

STAY REQUESTED

(CMC/ Trial Setting Conference 7/11/17)

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT**

JANE DOE AND JOHN DOE, *Petitioners*,

v.

SUPERIOR COURT OF SANTA CLARA, *Respondent*,

STANFORD HEALTHCARE (“SHC”) , ROY HONG MD, FREDERIC
DIRBAS MD, PALO ALTO FOUNDATION MEDICAL GROUP
 (“PAFMG”), *Real Parties in Interest*.

Appeal from the Superior Court of the State of California

For the County of Santa Clara

OCSC Case No. 2014-CV-1-261702

The Honorable Theodore Zayner

PETITIONER’S BRIEF

PETITION FOR PEREMPTORY WRIT, WRIT OF MANDATE OR
OTHER APPROPRIATE RELIEF; MEMORANDUM OF POINTS AND
AUTHORITIES: SUPPORTING EXHIBITS AS SEPARATE VOLUME

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STATUTES

Code of Civil Procedure Section 170.1

Code of Civil Procedure Section 170.3

Code Civ. Proc., § 170.1, subd. (a)(6)(C)

Code of Civil Procedure § 170.1 (a)(6)(A) (iii).

Code of Civil Procedure §170.3 (c) (5)

Code of Civil Procedure § 2025.290

CALIFORNIA RULES OF COURT

CRC 3.35-3.37

RULES

Judicial Canon Rule 3.4(f)

INTRODUCTION

This writ is taken by Petitioners from an order denying a judicial challenge for cause pursuant to Code of Civil Procedure §¹ 170.1. On June 20, 2017 (AOBE p. 80) the trial Court issued an order striking Plaintiffs' renewed Verified Recusal Statement which was filed 11 days earlier, on June 9, 2017. (AOBE p. 1) The Court's order exceeded the 10 day statutory response deadline according to Code of Civil Procedure § 170.3 (c) , and failed to include any form of a verified statement, answer, or disclosure of the relevant conflicts by the challenged judge

Petitioners wish to preserve and emphasize the fundamental basis- that the judicial failure to uphold the duty to disclose the relevant relationships, ultimately forced the filing of the verified recusal statements. The second basis for this petition is the surreptitious contemporaneous removal of the Mrs. Judge Zayner video (Appellant's Opening Brief Exhibits Volume 1 of 1, p.47-48²) on "The Stanford Family" *within days* of that key evidence being inset into Plaintiffs' first challenge statement. (AOBE p. 90)

¹ All Codes reference California Code of Civil Procedure Section , herein "CCP".

² All References to "AOBE" herein refer to (Appellant's Opening Brief Exhibits Volume 1 of 1)

Notwithstanding the inherent judicial duty to disclose (Code of Civil Procedure § 170.3(C) (1)), and the undisputed neglect to do so (AOBE³ p. 20-21 Decl. Doe ¶¶9,10), the Court’s basis of an entirely conclusory strike of Plaintiffs’ verified recusal statement does not appear to be supported by statute. Moreover, the willful timing and unequivocal destruction of the video of Mrs. Zayner on “The Stanford Family” (AOBE⁴ P. 47,48) must be presumed as tantamount to the weight and judicial implications of the destroyed evidence.(Evid. Code §413) Petitioners therefore pray for timely judicial recusal in the trial Court and relief from the Court’s interim orders.

STATEMENT OF THE CASE

The nature of the underlying case is a medical malpractice, battery, and invasion of privacy matter. The relief sought in the trial court was voluntary judicial recusal. This writ petition is taken following the judicial officer’s failure to file an answer, the judicial officer’s refusal to permit another judge to make a determination on the disqualification based on facts and law, the judicial officer’s refusal to

³ AOB refers to Appellant’s Opening Brief Exhibits in the Separate Volume and Bates numbered.

⁴ AOB refers to Appellant’s Opening Brief Exhibits in the Separate Volume and Bates numbered

accept service of the verified statement and exhibits, and the judicial officer's refusal to recuse himself and insistence to pass upon his own disqualification.

Despite the legislatively unsupported self-passing on a timely judicial recusal, the challenged judicial officer here ultimately struck Plaintiffs' recusal statement twice, once on May 5, 2017 (AOB E p. 83) and again on June 20, 2017 (AOBE p. 80). However, the judge persisted in failing to disclose, by neglecting to file a verified response or statement with either of those two strike orders. (AOBE p.)

The challenged judge correspondingly struck the second or "renewed" judicial recusal statement in conclusory fashion ruling that the Plaintiffs presented *no new facts* to support the refiling of the recusal, despite the remarkable new facts evidenced.(AOBE p. 6, ¶¶1,2)

The issue presented to this Court through the subject Writ Petition is the basis of a judicial challenge in Santa Clara Superior Court Pursuant to Code of Civil Procedure § 170.1 and Code of Civil Procedure § 170.3.

