

FILED

LOS ANGELES SUPERIOR COURT

JAN 09 2009

JOHN A. CLARKE, CLERK

BY *B. Long*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

ROMAN RAYMOND POLANSKI

Defendant

CASE NO. A334139

ORDER STRIKING STATEMENT
OF DISQUALIFICATION

The Court has read and considered the defendant's "Verified Statement of Counsel re: Disqualification of the Los Angeles Superior Court Pursuant to CCP Section 170.1; Request for Reference to the California Judicial Council Pursuant to CCP Section 170.3" filed January 5, 2009 with the attached points and authorities and declaration. As the pleading demonstrates on its face no legal grounds for disqualification, it is stricken pursuant to Code of Civil Procedure §170.4, subdivision (b).

The record in this case reflects that on August 8, 1977, the defendant pleaded guilty to Penal Code section 261.5, a felony, for having unlawful sexual intercourse with a minor. The record further reflects that on February 1, 1977, prior to being sentenced, the defendant failed to appear in court and a bench warrant was issued for his arrest. The defendant reportedly left the United States, and the bench warrant remains in full force and effect.

1 On December 2, 2008, counsel for defendant filed a pleading pursuant to Penal Code
2 section 1385, to dismiss the prosecution. The matter is set to be heard by the undersigned, and a
3 hearing is set for January 21, 2009.

4 On January 5, 2009, counsel for defendant filed a verified statement of disqualification
5 seeking the disqualification of all of the judges of the Los Angeles Superior Court. Under the
6 practice of the Los Angeles Superior Court, a statement of disqualification is first considered by
7 the judge to whom the matter is assigned. If that judge determines himself or herself
8 disqualified, the matter is referred to the Supervising Judge of the District where the case is
9 pending to determine if there is another judge of the District to whom the case can be assigned.
0 If there is no other judge who may hear the matter in the District, it is referred to the Supervising
1 Judge of the Division, to determine if a judge from another District may hear the matter. If there
2 is no judge in the Division who may hear it, the matter is referred to the Presiding Judge of the
3 Court to determine whether there is any judge of the court can hear the matter, or whether the
4 matter must be referred for assignment to a judge of court from another county. When a judge
5 from another county is assigned to hear the matter, that judge is assigned to hear the matter as a
6 judge of the Los Angeles Superior Court.

7 Rarely is disqualification of the entire court required, as the court is comprised of almost
8 600 judicial officers, presiding in twelve districts involving more than 50 courthouses spread out
9 over the 4,000 square miles of the County of Los Angeles. Only in an extremely rare instance
0 could it be possible to find that no judge of the Los Angeles Superior Court could be found to
1 preside at the matter. This is particularly true in light of the fact that any judge assigned from the
2 court of another county would preside at the matter as a judge of the Los Angeles Superior
3 Court.

4 In this case counsel for defendant seeks disqualification because he contends that a judge
5 of the Los Angeles Superior Court, Judge Larry Fidler, has personal knowledge of disputed
6 evidentiary facts within the meaning of Code of Civil Procedure section 170.1(a)(1)(A),
7 concerning statements made during 1997 negotiations about the case and concerning Mr.
8 Polanski's counsel. The defendant also alleges as a basis for disqualification that statements

1 made by the court's Public Information Director constitute a predetermination of the case with
2 regard to the issue of whether Mr. Polanski must be present for a hearing, such that a person
3 aware of the facts might reasonably entertain a doubt that the judge would be able to be
4 impartial.

5 First, Code of Civil Procedure section 170.1(a)(1)(A), is applicable. That section
6 provides:

7 “(a) A judge shall be disqualified if any one or more of the following is true:

8 “(1)(A) The judge has personal knowledge of disputed evidentiary facts
9 concerning the proceeding.

10 (B) A judge shall be deemed to have personal knowledge within the
11 meaning of this paragraph if the judge, or the spouse of the judge
12 or a person within the third degree of relationship to either of
13 them, or the spouse of such a person is to the judge's knowledge
14 likely to be a material witness in the proceeding.”

15 The allegation here is that Judge Fidler has personal knowledge. There is no specific
16 argument as to Judge Espinoza, the undersigned, who will hear the motion. Nor is there any
17 evidence that Judge Fidler is a person within the third degree of relationship to either Judge
18 Espinoza or his spouse. The fact that a judge of the court is a witness in the proceeding is not
19 alone disqualifying given the size and diversity of the court. The Legislature has set forth the
20 circumstances in which a judge's potential role as witness in the case would be disqualifying.
21 The Legislature did not include, among the disqualifying circumstances, a situation where a
22 judge not presiding over the case may be a witness. Accordingly, the court finds that it is not
23 disqualifying as a matter of law. No facts have been alleged that would indicate that the
24 relationship between the undersigned and any other judge is anything other than professional.
25 In fact, the undersigned, as Supervising Judge of the Criminal Division, may be required to hear
26 certain habeas corpus matters requiring evidentiary hearings in cases pending before other judges
27 of the court and which involve the actions and rulings of those judges. Local Rule 2.5(a)(2).
28 The present matter is similar in nature to such proceedings.

