

F I L E D
Clerk of the Superior Court

JUN 04 2012

BY: A. LUM

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

SHARON KRAMER,

Plaintiff,

vs.

BRUCE J. KELMAN,

Defendant.

Case No: 2010-00061530-CU-DF-NC

ORDER STRIKING PLAINTIFF SHARON
KRAMER'S MOTION TO DISQUALIFY
JUDGE THOMAS P. NUGENT

The court has reviewed the paperwork filed by Plaintiff Sharon Kramer on May 25, 2012, entitled "Petitioner Sharon Kramer's Motion to Disqualify 'Instant Judge'" (hereafter "Motion to Disqualify"). Plaintiff Kramer seeks to disqualify Judge Thomas P. Nugent from further handling the above-entitled case, pursuant to Code of Civil Procedure¹ sections 170.1(a)(6)(A)(iii) and 170.1(a)(6)(B). However, the Motion to Disqualify fails to state any legal basis for disqualification on its face, and it is hereby stricken pursuant to section 170.4(b).

I. Authority to Strike a Motion to Disqualify.

Challenges filed pursuant to Code of Civil Procedure section 170.1 are adjudicated under the procedures set forth in section 170.3. Pursuant to section 170.3, if a judge who should disqualify his or her self fails to do so, any party may file with the clerk a verified written statement setting forth facts constituting grounds for disqualification. The statement seeking to

¹ Unless otherwise stated, all statutory references are to the Code of Civil Procedure.

1 disqualify the judge “shall be presented at the earliest practicable opportunity after discovery of
2 the facts constituting the ground for disqualification. Copies of the statement shall be served on
3 each party or his or her attorney who has appeared and shall be personally served on the judge
4 alleged to be disqualified, or on his or her clerk, provided that the judge is present in the
5 courthouse or in chambers.” (§ 170.3(c)(1).)

6 Once objection has been made, the judge may, *within 10 days after service of the*
7 *objection*, “file a consent to disqualification” (§ 170(c)(3)); or file “a written verified answer
8 admitting or denying any or all of the allegations....” (*Id.*) Failure to take any action is
9 tantamount to consenting to disqualification. (§ 170.3(c)(4); *Hollingsworth v. Superior Court*
10 (1987) 191 Cal.App.3d 22, 26.) However, if the statement is untimely filed or on its face
11 discloses no legal grounds for disqualification, the judge against whom it is filed may strike it, so
12 long as he or she does so within the 10-day period prescribed in section 170.3(c)(3) for filing an
13 answer. (§ 170.4(b).) In striking a challenge, the court is not passing on its own disqualification,
14 but instead is passing only on the legal grounds set forth in the challenge for cause.

15 Should the 10-day period pass with the judge taking no action, the judge is deemed
16 disqualified and has no power to act in the case. (§ 170.4(b); *Lewis v. Superior Court* (1988) 198
17 Cal.App.3d 1101, 1104.)

18 Here, the Motion to Disqualify fails to state a legal basis for disqualification on its face.

19 II. The Factual Allegations.

20 Plaintiff makes a number of varied contentions regarding Judge Nugent’s handling of this
21 case. Boiled down to its basics, she essentially alleges that the handling of this case and the
22 issuance of rulings against Plaintiff somehow demonstrates that Judge Nugent is biased or
23 prejudiced against her.

24 As referenced above, Plaintiff contends the court is biased against counsel (namely
25 herself as being *in propria persona*), pursuant to section 170.1(a)(6)(B). She also seeks to
26 disqualify this court pursuant to section 170.1(a)(6)(A)(iii), which states that a judge is
27 disqualified if “[a] person aware of the facts might reasonably entertain a doubt that the judge
28 would be able to be impartial.” The standard for the latter is articulated in *United Farm Workers*

1 of *America v. Superior Court* (1985) 170 Cal.App.3d 97. However, there are well-established
2 limitations on what evidence may be used to establish bias or prejudice under section
3 170.1(a)(6)(A)(iii). Section 170.2 expressly provides that it shall not be grounds for
4 disqualification where the judge has “in any capacity expressed a view on a legal or factual issue
5 presented in the proceeding, except as provided in paragraph (2) of subdivision (a) of, or
6 subdivision (b) or (c) of, Section 170.1.” In addition, a legal ruling is insufficient to establish
7 bias or prejudice, even if the legal ruling is erroneous. (*Dietrich v. Litton Industries, Inc.* (1970)
8 12 Cal.App.3d 704, 719.) Further, it is not evidence of prejudice or bias when a judge expresses
9 an opinion based upon actual observances and in what he or she considers the discharge of his or
10 her judicial duty. (*Jack Farenbaugh & Son v. Belmont Construction, Inc.* (1987) 194 Cal. App.
11 3d 1023, 1031; *Shakin v. Board of Medical Examiners* (1967) 254 Cal. App. 2d 102, 116.)
12 Finally, a judge also has the right and duty to control proceedings in the courtroom. Section 128
13 provides, “every court shall have the power to . . . preserve and enforce order in its immediate
14 presence” and “provide for the orderly conduct of proceedings before it.”

