

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 MOTION TO CHALLENGE JUDGE FOR; IN THE ALTERNATIVE, VERIFIED ANSWER

On April 5, 2024, Real Party in Interest, Patrick Jones, filed a pleading as a statement of disqualification for cause, contending that “this court is not in a position to be a fair and impartial arbiter of this dispute.”

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. This 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 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 an initial status conference on January 8, 2024. Another status conference was held on February 26, 2024. On that date, a further status conference date was set for April 8, 2024. These dates were set with the agreement of the parties to track the progress of the preparation of the administrative record to allow for the setting of a briefing schedule and evidentiary hearing as required by law.

On April 5, 2024, Real Party in Interest Patrick Jones filed the following documents:

- “Statement of Disqualification of Judge Benjamin Hanna Pursuant to CCP 170.1(a)(6)(A)(i) and 170.3(c)(1)”
- “Respondent/Real Party in Interest Patrick Jones’s Declaration in Support of Disqualification of Judge Benjamin Hanna Pursuant to CCP 170.1(a)(6)(A)(i) and 170.3(c)(1)”

Through these filings, RPI Jones is seeking the disqualification of this Court. For the reasons set forth below the challenge is ordered *stricken* as provided for in CCP section 170.4(b).

II. The Challenge for Cause is Stricken

A. The Challenge for Cause Is Stricken Because it is not Verified.

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 requires that the written statement filed by the objecting party be verified. “A ‘verification’ is an affidavit verifying the truth of the matters covered by it. [Citations] Its object is to assure good faith in the averments or statements of a party to litigation.” (*Star Motor Imports, Inc. v. Superior Court* (1979) 88 Cal.App.3d 201, 204.)

Here, Real Party in Interest makes numerous factual allegations that purportedly support the disqualification of this Court. The list of allegations concludes with the statement that the document was executed on the 5th of April (no year is listed) and the document is afterwards (inconsistently) dated April 4, 2024. Real Party in Interest also signed the document. However, the document contains none of the components necessary for a verified pleading (CCP section 446.)

Without the required verification, the assurance of “good faith in the averments or statements of a party to litigation” cannot be presumed. Accordingly, the challenge is *stricken* for failure to comply with the statutory requirement of verification.

B. The Challenge for Cause Is Stricken Because it was not Served on all Parties.

In outlining the procedure for this type of challenge, CCP section 170.3(c)(1) requires that “[c]opies of the statement shall be served on each party or his or her attorney who has appeared...” Real Party in Interest served the Court with his challenge and supporting documentation on April 5, 2024. However, there is no indication in any of the documents filed that Real Party in Interest served them upon the attorney for Petitioners or the attorney for the Respondent.

Requirements for service of pleadings are rooted in fundamental principles of fairness, notice, and constitutional due process. Real Party in Interest did not comply with these requirements. The challenge for cause is *stricken* based on this noncompliance with the law.

C. The Challenge for Cause is Stricken Because it is not Timely

A challenge made to a judge by a party under CCP 170.3 “shall be presented at the earliest practicable opportunity of the facts constituting the grounds for disqualification” (CCP section 170.3(c)(1)). While no specific time period is set forth in the statute, it is clear from the general procedures under sections 170.1 and 170.3, that time is of the essence. For example, the challenged judge must respond within 10 days (CCP section 170.3(c)(3) and any request for review of the decision by an appellate court must also be made within 10 days (CCP section 170.3(d)). Failure to timely raise the issue of disqualification “constitutes an implied waiver of the disqualification.” (*In re Steven O.* (1991) 229 Cal.App.3d 46, 54)

Such timelines make sense, as allowing a party to wait and see what happens during the pendency of the case before filing his or her challenge wastes the resources of the court and the parties by having the parties and court set, prepare for, and hold unnecessary court dates.

As outlined above, this Court has been assigned to this case since late November 2023. Real Party in Interest did not file his challenge until April 5, 2024, over four months after the assignment was made.

Further, the substance of the allegations detail allegations of conduct dating back to 2022. Even if Real Party in Interest did not learn about the substance of the allegations from the “whistleblower” until sometime after 2022, he provides no explanation as to when or how he learned of these allegations and why he delayed in asserting them in connection with this case.

This challenge came at the proverbial “eleventh hour”, immediately prior to the status hearing set for April 8. At the April 8 hearing, the parties were prepared to set a briefing schedule and hearing date for the Court to determine the substantive issues in the case. Indeed, according to the Petitioner’s status conference statement, filed 2 days prior to the challenge, the administrative record has been provided and the case was ready to proceed.

Simply put, the challenge is untimely, and is therefore *stricken*.

D. 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). Cf., *Anastos v. Lee* (2004) 118 Cal. App. 4th 1314, 1219 (declarations in support of a Code of Civil Procedure section 473.5 motion must include proper foundation, i.e., personal knowledge.))

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.").)

Here, Real Party in Interest claims that "this Court is not in a position to be a fair and impartial arbiter of this dispute." However, the basis for such a conclusion is nothing more than conjecture, speculation, and what amounts to an argument of guilt by association based on the Court's prior employment and the employment of the Court's spouse. It is also noteworthy that nowhere in the document does Real Party in Interest assert that this Court is actually biased against him.

Real Party in Interest 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 and focused on unsubstantiated accusations against persons other than this Court. Real Party in Interest attempts to tie this Court to his accusations by asserting that this Court (as well as the Court's spouse) are witnesses to alleged illegal activity. Such allegations, however, 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**.

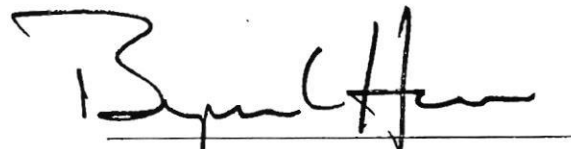
III. Conclusion

Since the statement of disqualification is unverified, untimely, was not served on all parties, and fails to disclose on its face any legal grounds for disqualification, it is ordered stricken pursuant to CCP 170.4(b). The parties are reminded that this determination of the question of disqualification is not an appealable order and may be reviewed only by a writ of mandate from the Court of Appeal sought within 10 days of notice to the parties of the decision. (CCP section 170.3(d).)

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: April 11, 2024



BENJAMIN L HANNA
Judge of the Superior Court

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
PATRICK JONES 1600 EAST CYPRESS AVE, STE 2 REDDING, CA 96002

Dated: April 11, 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

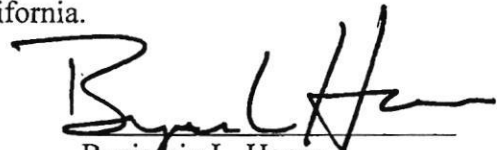
Verified Answer of Judge Benjamin L. Hanna

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 (including real parties in interest) to this proceeding or their counsel.
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 11th day of April, 2024 at Redding, California.


Benjamin L. Hanna