**I. THE COURT OF APPEAL HAS JURIDICTION
OVER THIS TIMELY WRIT.**

In relevant parts, Code of Civil Procedure § 170.3 (d) "The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding. The petition for the writ shall be filed and served within 10 days after service of written notice of entry of the court's order determining the question of disqualification. If the notice of entry is served by mail, that time shall be extended as provided in subdivision (a) of Section 1013."

On June 20, 2017 the Clerk served by mail the Order Striking the Disqualification of Hon. Zayner. (AOBE p.80) Pursuant to Code of Civil Procedure § § 1013, the writ would be due by July 5, 2017. This writ is therefore timely.

**II. THE JUDGE'S FAILURE TO ANSWER WITHIN 10
DAYS AUTOMATICALLY MANDATES
RECUSAL.**

Code of Civil Procedure § 170.3(C) (1) *PBA, LLC v KPOD, Ltd.*
(2003) 112 CA4th 965 is instructive that a challenged judge had ten

days to file a verified response or submit to recusal.

The California Judges Benchguide is correspondingly on point. [§2.29] To contest disqualification, the judge must file an answer within the ten-day period prescribed in CCP §170.3(c)(3) (i.e., within ten days of the filing or service of the statement), denying the allegations contained in the statement. *Urias v Harris Farms, Inc.* (1991) 234 CA3d 415, 421, 285 CR 659. Although the statute refers to an “answer” by the challenged judge, a judge’s written declaration under penalty of perjury satisfies the statutory requirement. *People v Mayfield* (1997) 14 C4th 668, 811, 60 CR2d

In this case, the Judge failed to file a written declaration under penalty of perjury. (AOBE p. 80 Court Order; p. 83 Court Order.) Moreover, the judge neglected to deny the allegations or submit a verified response attesting to the true relationship between the judge and Stanford.

**III. THE SURREPTITIOUS DESTRUCTION OF THE
KEY VIDEO EVIDENCE OF THE JUDGE’S
SPOUSE MANDATES RECUSAL. (Evid. Code § 413)**

Accessed at <https://www.youtube.com/watch?v=inLHxM-j718>,

the 2012 video of Mrs. Zayner was surreptitiously destroyed some days after the long running YouTube© video was cited and linked as evidence for judicial disqualification in Plaintiffs' April 28, 2017 verified statement. (AOBE p. 1)

A. The Transcript of the Destroyed Mrs. Zayner Video Attests to a Lifelong Commitment to Stanford by Both Mr. and Mrs. Zayner. (AOBE p. 47)

Mrs. Zayner [2012]: “Well we have a joke in the family which is that my parents encouraged us to go anywhere we wanted to go for school long as it was Stanford.”

CAPTION “Dawn Neisser, ’79 Founding Grant Society Member planning a bequest to Stanford”

“My name is Dawn Neisser, I’m a graduate of Stanford class of 1979. I’ve been an alum, a fan, a supporter of the school since then. I’m married to Ted [sic Theodore] Zayner, Class of ’78. This [2012] is our third year of being members of the [Stanford] Founding Grant Society Members. We designated our gift to the Stanford undergraduate education because both of us were undergraduates here and this was the beginning of this entire life experience life experience for us. One

of my favorite memories was spring quarter of senior year there was a very close group of us very close friends and one night probably a Thursday given our traditions we were over at the Oasis we had burgers and beer and then we went for our last late night swim skinny dip in Lake Lagunitas and you just don't want that night to end. You're just too close to the end so we hopped in the car and we drove over to the Coast and it was a beautiful moonlit drive and there were about six of us and it was like continuing that freshman dorm floor conversation senior year wrapped blankets arounds ourselves and walked on the beach for hours talking and I don't even remember what time we got back to campus [Stanford]. We graduated with a really core group of close friends that has kept together ever since graduation. We may be physically disparate but we're still very, very close. We just wanted that to continue to someone else, for several someone however many someone's there can be. It was a very easy decision."

CAPTION: "The Founding Grant Society Honoring those who have included Stanford University in their estate plans".

"For more information contact Stanford Office of Planned Giving Phone (650) 725-4358 Email: planned.giving@stanford.edu."

