

FILED
NOV 14 2017
Clerk of the Court
Superior Court of Santa Clara
BY B. FARAONE DEPUTY

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

THE PEOPLE OF THE STATE OF CALIFORNIA,)
) Case No. 213515
)
) Plaintiff,)
)
 vs.) **ORDER RE THE CCP 170.1**
) **CHALLENGE TO THE HONORABLE**
 ANTOLIN GARCIA-TORRES,) **VANESSA ZECHER**
)
) Defendant.)
)

On September 14, 2017, Defendant Antolin Garcia-Torres (“Garcia-Torres”) filed “Judicial Challenge CCP Section 170.3” objecting to the Honorable Vanessa A. Zecher hearing any motions in the above-captioned case (“Case”). The court treats this as a challenge pursuant to Code of Civil Procedure section 170.1. The grounds alleged are: the judge “served as a lawyer for a party in the present proceeding” (Code Civ. Proc., § 170.1(a)(2)(A)); and “a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.” (Code Civ. Proc., § 170.1(a)(6)(A)(iii)) (“Challenge”).

1 In Assignment Order 1052970-17, the Chief Justice of the State of California and
2 Chairperson of the Judicial Council assigned Judge Jeffrey S. Ross, Judge of the Superior Court
3 of California, City and County of San Francisco, to sit as a Judge of the Superior Court of
4 California, County of Santa Clara, under Code of Civil Procedure section 170.3(c)(1) to hear the
5 Challenge.

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7 The Challenge is based exclusively on Judge Zecher's employment—27 years ago— as
8 Santa Clara County Deputy County Counsel when she represented the County of Santa Clara and
9 its agencies. In that capacity, she represented the Santa Clara County Sheriff's Department and
10 fourteen of its employees, including Herman Leon ("Leon"), in a civil case: *John and Elsie*
11 *Leonti vs. County of Santa Clara, et al.* Case No. 691074 ("Leonti Case"). The Challenge
12 alleges that Judge Zecher should be disqualified from hearing the post-trial motions and any
13 further role in the Case because she handled the Leonti case, where Leon was a named
14 defendant, and because Leon is the lead detective and investigating officer in this case.

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16 After considering the Challenge, supporting exhibits, arguments, and applicable law, the
17 Challenge is DENIED. The evidence does not demonstrate that a reasonable person aware of all
18 the facts might entertain a doubt that the judge would be able to be impartial or that there was
19 bias against or prejudice to a party or lawyer in the proceeding.

20
21 **A. PROCEDURAL BACKGROUND**

22 Garcia-Torres was charged with and convicted of murder after a jury trial in which the
23 Honorable Vanessa Zecher was the trial judge. Garcia-Torres filed a post-trial discovery motion
24 and motion for a new trial, both of which allege misconduct by Leon related to alleged
25 misconduct in this case as well as his conduct in a different case, that counsel was unaware of at
26 the time of trial. On September 14, 2017, Garcia-Torres filed "Judicial Challenge CCP Section
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1 170.3” and, on September 18, 2017, he filed the “Supplemental Verified Statement Regarding
2 Challenge Pursuant to CCP § 170.3”, which asked the court to take judicial notice of the
3 pleadings and motions in the Case (“Case Motions”) and the contents of the Leonti Case court
4 file (“Leonti File”) (collectively the “Additional Exhibits”).

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6 Upon assignment, the following documents were provided to the reviewing judge by the
7 Clerk of the Superior Court, County of Santa Clara:

- 8 1. Judicial Challenge CCP Section 170.3;
- 9 2. Supplemental Verified Statement Regarding Challenge Pursuant to CCP § 170.3;
- 10 3. Verified Answer of Judge Vanessa A. Zecher to Defendants “Judicial Challenge
11 CCP Section 170.3” and “Supplemental Verified Statement Regarding Challenge
12 Pursuant to CCP § 170.3” Memorandum of Points and Authorities; and
- 13 4. Reply to Verified Answer to Judicial Challenge Pursuant to CCP Section 170.3.

