

FILED
Los ANGELES SUPERIOR COURT
SEP 21 2012
JOHN A. CLARKE, CLERK
BY NICHOLAS J. YOUNG, DEPUTY

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

In re the conservatorship of:

CASE NO. BP108870

BRITNEY JEAN SPEARS

ORDER STRIKING STATEMENT
OF DISQUALIFICATION

On September 21, 2012, Petitioner Sam Lutfi filed a pleading as a peremptory challenge under Code of Civil Procedure § 170.6 or, in the alternative, a statement of disqualification for cause, contending that Judge Reva G. Goetz is biased against him. Insofar as a 170.6 challenge at this stage of the proceedings is untimely, the motion is denied. The court treats the pleading as a statement of disqualification pursuant to C.C.P. § 170.3 subdivision (c)(1). The statement is based upon Lutfi's opinion and dissatisfaction with the Court's rulings. On its face, and as a matter of law, it does not present lawful grounds for disqualification.

Code of Civil Procedure §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; *Urias v. Harris Farms, Inc.* (1991) 234 Cal.App.3d 415, 426.

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*

1 *America v. Superior Court* (1985) 170 Cal.App.3d 97, 104; *Stanford University v. Superior*
2 *Court* (1985) 173 Cal.App.3d 403, 408 ("the litigants' necessarily partisan views do not provide
3 the applicable frame of reference.")

4 Rulings and findings based upon evidence and argument officially presented can almost
5 never constitute a valid basis for disqualification. *McEwen v. Occidental Life Ins. Co.* (1916)
6 172 Cal. 6, 11 (erroneous rulings, even when numerous and continuous, are not grounds for bias
7 or prejudice, nor are "judges' expressions of opinion uttered in what he conceives to be the
8 discharge of his judicial duty"). *See also*, California Procedure, 3rd Ed., Witkin, *Courts*, §94, pp.
9 111-112.

10 A party's remedy for an erroneous ruling is not a motion to disqualify, but rather review
11 by appeal or writ. *See Ryan v. Welte* (1948) 87 Cal.App.2d 888, 893: "[A] wrong opinion on the
12 law of a case does not disqualify a judge, nor is it evidence of bias or prejudice." Otherwise, the
13 court said, "no judge who is reversed by a higher court on any ruling or decision would ever be
14 qualified to proceed further in the particular case." The proper remedy, of course was an appeal
15 from the erroneous ruling. *See 2 Witkin, California Procedure* (4th ed.), *Courts*, Nondisqualifying
16 Opinions, p. 157.

17 As stated in *Liteky v. United States* (1994) 510 U.S. 540, 114 S.Ct. 1147, 127 L.Ed.2d
18 474, in discussing the extrajudicial source doctrine:

19 "First, judicial rulings alone almost never constitute a valid basis for a bias
20 or partiality motion. *See United States v. Grinnel Corp.*, 384 U.S. 563, 583
21 (1966). In and of themselves (i.e., apart from surrounding comments or
22 accompanying opinion), they cannot possibly show reliance upon an extrajudicial
23 source; and can only in the rarest circumstances evidence the degree of favoritism
24 or antagonism required (as discussed below) when no extrajudicial source is
25 involved. Almost invariably, they are proper grounds for appeal, not for recusal.
26 Second, opinions formed by the judge on the basis of facts introduced or events
27 occurring in the course of the current proceedings, or of prior proceedings, do not
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1 constitute a basis for a bias or partiality motion unless they display a deep-seated
2 favoritism or antagonism that would make fair judgment impossible. Thus,
3 judicial remarks during the course of a trial that are critical or disapproving of, or
4 even hostile to, counsel, the parties or their cases, ordinarily do not support a bias
5 or partiality challenge."

6 Accordingly, since the statement of disqualification on its face discloses no legal grounds
7 for disqualification, it is ordered stricken pursuant to Code of Civil Procedure §170.4,
8 subdivision (b). The parties are reminded that this determination on the question of
9 disqualification is not an appealable order and may be reviewed only by a writ of mandate from
10 the Court of Appeal sought within 10 days of notice to the parties of the decision. In the event
11 that a timely writ is sought and an appellate court determines that an answer should have been
12 timely filed, such an answer is filed herewith.

13 GOOD CAUSE APPEARING THEREFOR, It is so ordered.

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16 Date: 9/21/2012

17 Reva G. Goetz
18 REVA G. GOETZ
19 Judge of the Superior Court of California
20 County of Los Angeles
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Verified Answer of Judge <name>

I, Reva G. Goetz, do declare under penalty of perjury:

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.

Executed this 21st day of September, 2012, at Los Angeles, California.


REVA G. GOETZ

CERTIFICATE OF MAILING

I am over the age of 18 years and not a party to the within action. I am familiar with the Los Angeles Superior Court practice for collection and processing of correspondence and know that such correspondence is deposited with postage prepaid with the United States Postal Service the same day it is delivered to the mailroom in the Los Angeles Superior Court. I declare under penalty of perjury under the laws of the State of California that I delivered a true copy of the document to which this is attached to the parties or their attorney addressed as listed above by placing the copy in a sealed envelope to the mail room of this court.

Date: September 21, 2012

JOHN A. CLARKE, Executive Officer/
Clerk of the Superior Court of California,
County of Los Angeles.

by: N. Young, Deputy Clerk

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