

FILED

AUG 17 2023

Clerk of the Court
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
BY True 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;
2) CHALLENGE TO RECUSE JUDICIAL
OFFICER FOR CAUSE; AND
3) DECLARATION IN SUPPORT OF
MOTION TO RECUSE JUDICIAL
OFFICER FOR CAUSE;"**

**IN THE ALTERNATIVE,
VERIFIED ANSWER OF
JUDGE ANDREA FLINT**

The present case is a highly contentious family law case filed by petitioner Kostiantyn Mars on September 22, 2022. Since the time the case was filed, the Court has presided over several contested hearings at which evidence was presented and orders issued, including hearings pertaining to issues of domestic violence, child custody, support, and marital assets.

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,

1 "Statement of Disqualification"). In the Statement of Disqualification, plaintiff contends that the
2 undersigned judicial officer is biased against him such that he cannot have a fair and impartial
3 hearing in this case. Petitioner bases his claim of bias on the Court's statements, decisions and
4 rulings at the hearings held in this case on October 31, 2022, June 29, 2023, July 31, 2023, and
5 August 1, 2023. Petitioner contends that on the first day of trial, July 31, 2023, the Court
6 demonstrated a bias against him by proceeding with the trial despite his claim of a family
7 emergency and a headache. Additionally, petitioner contends that the Court did not adequately
8 review the evidence he presented at the hearings. Petitioner further claims that the Court's adverse
9 rulings and orders issued during and after the hearings were erroneous, prejudicial, and likely the
10 result of a bribe from the respondent.

11 Petitioner's Statement of Disqualification fails to state *facts* which constitute grounds for
12 disqualification of the undersigned judicial officer pursuant to Code of Civil Procedure section
13 170.1. Where, as here, the statement of disqualification does not reveal any grounds for
14 disqualification on its face, the judge can strike the statement of disqualification. (Code Civ. Proc.
15 §170.4(b); *Neblett v. Pacific Mutual Life Ins. Co.* (1943) 22 Cal.2d 393, 401.)

16 Code of Civil Procedure section 170.3(c)(1) requires that the statement of disqualification
17 set forth the *facts* which constitute grounds for the disqualification of the court. Mere allegations
18 setting forth the conclusions of the declarant are insufficient. (*Ephraim v. Superior Court* (1941)
19 42 Cal.App.2d 578, 578-579; *Urias v. Harris Farms, Inc.* (1991) 234 Cal.App.3d 415, 426.)
20 Petitioner, as the party seeking the disqualification of the court, has the burden of proof; and, in
21 the absence of proof, the presumption is that no bias or prejudice exists. (*Betz v. Pankow* (1993)
22 16 Cal.App.4th 919, 926; *see also, Estate of Buchman* (1955) 132 Cal.App.2d 81, 104.) Indeed,
23 the party raising the issue of bias "has a heavy burden and must 'clearly' establish the appearance
24 of bias." (*Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 391.)

25 Petitioner did not meet his burden. In the Statement of Disqualification, petitioner
26 contends, without more, that because the Court issued orders adverse to petitioner, the Court is
27 biased against him, has ignored his evidence during the hearings, and has taken bribes from
28 respondent. Petitioner's claims are not based on facts. Instead, petitioner's claims are based upon

1 supposition, conclusory assertions, personal opinions, and hearsay. However, the declaration or
2 verified statement filed in support of the disqualification is held to the same standard of
3 admissibility as is oral testimony. (*Mayo v. Beber* (1960) 177 Cal.App.2d 544, 551.) “[B]ias and
4 prejudice are never implied and must be established by clear averments.” (*Woolley v. Superior*
5 *Court* (1937) 19 Cal.App.2d 611, 626.) Verified statements which are based upon hearsay or upon
6 information and belief, are not sufficient to support a judicial disqualification. (See, *N. Beverly*
7 *Park Homeowners Ass’n v. Bisno* (2007) 147 Cal. App. 4th 762, 778; *United Farm Workers of*
8 *America, AFL-CIO v. Superior Court* (1985) 170 Cal.App.3d 97, 106, n. 6; *Higgins v. City of San*
9 *Diego* (1899) 126 Cal. 303, 313-314.)

10 The court in *In re Morelli* (1970) 11 Cal.App.3d 819, 843-44, held that the statement of
11 disqualification may be stricken where, as here, it is based upon “conclusions; references to
12 copious transcripts without citation to specific excerpts; allegations of facts not pertinent or
13 appropriate to the issues to be determined in the hearing; material not legally indicative of bias or
14 prejudice, such as judicial opinions expressed in the discharge of litigation and legal rulings;
15 judicial reactions based on actual observance in participation in legal proceedings; and references
16 to circumstances so inconsequential as to be no indication whatsoever of hostility and nonprobative
17 of any bias or prejudice. (Citations.)”

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

28 Further, “[t]o show bias or prejudice...there must be declarations showing indications of

1 personal bias or the existence of some fixed anticipatory prejudgment." (*In re the Marriage of*
2 *Fenton* (1982) 134 Cal.App.3d 451, 457.) No such showing was made by petitioner here.

