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FILED
Superior Court of California
County of Los Angeles

OCT 05 2020

Sherri R. Carter, Executive Officer/Clerk

By K. Metoyer Deputy
K. Metoyer

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

WADE ROBSON,

Plaintiff,

v.

MJJ PRODUCTIONS, INC., et al.,

Defendants

CASE NO. BC508502
(Related to BP117321; BC545264)

ORDER STRIKING STATEMENT OF
DISQUALIFICATION

On October 2, 2020, counsel for plaintiff filed a pleading seeking the undersigned's voluntary recusal in this case, or in the alternative, disqualification for cause. The motion and statement of disqualification are based upon counsel's opinion, the court's comments upon the factual and legal issues in the case, the court's rulings, and a contention that because the judge's wife, a lawyer, who represents USC and USC officials, not parties herein but the subject of separate lawsuits filed by plaintiff's counsel, may benefit from enhanced goodwill and reputation if the court rules against plaintiff's counsel in this matter. Although USC and its officials are not parties to the present action, counsel contends that his firm is currently suing USC and its officials in a significant case (or at least liaison counsel to this lawsuit), and that a ruling against counsel and his firm in the present case would enhance the judge's wife's goodwill and reputation with USC such that she might get better or more business from USC, which would be

1 economically beneficial to her and her husband.

2 However, as discussed below, a judge cannot voluntarily recuse itself in a case unless
3 there are legal grounds for disqualification for cause, and none of the contentions made by
4 plaintiff's counsel are, as a matter of law, legal grounds for disqualification for cause.
5 Accordingly, the pleading demonstrates on its face no legal grounds for disqualification for
6 cause. The motion for voluntary recusal is denied, and the statement of disqualification for cause
7 is stricken pursuant to Code of Civil Procedure 170.4(b).

8 **1. A judge cannot voluntarily recuse unless there are grounds for**
9 **disqualification.**

10 The duty to decide cases if there are no legal grounds for disqualification is as strong as
11 the duty to recuse if there are grounds. *United Farm Workers v. Superior Court* (1985) 170
12 Cal.App.3d 97, 100. Code of Civil Procedure § 170's duty to decide cases was "prompted by
13 statements suggesting that certain judges did not believe they had such a duty." *Id.* Code of
14 Civil Procedure § 170 "serves to remind judges of their duty to hear cases which are
15 controversial and might subject them to public disapproval as well as to protect them from public
16 criticism by a clear statement of their responsibility." *Id.*

17 **2. The statement of disqualification demonstrates on its face no legal grounds**
18 **for disqualification.**

19 A party's belief as to a judge's bias and prejudice is irrelevant and not controlling in a
20 motion to disqualify for cause, as the test applied is an objective one. *United Farm Workers of*
21 *America v. Superior Court* (1985) 170 Cal.App.3d 97, 104; *Leland Stanford Junior University*
22 *v. Superior Court* (1985) 173 Cal.App.3d 403, 408 ("the litigants' necessarily partisan views [do]
23 not provide the applicable frame of reference." [Brackets in original.]

24 Code Civ. Proc., § 170.3(c)(1) requires that the disqualification statement set forth "the
25 facts constituting the grounds" for disqualification of the judge. Mere conclusions of the pleader
26 are insufficient. *In re Morelli* (1970) 11 Cal.App.3d 819, 843; *Urias v. Harris Farms, Inc.*
27 (1991) 234 Cal.App.3d 415, 426.

28 The facts here are (a) the court's comments upon the factual and legal issues in the case;

1 (b) the judge's wife's position as a lawyer that represents USC and its officials; and (c) the
2 court's rulings and findings.

