FILED
09/10/2026
KIM TURNER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MENDOCINO
Munoz, Ashley
DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MENDOCINO

VINCENT MICHAEL HYLER,

Petitioner,

v.

CARLI MICHELLE HELLER,

Respondent.

Case No. 25FL01030 (consolidated with Case No. 25FL01032)

ORDER STRIKING RESPONDENT'S "VERIFIED STATEMENT OF DISQUALIFICATION AND MOTION TO DISQUALIFY JUDGE MCCURRY FOR CAUSE;"IN THE ALTERNATIVE, VERIFIED ANSWER OF JUDGE FREDRICCO MCCURRY

PROCEDURAL HISTORY[1]

On March 17, 2025, petitioner Vincent Michael Hyler filed a "Petition for Custody and Support of Minor Children" against respondent Carli Michelle Heller in the present case (hereinafter, "family law case"). On March 18, 2025, respondent filed a request for a domestic violence restraining order (hereinafter, "DVRO") against petitioner in *Heller v. Hyler*, Superior Court Case No. 25FL01032 (hereinafter, "DVRO case"). The Honorable Patrick Michael Pekin,

[1] The Procedural History only sets forth those pleadings, hearings, and orders relevant to respondent's challenge.

Judge of the Superior Court of California, County of Mendocino ("Judge Pekin"), was assigned to preside over both the DVRO and family law cases.

On March 20, 2025, a temporary restraining order was issued against petitioner Vincent Michael Hyler in the DVRO case. On July 3, 2025, the day set for the evidentiary hearing on the DVRO, the parties entered into a stipulated judgment in which the parties agreed to parentage, custody, visitation, relocation, mutual stay-away orders, and a dismissal of the entire DVRO case with prejudice. On February 11, 2026, Judge Pekin signed the Findings and Orders After Hearing (hereinafter, "FOAH"), which memorialized the stipulated agreement reached in the DVRO case on July 3, 2025, and attached a copy of the reporter's transcript of the stipulation. The FOAH was filed in both the DVRO and family law cases.

After Judge Pekin changed judicial assignments, the undersigned judicial officer was assigned to preside over the DVRO and family law cases. On April 8, 2026, the undersigned judicial officer ordered the two cases consolidated.

On May 26, 2026, the undersigned judicial officer presided over a status hearing. Both parties were represented by counsel. At the hearing, the undersigned judicial officer reminded the parties that the FOAH issued on February 11, 2026, contained the standing orders for the parties to follow.

On June 11, 2026, the undersigned judicial officer issued a temporary emergency order which set forth the date and time for petitioner to visit the minor, ordered respondent to pay for petitioner's airfare from California to Florida, and required respondent to provide the location of the exchange within 24 hours and produce the minor for petitioner's visitation.

On July 6, 2026, petitioner requested an order to show cause (hereinafter "OSC") regarding respondent's failure to comply with the Court's orders, including the order of June 11, 2026. On July 13, 2026, the Court issued the OSC and set the hearing for August 11, 2026. On August 10, 2026, respondent filed an ex parte application seeking a continuance of the OSC hearing.

On August 11, 2026, the undersigned judicial officer issued an order continuing the OSC hearing to August 28, 2026. On August 12, 2026, the undersigned judicial officer issued a

temporary emergency order and child abduction prevention order which, *inter alia*, ordered law enforcement to remove the minor child from respondent's custody.

On August 28, 2026, the undersigned judicial officer presided over the OSC hearing. Respondent appeared remotely. Respondent requested a continuance of the OSC. The undersigned judicial officer continued the OSC to September 2, 2026.

On August 31, 2026, respondent filed a "Verified Statement of Disqualification and Motion to Disqualify Judge McCurry for Cause" (hereinafter, "statement of disqualification"). In the statement of disqualification, respondent contends that the undersigned judicial officer cannot be fair and impartial. Respondent contends that the order to show cause issued on July 13, 2026, and the temporary emergency order of August 12, 2026, were erroneous and defective. Respondent contends that at the hearing on August 28, 2026, the undersigned judicial officer should have vacated the OSC instead of continuing the hearing to September 2, 2026. Respondent contends that a person aware of these purported facts would reasonably believe that the undersigned judicial officer would not be able to be impartial at the hearing on September 2, 2026.

