

FILED

APR 18 2016

MICHAEL D. PLANET
Executive Officer and Clerk
BY: *M. D. Planet*, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF VENTURA

COUNTY LINE HOLDINGS, LLC, a
Delaware limited liability company,

Plaintiff,

vs.

JAIME DeJESUS GONZALEZ, an
individual, et al.

Defendant

Jaime DeJesus Gonzales, as Trustee of the
Mansdorf Family Trust,

Intervnor

JANICE McCLANAHAN,
Cross-Complainant

vs.

COUNTY LINE HOLDINGS, LLC et al

Cross-Defendants

KEVIN MACNAMARA,

Intervenor

**DECISION
ON THE SECOND MOTION
FOR DISQUALIFICATION
OF JUDGE HENRY J. WALSH**

Assignment of Case
From Ventura County
Assignment #1044757-16

Ventura County Case
No. 56-2013-00444799 CU-OR-VT

VENCI00444799

1 This Court was assigned to hear and determine the issue of the second motion for
2 disqualification of Judge Henry J. Walsh (hereafter "Walsh") filed by Jaime DeJesus
3 Gonzalez on March 18, 2016, and who is self-represented (hereafter "Gonzalez")¹ in a case
4 before the Ventura County Superior Court.

5 Decision

6 This second disqualification motion is DENIED. The question of disqualification is not
7 an appealable order and it can be reviewed only by a petition for writ of mandate filed
8 within 10 days of notice to the parties of the decision. *Christie v. City of El Centro* (2006) 135
9 Cal.App.4th 767, 774.

10 Previous Disqualification Request

11 This Court has reviewed its decision in the first request for disqualification by Gonzalez
12 regarding Walsh dated 2/10/16. Except for the campaign contribution issue and the public
13 reproval letter, all of Gonzalez's contentions have previously been addressed and analyzed.
14 But the Court will do so again for purposes of thoroughness.

15 Disqualification Request

16 On 3/18/15 Gonzalez filed his *Verified Statement*; contends he does so pursuant to Code of
17 Civil Procedure sections 170.3(c)(1), 170.4(c)(3), and Rules 2009 [Procedures for Obtaining
18 Default Judgment], 2015.5 [Certification or declaration under penalty of perjury] and
19 3.1800 [Default Judgments]. He sets forth "the facts constituting the grounds for
20 disqualification of Judge Walsh, being presented again, *after the receipt of additional
21 material on March 1, 2016.*" (Emphasis the Court's.) [i.e. *The campaign contribution and
22 public reproval information.*]

23 Gonzalez testifies that disqualification is required if an objective observer would
24 entertain reasonable questions about the judge's impartiality. "Under this standard,
25 avoiding the appearance of impartiality and impropriety by Judge Walsh, given the facts
26 *and two separate late disclosures.*" (Emphasis the Court's.)² *This Court's analysis of these two
27 "new" issues can be found below at page 10.*

28 ¹ No disrespect is intended in using last names; it is done for ease in writing.

² The ONLY NEW issue raised is that he just recently received the Minute Order dated February 19, 2016,
that disclosed Timothy Sottile's campaign contribution to Judge Walsh's campaign that exceeded \$100. (Ex.
60, Minute Order Disclosing Sottile's Donation over \$100.) That he recently received documentation dated

1 The Court has carefully read the 29 page declaration, with exhibits, filed by Gonzalez
2 and rather than set forth each "contention" made at this point in the Decision, the Court
3 turns to (1) the guiding legal authorities, and then to (2) Walsh's response, and then (3) the
4 reader will find that this Court has addressed and made findings of fact on each of the
5 "contentions" raised by Gonzalez in his Verified Statement.

6 Guiding Legal Authorities

7 This kind of a matter is very serious and deserves careful review. Both the allegations
8 made in the Gonzalez Declaration and the contentions made in the Judge's Response need
9 to be studied. All Points and Authorities need to be considered, irrespective of who might
10 have filed them. The spirit of the law as well as the letter of the law must be followed.