B. The Destroyed Mrs. Zayner Video Attests to Both Mr. and Mrs. Zayner’s membership in the Stanford Founding Grant Society Founding. (AOBE p. 47)

“Theodore C. Zayner” is named in Stanford’s recent publication as one of approximately 25 members of the Stanford Founding Grant Society Members. (AOBE p.148), with an undisclosed sum.⁵

IV. THE STANDARD OF REVIEW IS MISINTERPRETATION OF LAW, AND EXERCISE OF DUE DISCRETION.

The trial court’s decision is reviewed for an abuse of discretion and can be reversed if it applied the wrong legal standard or lacked a reasonable basis for its decision. *Curle v. Superior Court (Gleason) (2001)* 24 Cal. 4th 1059 [No. S080322. Feb. 8, 2001.] The trial court indisputably applied the inappropriate standard here – whether the judicial officer who was challenged could *refuse* personal service of the verified statement exhibits

⁵ Mrs. Zayner attests that their estate planning contributions to Stanford are such that they would support several students at Stanford.

(AOBE p.55-56, Decl. Sotto ¶¶4,5 , Decl Lloyd ¶¶3,4), and then on that basis rule himself on the judicial challenge. The judicial officer failed to file an answer to the challenge statement or denial of the allegations, and thereby established cognizable appearance of prejudice for which judicial acceptance of recusal must now be the appropriate remedy.

Petitioners plead that they presented sufficient evidence to support a finding of “the appearance” of judicial bias, and therefore the trial court abused its discretion in self striking the verified statement for judicial challenge.

A. The Facts Constituting Grounds For Judicial Disqualification are Meritorious. (CCP § 170.3 (c) (1).

The evidence here meets the lay criteria of appearing to lack impartiality.

1. Failure to Disclose the Judicial Relationship to Stanford in Advance of this Disqualification Motion Justifies Recusal.

The challenged Judge neglected to comply with the Judicial Canons and disclose in open court the relationship with the party defendants in this case, and at least defendants in several other similarly situated cases in Santa Clara. (AOBE p.) In

AOBE p. 39-53 are itemized in the exhibit appendix , which reference the undisclosed relationship of the judicial officer and his spouse and family to Defendants Stanford.

2. Undisclosed Judicial Financial Interests and Estate Planning with Stanford and its Alter Egos Justify Recusal.

The challenged Judge neglected to comply with the Judicial Canons and disclose in open court the relationship with the party defendants in this case, and at least defendants in several other similarly situated cases in Santa Clara. (AOBE p. 44,45)

3. Undisclosed Current and Ongoing Relationships With Stanford Justify Recusal.

Exhibits are attached to this brief in support that the judge's relationships to Defendants Stanford and its alter egos are current, relevant, and prejudicial. (AOBE p.144-161; and p. 39-52)

4. Spousal Financial Interest Separately Warrants Judicial Recusal.

Code of Civil Procedure § 170.1. (a) “A judge shall be disqualified if any one or more of the following are true:

(B) A judge shall be deemed to have a financial interest within the meaning of this paragraph if: (i) A spouse or minor child living in the household has a financial interest. (ii) The judge or the spouse of the judge is a fiduciary who has a financial interest. (AOBE p.48, p. 157)

5. Judicial Failure to Dispute the Allegations in the Challenge Justifies Disqualification.

Whereas a statement of disqualification cannot be based on belief, hearsay, or other inadmissible evidence; accordingly a judicial answer to a petition for Code of Civil Procedure § 170.1 can also not build its foundation on a bed of sand. The challenged judicial officer must submit a verified answer, even in the alternative, to the order striking the recusal, with a declaration of facts, under oath. Here the Judicial Order striking the Verified Recusal Statement lacks any foundation with a

declaration of facts and disclosure of the judicial relationships.
United Farm Workers of America v Superior Court (1985, 4th
Dist) 170 Cal App 3d 97, 216 Cal Rptr 4.

**6. Surreptitious Evidence Destruction and Concealment of
Mrs. Zayer's Video Testimonial after the April 28, 2017
Exhibits Were Released to Stanford.**

The single biggest damning evidence mandating judicial
recusal in this case is the actual conduct of the parties of interest
after the evidence of the Mrs. Judge Zayner video was released
by Plaintiffs.

The video of Mrs. Zayner which was marked as “ 2012”
surreptitiously was destroyed or removed from all public view
days after Plaintiffs' notice to Stanford and Judge Zayner.
Stanford denied either doing or instructing the destruction or
concealment of Plaintiffs' evidence. Judge Zayner failed to
address the destroyed video, and has made no verified statement
under oath.

