

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

NA,

Petitioner,

v.

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

Respondent,

NA,

Real Party In Interest.

After February 16, 2017 Order of the Court of Appeal
Second Appellate District (Division One)

PETITION FOR REVIEW

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF
THE CALIFORNIA SUPREME COURT:

Petitioner¹ respectfully files this petition for review concerning the February 16, 2017 order of the California Court of Appeal for the Second Appellate District, Division One. This order is attached hereto as EXHIBIT E4. The February 16, 2017 order denies the February 2, 2017 writ of mandate, prohibition, certiorari, or other appropriate relief, and petition to disqualify Judge Richard J. Burdge. The February 2, 2017 writ petition involves an order of the Respondent Court (Superior Court of the State of California for the County of Los Angeles) erroneously striking a disqualification statement for cause on January 20, 2017 [EXHIBIT E1].

The real party in interest is NA.

Petitioner reasonably and appropriately filed a verified statement of disqualification setting forth the facts (hearing transcript) and legal grounds to disqualify Judge Richard J Burdge on January, 19 2017 [EXHIBIT E2]. Petitioner presented legal grounds over and above the bias threshold required CCP §170.1(a)(6)(C); therefore, Judge Burdge did not apply the law when he issued an order striking the disqualification. [EXHIBIT E1]. Petitioner's disqualification statement was filed timely upon receiving the facts, the hearing transcript arrived in the mail on January 14, 2017.

On filing a timely writ petition in the Second Appellate District, the Second Appellate District erred in denning the relief sought. The Second Appellate District did not apply the law in this matter and by not applying the law would create a "muddling" of the statutes. When the law is applied as intended balance is assured at minimal costs. A divergence from the law, or abuse of discretion creates imbalance at a significant social and economic costs,

¹ If the highest court is no longer in alignment with the law, let us work together to amend the law and avoid a "muddling" of the existing clear and unambiguous language.

as demonstrated in the Petitioners case study -

<http://peremptorychallenge.weebly.com/>

On this petition for review the following issues are presented.

ISSUES PRESENTED FOR REVIEW

1. Striking The Verified Disqualification Statement Was An Error In Law And Inconsistent With The Statutory Framework In simple terms: Per the clear and unambiguous statutory framework - Petitioner applied the law and the trial court violated the law; therefore the second appellate court erred in denying the Petitioners writ. Please keep the law simple (easy to comprehend).

2. Access to Justice Concern - Petitioner cannot afford to raise further issues due to the significant paper copy costs (15 copies!) and the extensive pending litigation imposed by the lower courts, including appeal of the 12/28/16 order. Petitioner has absolutely no choice, but to pursue litigation which will bankrupt him – the lower court imposed an order which causes an indefinite impediment to Petitioners employment. The cost of the lower courts blatant and egregious bias comes at significant cost to Petitioner, our courts and tax payers – the practice of imbalanced rule must be discouraged (this should have been simple/minor matter)!

REASONS WHY REVIEW SHOULD BE GRANTED

The method of conducting the proceedings on December 28, 2016 as well as the January 20, 2017 order on its face demonstrates bias and that Judge Burdge is personally embroiled in the proceedings. The trial court order does not address petitioner's claims of retaliation, gender bias, or grounds for disqualification under state law or under the Fourteenth Amendment.

The United States Supreme Court held that a “fair trial in a fair tribunal is a basic requirement of due process.” In re Murchison (1955) 349 U.S. 133, 136. “Fairness of course requires and absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness,” Id. cf. Mistretta v. United States (1989) 488 U.S. 361, 407 (“The legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship.”). This foundational requirement helps to ensure both the litigant’s and the public’s confidence that cases will be adjudicated fairly by neutral decision makers. This court should grant review to settle important questions of law concerning judicial disqualification and the claimed retaliation encountered by the Petitioner (bias in this matter is overt and intended to cause irreversible harm).

Pro Se litigants must navigate extremely complex legal procedure with no/zero legal counsel and by further “muddling” of the law the court places the Pro Se in an inevitable position to fail. In this instance, the law is crystal clear, Petitioner applied the law and the trial judge did not. “Access to Justice” extends beyond legal counsel – Access to Justice includes the “clarity of law” – law which is easy to navigate and comprehend. Therefore, Petitioner respectfully requests the court grant review in this matter to ensure the clear and unambiguous application of the law does not become muddled by localized county politics.