THE STATEMENT OF DISQUALIFICATION FAILS TO STATE FACTS WHICH CONSTITUTE GROUNDS FOR DISQUALIFICATION

Respondent's statement of disqualification fails to state facts which constitute grounds for disqualification of the undersigned judicial officer pursuant to Code of Civil Procedure section 170.1. Where, as here, the statement of disqualification does not reveal any ground for disqualification on its face, the judge can strike the statement of disqualification. (Code Civ. Proc., §170.4(b); *Neblett v. Pacific Mutual Life Ins. Co.* (1943) 22 Cal.2d 393, 401.)

Code of Civil Procedure section 170.3(c)(1) requires that the statement of disqualification set forth *facts* which constitute grounds for the disqualification of the court. Mere allegations setting forth the conclusions of the declarant are insufficient. (*Ephraim v. Superior Court* (1941) 42 Cal.App.2d 578, 578-579; *Urias v. Harris Farms, Inc.* (1991) 234 Cal.App.3d 415, 426.) Respondent, as the party seeking the disqualification of the Court, has the burden of proof; and, in the absence of proof, the presumption is that no bias or prejudice exists. (*Betz v. Pankow* (1993) 16 Cal.App.4th 919, 926; *see also, Estate of Buchman* (1955) 132 Cal.App.2d 81, 104.) Indeed,

the party raising the issue of bias "has a heavy burden and must 'clearly' establish the appearance of bias." (*Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 391.)

Respondent did not meet her burden of proof. Respondent's subjective belief regarding bias 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 Court* (1985) 173 Cal.App.3d 403, 408 ("[T]he litigants' necessarily partisan views do not provide the applicable frame of reference.").) "In the context of judicial recusal, '[p]otential bias and prejudice must clearly be established by an objective standard.'" (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 389; *Roitz v. Coldwell Banker Residential Brokerage Co.* (1998) 62 Cal.App.4th 716, 724.) "[T]he partisan litigant emotionally involved in the controversy underlying the lawsuit is not the disinterested objective observer whose doubts concerning the judge's impartiality provide the governing standard." (*Haworth,* at p. 389.)

> Bias or prejudice consists of a 'mental attitude or disposition of the judge towards a party to the litigation . . .' (Citation.) In order for the judge to be disqualified, the prejudice must be against a particular party ... and sufficient to impair the judge's impartiality so that it appears probable that a fair trial cannot be held. (Citations.)

(*Ensher, Alexander & Barsoom, Inc. v. Ensher* (1964) 225 Cal.App.2d 318, 322-323; *see also*, *Flier v. Superior Court* (1994) 23 Cal.App.4th 165, 171.)

"To show bias or prejudice...there must be declarations showing indications of personal bias or the existence of some fixed anticipatory prejudgment." (*In re the Marriage of Fenton* (1982) 134 Cal.App.3d 451, 457.) In this case, respondent has not demonstrated that the undersigned judicial officer has a personal bias or a fixed anticipatory prejudgment of the issues in this case.

As stated in *People v. Ford* (1914) 25 Cal.App. 388, 395:

> It is not sufficient in a case of this kind, to allege in the affidavit simply that the defendant believes that he cannot have a fair and impartial trial, etc., but it must be made to appear by the affidavit or affidavits on file that a fair and impartial trial cannot be had before the judge about to try the case, by reason of the bias and prejudice of such judge. (Citation.) The affidavit or affidavits must not only state facts, but the facts stated must establish to the satisfaction of a reasonable mind that

> the judge has a bias or prejudice that will in all probability prevent him from dealing fairly with the defendant.