7. Judicial and Court Clerk's Willful Refusal to Accept Personal Service in Violation of CCP § 170.3(C) (1)

CCP § 170.3(C) (1) requires that a statement of disqualification to be personally served on the judge to be disqualified or upon his or her clerk provided the judge is present in the courthouse or chambers. Here the Statement of Disqualification was first served on the Court on Friday April 28, 2017 (AOBE p.89 POS, p.61 Decl. Sotto ¶¶4-6), however, inexplicably when servers attempted to serve the remainder of the filed documents (Exhibits and Declaration) on May 1, 2017, the next business day on the Judge and/or Court Clerk, the Clerk and judicial officer refused service, estopping service and frustrating purpose. (AOBE p. 56 Decl. Sotto ¶¶4,5,6; p. 61 Decl. Lloyd ¶¶2-5).

Subsequently, the Court then struck the verified statement as “conclusory” and also ruling that there were “no exhibits” or declarations to the statement. (AOBE p.83 Court Order)

**V. PLAINTIFFS' STATEMENTS OF
DISQUALIFICATION WERE TIMELY.**

Pursuant to CCP 170.4 (b), the pleadings were timely and demonstrated legal grounds for disqualification. Petitioners filed a statement of disqualification on April 28, 2017. (AOBE p. 89)

Whereas, the Court refused to accept service of the full moving papers and exhibits (AOBE p. 56 Decl. Sotto ¶¶4-6; p. 61 Decl. Lloyd ¶¶2-5).

Whereas, the Court struck the first disqualification partly based on the very exhibits which the Court refused to accept service (AOBE p.83 Court Order);

Whereas, the Court's first order striking disqualification failed to include an alternative verified answer within ten days or accept recusal (AOBE p.83 Court Order 5/5/17);

Whereas, on or about after May 5, 2017 Petitioners learned of the evidence destruction and or concealment of the Mrs. Judge Zayner testimonial video from the prior unrestricted public view (AOBE p.47, p.48; p.20, Decl. Doe ¶5; AOBEP.51-52) ; and

Whereas Defendants stonewalled and denied any association or knowledge of the Court’s possible removal of the video evidence of Mrs. Judge Zayner (AOB E p. 51, 52) ;

Petitioners therefore on June 9, 2017 filed a second statement of judicial disqualification. (AOB E p.1)

A party seeking to disqualify a judge must do so “at the earliest practical opportunity after discovery of the facts constituting the grounds for the disqualification”. (CCP §170.3, subd. (c) (1). Petitioners’ Statement of Disqualification was based on facts and events that became known to them between on or about March 1, 2017 and May 10, 2017 (AOB E p. 109 Decl. Doe ¶9) Because the Statement of Disqualification was filed at the earliest practicable opportunity after discovery of the facts, it must be considered timely and weighed on its merits. Code of Civil Procedure § 170.1.

**VI. THE STATEMENT OF DISQUALIFICATION
STATED UNAMBIGUOUS GROUNDS FOR
RECUSAL.**

The Court must consider a statement of disqualification that demonstrates on its face potential legal grounds for recusal. Code of

Civil Procedure §170.4 subd. (b). A statement of recusal must set forth the grounds for disqualification. (Code of Civil Procedure § 170.3 subd. (c) (1). A statement of disqualification may be based on admissible evidence.

VII. A JUDGE HAS JUST AS STRONG A DUTY TO RECUSE HIMSELF FOR CAUSE, AS A DUTY TO RULE.

A judge has both an ethical and statutory duty to recuse himself where there are legal grounds for recusal. (Code of Civil Procedure § 170). The judge’s duty to decide does not override the duty to recuse if there are grounds for recusal. *United Farm Workers of America v Superior Court supra* 170 Cal. App 3d.p.100.

A judge is statutorily prohibited from deciding the issue of his own recusal. Pursuant to Code of Civil Procedure § 170.3 (c) (5) ”A judge who refuses to recuse himself or herself shall not pass upon his or her own disqualification or upon the sufficiency in law, fact, or otherwise, of the statement of disqualification filed by a party.”

VIII. THE JUDGE’S DUTY TO DISCLOSE IS GREATER THAN THE DUTY TO RULE.

Canon 3E(2) requires judges to disclose on the record information that is reasonably relevant to the question of disqualification, even if the judge believes there is no basis for disqualification. Public perception and trust in the justice system is paramount.

The “duty to disclose,” means that Judge Zayner was already under a duty to familiarize himself with any possible conflicts of interest (Code of Civil Procedure §170.1(3)(c)) and disclose any possible conflicts immediately to the parties. It is not up to the plaintiffs to discover conflicts of interest invoking a Code of Civil Procedure § 170.1 whether in a timely manner or not. “Although a party has an obligation to act diligently, he or she is not required to launch a search to discover disqualifying information that a judge should have disclosed,” *Christie v. City of El Centro* (App. 4 Dist. 2006) 37 Cal.Rptr.3d 718, 135 Cal.App.4th 767, review denied. See also, (*Urias*, supra, 234 Cal.App.3d at p. 425,

285 Cal.Rptr. 659 [party not required to investigate to ascertain a judge's former clients]; *Betz*, supra, 16 Cal.App.4th at pp. 935, 937, 20 Cal.Rptr.2d 841 [parties not required to investigate to ascertain clients of law firm in which arbitrator had been a partner].)