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15 Upon review of those documents, the court issued two orders. The first, issued October
16 19, 2017, directed Garcia-Torres to comply with California Rules of Court, Rule 3.1306(c) by
17 delivering copies of the Case Motions and Leonti File to the court and all parties; he complied by
18 delivering the Additional Documents. The second, issued October 31, 2017, ordered the People
19 and counsel for Judge Zecher to file any response to the Additional Exhibits by November 7,
20 2017; both counsel advised Garcia-Torres and the court that no further response would be filed.

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22 In response to the court’s order, Garcia-Torres provided the Leonti File which included
23 not only the select documents to be judicially noticed, but the entire Clerk’s record in the Leonti
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1 Case¹. The court takes judicial notice of and has read the entire Clerk's record in the Leonti
2 Case.

3 The court took the matter under submission on November 7, 2017.

4 **B. APPLICABLE LAW**

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6 1. *Challenges for Cause*

7 A judge shall be disqualified if, for any reason, a person aware of the facts might
8 reasonably entertain a doubt that the judge would be able to be impartial. (Code Civ. Proc., §
9 170.1,(a)(6)(A)(iii).) The standard for disqualification of a judge for impartiality is
10 fundamentally an objective one, and not limited to actual bias. (40 CALIFORNIA JURISPRUDENCE
11 3d, Judges, § 77, citing *Christie v. City of El Centro* (2006) 135 Cal.App.4th 767, 776.) For
12 purposes of judicial disqualification, impartiality entails the absence of bias or prejudice in favor
13 of, or against, particular parties or classes of parties, as well as maintenance of an open mind.
14 (*Ibid.*, citing *Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 390–1.)

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16 Bias or prejudice by a judge toward a lawyer in the proceeding also may be grounds for
17 disqualification. (Code Civ. Proc., § 170.1,(a)(6)(B).) However,

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19 [A] party raising the issue has a heavy burden and must clearly establish
20 the appearance of bias. [T]he appearance-of-partiality standard must not
21 be so broadly construed that it becomes, in effect, presumptive, so that
22 recusal is mandated upon the merest unsubstantiated suggestion of
23 personal bias or prejudice. A judge...has a duty to decide any proceeding
24 in which he or she is not disqualified. Judicial responsibility does not
25 require shrinking every time an advocate asserts the objective and fair
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28 ¹ These documents are captioned "BATES: CCP 170.1/170.3 Jud. Notice Docs." Hereinafter, they will be referred to
individually as "Bates ___"

1 judge *appears* to be biased. The duty of a judge to sit where not
2 disqualified is equally as strong as the duty not to sit when disqualified.

3 (*Wechsler, supra*, 224 Cal.App.4th at p. 391 [internal citations and quotations omitted]).

4 2. *Discretion to Hold Evidentiary Hearings*

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6 “The judge deciding the question of disqualification may decide the question on the basis
7 of the statement of disqualification and answer and any written arguments as the judge requests,
8 or the judge may set the matter for hearing as promptly as practicable.” (Code Civ. Proc., §
9 170.3(c)(6).) If a hearing is ordered, the judge shall permit the parties and the judge alleged to
10 be disqualified to argue the question of disqualification and shall for good cause shown hear
11 evidence on any disputed issue of fact. (*Ibid.*) While the challenged judge and all parties must
12 be served with the statement of disqualification, the matter need not be set for hearing. (*Urias v.*
13 *Harris Farms, Inc.* (1991) 234 Cal.App.3d 415, 422, citing Code Civ. Proc., § 170.3(c)(6).)
14 Moreover, while the judge determining the issue may request argument or evidence from the
15 other parties, he or she is not obligated to do so. (*Ibid.*)

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17 Here, no party requested a hearing. The court decided the Challenge on the parties’
18 briefs, the declarations, and the records, of which it took judicial notice, as requested by Garcia-
19 Torres.