Respondent has not set forth facts which clearly establish that the undersigned judicial officer is biased against respondent and in favor of petitioner. Nor has respondent clearly established that a person aware of the facts might reasonably entertain a doubt that the undersigned judicial officer would be able to be fair and impartial in this case. The test for such a determination is an objective one, which asks "whether a reasonable member of the public at large, aware of all the facts, would fairly entertain doubts concerning the judge's impartiality." (*Briggs v. Superior Court* (2001) 87 Cal.App.4th 312, 319.)

> The 'reasonable person' is not someone who is 'hypersensitive or unduly suspicious,' but rather is a 'well-informed, thoughtful observer.' (Citation.) '[T]he partisan litigant emotionally involved in the controversy underlying the lawsuit is not the *disinterested objective observer* whose doubts concerning the judge's impartiality provide the governing standard.' (Citations.)

(*Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 391.)

The disinterested objective observer would not have doubts as to whether the undersigned judicial officer would be fair and impartial in this case because the present challenge is based entirely upon the Court's statements, decisions, and orders issued in the proceedings about the proceedings. Code of Civil Procedure section 170.2, subdivision (b), makes clear that it is not grounds for disqualification that a judge "[h]as in any capacity expressed a view on a legal or factual issue presented in the proceeding...."

> [O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.

(*Liteky v. United States* (1994) 510 U.S. 540, 555; *see also, Marr v. Southern California Gas Co.* (1925) 195 Cal. 352, 354.)

"[A] judge is not a mere umpire presiding over a contest of wits between professional opponents, but a judicial officer entrusted with the grave task of determining where justice lies under the law and the facts between the parties who have sought the protection of our courts.

Within reasonable limits, it is not only the right but the duty of a trial judge to clearly bring out the facts so that the important functions of his office may be fairly and justly performed." (*In re Dupont's Estate* (1943) 60 Cal.App.2d 276, 290.)

"These opinions and expressions thereof may be critical or disparaging to one party's position, but they are reached after a hearing in the performance of the judicial duty to decide the case, and do not constitute a ground for disqualification.'" (*Haldane v. Haldane,* (1965) 232 Cal.App.2d 393, 395.)

Moreover, "a trial court's numerous rulings against a party — even when erroneous — do not establish a charge of judicial bias, especially when they are subject to review." (*People v. Ng* (2022) 13 Cal.5th 448, 572; *Dietrich v. Litton Industries, Inc.* (1970) 12 Cal.App.3d 704, 719 ("[e]rroneous rulings against a litigant, even when numerous and continuous, do not establish a charge of bias and prejudice.").) In *McEwen v. Occidental Life Ins. Co.* (1916) 172 Cal. 6, the court stated that findings based upon evidence and argument officially presented can almost never constitute a valid basis for disqualification. A party's remedy for an erroneous ruling is not a motion to disqualify, but rather review by appeal or writ. (*Id.* at p. 11; *see also Ryan v. Welte* (1948) 87 Cal.App.2d 888, 893, "a wrong opinion on the law of a case does not disqualify a judge, nor is it evidence of bias or prejudice.".) Otherwise, "no judge who is reversed by a higher court on any ruling or decision would ever be qualified to proceed further in the particular case." (*Ryan v. Welte,* 87 Cal.App.2d at p. 893.) The proper remedy is an appeal from the erroneous ruling. (*Ibid.*)

As stated in *Liteky v. United States,* 510 U.S. at p. 555:

> [J]udicial rulings alone almost never constitute valid basis for a bias or partiality motion. (Citation.) In and of themselves ... they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required ... when no extrajudicial source is involved. Almost invariably, they are proper grounds for appeal, not for recusal.

In this case, if respondent believed that the Court's decisions and orders were erroneous, her remedy was to file an appeal or writ petition.

Code of Civil Procedure section 170 states that it is the duty of the judge to hear matters assigned to them.