Even as late as June 30,2017 Judge Zayner has neglected to make the required disclosure to Plaintiffs in this case, or many if not all other Plaintiffs similarly situated. (*Lyons vs. Stanford, Phills vs. [Stanford]*,

1. The Judge Must Disclose His Current and Close Allegiances and Affiliations.

While a ‘mere prior association [does not]form a reasonable basis for questioning a judge’s impartiality.’” (*Allphin v. United States* (Fed. Cir. 2014) 758 F.3d 1336p. 1344, citing *Maier v. Orr* (Fed. Cir. 1985) 758 F.2d 1578.), no case asserts that publicly naming yourself as “The Stanford Family”, forming the Stanford Founder’s Grant Society, donating to Stanford undisclosed sums (AOBE p. 147, 148), and

affirming at a public recall of a college graduation's late night skinny dipping with your wife and Stanford "SULsies" (AOBE p. 150- "comments"), friends, drinking beers and committing your life earnings to Stanford. (AOBE p.77) (Accessed now at <https://www.youtube.com/watch?v=inLHxM-j718>).

2. The judge must not proceed in spite of a conflict of interest that he knows or should know, or only recuse after being found out.

On or about at least April 17, 2017, Judge Zayner was aware of a potential appearance of conflict with several Defendant Stanford and its alter ego cases in his Court. (AOBE p138 ¶ 11). Other Plaintiff cases with Stanford defendants were regularly appearing in Judge Zayner's Court, and at least one had recently brought forth the Judge's current financial and interest relationships. (AOBE p.129-130)

There was no evidence that the Judge, in this case or others similarly situated with Defendants Stanford or its alter egos, even in perhaps abundance of caution, since the t earlier

motion in *Lyons vs. Stanford* (AOB E p. 128) disclosed his relationship to any Plaintiffs. (*Phils adv. Leland* [Stanford] CV263146) (AOBE p.109 Decl. Doe ¶¶6,7,8)

3. The judge must not refuse to disqualify himself and force the parties to proceed in spite of an undisclosed conflict of interest.

“The issue of disqualification must be raised at the earliest reasonable opportunity after the party becomes aware of the disqualifying facts”. *North Beverly Park Home-owners Ass'n v. Bisno* (App. 2 Dist. 2007) 54 Cal.Rptr.3d 644, 147 Cal.App.4th 762, rehearing denied, review denied. That is the only timeliness requirement for a CCP §170.1, which is true here.

As to the legislative purpose, “Statutes governing disqualification of judges for cause are intended to ensure public confidence in the judiciary and to protect the right of the litigants to a fair and impartial adjudicator”. *Rossco Holdings Inc. v. Bank of America* (App. 2 Dist. 2007) 58 Cal.Rptr.3d 141, 149 Cal.App.4th 1353, modified on denial

of rehearing. See also, *Peracchi v. Superior Court* (2003) 135 Cal.Rptr.2d 639, 30 Cal.4th 1245, 70 P.3d 1054, rehearing denied.

4. The acts of a judge subject to disqualification are void.

While the majority of cases instruct that the orders of a judge subject to recusal are void, according to some authorities the order are voidable. *Giometti v Etienne* (1934) 219 C 687, 688– 689 (void); *Urias v Harris Farms, Inc.* (1991) 234 CA3d 415, 424, 285 CR 659 (voidable); *Betz v Pankow* (1993) 16 CA4th 931, 939– 940, 20 CR2d 841 (voidable); *Rossco Holdings Inc. v Bank of America* (2007) 149 CA4th 1353, 58 CR3d 141 (void); *Christie v City of El Centro* (2006) 135 CA4th 767, 37 CR3d 718 (void); see also §2.75 for discussion of effect of rulings by judge who was subject of a peremptory challenge.

5. Disqualification of a judge occurs when the facts creating disqualification arise.

In *Christie v. City of El Centro* (App. 4 Dist. 2006) 37 Cal.Rptr.3d 718, 135 Cal.App.4th 767, review denied, the disqualification of a judge occurs when the facts creating recusal arise, not when disqualification is established.

This instructive case would mean that Judge Zayner should be disqualified before he took the case because the facts creating the disqualification (life commitment of the Judge and Mrs. Zayner to Stanford) already had arisen prior to his accepting assignment, not when the facts were discovered by Plaintiffs, and thus his rulings are *voidable* on objection.