15 As stated previously, Plaintiff’s allegations are based on actions taken by Judge Nugent
16 during his handling of this case, comments he is alleged to have or has made in his judicial
17 capacity, and the legal decisions rendered. There are a number of allegations Plaintiff makes in
18 alleging that Judge Nugent should be disqualified for allegedly demonstrating actual or perceived
19 bias against her or allegedly engaging in misconduct. However, while the allegations are varied,
20 they all fall within the parameters of Plaintiff’s disagreement with the court’s legal rulings and
21 Plaintiff’s perceptions that Judge Nugent is not handling the case correctly. As the authorities set
22 forth above clearly indicate, such allegations, without more, cannot establish a legal basis for
23 disqualification. Moreover, every ruling requires the court to resolve a conflict in favor of one
24 party and against another. The opinion formed does not amount to bias and prejudice. (*Moulton*
25 *Niguel Water Dist. v. Colombo* (2003) 111 Cal. App. 4th 1210, 1219-1220.) Thus, it is clearly
26 not legal evidence of bias that the court has ruled in a particular way in this case. Therefore, the
27 assertions of bias relating to the court’s handling or ruling on the issues in this case cannot
28 support Plaintiff’s contention that Judge Nugent should be disqualified. In addition, much of

1 what Plaintiff alleges amounts to no more than mere speculation or conjecture, which cannot
2 form a legal basis for disqualification.

3 III. Conclusion.

4 The facts presented do not show any bias on the part of the judge, nor do they support
5 any reasonable and objective conclusion that Judge Nugent is or could reasonably be believed to be
6 biased. Therefore, the request for disqualification is properly stricken and this court may hear
7 any further matters that may come before it in these proceedings.

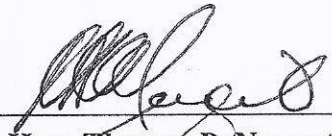
8 IT IS HEREBY ORDERED that Plaintiff's Motion to Disqualify Judge Thomas P.
9 Nugent is stricken for the reasons stated above, pursuant to section 170.4(b).

10 This order constitutes a determination of the question of disqualification of the trial judge
11 pursuant to section 170.3(d).

12 IT IS SO ORDERED.

13 Dated this 4th day of June 2012.

14 By:

15 
16 **Hon. Thomas P. Nugent**
17 Judge of the Superior Court
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO <input type="checkbox"/> COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814 <input type="checkbox"/> HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827 <input type="checkbox"/> FAMILY COURT, 1555 6TH AVE, SAN DIEGO, CA 92101-3294 <input type="checkbox"/> MADGE BRADLEY BLDG., 1409 4TH AVE., SAN DIEGO, CA 92101-3105 <input checked="" type="checkbox"/> KEARNY MESA BRANCH, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123-1187 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941 <input type="checkbox"/> RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-5200 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5649 <input type="checkbox"/> JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792 <input type="checkbox"/> JUVENILE COURT, 325 S. MELROSE DR., VISTA, CA 92083-6634	FOR COURT USE ONLY <div style="text-align: center;"> F I L E D Clerk of the Superior Court JUN 04 2012 BY: A. LUM </div>
PLAINTIFF(S)/PETITIONER(S) BRUCE J. KELMAN	
DEFENDANT(S)/RESPONDENT(S) SHARON KRAMER,	JUDGE: THOMAS P. NUGENT DEPT: 30
<div style="text-align: center;"> CLERK'S CERTIFICATE OF SERVICE BY MAIL (CCP 1013a(4)) </div>	CASE NUMBER 37-2010-00061530-CU-DF-NC

I, certify that: I am not a party to the above-entitled case; that on the date shown below, I served the following document(s):

Order Striking Plaintiff Sharon Kramer's Motion to Disqualify Judge Thomas P. Nugent dated June 4, 2012

on the parties shown below by placing a true copy in a separate envelope, addressed as shown below; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at: ☐ San Diego ☒ Vista ☐ El Cajon
☐ Chula Vista ☐ Ramona, California.

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CLERK OF THE SUPERIOR COURT

Date: JUN 04 2012

by A. LUM, Deputy
 A. LUM