11 In general the guidelines are as follows: The Legislature may adopt reasonable rules
12 and regulations regarding disqualification of judges, and prejudice on the part of a judge
13 may properly be made ground for disqualification. Johnson v Superior Court (1958) 50 C2d
14 693. However, a wrong ruling on the evidence or the law does not disqualify a judge, nor
15 does it show bias or prejudice; Ryan v Welte (1948) 87 CA2d 888. The burden of proving
16 bias or prejudice is upon the complaining party. (Golish v Feinstein, (1932) 123 Cal App
17 547 at 549; and Ryan v Welte, supra, at 892.)

18 The standard for disqualification established in CCP 170.1(a)(6)(C), which provides for
19 disqualification for bias or prejudice where a person aware of the facts might reasonably
20 entertain a doubt that the judge is able to be impartial, *is fundamentally an objective one*. It
21 represents a legislative judgment that, due to the sensitivity of the question and inherent
22 difficulties of proof, as well as the importance of public confidence in the judicial system,
23 the issue is not limited to the existence of an actual bias. Rather, if a reasonable person
24 would entertain doubts concerning the Judge's impartiality, disqualification is mandated.

25 To ensure that proceedings appear to the public to be impartial and hence worthy of
26 their confidence, the situation must be viewed through the eyes of the objective person.
27 This standard indicates that the decision is not based on the Judge's personal view of his
28 own impartiality, and also suggests that the litigant's necessarily partisan views do not
provide the applicable frame of reference. Rather, the Judge ought to consider how his

February 10, 2016, that was issued by the Commission on Judicial Performance regarding the same type of failure to disclose campaign contributions of more than \$100 dollars by an appearing attorney.

1 participation in a given case looks to the average person on the street. *United Farm Workers*
2 *of America v Superior Court (1985) 170 Cal App 3d 97* [fact that judge's wife had worked for
3 employer for two days during strike did not warrant disqualification of judge, where judge
4 had forgotten about his wife's work until nearly two months into trial and judge's conduct
5 during trial did not support inference of partiality].

6 The terms "bias" and "prejudice" as used in recusal statutes connote a favorable or
7 unfavorable disposition or opinion that is somehow wrongful or inappropriate, either
8 because it is undeserved or because it rests upon knowledge that the subject ought not to
9 possess or because it is excessive in degree; impartiality is not gullibility and
10 disinterestedness does not mean child-like innocence; if judge did not form judgments of
11 actors in courthouse dramas called trials, he could never render decisions; expressions of
12 impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what
13 imperfect men and women sometimes display, do not establish bias or partiality; judge's
14 ordinary efforts at courtroom administration, even a stern and short-tempered judge's
15 ordinary efforts at courtroom administration, are immune from disqualifications motions.
16 *Liteky v. U.S. (1994) 114 S.Ct.1147* [disqualification denied].

17 If a judge who should disqualify himself or herself refuses or fails to do so, any party may
18 file with the clerk a written verified statement objecting to the hearing or trial before the
19 judge and setting forth the facts constituting the grounds for disqualification of the judge.
20 The statement shall be presented at the earliest practicable opportunity after discovery of
21 the facts constituting the ground for disqualification. Copies of the statement shall be
22 served on each party or his or her attorney who has appeared and shall be personally
23 served on the judge alleged to be disqualified, or on his or her clerk, provided that the
24 judge is present in the courthouse or in chambers. Code Civil Procedure § 170.3(c)(1)

25 A party may file no more than one statement of disqualification against a judge unless
26 facts suggesting new grounds for disqualification are first learned of or arise after the first
27 statement of disqualification was filed. Repetitive statements of disqualification not alleging
28 facts suggesting new grounds for disqualification shall be stricken by the judge against
whom they are filed. Code Civil Procedure § 170.4(c)(3).

Walsh's Declaration

1 On 3/25/16 Walsh filed his declaration and testifies the allegations in this present
2 challenge are largely repetitive of the previous challenge filed by Gonzalez, and may be
3 susceptible to being stricken pursuant to CCP § 170.4 (c)(3); that would invite a further
4 motion for recusal and/or writ application; better course is to respond to Gonzalez'
5 motion; in his capacity as a trustee, Gonzalez has been represented by an attorney, Mr.
6 Fobi; shortly after taking the matter under submission, Gonzalez' initial CCP § 170.1
7 challenge was filed; stopped everything; time delay between the filing of that first
8 challenge, and the ruling; he set the case for re-argument; further argument was set for
9 March 21; on March 18 Gonzalez filed his second CCP § 170.1 challenge; matters are
presently at another standstill until this challenge is ruled upon.