> Judicial responsibility does not require shrinking every time an advocate asserts the objective and fair judge appears to be biased. The duty of a judge to sit where not disqualified is equally as strong as the duty not to sit when disqualified. (Citation.)

(*Briggs v. Superior Court* (2001) 87 Cal.App.4th 312, 319.)

Accordingly, because respondent's statement of disqualification, on its face, discloses no facts which constitute legal grounds for disqualification, it is ordered stricken pursuant to Code of Civil Procedure section 170.4, subdivision (b).

The parties are reminded that this determination of the question of disqualification is not an appealable order and may be reviewed only by a writ of mandate from the Court of Appeal sought within 10 days of notice to the parties of the decision. (Code Civ. Proc., § 170.3(d).) In the event that a timely writ is sought, and an appellate court determines that an answer should have been timely filed, such an answer is filed herewith.

GOOD CAUSE APPEARING THEREFORE, It is so ordered.

Date: September 10, 2026

FredRicco McCurry,
Judge of the Superior Court

VERIFIED ANSWER OF JUDGE FREDRICCO MCCURRY

I, FredRicco McCurry, declare as follows:

1. I am a Judge of the Superior Court of California, County of Mendocino. If called upon as a witness, I would competently testify to the matters stated herein.

2. On March 17, 2025, petitioner Vincent Michael Hyler filed a "Petition for Custody and Support of Minor Children" against respondent Carli Michelle Heller in the present case (hereinafter, "family law case"). On March 18, 2025, respondent filed a request for a domestic violence restraining order (hereinafter, "DVRO") against petitioner in *Heller v. Hyler*, Superior Court Case No. 25FL01032 (hereinafter, "DVRO case"). The Honorable Patrick Michael Pekin, Judge of the Superior Court of California, County of Mendocino ("Judge Pekin"), was assigned to preside over both the DVRO and family law cases.

3. On March 20, 2025, a temporary restraining order was issued against petitioner Vincent Michael Hyler in the DVRO case. On July 3, 2025, the day set for the evidentiary hearing on the DVRO, the parties entered into a stipulated judgment in which the parties agreed to parentage, custody, visitation, relocation, mutual stay-away orders, and a dismissal of the entire DVRO case with prejudice. On February 11, 2026, Judge Pekin signed the Findings and Orders After Hearing (hereinafter, "FOAH"), which memorialized the stipulated agreement reached in the DVRO case on July 3, 2025, and attached a copy of the reporter's transcript of the stipulation. The FOAH was filed in both the DVRO and family law cases.

4. After Judge Pekin changed judicial assignments, I was assigned to preside over the DVRO and family law cases. On April 8, 2026, I ordered the two cases consolidated.

5. On May 26, 2026, I presided over a status hearing. Both parties were represented by counsel. At the hearing, I reminded the parties that the FOAH issued on February 11, 2026, contained the standing orders for the parties to follow in both cases.

6. On June 11, 2026, I issued a temporary emergency order which set forth the date and time for petitioner to visit the minor, ordered respondent to pay for petitioner's airfare from California to Florida, and required respondent to provide the location of the exchange within 24 hours and produce the minor for petitioner's visitation.

7. On July 6, 2026, petitioner requested an order to show cause (hereinafter "OSC") regarding respondent's failure to comply with the Court's orders, including the order of June 11, 2026. On July 13, 2026, I issued the OSC and set the hearing for August 11, 2026. On August 10, 2026, respondent filed an ex parte application seeking a continuance of the OSC hearing. On August 11, 2026, I issued an order continuing the OSC hearing to August 28, 2026.

8. On August 12, 2026, I issued a temporary emergency order and child abduction prevention order which, *inter alia*, ordered law enforcement to remove the minor child from respondent's custody.

9. On August 28, 2026, I presided over the continued OSC hearing. Respondent appeared remotely. Respondent requested a continuance of the OSC. I continued the OSC to September 2, 2026.