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21 **C. Garcia-Torres’s Claims**

22 It is undisputed that Judge Zecher was employed as Deputy County Counsel in the Santa
23 Clara County Counsel’s Office from 1990-1991. In that capacity, she represented the County
24 of Santa Clara, the Santa Clara County Sheriff’s Department, and fourteen individually-named
25 employees of the Sheriff’s Department as defendants in the case, *Leonti v. County of Santa*
26 *Clara*. One of those employees was Leon, the lead investigating detective in this case, which
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1 involves the disappearance of the victim, Sierra La Mar, and the subsequent prosecution of
2 Garcia-Torres for her murder. In her capacity as a Deputy County Counsel, Judge Zecher filed an
3 answer and a cross-complaint on behalf of those defendants and ultimately consummated the
4 settlement in which the County of Santa Clara paid plaintiffs \$650,000. The complaint as to the
5 defendants she represented was dismissed with prejudice.

6
7 Garcia-Torres contends that, due to her representation of Leon, Judge Zecher should not
8 decide the Case Motions and that she should be disqualified on two grounds: the judge “served
9 as a lawyer for a party in the present proceeding” (Code Civ. Proc., § 170.1.(a)(2)(A)); and “a
10 person aware of the facts might reasonably entertain a doubt that the judge would be able to be
11 impartial.” (Code Civ. Proc., § 170.1.(a)(6)(A)(iii)) (the “Challenge”).

12
13 The Challenge contends that, having represented Leon as a defendant 27 years ago, Judge
14 Zecher should be disqualified from hearing and deciding the Case Motions which focus on
15 Leon’s wrongful conduct in the Case. The Case Motions allege misconduct by Leon in the
16 investigation of Sierra Lamar’s murder—specifically regarding “Item 16,” an envelope of her
17 hair samples—and his false testimony regarding the hair samples. Garcia-Torres seeks *Pitchess*
18 discovery about Leon and a New Trial.

19
20 The Leonti file includes Sergeant Laurie Smith’s Report of the circumstances of the
21 unintended death of Jeffrey Michael Leonti (Leonti’s) on May 24, 1989 after having been
22 subdued with a Taser while in the Sheriff’s custody. (Bates 618-660) Sergeant Smith’s report
23 chronicles the events from Leonti’s arrest by City of Santa Clara Police to his detention, strip
24 search, the use of the Taser, and, ultimately, his death. She interviewed the following witnesses
25 and summarized their statements:
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- 1 ○ Nancy Kahn, who called Santa Clara Police on May 24, 989 to report Leonti's
- 2 conduct, which lead to his arrest (Bates 644-5)
- 3 ○ Sergeants Mark Kerby, Officer Michael Hayes and Police Officer Jack Soderholm
- 4 (Bates 646-9)
- 5
- 6 ○ Police Officer Dale Little (Bates 650-4)
- 7 ○ Correctional Officer David Gonzales (Bates 655-660)

8 Notably, there is no evidence that Sergeant Smith interviewed Leon.

9 Sergeant Smith's report describes Leon's role as one of three officers on duty at the Santa
10 Clara County Jail safety cell when Leonti was brought there during his detention. (Bates 625).

11 The totality of his involvement is summarized as follows:

12 Initially, Leon stood outside the safety cell after Leonti entered it, but later entered to
13 assist the officers. (Bates 626-7). When Leonti was resisting the officers' efforts to conduct a
14 strip search, "Officer Leon assisted Officer Masarweh in holding the subject's legs." (Bates 628).
15 In response to Leonti's resistance, Deputy Lemmon applied the Taser twice to subdue him.
16 "Officer Masarweh and Officer Leon attempted to hold the subject's legs." (Bates 629) After
17 Leonti became calm, "Officer Leon and Deputy Sorenson returned to their assigned duty
18 positions." (Bates 632) When it was determined that Leonti required medical care at Valley
19 Medical Center, "Officer Leon was called and told to bring clothing to the safety cell for the
20 subject because he was going to be transported to the hospital." (Bates 633). After Leonti
21 departed for the hospital, "Officer Leon returned to his assigned duty station." (Bates 635).

22 **D. Analysis**

23 The first claim—that the judge “served as a lawyer for a party in the present proceeding”
24 (Code Civ. Proc., § 170.1(a)(2)(A)) —is quickly resolved. Leon is not a party in the present
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1 proceeding. Judge Zecher served as a lawyer for a public agency and was not in private practice;
2 therefore Code of Civil Procedure section 170.1(a)(2)(B) is inapplicable. She was employed as a
3 lawyer for the Santa Clara County, Office of the County Counsel, representing Santa Clara
4 County and the Santa Clara County Sheriff, neither of which is a party to the proceeding.