3 **2(a). The court's comments upon the factual and legal issues are not disqualifying.**

4 The Legislature has provided in Code of Civil Procedure 170.2(b), with certain
5 exceptions not here applicable, that: "It shall not be grounds for disqualification that the judge :
6 **** (b) Has in any capacity expressed a view on a legal or factual issue presented in the
7 proceeding"

8 **2(b). The judge's wife's position as a lawyer that represents USC and its officials is**
9 **not disqualifying.**

10 USC and its officials are not parties or material witness in this case. In addition, there is
11 no contention that the judge is disqualified pursuant to the specific provisions of Code of Civil
12 Procedure 170.1 relating to judge's spouses who are lawyers, i.e., Code of Civil Procedure
13 170.1(a)(C)(3)(B) deeming a judge to have a disqualifying financial interest in the proceeding or
14 a party to the proceeding if his spouse has such an interest; and 170.1(a)(a)(3)(C), deeming the
15 judge disqualified if the spouse of a judge is associated in the private practice of law with a
16 lawyer in the proceeding.

17 There is no direct disqualifying financial interest and no disqualifying association. First,
18 disqualifying financial interests must be direct. Code of Civil Procedure 170.5 defines "financial
19 interest" for the purposes of sections 170 through 170.5, inclusive, as follows: "Financial
20 interest' means ownership of more than a 1 percent legal or equitable interest *in a party*, or a
21 legal or equitable interest *in a party* of a fair market value in excess of one thousand five
22 hundred dollars (\$1,500), or a relationship as director, advisor or other active participant in the
23 affairs *of a party*" [Emphasis added.]

24 Rather than a disqualifying financial interest in a party or the action, counsel contends
25 that the judge is disqualified because, in his opinion, the judge's spouse's reputation and
26 goodwill with USC would likely be enhanced if her husband ruled against counsel for plaintiff,
27 as counsel for plaintiff has filed litigation against USC and its officers. However, California
28 cases do not find grounds for disqualification based upon such alleged relationships or goodwill

1 and reputation benefit.

2 California appellate courts have required strong showings of very direct and significant
3 relationships to find them disqualifying. See, e.g., *United Farm Workers of America v. Superior*
4 *Court* (1985) 170 Cal.App.3d 97; *Stanford University v. Superior Court* (1985) 173 Cal.App.3d
5 403; and *In re Marriage of Fenton* (1982) 134 Cal.App.3d 451.

6 In the *United Farm Workers* case, the plaintiff corporation filed a claim against defendant
7 for substantial damages arising out of union activity in connection with a strike. Two months into
8 the trial, the judge mentioned to defendant's counsel that his wife had worked two days as a
9 replacement worker for plaintiff. Defendant then filed a motion to dismiss based on bias and the
10 judge explained that he had forgotten about his wife's work for plaintiff six years earlier until
11 some testimony at trial refreshed his recollection. This relationship of the judge's spouse, which
12 is far more direct than that complained of in this action, was not found to be disqualifying.

13 *Stanford University* was a case for damages against Stanford University, its Board of
14 Trustees, the County of Santa Clara, and others. The plaintiff moved to disqualify the trial judge
15 because he had participated in founding a Santa Clara County chapter of the Stanford Law
16 Society in the mid-1960's and had been the president of that chapter from 1969 to 1971, and that
17 he had been a member of the Board of Visitors of Stanford Law School from 1969 to 1972, and
18 that thereafter he had attended graduate gatherings. These relationships were found not to be
19 disqualifying.

20 *In re Marriage of Gention* (1982) 134 Cal.App.3d 451, is particularly relevant to the
21 present inquiry, as it deals with the potential for enhancing goodwill and reputation. The case
22 was a dissolution proceeding in which the wife sought to disqualify all the judges of Monterey
23 County from hearing her action. She alleged that her husband was a prominent attorney active in
24 the local bar association who played a part in obtaining bar association endorsements for the
25 county judiciary and it would be impossible for her to receive a fair and impartial trial. In
26 rejecting these contentions, the Court said:

27 "While wife was understandably apprehensive, we must assume that the judges
28 who passed upon her motions conscientiously believed that they, and other local judges,

1 could determine the matter objectively and in conformity with their oaths of office. No
2 precedent or authority, of which we are aware would justify us in holding that the
3 prominence of husband, or his role in the local bar, established disqualification of all
4 Monterey County judges as a matter of law."

