

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SHASTA**

HON. BENJAMIN L HANNA

Dept. 63 / acm

23CV-0203713

ANDERSON/MILLVILLE RESIDENTS

VS.

COUNTY OF SHASTA, ET AL.

**NATURE OF PROCEEDINGS: ORDER TO STRIKE DECLARATION IN SUPPORT
OF DISQUALIFICATION OF JUDGE; IN THE
ALTERNATIVE, VERIFIED ANSWER**

On May 17, 2024, Attorney Shon Northam, representing Real Party in Interest Patrick Jones, filed "Declaration of Counsel in Support of Disqualification of Judge Judge (*sic*) Hanna pursuant to CCP 170.1(a)(6)(A)(i) and 170.3(c)(1)."

While the document filed is in the form of a declaration, with no motion, no supporting points and authorities, or any explicit requested relief, the Court will nonetheless treat it as a challenge under CCP section 170.3(c)(1) and address it accordingly.

For the reasons set forth below, the pleading is stricken pursuant to California Code of Civil Procedure (hereinafter "CCP") section 170.4(b).

I. Introduction and Procedural History

This case was filed on November 21, 2023. In filing the case, Petitioners, represented by counsel, are petitioning the court for a writ of mandate to overrule a decision made by the Shasta County Board of Supervisors. The nominal respondent is therefore the County of Shasta, here represented by Shasta County Counsel. The action is governed by the statutory authority of the California Environmental Quality Act (California Public Resources Code section 21000 *et seq*). The respondents in the case are the County of Shasta and the Shasta County Board of Supervisors. Patrick Jones is a real party in interest ("RPI") in this case as he is the recipient of County approval for the project at issue in the petition.

When the case was filed, pursuant to normal court procedures an order of assignment for all purposes was made, assigning the matter to the Honorable Tamara Wood. On November 29, 2023, via written order, Judge Wood recused herself from the case and assigned the case for all purposes to this Court.

After receiving the case assignment, the Court set and held several status conferences to allow the parties to obtain and certify the administrative record that serves as the factual and legal basis for the decision of the County being challenged by Petitioners.

On April 5, 2024, RPI Patrick Jones (at that time acting *in pro per*) filed a CCP 170.1 challenge against this Court. The Court struck the challenge via written order on April 11, 2024.

On April 29, 2024, the Court and parties met to discuss the setting of a briefing schedule and a hearing date. On May 2, 2024, via written order, the Court set a briefing schedule and set a hearing date.

On May 17, 2024, Attorney Northam filed the declaration that is the subject of this ruling.

II. The Challenge for Cause is Stricken

A. The declaration is stricken because it fails to meet the requirements of CCP 170.3(c)(1).

A party seeking disqualification of a judge under CCP section 170.1 “may file with the clerk a written verified statement objecting to the hearing or trial before the judge and setting forth the facts constituting the grounds for disqualification of the judge.” (CCP section 170.3(c)(1).)

The statute clearly sets forth two parts to the written verified statement by a party seeking to disqualify a judge. First, the party must affirmatively object to the judge hearing the case. Second, the party is required to set forth facts supporting his or her belief that the judge should be disqualified.

The only document filed by counsel in this case is the aforementioned “Declaration of Counsel in Support of Disqualification of Judge Judge (*sic*) Hanna pursuant to CCP 170.1(a)(6)(A)(i) and 170.3(c)(1).” A review of that document contains no explicit objection or challenge to this Court hearing the case. Standing alone, the declaration itself is insufficient. A request for action by a court is a motion and is not the same as a declaration. The two documents are separate and distinct, serving different purposes. A “motion” is “a party’s written request to the court for an order or other action.” (CCP section 116.130(h).) A “declaration” is “a written statement signed by an individual which includes the date and place of signing, and a statement under penalty of perjury under the laws of this state that the contents are true and correct.” (CCP section 116.130(i).)

This distinction was recognized in the initial challenge filed by RPI Jones on April 5, 2024. In that instance, RPI Jones filed both a factual statement (although not properly verified) as well as a separate document explicitly challenging the Court for cause. The putative challenge here consists solely of a declaration, and therefore does not comply with the requirements of section 170.3(c)(1). It is therefore stricken.

B. The declaration is stricken because it contains repetitive allegations already addressed in the previous challenge filed by RPI and stricken by the Court.

While a party is not strictly limited to a single challenge for cause in a case, repeated challenges based on the same facts and allegations are not permitted and are subject to being stricken. CCP section 170.4(c)(3) states as follows:

“A party may file no more than one statement of disqualification against a judge unless facts suggesting new grounds for disqualification are first learned of or arise after the first statement of disqualification was filed. Repetitive statements of disqualification not alleging facts suggesting new grounds for disqualification shall be stricken by the judge against whom they are filed.”

Here, the majority of the allegations in the declaration filed by counsel are recycled from the earlier filing by RPI Jones.¹ Indeed, other than portions of the declaration outlining counsel’s professional experience and a pending motion to dismiss in an unrelated criminal matter, the grounds for disqualification in both filings is from information gathered from a report by a “whistleblower” which supposedly alleges a nebulous connection between the Court, the Court’s spouse, and actions by the elected district attorney of Shasta County.

Simply put, the Court has already ruled on a challenge based on these facts. The explicit terms of CCP section 170.4(c)(3) require that such repetitive statements “shall be stricken.” The Court is required to follow the law. The declaration is therefore stricken.