10 Responds to Gonzalez' Verified Statement and testifies; Paragraphs 1-6 are introductory
11 in nature; agrees with the holding in *Litikey v, United States*, 510 U.S. 540; Paragraphs 7-27
12 deal with court proceedings in the Los Angeles Superior Court; had no participation in any
13 of those cases; has no personal knowledge of any of the allegations Gonzalez is making
14 against judicial officers in Los Angeles; Paragraphs 28-42 present arguments regarding the
15 result which Gonzalez seeks in the Ventura case; are improper to be part of a
16 disqualification motion; is an effort to inject adverse rulings into a disqualification motion.

17 Walsh testifies that Paragraphs 43-48 argue his conduct of pre-trial discovery
18 proceedings; rulings which were within the discretion of the trial judge; exercised that
19 discretion in a manner to keep the case moving; Paragraphs 49-53 are argumentative and
20 address matters beyond his control; Gonzalez testified on his own behalf, and was given
21 considerable latitude by myself to say pretty much whatever he wished to say; Paragraphs
22 54-62 concern the conduct of proceedings in Ventura and Los Angeles; has no personal
23 knowledge of what happened in the Los Angeles proceedings; Paragraphs 63-70 address
24 Gonzalez' position relative to the fact that Mr. Sotille and Walsh are participants in the
25 local chapter of the American Inns of Court; was specifically raised by Gonzalez in his
previous recusal motion, and was decided not to be a disqualifying factor; should not be
given new life in this motion.

26 Gonzalez erroneously contends that the assignment to Judge Anderle was made by the
27 Presiding Judge of the Ventura Courts, Judge Donald Coleman; assignment was made by
28

1 the Administrative Office of the Courts, as they do in all CCP § 170.1 motions; Judge
2 Coleman had nothing to do with it except noting that the assignment had been made.

3 Walsh turns to the only new issue raised by Gonzalez; Paragraphs 71-80 address his
4 setting the case for further argument, and the election contribution made by Mr. Sotille in
5 2012; set the case for further argument because there had been a delay due to Gonzalez'
6 earlier filing; had no hidden agenda in doing that; asked counsel and Gonzalez to see if
7 they could agree on a date in a minute order dated February 17, 2016; they could not; set it
8 for March 21, 2016; Gonzalez is correct that he received an admonishment from the
9 Commission on Judicial Performance; it was for not making disclosure of attorney
10 contributors after the election in June of 2012; had argued to the CJP that the requirement
11 that he make such post-election disclosures was not enacted until 2013 (the year after his
12 election); they were not impressed; received a public reproof; due to the pendency of that
13 matter, however, he undertook to disclose election contributions in any case that was filed
14 before June 5, 2014 (two years after the 2012 election); the amount of Mr. Sotille's
15 contribution was \$200; it is not an amount that requires a disqualification; only when the
16 contribution gets to \$1,500 that CCP § 170.1 (9)(A)³ requires a recusal; Sotille's
17 contribution was about .0017 of his total campaign contributions; did not believe that it
18 required a disqualification either then or now; Gonzalez chooses to ignore that his
19 attorney, Mr. Emmanuel Fobi, made a campaign contribution of \$300.

20 ³A judge shall be disqualified if any one or more of the following are true: . . .

21 (9) (A) The Judge has received a contribution in excess of one thousand five hundred dollars (\$1500) from a
22 party or lawyer in the proceeding, and either of the following applies:

(i) The contribution was received in support of the judge's last election, if the last election was within the last
23 six years.

(ii) The contribution was received in anticipation of an upcoming election.

(B) Notwithstanding subparagraph (A), the judge shall be disqualified based on a contribution of a lesser
24 amount if subparagraph (A) of paragraph (6) applies.*

(C) The judge shall disclose any contribution from a party or lawyer in a matter that is before the court that
25 is required to be reported under subdivision (f) of Section 84211 of the Government Code, even if the amount
26 would not require disqualification under this paragraph. The manner of disclosure shall be the same as that
27 provided in Canon 3E of the Code of Judicial Ethics.

