

FILED

SEP 13 2023

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

KOSTIANTYN MARS, Case No.: 22FL003144
Petitioner,
v.
HANNA MARS,
Respondent.

ORDER STRIKING: PETITIONER'S
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;"

On August 9, 2023, petitioner Kostiantyn Mars filed 1) Challenge to Recuse Judicial Officer for Cause; 2) Notice of Motion and Motion to Recuse Judicial Officer for Cause; and 3) Declaration in Support of Motion to Recuse Judicial Officer for Cause (hereinafter, collectively, "Statement of Disqualification"). On September 5, 2023, petitioner Kostiantyn Mars filed 1) Notice of Motion and Motion to Recuse Judicial Officer for Cause; and 2) Declaration in Support of Motion to Recuse Judicial Officer for Cause (hereinafter, collectively, "Statement of Disqualification"). On September 12, 2023, petitioner filed both a challenge under CCP section

1 170.6 and a challenge under CCP section 170.3. The Court denied both requests. On September
2 13, 2023, petition filed a third challenge under CCP 170.1. The Court finds that there are no new
3 facts presented in petitioner's most recent request. There continues to be no facts which constitute
4 grounds for disqualification of the undersigned judicial officer pursuant to Code of Civil Procedure
5 section 170.1. Where, as here, the statement of disqualification does not reveal any grounds for
6 disqualification on its face, the judge can strike the statement of disqualification. (Code Civ. Proc.
7 §170.4(b); *Neblett v. Pacific Mutual Life Ins. Co.* (1943) 22 Cal.2d 393, 401.)

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

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

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

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

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

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

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

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

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

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

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

23 The *disinterested objective observer* would not have doubts as to whether the court would
24 be fair and impartial in this case because the entirety of petitioner’s challenge is based upon his
25 dissatisfaction with the Court’s decisions and rulings issued during the hearings in this case. Like
26 in the present case, in *Haldane v. Haldane* (1965) 232 Cal.App.2d 393, 395, one of the parties
27 claimed that the judge was biased against him. The court stated that even if the court makes
28 comments which are “critical or disparaging,” if they are made in furtherance of the court’s duties,

1 they are not grounds for disqualification. (*Ibid.*) “[J]udicial remarks during the course of a trial
2 that are critical or disapproving of, or even hostile to the parties or their cases, ordinarily do not
3 support a bias or partiality challenge.” (*Liteky v. United States* (1994) 510 U.S. 540, 555; *see also,*
4 *Marr v. Southern California Gas Co.* (1925) 195 Cal. 352, 354.)

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

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

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

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

28

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

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

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

8 Finally, pursuant to Code of Civil Procedure section 170.4 (3) A party may file no
9 more than one statement of disqualification against a judge unless facts suggesting new
10 grounds for disqualification are first learned of or arise after the first statement of
11 disqualification was filed. Repetitive statements of disqualification not alleging facts
12 suggesting new grounds for disqualification shall be stricken by the judge against whom
13 they are filed.

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

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

22 **GOOD CAUSE APPEARING THEREFORE, It is so ordered.**

23 Date: September 13, 2023

25 
26 _____
27 Andrea Flint
28 Judge of the Superior Court

VERIFIED ANSWER OF JUDGE ANDREA FLINT

I, Andrea Flint, do declare as follows:

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

6 2. On August 9, 2023, 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. On September 5, 2023, Petitioner filed another, almost identical,
9 Statement of Disqualification. On September 13, 2023, filed another, almost identical, Statement
10 of Disqualification. Petitioner bases his claim of bias on the Court's statements, decisions and
11 rulings at the hearings held in this case on October 31, 2022, June 29, 2023, July 31, 2023, and
12 August 1, 2023 as well as the Court's denial of his prior motions for Disqualification. Petitioner
13 contends that I demonstrated a bias against him because on July 31, 2023, I proceeded with the
14 trial despite petitioner's claim that he had a family emergency and a headache. Additionally,
15 petitioner contends that I did not adequately review the evidence he presented at the hearings.
16 Petitioner also claims that the court's rulings and orders were erroneous, prejudicial, and likely the
17 result of a bribe from the respondent.

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

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

27 5. I deny petitioner's claim that I did not continue the trial scheduled for July 31, 2023,
28 after petitioner stated that he had a family emergency and a headache, because of a bias against

1 petitioner. At the beginning of trial, petitioner informed me that he wanted a trial continuance
2 because of a family emergency, but he would not provide me with any specific information or
3 documentation regarding the purported emergency, even after I recessed the trial until the
4 afternoon so that petitioner could obtain such documentation. At the afternoon session of trial,
5 instead of providing documentation to support his request for a trial continuance based on a family
6 emergency, petitioner claimed that the trial should not go forward because he was not feeling well.
7 I ended the afternoon session of trial early as an accommodation to petitioner.

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

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

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

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

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

24 | Executed September 13, 2023.

Andrea Flint
Hon. Andrea E. Flint
Andrea Flint
Judge of the Superior Court

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

FOR COURT USE ONLY

FILED

Petitioner:

Kostiantyn Mars

DATED: 09-13-2023

CLERK OF THE COURT
Superior Court of California

County of Santa Clara

Parker
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;
- 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: 09-13-2023

Parker
By True Parker, Deputy Court Clerk

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

*Via Interoffice mail

Kostiantyn Mars
P.O Box 8081
San Jose, Ca 95155

*Via First Class Mail

Nancy Roberts
155 E. Campbell Ave #255
Campbell, Ca 95008

*Via First Class Mail