C. The Challenge for Cause is Stricken Because it Fails to Disclose Sufficient Legal Grounds for Disqualification.

CCP section 170.3(c)(1) requires that the disqualification statement set forth “the facts constituting the grounds” for disqualification of the judge. Mere conclusions of the pleader are insufficient. (*In re Morelli* (1970) 11 Cal. App. 3d 819, 843 (overruled on other grounds); *Urias v. Harris Farms, Inc.* (1991) 234 Cal. App. 3d 415, 426). The statement of disqualification cannot be based upon information and belief, hearsay, or other inadmissible evidence. (See *United Farm Workers of America, AFL-CIO v. Superior Court* (1985) 170 Cal. App. 3d 97, note 6 at 106 (disqualification cannot be based upon hearsay or other inadmissible evidence).

A party’s belief as to a judge’s bias and prejudice is irrelevant and not controlling in a motion to disqualify for cause, as the test applied is an objective one. (*United Farm Workers of America AFL-CIO v. Superior Court* (1985) 173 Cal. App. 3d 403, 408 (“the litigants’ necessarily partisan views [do] not provide the applicable frame of reference.”).)

The party seeking disqualification has the burden of proof and must clearly establish the appearance of bias. (*Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 391.)

¹ The similarities between the two documents are uncanny and appear to be the result of “cut and paste” efforts. The similarities include identical sentences, punctuation, and even the same spelling and typographical errors.

“The California Supreme Court has cautioned that a party raising the issue has a heavy burden and must “ ‘clearly’ ” establish the appearance of bias. (citations) [T]he appearance-of-partiality ‘standard “must not be so broadly construed that it becomes, in effect, presumptive, so that recusal is mandated upon the merest unsubstantiated suggestion of personal bias or prejudice.’ (Haworth v. Superior Court (2010) 50 Cal.4th 372, 389)

“A judge ... ‘has a duty to decide any proceeding in which he or she is not disqualified.’ [Citation.] ‘ “Judicial responsibility does not require shrinking every time an advocate asserts the objective and fair judge appears to be biased. The duty of a judge to sit where not disqualified is equally as strong as the duty not to sit when disqualified.” ’ ” (Haworth, *supra* at 392.)

Here, once again RPI claims that “this Court is not in a position to be a fair and impartial arbiter of this dispute.” However, it is patently unclear from the information in the declaration how this conclusion is reached. The basis for counsel’s conclusion is a series of hearsay allegations with no connection whatsoever to this pending case or the parties involved. While counsel attempts to impute wrongdoing or knowledge of wrongdoing to the Court, the declaration provides no connection between the unsubstantiated and vague allegations and the Court’s ability to preside over this litigation.

Counsel also claims that he plans on issuing a subpoena to the court to testify in a hearing on a pending criminal matter. Whether this plan will become reality remains to be seen, and counsel’s plan does not create legal grounds for the Court’s disqualification.

RPI points to nothing that this Court has done or said that would constitute bias or prejudice against him. Indeed, virtually all the information contained is conclusory and speculative. Simply put, these allegations do not meet the standard set forth by the applicable law.

Because the challenge fails to show any legal grounds for disqualification, it is stricken.

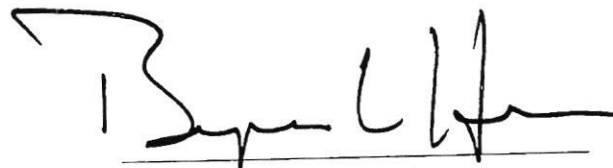
III. Conclusion

The declaration by counsel fails to comply with legal requirements, is improperly repetitive of the last attempt at disqualification, and fails to show legal grounds for disqualification. It is therefore ordered stricken pursuant to CCP 170.4(b).

In the event that a timely writ is sought and an appellate court determines that an answer should have been timely filed, such an answer is filed herewith. (See *PBA, LLC v. KPOD, Ltd.* (2003) 112 Cal.App.4th 965, 972.)

GOOD CAUSE APPEARING THEREFORE, it is so ordered.

Dated: May 24, 2024



BENJAMIN L HANNA
Judge of the Superior Court

**ORDER TO STRIKE DECLARATION IN SUPPORT OF DISQUALIFICATION OF
JUDGE; IN THE ALTERNATIVE, VERIFIED ANSWER**


Verified Answer of Judge Benjamin L. Hanna

I, Benjamin L. Hanna, declare:

1. I am a Judge of the Superior Court of the State of California, in and for the County of Shasta, and as such I have been assigned to preside over this case.
2. I am not prejudiced or biased against or in favor of any party or counsel (including real parties in interest) to this proceeding.
3. Prior to my appointment as a superior court judge in July of 2023, I was employed as Chief Deputy District Attorney in the Shasta County District Attorney's Office. I left that position in May 2023.
4. My spouse is currently employed as a Senior Deputy District Attorney in the Shasta County District Attorney's Office.
5. Nothing about my prior employment or my spouse's current employment creates any issue regarding my ability to be fair and impartial in this case.
6. 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.

Executed this 24th day of May, 2024 at Redding, California.



Benjamin L. Hanna

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CERTIFICATE OF MAILING

State of California, County of Shasta

I, the undersigned, certify under penalty of perjury under the laws of the State of California that I am a deputy clerk of the above-entitled court and not a party to the within action; that I mailed a true and correct copy of the above to each person listed below, by depositing same in the United States Post Office in Redding, California, enclosed in sealed envelopes with postage prepaid.

DONALD B MOONEY 417 MACE BOULEVARD, SUITE J-334 DAVIS, CA 95618
SHON NORTHAM 1650 OREGON STREET, SUITE 116 REDDING, CA 96001

Dated: May 28, 2024


Deputy Clerk

Cc: Shasta County Counsel 1450 Court St, Suite 332 Redding, CA 96001
Shasta County Board of Supervisors 1450 Court St, Suite 308B Redding, CA 96001
County of Shasta 1450 Court St, Suite 308B Redding, CA 96001