1 Nor is the action of court staff grounds for disqualification. If court staff has engaged in
2 conduct that would be disqualifying, it is the staff that is disqualified, not the judge. *See, e.g.,*
3 *Hunt v. American Bank & Trust Co. Of Baton rouge, Louisiana* (11th Cir. 1986) 783 F.2d 1011,
4 1016.¹ The Public Information Director does not act in the capacity of law clerk or advisor
5 concerning how a case should be decided.

6 The Los Angeles Superior Court frequently has cases which are the subject of great
7 public interest and in some cases intense media scrutiny. The court's Public Information
8 Director is responsible, among other things, for coordinating and assisting judges with regard to
9 media requests to photograph, record, or broadcast proceedings pursuant to California Rule of
10 Court 1.150. In addition, in cases concerning high public and media interest, the Public
11 Information Director assists the judge in ensuring that adequate public and media access is
12 provided to publicly available documents and information, but not to sealed documents or
13 information that the judge has determined should not be publicly disclosed.

14 Although judges are generally prohibited from communicating publicly about pending
15 cases, these ethical rules do not prohibit a judge or the court from making statements in the
16 course of their official duties, explaining for public information the procedures of the court, or
17 facilitating public and press access to public documents and information. Code of Judicial
18 Ethics, Canon 3B(9). Nor do these rules prohibit a judge or the court from repeating outside of
19 the courtroom what a judge stated in the courtroom, what is contained in public case files, or
20 contained in the public record of the proceedings. California Judicial Conduct Handbook
21 (Rothman, 3rd ed.) §5.33. In this context a judge and the court can provide background
22 information helpful to public understanding of legal issues, explanations of the law, and
23 distribution of information to the press. *Id.*, §534.

24 In fact, it is part of judicial duties to promote public understanding of the administration
25 of justice. In order to increase public understanding of the court system, judges help to create

27 ¹"We may profitably look to federal cases, interpreting [the federal statute, 28 U.S.C.
28 §455(a)] for guidance in distilling some basic principals." *United Farm Workers of America v.*
Superior Court (1985) 170 Cal.App.3d 97, 103-104.

1 local mechanisms for obtaining information from the public and to provide information
2 responsive to the public's needs. Public trials and open court records are a fundamental aspect of
3 our court system. Both civil and criminal trial proceedings and court records are open to the
4 public unless specifically made confidential by law, or unless the court makes specific findings.
5 California Rules of Court 243.1, 243.2, based upon *NBC Subsidiary (KNBC-TV), Inc. v. Superior*
6 *Court (Locke)* (1999) 20 Cal.4th 1178. Court records are presumptively open to the public. In
7 this context, court record means "all or a portion of any document, paper, exhibit, transcript, or
8 other thing filed or lodged with the court." California Rule of Court 243.1. *See also, Copley*
9 *Press, Inc. v. Superior Court* (1992) 6 Cal.App.4th 106 (as to what court records the public has a
10 common law right of access).

1 The Public Information Director is an aid to ensure that these important rights of public
2 and press access to the court records and proceedings are made available. In cases with high
3 public interest, the Public Information Director plays a particularly important role in assisting in
4 access to public information about the case. In this matter, there is an outstanding arrest warrant
5 that requires the defendant's presence in court. This reflects the order of the judge who issued
6 the bench warrant. Additionally, Penal Code section 977, subsection (b)(1) states in its entirety,

7 "In all cases in which a felony is charged, the accused shall be present at the arraignment,
8 at the time of plea, during the preliminary hearing, during those portions of the trial when
9 evidence is taken before the trier of fact, and at the time of the imposition of sentence.
10 *The accused shall be personally present at all other proceedings unless he or she shall,*
1 *with leave of court, execute in open court, a written waiver of his or her right to be*
2 *personally present, as provided by paragraph (2). If the accused agrees, the initial court*
3 *appearance, arraignment, and plea may be by video, as provided by subdivision (c)."* Pen.
4 Code section 977(b)(1), (*emphasis added*).

5 In this context, there is a basis for the Court's Public Information Director to advise the
6 public of the outstanding arrest warrant and the general statutory requirement in felony cases.
7 That the defendant contends that the Court's Public Information Director inartfully,
8 inappropriately, or even incorrectly provided this information to the public, does not, as a matter
9 of law, provide the basis for disqualification of the judge who has not publicly or otherwise
10 made a ruling or determination of the matter. No admissible evidence has been provided that
would support any contrary contention. In this regard, the statement is based upon the

1 complaining party's opinion, speculation, and inadmissible evidence. The pleading
2 demonstrates on its face no legal grounds for disqualification.