5 **2(c). The court's rulings do not constitute a valid basis for disqualification.**

6 Rulings and findings do not constitute a valid basis for disqualification. As stated by the
7 California Supreme Court in *People v. Guerra* (2006) 37 Cal.4th 1067, 1112, "a trial court's
8 numerous rulings against a party--even when erroneous--do not establish a charge of judicial
9 bias, especially when they are subject to review." (Overruled on other grounds.) *McEwen v.*
10 *Occidental Life Ins. Co.* (1916) 172 Cal. 6, 11 (erroneous rulings, even when numerous and
11 continuous, are not grounds for bias or prejudice, nor are "judges' expressions of opinion uttered
12 in what he conceives to be the discharge of his judicial duty"). *See also*, Code of Civil Procedure
13 section 170.2(b), which provides with certain exceptions not here applicable: "It is not grounds
14 for disqualification that the judge ... [h]as in any capacity expressed a view on a legal or factual
15 issue presented in the proceeding...." *Cf.*, Cal. Const., art. VI, § 10 which provides in pertinent
16 part with regard to all courts: "The court may make such comment on the evidence and the
17 testimony and credibility of any witness as in its opinion is necessary for the proper
18 determination of the cause."

19 A party's remedy for an erroneous ruling is not a motion to disqualify, but rather review
20 by appeal or writ. *See Ryan v. Welte* (1948) 87 Cal.App.2d 888, 893: "[A] wrong opinion on the
21 law of a case does not disqualify a judge, nor is it evidence of bias or prejudice." Otherwise, the
22 court said, "no judge who is reversed by a higher court on any ruling or decision would ever be
23 qualified to proceed further in the particular case." The proper remedy, of course, was an appeal
24 from the erroneous ruling. *See* 2 Witkin, California Procedure (5th ed.), Courts, Nondisqualifying
25 Opinions, pp. 162-163.

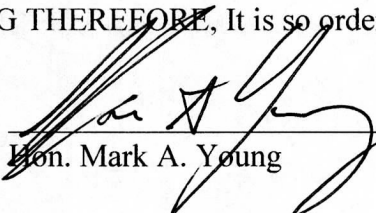
26 **Conclusion**

27 Since the statement of disqualification on its face discloses no legal grounds for
28 disqualification, the court does not voluntarily recuse itself, and orders the statement stricken

1 pursuant to Code Civ. Proc., § 170.4, subdivision (b). The parties are reminded that this
2 determination of the question of the disqualification is not an appealable order and may be
3 reviewed only by a writ of mandate from the Court of Appeal sought within 10 days of notice to
4 the parties of the decision. Code Civ. Proc., § 170.3(d). In the event that a timely writ is sought,
5 and an appellate court determines that an answer should have been timely filed, such an answer
6 is filed herewith. *See PBA, LLC v. KPOD, Ltd.* (2003) 112 Cal.App.4th 965, 972; *accord, Fine*
7 *v. Superior Court* (2002) 97 Cal.App.4th 651, 658.

8
9 GOOD CAUSE APPEARING THEREFORE, It is so ordered.

10 Date: 10/5/2020

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13 Hon. Mark A. Young
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Verified Answer of Mark A. Young

I, Mark A. Young, declare:

1. I am a Judge of the Superior Court and as such have been assigned to preside over this case.

2. I am not prejudiced or biased against or in favor of any party to this proceeding or their counsel.

3. All rulings made by me in this action have been based upon facts and arguments officially presented to me and upon my understanding of the law. My statements and rulings are set forth in the records and the files herein, which are the best evidence hereof. To the extent the moving party's statement of those rulings and statements are inconsistent therewith, they are denied.

4. All statements made by me and all actions taken by me in this proceeding have been done in furtherance of what I believe were my judicial duties.

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

I declare under penalty of perjury that the foregoing is true and correct and of my own personal knowledge, except as to those matters stated to be on my information and belief, and as to those matters, I believe them to be true. Executed this 5th day of October 2020, at Santa Monica, California.


Mark A. Young