On or about April 28, 2017 the Trial Court declined to entertain the exhibits in the first filing, and then on or about June 9, 2017 the Trial Court declined to consider the merits and new evidence, or allow the statement and evidentiary exhibits to be ruled on by another judge. Notwithstanding the Court's refusal to recuse itself, and the Court's refusal to disclose its relationship to Stanford in open court From June 9, 2017 to June 30, 2017, the Trial Court continued to rule on all motions in the base case with full force and effect.

IX. THE JUDGE HAS AN IMMENSE AND

**INTRICATE PERSONAL AND FAMILIAL
LIFELONG ALLEGIANCES TO DEFENDANT
STANFORD.**

Even a casual alumnus could argue some interest would not be an inconclusive grounds for recusal. It is much simpler in this particular case because the judge has shown much, much more than a related interest. The monologue in these videos shows a judiciary and his spouse who are dedicated to if not almost obsessed with their alma mater (AOB p.47-48). Since the Judge engages regularly in these velvet handcuff Stanford activities, that influence and cross promotional relationship without a waiver of both parties, should preclude the judge from making judgment in a case involving Stanford or any of its alter egos.

**X. STANFORD'S ALTER EGOS ARE OF SIMILAR
NAME RECOGNITION AND FINANCIAL
INTEREST.**

The alter egos of Stanford, Stanford HealthCare, and Leland Junior University, etc. known to be the one and the same for purposes of alumni and the spirit of fundraising. For example,

clearly, Stanford University medical students intern at the Stanford Hospital or SHC, and the professors and doctors are employees of Stanford University. Therefore, even assuming arguendo that Stanford University does not have any relationship to Stanford Health and the multitude of Stanford's other named institutions, such argument is not persuasive in attempts to reject mandatory judicial recusal. Clearly, if Defendant "Stanford" whether Stanford Health, Leland University, Board of Trustees of Leland, Stanford University, Packard Hospital, etc. were to lose a trial, it would inarguably bode less favorably for the name Stanford and the institutional finances (alumni contributions, fundraising, public image) regardless of its alter egos.

Accordingly the volumes of court awarded exorbitant monetary "sanctions" in favor of Stanford by the challenged Judge as shown here would equate to a better financial outlook for Stanford as a general institution. Notwithstanding Stanford's operations as a "non-profit", its divisions and alter egos utilize for example the lands which are owned by Stanford and its operating entities.

Judge Zayner was in violation of 170.3 (C)(5) which states in relevant part: “A judge who refuses to recuse himself or herself shall not pass upon his or her own disqualification or upon the sufficiency in law, fact, or otherwise, of the statement of disqualification filed by a party. In that case, the question of disqualification shall be heard and determined by another judge agreed upon by all the parties who have appeared or, in the event they are unable to agree within five days of notification of the judge's answer, by a judge selected by the chairperson of the Judicial Council, or if the chairperson is unable to act, the vice chairperson. The clerk shall notify the executive officer of the Judicial Council of the need for a selection. The selection shall be made as expeditiously as possible.”

170.3(c)(1) If a judge who should disqualify himself or herself refuses or fails to do so, any party may file with the clerk a written verified statement objecting to the hearing or trial before the judge and setting forth the facts constituting the grounds for disqualification of the judge. The statement shall be presented at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification. Copies of the statement shall be served on each party or his or her attorney who has appeared and shall be personally served on the judge alleged to be

disqualified, or on his or her clerk, provided that the judge is present in the courthouse or in chambers.

(2) Without conceding his or her disqualification, a judge whose impartiality has been challenged by the filing of a written statement may request any other judge agreed upon by the parties to sit and act in his or her place.

(3) Within 10 days after the filing or service, whichever is later, the judge may file a consent to disqualification in which case the judge shall notify the presiding judge or the person authorized to appoint a replacement of his or her recusal as provided in subdivision (a), or the judge may file a written verified answer admitting or denying any or all of the allegations contained in the party's statement and setting forth any additional facts material or relevant to the question of disqualification. The clerk shall forthwith transmit a copy of the judge's answer to each party or his or her attorney who has appeared in the action.

(4) A judge who fails to file a consent or answer within the time allowed shall be deemed to have consented to his or her disqualification and the clerk shall notify the presiding judge or person authorized to appoint a replacement of the comply with CCP 170.3(4) recusal as provided in subdivision (a).

Judge Zayner failed to file an answer in the required time, therefore he must be disqualified per CCP 170.3 (c)(4), therefore he is mandatorily recused.