* (6)(A) For any reason: (i) The judge believes his or her recusal would further the interests of justice. (ii) The
28 judge believes there is a substantial doubt as to his or her capacity to be impartial. (iii) A person aware of the
facts might reasonably entertain a doubt that the judge would be able to be impartial.

1 Paragraphs 81-100 are mostly argumentative with respect to the merits of the case; do
2 not bear on any circumstance of disqualification. Testifies *that he is not prejudiced against*
3 *Gonzalez*; there is no credible evidence that he is prejudiced against Gonzalez; Gonzalez
4 received many accommodations regarding the trial date; rulings adverse to Gonzalez are
5 not a basis for a disqualification, and were made based on the facts and law existing at the
6 time those rulings were made; case he has contains a genuine legal issue of the conflict
7 between the Probate Code and the Code of Civil Procedure (Enforcement of Judgments
8 Act) regarding notice requirement to a judgment debtor before certain collection efforts
9 may be maintained and enforced.

9 Findings of Fact On The Gonzalez Verified Statement

10 On 3/18/16 Gonzalez filed a verified statement; testifies that Walsh is disqualified to
11 render verdict or judgment upon trial in this action; he is disqualified to enter all orders,
12 rulings, findings and determinations in this matter; he sets out his grounds that he claims
13 mandate disqualification. It includes the following claims:

14 **A. Judicial impropriety infected the McClanahan judgment - LASC BC 363659;**
15 specifically that the McClanahan judgment itself is the product of judicial collusion,
16 contravention of rules and binding precedent, and actual bias, by at least two separate
17 judicial officers in LASC BC363659, both favoring McClanahan, Attorneys Sottile,
18 Thomas Cacciatore and David Marcus in LASC BC363659. (*Paragraphs 7-21 of Verified*
Statement).

19 Finding: All this was addressed and considered in this Court's 2/10/15 decision [See
20 Paragraphs "(2)" through "(6)" of this Court's findings in that decision.] In any event, if
21 Gonzalez has embellished that argument here, this Court finds that the material was
22 available and should have been presented in his first recusal request, and is *res judicata*.
23 This Court has not ignored Gonzalez' claim that "Walsh's actions cannot be viewed in a
24 'vacuum,' and must be viewed as a whole, to include the facts and circumstances of the
25 cases leading up to this case." But recusal motions cannot be reinvented by recasting old
26 arguments into a new recusal motion.

26 **B. Judicial Impropriety of Judge Mary Strobel and Attorneys Sottile and Cacciatore, and**
27 **Marcus. Specifically claims there was a conspiracy and impropriety among them and**
28 **potentially McClanahan. (*Paragraphs 22-25 of Verified Complaint*.)**

1 Finding: Same as in A above.

2 C. Judicial Impropriety Judge Elizabeth White in LASC BC 425880, entered Judgment
3 against Mr. Mansdorf without any trial *de novo* or answer to the Complaint, because
4 default was entered against Mr. Mansdorf. (*Paragraphs 26-30 of Verified Statement*).

5 Findings: Many of the facts recited in this case by Gonzalez refer back to the Los Angeles
6 litigation with rhythmic regularity; it is *res judicata*; it is very clear that Walsh had no
7 reason to review or consider those facts. Moreover, a wrong ruling on the evidence or the
8 law does not disqualify a judge, nor does it show bias or prejudice. Suspicion, innuendo
9 and insinuation does not substitute for credible evidence of facts.

10 D. Unlawful Collection Process Later Implicitly Endorsed by Judge Walsh. (*Paragraphs 26-*
11 *29 of Verified Statement*).

12 Finding: This is attacking the rulings of the Court on the law and the evidence indirectly; a
13 wrong ruling on the evidence or the law does not disqualify a judge, nor does it show bias
14 or prejudice.

15 E. Rulings grossly exceeding the discretionary bounds of Walsh. (*Paragraphs 31-42 of*
16 *Verified Statement*).

17 Finding: A wrong ruling on the evidence or the law does not disqualify a judge, nor does it
18 show bias or prejudice.