BACKGROUND

Petitioner is a single male and parent of one child who is the age 9. The underlying family law case commenced on December 9, 2009 on the petition of NA. Petitioner filed a response on December 23, 2009.

The marriage of Petitioner and NA had a duration of approximately 8 years. NA moved from Australia and became a U.S. resident in February 2001. Petitioner and NA were residents of San Diego County from 2000 to July 2009.

Petitioner and NA have a daughter, Sofia Locatelli, born on September 30, 2007 **in San Diego County**. On July 2009 NA unilaterally terminated a successful co-parenting arrangement, by removing their child from the County of San Diego and then filing for a divorce advantage in the County of Los Angeles.

In 2015, NA was sanctioned for bad faith actions to deny and frustrate Petitioners custodial time and obstructing the litigation process. In spite of the courts sanctions NA's bad faith actions continued as follows (the current matter before the court)...

NA significantly **delayed the matter by refusing to attend mediation** and further delayed the matter for her benefit via a continuation.

Absent an order for the change in circumstance, NA bullied the Petitioner into terms which jeopardize his career by threatening to deny the Petitioner his custodial time with his daughter. Emblazoned by her command of the court, NA pursued adversarial litigation rather than honor the approx. 6 year parenting plan - The same parenting plan she proposed under "identical" circumstances and closely aligned with the recommendation of "two" separate evaluators.

When the matter finally went before Judge Burgde, NA provided no/zero evidence to support her baseless hearsay and would commit perjury.

In spite of the forementioned facts, the court denied Petitioner due process and awarded the NA for blatant bad faith actions. Any court would be disingenuous to indicate a father would prevail under similar circumstances. Gender, a mother, is not cause for a pass on bad faith conduct and obstructing the settlement of litigation.

Furthermore, Petitioner was certain the court would not entertain NA's absurd request to significantly burden one party on the exchanges, a **significant contradiction to the prevailing case law**; thus the court threw the Petitioner a major "curve ball" then denied him due process to adequately respond, or be heard on all matters before the court.

Two separate evaluator's recommended fair and balanced exchanges in the best interest of the child, does the Petitioner need the whole/entire ADR program and Judicial Council to testify on his behalf (ALL will align with the Petitioner)?

The **egregious abuse of discretion** by Judge Burdge to propagate an adversarial divorce and alienate Petitioner from his daughter is counter to prevailing case law and detrimental to the higher courts position on Alternative Dispute Resolution (ADR). In a Judge Burdge court, the adversarial party, NA, can literally direct the court to issue worse case judgments on the other party rather than work towards an amicable solution in the best interest of their child. In addition, please review questions Petitioner provided in the writ [EXHIBIT E3] to understand the 12/28/16 orders severe impact to his livelihood and determent to his ability to maintain employment.

ARGUMENT

I. Striking The Verified Disqualification Statement Was An Error In Law And Inconsistent With The Statutory Framework

The January 20, 2017 order fails to consider both CCP § 170.3 (c)(5) and CCP § 170.4 (b). An order striking a verified disqualification statement based on a judge's indication that the statement shows no legal grounds for disqualification is subjected to an objective review based on reasonably identified standards that starts with review of the actual language of the order which strikes the disqualification statement. A conditional answer which does not respond to the verified disqualification statement is not consistent with the statutory scheme. Instead, it artificially forces a statutory writ of mandate when the matters should have been assigned to a different judge for determination of the question for disqualification. Objectively Judge Burdge' January 20, 2017 order is not proper within the statutory framework and does provide proper and equal importance of the right of the complaining party to the mandatory procedures of CCP § 170.3

(c)(5). Judge Burdge was required to refer the matter to the Chairperson of the California Judicial Council.

CCP § 170.3 outlines a statutory scheme for determining challenges for cause. It provides, in relevant part, as follows:

“(c)(1) If a judge who should disqualify himself or herself refuses or fails to do so, any party 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....