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

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

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

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

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

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

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

///

///

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

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

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

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

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

20 "[A] judge will normally and properly form opinions on the law, the evidence and the
21 witnesses, from the presentation of the case. These opinions and expressions thereof may be
22 critical or disparaging to one party's position, but they are reached after a hearing in the
23 performance of the judicial duty to decide the case, and do not constitute a ground for
24 disqualification." (*Haldane v. Haldane*, *supra*, 232 Cal.App.2d at p. 395.) "When making a
25 ruling, a judge interprets the evidence, weighs credibility, and makes findings. In doing so, the
26 judge necessarily makes and expresses determinations in favor of and against parties. How could
27 it be otherwise? We will not hold that every statement a judge makes to explain his or her reasons
28

1 for ruling against a party constitutes evidence of judicial bias.” (*Moulton Niguel Water Dist. v.*
2 *Colombo* (2003) 111 Cal.App.4th 1210, 1219.)

3 Code of Civil Procedure section 170.2, subdivision (b), makes clear that it is *not* grounds
4 for disqualification that a judge “[h]as in any capacity expressed a view on a legal or factual issue
5 presented in the proceeding....” A party’s remedy for an erroneous ruling is not a motion to
6 disqualify, but rather review by appeal or writ. (*McEwen v. Occidental Life Ins. Co.* (1916) 172
7 Cal. 6, *McEwen v. Occidental Life Ins. Co.* (1916) 172 Cal. 6, 11; *see also, Ryan v. Welte* (1948)
8 87 Cal.App.2d 888, 893, “[A] wrong opinion on the law of a case does not disqualify a judge, nor
9 is it evidence of bias or prejudice.”) Otherwise, “no judge who is reversed by a higher court on
10 any ruling or decision would ever be qualified to proceed further in the particular case.” (*Ryan v.*
11 *Welte*, at p. 893.) The proper remedy is an appeal from the erroneous ruling. (*Ibid.*)

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

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

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

19 Accordingly, because the Statement of Disqualification discloses no legal grounds for
20 disqualification on its face, it is ordered stricken pursuant to Code of Civil Procedure section 170.4,
21 subdivision (b).

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

6 GOOD CAUSE APPEARING THEREFORE, It is so ordered.

7 Date: August 17, 2023

8
9 

10 Andrea Flint
11 Judge of the Superior Court
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
VERIFIED ANSWER OF JUDGE ANDREA FLINT

2 I, Andrea Flint, 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 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. Petitioner bases his claim of bias on the Court's statements,
9 decisions and rulings at the hearings held in this case on October 31, 2022, June 29, 2023, July 31,
10 2023, and August 1, 2023. Petitioner contends that I demonstrated a bias against him because on
11 July 31, 2023, I proceeded with the trial despite petitioner's claim that he had a family emergency
12 and a headache. Additionally, petitioner contends that I did not adequately review the evidence
13 he 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.

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. At no time have I ever taken
17 a "bribe" in this or any other case over which I have presided. I deny that any ground for
18 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 claim that I did not continue the trial scheduled for July 31, 2023,
25 after petitioner stated that he had a family emergency and a headache, because of a bias against
26 petitioner. At the beginning of trial, petitioner informed me that he wanted a trial continuance
27 because of a family emergency, but he would not provide me with any specific information or
28 documentation regarding the purported emergency, even after I recessed the trial until the

1 afternoon so that petitioner could obtain such documentation. At the afternoon session of trial,
2 instead of providing documentation to support his request for a trial continuance based on a family
3 emergency, petitioner claimed that the trial should not go forward because he was not feeling well.
4 I ended the afternoon session of trial early as an accommodation to petitioner.

5 6. 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 August 17, 2023.

22 

23 Andrea Flint
24 Judge of the Superior Court
25
26
27
28

<p align="center">Superior Court Of California County of Santa Clara</p>	<p align="center"><small>FOR COURT USE ONLY</small></p> <p align="center">FILED</p> <p align="center">DATED: 08-17-2023</p> <p align="center">CLERK OF THE COURT Superior Court of California</p> <p align="center">County of Santa Clara <i>TParker</i> BY: True Parker Deputy Clerk</p>
<p>Petitioner: Kostiantyn Mars</p>	<p>CASE NUMBER: 22FL003144</p>
<p>Respondent: Hanna Mars</p>	
<p align="center">PROOF OF SERVICE OF:</p> <p>ORDER STRIKING: PETITIONER'S</p> <p>1) NOTICE OF MOTION AND MOTION TO RECUSE JUDICIAL OFFICER FOR CAUSE;</p> <p>2) CHALLENGE TO RECUSE JUDICIAL OFFICER FOR CAUSE; AND</p> <p>3) DECLARATION IN SUPPORT OF MOTION TO RECUSE JUDICIAL OFFICER FOR CAUSE;"</p> <p>IN THE ALTERNATIVE,</p> <p>VERIFIED ANSWER OF</p> <p>JUDGE ANDREA FLINT</p>	

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: **08-17-2023**

TParker
By True Parker, Deputy Court Clerk

<p>Domestic Calendar Office 201 N. First Street San Jose, CA. 95113</p> <p align="center"><i>*Via Interoffice mail</i></p>	<p>Kostiantyn Mars P.O Box 8081 San Jose, Ca 95155</p> <p align="center"><i>*Via First Class Mail</i></p>	<p>Nancy Roberts 155 E. Campbell Ave #255 Campbell, Ca 95008</p> <p align="center"><i>*Via First Class Mail</i></p>
--	---	---