10. On August 31, 2026, respondent filed a "Verified Statement of Disqualification and Motion to Disqualify Judge McCurry for Cause" (hereinafter, "statement of disqualification"). In the statement of disqualification, respondent contends that I cannot be fair and impartial. Respondent contends that the order to show cause issued on July 13, 2026, and the temporary emergency order of August 12, 2026, were erroneously issued and defective. Respondent contends that at the hearing on August 28, 2026, I should have vacated the OSC instead of continuing the hearing to September 2, 2026. Respondent contends that a person aware of these purported facts would reasonably believe that I would not be able to be impartial at the hearing on September 2, 2026.

11. I deny respondent's claims. I deny respondent's claim that I am biased in this case. I deny respondent's claim that a person aware of the facts might reasonably entertain a doubt that I would be able to be impartial. I deny that any ground for my disqualification exists. I am not biased or prejudiced against or in favor of respondent Carli Michelle Heller. I am not biased or prejudiced against or in favor of petitioner Vincent Michael Hyler. I am not biased or prejudiced against or in favor of any party or attorney in this case. I know of no reason why I cannot be fair and impartial in this case.

12. I deny respondent's claim that my statements, decisions, and rulings issued in this case were the product of bias. All rulings made by me were based upon the facts and arguments presented to me, upon my understanding of the law, and my experience in handling similar cases. My statements and rulings are set forth in the records and in the files herein, which are the best evidence thereof. To the extent the moving party's statement of my statements and rulings are inconsistent therewith, they are denied.

13. All statements made, and all actions taken, by me in this case were in furtherance of what I believe were my judicial duties.

14. I am not now, nor have I ever been, predisposed to rule in any particular manner in this case.

15. I know of no facts or circumstances which would require my disqualification or recusal in this case.

16. I do not believe that my recusal would serve the interests of justice.

I declare under penalty of perjury that the foregoing is true and correct.

Executed September 10, 2026, in Mendocino County, California.

FredRicco McCurry,
Judge of the Superior Court

Superior Court of California, County of Mendocino

PROOF OF SERVICE

Case: **25FL01030** **HYLER, VINCENT MICHAEL VS HELLER, CARLI**

Document Served: **ORDER STRIKING RESPONDENT'S "VERIFIED STATEMENT OF DISQUALIFICATION AND MOTION TO DISQUALIFY JUDGE MCCURRY FOR CAUSE;" IN THE ALTERNATIVE, VERIFIED ANSWER OF JUDGE FREDRICCO MCCURRY**

I declare that I am employed by the Superior Court of California, in and for the County of Mendocino; I am over eighteen years of age and not a party to the within action. My business address is:

- ☒ Mendocino County Courthouse, 100 North State Street, Ukiah, CA 95482
- ☐ Ten Mile Branch, 700 South Franklin Street, Fort Bragg, CA 95437

I am familiar with the Superior Court of Mendocino County's practice whereby each document is placed in the Attorneys' boxes, located in Room 107 of the Mendocino County Courthouse or at the Ten Mile Branch, transmitted by e-mail, and/or placed in an envelope that is sealed with appropriate postage is placed thereon and placed in the appropriate mail receptacle which is deposited in a U.S. mailbox at or before the close of the business day.

On the date of the declaration, I served copies of the attached document(s) on the below listed party(s) by placing or transmitting a true copy thereof to the party(s) in the manner indicated below.

Party Served	Ukiah US Mail	Ten Mile US Mail	Ukiah Attorney Box	Ten Mile Attorney Box	Inter Office Mail	Fax	E-mail
Attorney for Petitioner Kali Perkins 125 E. Mill St. UKIAH, CA 95482 kali@perkins-familylaw.com	☒	☐	☐	☐	☐	☐	☒
Respondent Carli Heller hellercwp@gmail.com	☐	☐	☐	☐	☐	☐	☒

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed at:

☒ Ukiah, California ☐ Fort Bragg, California

Date: September 10, 2026

KIM TURNER, Clerk of the Court

By: Ashley Munoz, Deputy Clerk