Judge Zayner refused to recuse himself voluntarily, or to permit his clerk to request a neutral judicial assignment to adjudicate the hearing on his recusal.

Moreover, to date Judge Zayner has made no verified statement or declaration under oath describing his affiliations with Stanford, his book promotion and cross promotion in March 2017, or any facts in the form of a verified declaration attesting that Judge Zayner can be impartial in cases involving Defendant Stanford and/or its multiple alter egos.

**XI. IN THE ALTERNATIVE, THIS COURT IS
AUTHORIZED PER CCP 170.1 TO SUA SPONTE
ASSIGN A NEW TRIAL COURT.**

Petitioners request that the Court of Appeals take into consideration the provision of Code of Civil Procedure section 170.1, subdivision (c), which provides: “At the request of a party or on its own motion an appellate court shall consider whether in the interests of justice it should direct that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed by the appellate court.”

The power of the appellate court to sua sponte disqualify a judge under Code of Civil Procedure section 170.1, subdivision (c), should be exercised in this matter on the basis that the interests of justice require it. (*Livingston v. Marie Callenders, Inc.* (1999) 72 Cal.App.4th 830, 840, 85 Cal.Rptr.2d 528.) The interests of justice require it, for example, where a reasonable person might doubt whether the trial judge was impartial (*Catchpole v. Brannon* (1995) 36 Cal.App.4th 237, 247, 42 Cal.Rptr.2d 440), or where the court's rulings suggest the “whimsical disregard” of a statutory scheme. (*People v. Gulbrandsen* (1989) 209 Cal.App.3d 1547, 1562, 258 Cal.Rptr. 75.) Petitioners here contend that justice requires the assignment of a new court judge, because of the evidence presented.

In light of that evidence of Stanford preference, Petitioners have been “forced” to in this case file multiple (more than four) petitions to request that the Court simply enforce its very own protective orders. Despite compelling expert and other declarations, and exhibits making a *prima facie* case of Stanford’s unremitting and blatant protective order violations, Judge Zayner was unwilling to issue even just a more restrictive protective order for Plaintiffs. Court discovery protective orders issued by Judge Elfing on 11/12/15 required the non-disclosure of discovery documents in this case, and mandated defendants’ restraint from use of

plaintiffs' documents for any ulterior purpose, other than the prosecution of the instant case.

The Court of Appeals will observe that the trial Court not only declined to uphold its own Orders in this case multiple times from 2016 through 2017, but also refused to even entertain Petitioner's motion to simply grant a more defined protective order proceeding forward. The Court summarily denied all Petitioners'/Plaintiffs' motions to enforce the protective order (2/2/17), Motion for sanctions for violations of the Protective order (2/2/17), and Motion for issue, evidence or termination sanctions (6/22/17).

The Court of Appeals is asked to grant the three orders at issue in this opinion. The trial court's orders in connection with non-recognition of the Court Protective Orders of 11/12/15, and the trial Court's orders in connection with the non-recognition of the Doe (anonymous filing) orders of September 9, 2014, strongly intimate if not frankly suggest bias and caprice on behalf of the court, with frustration and a desire to clear its docket of another Stanford Defendant case, in favor of Stanford. Therefore, petitioners' request should be granted.

**XII. AN UP-TO-DATE APPELLATE PUBLISHED
AUTHORITY IN RECUSAL IS REQUIRED.**

Other than a thirty two year old case also involving Stanford (*Stanford University v. Superior Court* (1985) 173 Cal.App.3d 403), there is clearly a paucity of current and relevant appellate authority determining the up-to-date standard of judicial disqualification. Statutes governing disqualification for cause are intended to ensure public confidence in the judiciary and to protect the right of the litigants to a fair and impartial adjudicator not to safeguard an asserted right, privilege, or preference of a judge to try or hear a particular dispute. *People v. Thomas* (1972) 8 Cal. 3d 518, 520 [105 Cal. Rptr. 366, 503 P.2d 1374].

Petitioners therefore request that this Court of Appeals adjudicate the merits of this writ with the public policy applications.

IN SUMMARY

During a new era of internet and readily disseminated media coverage and enhanced best practice judicial standards, and in the wake of the national civilian outrage related to Hon. Judge Aaron Persky and his alma mater Stanford (*People vs. Brock Turner*), such public perceptions of judicial indifference to self-policing cannot lie. A 1985 case (*Stanford University v. Superior Court* , *supra* where Stanford prevailed in reversal of judicial disqualification must not be the

standard for this case, nor should that dated case be the determining case law in this new era.

