

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

AUG 05 2016  
Sherri R. Carter, Executive Officer/Clerk  
By Nancy Lee, Deputy

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

MARINA J. BOYD,  
Plaintiff,  
v.  
CITIMORTGAGE, INC. et al.,  
Defendants.

CASE NO. SC117126  
ORDER STRIKING STATEMENT  
OF DISQUALIFICATION

On May 26, 2016, Plaintiff filed a statement of disqualification for cause, contending that the undersigned judge is biased against her based on the fact that Plaintiff filed on May 24, 2016 a lawsuit against the undersigned judge in the U.S. District Court, Central District, Case No. CV-16-3631-R(AGR). The pleadings failed to disclose lawful grounds for disqualification and was therefore ordered stricken.

On July 28, 2016, Plaintiff filed a second statement of disqualification. The claimed basis for disqualification here is Plaintiff's dissatisfaction with the court's rulings. Again, the pleading discloses on its face no legal grounds for disqualification.

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 v. Superior Court* (1985) 170 Cal.App.3d 97, 104; *Stanford University v. Superior*

1 Court (1985) 173 Cal.App.3d 403, 408 ("the litigants' necessarily partisan views do not provide  
2 the applicable frame of reference.")

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

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

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

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

Verified Answer of Lisa Hart Cole

I, Lisa Hart Cole, declare:

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.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 5<sup>th</sup> day of August, 2016, at Santa Monica, California.

**LISA HART COLE**  
\_\_\_\_\_  
LISA HART COLE