3 Further, a party's belief as to a judge's bias and prejudice is irrelevant and not controlling
4 in a motion to disqualify for cause, as the test applied is an objective one. *United Farm Workers*
5 *of America v. Superior Court* (1985) 170 Cal.App.3d 97, 104; *Stanford University v. Superior*
6 *Court* (1985) 173 Cal.App.3d 403, 408 ("the litigants' necessarily partisan views do not provide
7 the applicable frame of reference"). Code of Civil Procedure §170.3(c)(1) requires that the
8 disqualification statement set forth "the facts constituting the grounds" for disqualification of the
9 judge. Mere conclusions of the pleader are insufficient. *In re Morelli* (1970) 11 Cal.App.3d
10 819, 843; *Urias v. Harris Farms, Inc.* (1991) 234 Cal.App.3d 415, 426.

11 The statement of disqualification cannot be based upon information and belief, hearsay,
12 or other inadmissible evidence. See *United Farm Workers of America, AFL-CIO v. Superior*
13 *Court* (1985) 170 Cal.App.3d 97, note 6 at 106 (disqualification cannot be based upon hearsay or
14 other inadmissible evidence). Cf., *Anastos v. Lee* (2004) 118 Cal.App.4th 1314, 1319
15 (declarations in support of a Code of Civil Procedure section 473 motion must include proper
16 foundation, i.e., personal knowledge.)

17 The objective reasonable person test requires consideration of the facts from the
18 standpoint of a "well-informed, thoughtful, and objective observer," and not that of a
19 "hypersensitive, cynical, and suspicious person." *United States v. Jordan* (5th Cir. 1995) 49 F.3d
20 152, 156. Based upon the admissible evidence provided, the court finds, as a matter of law, there
21 is no basis for disqualification under Code of Civil Procedure section 170.1(a)(6)(iii).

22 Even if the statements of the Public Information Director could somehow be attributed to
23 the undersigned, Code of Civil Procedure section 170.2, enacted after the older cases cited by
24 counsel for defendant, provides with certain exceptions not here applicable:

25 "It shall not be grounds for disqualification that the judge:

26 * * * *

27 (b) Has in any capacity expressed a view on a legal or factual issue presented in the
28 proceeding...."

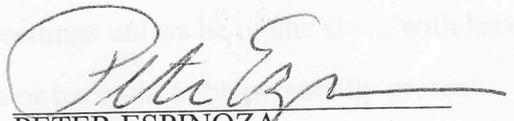
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Conclusion

Since the statement of disqualification on its face discloses no legal grounds for disqualification, it is ordered stricken pursuant to Code of Civil Procedure §170.4, subdivision (b). The parties are reminded that this determination of the question of the 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 of Civil Procedure §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. *See PBA, LLC v. KPOD LTD* (2003) 112 Cal.App.4th 965, 972; *accord, Fine v. Superior Court* (2002) 97 Cal.App.4th 651, fn. 3 at 658.

GOOD CAUSE APPEARING THEREFORE, it is so ordered.

January 9, 2009


PETER ESPINOZA
Judge of the Superior Court



Verified Answer of Peter Espinoza

I, Peter Espinoza, 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. I have not yet decided or prejudged any of the issues presented by counsel for defendant's motion pending before me.

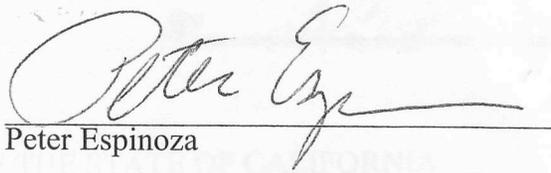
3. I have worked with the Court's Public Information Director with regard to trying to locate or reconstruct the file in this old case which he reported was missing. I did advise him that I was unaware of anything in the record that changed the outstanding arrest warrant that required the defendant to be present in court or the positions, if any, of judges who had earlier presided in this matter concerning whether the defendant is required to be present in court. I am aware of the general statutory requirement of Penal Code section 977(b)(1), which requires the accused to be personally present at most court proceedings unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present. However, I am unaware of any request for such leave of court that has been made to me or that has been granted by any other judicial officer presiding in this matter. I am also aware of California Common Law set forth in the prosecutor's opposition to counsel for defendant's motion that is pending before me, but have not yet decided how either Penal Code section 977(b)(1) or that Common Law should be applied to the circumstances of this case.

4. I have had no ex parte communications with any prosecutors concerning this case. I do not believe that I have had any conversations with any other judges who have presided in this matter concerning the merits of this case, although I regularly have conversations with my colleagues, as I am the Supervising Judge of the Criminal Division, and sometimes seek assistance and advice from other judges as is permitted by the Code of Judicial Ethics.

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 and of my own

1 personal knowledge, except as to those matters stated to be on my information and belief, and as
2 to those matters, I believe them to be true. Executed this 9th day of January, 2009, at Los
3 Angeles, California.

4
5
6 
7 Peter Espinoza

