at SAN JOSE, CALIFORNIA. I declare under penalty of perjury that the foregoing is true and correct.

**DATED: 03-28-2024**

  
By True Parker, Deputy Court Clerk

Domestic Calendar Office  
201 N. First Street  
San Jose, CA. 95113

*\*Via Interoffice mail*

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Nancy Roberts  
155 E. Campbell Ave #255  
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*\*Via First Class Mail*