19 F. Though trial was continued from June to December 2, 2015, this was done in bits and
20 pieces, and each time, Judge Walsh prevented any more discovery, specifically, no
21 deposition of Ms. McClanahan. (*Paragraphs 43-48 of Verified Statement*).

22 Finding: This is attacking the rulings of the Court on the law indirectly; a wrong ruling on
23 the law does not disqualify a judge, nor does it show bias or prejudice.

24 G. Facts were provided under oath at deposition and at trial by the purchaser's agent and
25 the judgment creditor, but initial lodgment of the depositions was impossible because the
26 clerk mistakenly rejected a substitution of counsel form by Counsel Emmanuel F. Fobi,
27 and this prevented Emmanuel from entering the case in representation of Intervenor,
28 Lodging the Deposition Transcripts at the start of trial, and generally defending and
litigating. (*Paragraphs 49-53 of Verified Statement*).

Finding. A wrong ruling on the law does not disqualify a judge, nor does it show bias or
prejudice.

1 H. Gonzalez "digresses for a moment." Back on November 24, 2015, an email was sent by
2 Attorney Sottile to Attorney Macnamara stating that the trial would not take place on
3 November 30, 2015, but would begin on December 2, 2015. On November 30, 2015, the
4 Court announced that it would begin trial on December 2, 2015, as Mr. Sottile had
5 indicated via email six days prior, and this December 2, 2015, date was the same day as the
6 pre-scheduled hearing on the Letters of Administration for the Estate of Mildred Mansdorf
7 in Los Angeles. (*Paragraphs 54-63 of Verified Statement*).

8 Findings: These same claims were previously made, or should have been made, in the first
9 recusal motion; recasting it here is unproductive and simply *res judicata*. There must be
10 substantive facts shown to back up this contention; not just suspicion; this broad statement
11 must fail because it lacks substance. Moreover, this would be claiming an error of law
12 indirectly and recusal motions are not available on a judges wrong rulings on the law.

13 I. The "Inns of Court" contention; combined with a claim that this Judge who was assigned
14 the case was involved in a 1998 hotly-contested case involving the Ventura Presiding Judge;
15 combined with the contention that this Judge was wrong in the denial of the first recusal
16 motion. (*Paragraphs 64-70 of Verified Statement*).

17 Findings: These paragraphs have a potpourri of issues; most of the contentions were
18 addressed in the first recusal motion and are *res judicata*; but the fact is, that any error in
19 this Court's decision can be attacked only on a Writ of Mandate which Gonzalez has done;
20 further comment here is not appropriate; the resolution for such issues rest with the Court
21 of Appeal.

22 J. The very same day Judge Anderle made his decision denying that Judge Walsh was
23 disqualified and should be recused, Walsh issued a Minute Order on February 17, 2016,
24 addressing the ruling on the submitted matter: Walsh continued marching forward using
25 the March 21, 2016, date. Walsh did not care and he refused to hear him out on the point.
26 (*Paragraphs 71-77 of Verified Statement*).

27 Findings. There must be substantive facts shown to back up this contention, not just
28 suspicion; this broad statement must fail because it lacks substance. Moreover, this would
be claiming an error of law indirectly and recusal motions are not available on a judges
wrong rulings on the law.

The New Disclosures

1 J [subpart]. Irreconcilably, right in the midst of the claims made in Paragraph J above,
2 Gonzalez digresses and testifies that *he just recently received the Minute Order dated*
3 *February 19, 2016, that disclosed Timothy Sottile's campaign contribution to Judge Walsh's*
4 *campaign that exceeded \$100. (Ex. 60, Minute Order Disclosing Sottile's Donation over*
5 *\$100.) That he recently received documentation dated February 10, 2016, that was issued by*
6 *the Commission on Judicial Performance regarding the same type of failure to disclose*
7 *campaign contributions of more than \$100 dollars by an appearing attorney. Walsh said the*
8 *he knew nothing about "whatever Gonzalez was talking about" and that the contributions*
9 *had to be over \$1,500 for him to be obligated to report. Walsh told Gonzalez that he would*
10 *not be stepping down; Gonzalez asked Walsh why did the Judicial Counsel publicly*
11 *admonished him. (See Paragraphs 77-80 of Verified Statement.)*