“(c)(3) Within 10 days after the filing or service, whichever is later, the judge may file a consent to disqualification ..., or the judge may file a written verified answer admitting or denying any or all of the allegations contained in the party's statement and setting forth any additional facts material or relevant to the question of disqualification....

“(c)(5) A judge who refuses to recuse himself or herself shall not pass upon his or her own disqualification or upon the sufficiency in law, fact, or otherwise, of the statement of disqualification filed by a party. In that case, the question of disqualification shall be heard and determined by another judge agreed upon by all the parties who have appeared or, in the event they are unable to agree within five days of notification of the judge's answer, by a judge selected by the chairperson of the Judicial Council, or if the chairperson is unable to act, the vice chairperson. The clerk shall notify the executive officer of the Judicial Council of the need for a selection. The selection shall be made as expeditiously as possible. No challenge pursuant to this subdivision or Section 170.6 may be made against the judge selected to decide the question of disqualification.”

CCP § 170.4 eliminates the recusal issue. Subdivision (b) provides: “Notwithstanding paragraph (5) of subdivision (c) of Section 170.3, if a statement of disqualification is untimely filed or if on its face it discloses no legal grounds for disqualification, the trial judge against whom it was filed may order it stricken.”

At minimum, consideration should be given to the following factors in review of orders that strike a verified disqualification statement:

First, whether the order acknowledges or mentions the constitutional, statutory, or common law authority (the legal basis) identified in the disqualification statement.

Second, whether the order identifies any specific verified fact identified by the complaining parties and whether the order omits all reference to the verified facts asserted by the complaining party.

If these first two facts are not met and the order striking a disqualification statement is combined with an equally defective and vague conditional answer, under CCP § 170.3 (c)(3) should be construed as consent to disqualification.

Third, whether the verified disqualification statement alleges bias or prejudice (factual issues), thereby indicating that passing on the sufficiency of the facts asserted should be resolved pursuant to the mandatory procedures of CCP § 170.3 (c)(5).

The final matter that should be considered is whether the verified disqualification statement identifies facts supporting the claim that the judge is or was engaged in conduct without fundamental jurisdiction or in absence of jurisdiction.

While acknowledging that § 170.4 (b) provides that a judge may order a disqualification statement stricken if on its face there is no legal ground for disqualification, this provision must be interpreted in a way so that the purposes of both CCP § 170.3 (c)(5) and CCP § 170.4 (b) are given effect. Without a balancing standard which requires scrutiny of *both* the verified statement of disqualification and the order striking such statement, the purpose and effect of the statutory scheme is fundamentally undermined.

The Due Process Clause “may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way,

‘justice must satisfy the appearance of justice.’” Murchison at 136. “[T]he requirement of an impartial decision maker transcends concern for diminishing the likelihood of error. The unfairness that results from biased decision makers strikes so deeply at our sense of justice that it differs qualitatively from the injury that results from insufficient procedures. United Retail & Wholesale Emp. v. Yahn & McDonnell (1986)787 F.2d 128, 138.

Also, review is warranted to identify clear objective standards that balances (1) the interest of the court user to the mandatory procedures of CCP § 170.3 (c)(5) of appointment by the Chairperson of the Judicial Council of a judge to determine the question of disqualification and (2) the improper use of CCP § 170.4 (b) to strike disqualification statements when there exists grounds for disqualification. The procedures adopted disregarded the statutory framework, procedures, and barred the required order from the supervisory, operational, and policy making bodies of the court – the Chairperson of the Judicial Council and the supervising judge of the Superior Court of the County of Los Angeles.

Petitioner sought disqualification under CCP § 170.1 (a)(3)(A) and CCP §170.1 (a)(6)(A)(iii) [a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial]. He expressly requested that the judge not pass upon his own disqualification or upon the sufficiency in law, fact or otherwise and that the question of disqualification be heard by a judge selected by the chairperson of the Judicial Council. This court should grant review to set forth an objective standard which does not undermine the purpose of CCP § 170.3 (c)(5) in having the Chairperson of the Judicial Council assign a judge to determine the question of disqualification does not allow misuse of and CCP § 170.4 (b) to strike a verified disqualification statement to avoid the requirement of