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6 Therefore, the Challenge as to the first ground is denied.

7 The second claim—"a person aware of the facts might reasonably entertain a doubt that
8 the judge would be able to be impartial" (Code Civ. Proc., § 170.1(a)(6)(A)(iii))—requires an
9 understanding of all of the facts, some of which are contained in the Additional Documents, but
10 not discussed by the parties. "[I]f a fully informed, reasonable member of the public would fairly
11 entertain doubts that the judge is impartial, the judge should be disqualified." (*Wechsler, supra*,
12 224 Cal.App.4th at p. 391) The "reasonable person" is not someone who is "hypersensitive or
13 unduly suspicious," but rather a "well-informed, thoughtful observer." (*Ibid.*) The analysis also
14 presumes that the objective layperson is fully informed of all relevant facts. (*Id.* at p. 392.)

15
16 Therefore the court reviewed the entire Leonti File which demonstrates the very limited
17 role that Leon is alleged to have played in the events which lead to the death of Jeffrey Michael
18 Leonti, while in the Sheriff's custody on May 24, 1989. Sergeant Smith's detailed report
19 itemized the role of each participant. Each statement that mentions Leon is quoted above. He did
20 not subdue Leonti. He did not make the decision to conduct the strip search. He did not make the
21 decision to administer the Taser, nor did he administer it to Leonti. His only role was to hold
22 Leonti's legs briefly while other deputy sheriffs attempted to conduct a search incident to his
23 admission to the jail and another deputy administered the Taser. He was just one of fourteen
24 Santa Clara County Sheriff Department employees, and—as evidenced by the few statements
25 about him—he was one of the participants who had very limited contact with Leonti.
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1 Judge Zecher's declaration under penalty of perjury states: "Although I do recall,
2 generally, the *Leonti* case, I had no recollection that Sergeant Leon was a County employee
3 named in that case prior to the time that defense counsel showed me the pleadings from the
4 *Leonti v. County of Santa Clara* case which named Herman Leon as a defendant. . . . I do not
5
6 have any specific recollection of any factual claim against him. Rather, what I generally recall is
7 that plaintiffs' claims in the *Leonti* case were primarily focused on another named defendant."
8 Judge Zecher denies that she is biased or prejudiced against or in favor of the defendant, any
9 party or any attorney in the proceeding.

10 Garcia-Torres has not met the heavy burden required to establish the appearance of bias.
11 (See *Haworth, supra*, 50 Cal.4th at p. 389). In light of Leon's *de minimis* role in the *Leonti*
12 Case—one of fourteen Sheriff's Department employees in a case in which she represented the
13 County and the Sheriff's Department for approximately one year, 27 years ago—a fully
14 informed, reasonable member of the public would not entertain doubts that Judge Zecher is
15 impartial.
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18 **E. Conclusion**

19 A judge deciding a challenge is mindful of the critical importance of "the appearance of
20 objectivity of the decision maker" and that a determination on a challenge for cause under
21 section 170.1(a)(6)(A)(iii) "touches upon the core of the judicial process." (*United Farm*
22 *Workers of America v. Superior Court* (1985) 170 Cal.App.3d 97, 100). In creating a procedure
23 for judicial disqualification, in addition to guaranteeing fairness to individual litigants, the
24 Legislature sought to ensure public confidence in the judiciary and was concerned that
25 irreparable harm could result if a case were heard by a judge who appears to be tainted.
26 (*Wechsler, supra*, 224 Cal.App.4th at p. 390). "A party has the right to an objective decision
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1 maker and to a decision maker who appears to be fair and impartial.” (*ibid.*) For the reasons
2 stated, this court finds that Judge Zecher meets those requirements and should continue to serve
3 as the trial judge in the Case. The Challenge is DENIED on both grounds.

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5 IT IS SO ORDERED.

6 DATE: November 8, 2017

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9 Jeffrey S. Ross,
10 Judge of the Superior Court
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