12 Findings. At the outset, Gonzalez says nothing about Walsh's testimony that Mr. Fobi,
13 Gonzalez' attorney, made a \$300 contribution to his campaign as well. This Court finds
14 that any objective observer would conclude that that fact effectively neutralizes any claim
15 of bias. Furthermore, unaccountably, Gonzalez does not address or attempt to provide any
16 analysis of how CCP § 170.1 (9)(A) is significant in his case. Nor does he tell the Court how
17 the fact that there is an outstanding public reproof makes any difference. Moreover, this
18 Court cannot, on its own initiative, formulate any reason that those facts would justify
19 recusal. Thus we find that any average objective and informed observer on the street,
20 knowing all the facts, would NOT consider either "disclosure," or both together, the basis
21 for recusal.

22 *Turning to the Balance of the Verified Statement*

23 K. All of the facts leading up to this case demonstrate judicial impropriety. (*Paragraphs 81-*
24 *100 of Verified Statement.*)

25 Findings. This Court has already ruled on all of these claims which are simply recast using,
26 sometimes, different word-smithing.

27 L Disqualification of a judge occurs when the facts creating disqualification arise, not when
28 disqualification is established. (*Christie v. City of El Centro, supra*, 135 Ca1.App.4th at 780,
review denied.) This would mean that Judge Walsh was disqualified before he took the case
because the facts creating the disqualification (trusteeship - *Gavilan*) already had arisen

1 prior to his accepting appointment, not when the facts were discovered, and thus his
2 rulings are voidable on objection. (*Paragraphs 101 of Verified Statement.*)

3 **Finding. This claim is a conclusion based upon a history of the case which the Court has**
4 **rejected; it does not merit an additional response. This Court did not believe *Christie v. City***
5 **of *El Centro* (2006) 135 Cal.App.4th 767 was helpful [disqualification was mandated**
6 **because the objector defendant showed prejudice; the trial judge had communicated with**
7 **the original judge whom arrestee had challenged peremptorily; conversation was**
8 **improper.]**

9 M. Judge Walsh must declare a mistrial. (*Page 28 lines 9-19 of Verified Statement.*)

10 **Findings: There is no valid claim made; it is pure argument.**

11 N. The acts of a judge subject to disqualification are void or, according to some authorities,
12 voidable. (*Page 28 lines 19 through page 29 line 3 [end of declaration] of Verified Statement.*)

13 **Findings: There is no valid claim made; it is pure argument.**

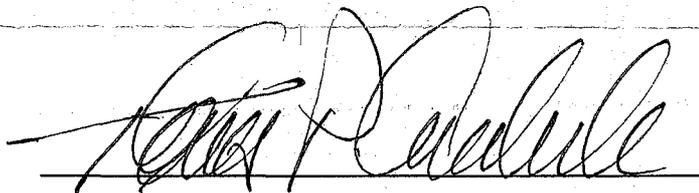
14 **Conclusions of Law**

15 A. There is insufficient evidence that the facts, as just disclosed by Walsh related to
16 campaign contributions and the public reproval letter, violated the appearance of the bias
17 or prejudice doctrines.

18 B. The burden of proving bias or prejudice is upon the complaining party and he has failed
19 to carry that burden.

20 C. This Court has viewed this matter through the eyes of an objective person and concludes
21 that *an objective reasonable person who knew all of the facts would not find there should be*
22 *disqualification in this case.*

23 Dated: April 11, 2016



24 Thomas P. Anderle
25 Superior Court Judge
26 County of Santa Barbara, California
27
28

SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

SHORT TITLE: COUNTY LINE HOLDINGS VS JAIME GONZALEZ	CASE NUMBER: 56-2013-00444799-CU-OR-VTA
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CLERK'S CERTIFICATE OF SERVICE BY MAIL

I certify that I am not a party to this cause. I certify that a true copy of Decision on the Second Motion for Disqualification was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at Ventura, California, on 04/18/2016.

Clerk of the Court,

By: Patti Morua-Widdows
Patti Morua-Widdows, Clerk

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