Based even purely on just the fact that Mrs. Judge Zayner's public Youtube video was surreptitiously destroyed and removed from Youtube (Evid. Code § 413) *just days* after Petitioners inserted the video link in their moving papers, that basis creates an unequivocal public "lay" perception that that evidence was not favorable to the opposition to the judicial challenge. Otherwise, the expectancy would not be that a public video which Mrs. Judge Zayner voluntarily participated in, and had been posted for public view and cross promotion of Stanford and its Founder's Society for 5 years, would suddenly and inexplicably just *disappear from public view*.

More distinctively, Judge Zayner has to date declined and simply failed to file any verified answer, which was a requirement pursuant to CCP 170.3 (c) (3).

It appears that the intent of the legislature in drafting Code of Civil Procedure §170.3 was to allow for the judicial officer to file a written verified answer admitting or denying all of the allegations contained in the parties' verified statement, as well as setting forth any

additional material facts material or relevant to the question of disqualification.

The preservation of the judicial system, as well as the public's perception of justice and judicial impartiality is the basis for the legislative requirement for *a verified statement by the challenged judge*. In light of the fact that Honorable Zayner has not yet taken the opportunity to comply with Code of Civil Procedure § 170.3 (c) (3), such a factual oversight intimates that recusal is therefore mandatory.

Judicial discretion exercised to strike in conclusory fashion “striking the judicial challenge” without in the alternative attempting to satisfy the legislative requirement of Code of Civil Procedure § 170.3 in timely (within 10 days from filing or service) filing a verified statement appears inapposite to current statute and case law.

Therefore, in light of the uncontroverted fact that to date, there has been unequivocally no verified statement filed by Hon. Zayner either attesting to, delineating, or denying his honor's current and ongoing relationships with Stanford, recusal is mandatory.

As the recusal was justified on April 28, 2017 and should have been voluntarily done by Hon. Zayner, waiting months for nearly half a dozen

motions to be at issue, when the recusal should have been set on that earlier date, has significantly prejudiced Petitioners in this case.

STAY REQUESTED

Petitioners request a stay the proceedings in Superior Court in connection with seeking the instant writ petition relief. Therefore, Petitioners plead that the Court of Appeal to stay (1) the enforcement of the challenged ruling or further proceedings in the underlying case while the Court of Appeal is reviewing the writ petition and (2) suspend the enforcement of the Trial Court's interim order until the writ from the recusal challenge is resolved. Denial of this stay request will be prejudicial to Petitioners, whose upcoming motions would be adjudicated by the challenged judge. Granting the stay will not prejudice any other party, as the upcoming motions in this case are nearly entirely moved by Petitioners.

PRAYER

Petitioners pray for issuance of a Writ of Mandate directing the Respondent Court to reassign this case to a neutral judicial officer, an order vacating the Court's orders from April 28, 2017 through the writ determination, and an award of such other relief as may be just and proper.

VERIFICATION

We, Jane Doe and John Doe, are the Plaintiffs/ Petitioners herein. We have read the foregoing Petition for a Writ of Mandate or other appropriate relief and know its contents. The facts alleged in the Petition are within our own knowledge, and we know these facts to be true. Because of our genuine familiarity with the relevant facts pertaining to the Trial Court proceedings, we, rather than limited scope counsel verify this petition.

Petitioners herein attest that the tendered evidence of Stanford's unrelenting velvet handcuffs to Honorable Zayner as his family's alma mater, in amalgamation with the video testament of Mrs. Zayner are of a compelling and explicit nature. These facts further create a public perception which would reasonably preclude a fair and impartial hearing or trial for Plaintiffs who are opposing Stanford or its alter egos in this Santa Clara Court, and before said judge. There is therefore, at best, an appearance of potential prejudice in favor of the interests of Defendant Stanford and its alter egos.

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

Executed on July 3, 2017.

BY /eJDoe/_____

Jane Doe

/ JohnDoe/

John Doe

Declaration to Authenticity of Exhibits

1. All exhibits accompanying this Petition are true copies of the original documents on file with the respondent court. The exhibits are incorporated herein by reference as though fully set forth in this petition. The Exhibits are paginated consecutively, and page references in the petition are to the consecutive pagination.

Beneficial Interest of Petitioners; Capacities of Respondent and Real Parties in interest

2. Jane Doe and John Doe (collectively “Petitioners”) are Plaintiffs in an action now pending in the respondent court entitled Doe vs. Hong et al (include Stanford Hospital and Stanford University professor Dr. Dirbas) in the Santa Clara County Superior Court Case No. 14-CV-260712. Petitioners are named herein as the real parties in interest.

Timeliness of Petition

3. Following the June 9, 2017 filing of the verified recusal statement, the respondent judge took the matter under submission. On June 20, 2017, a ruling was issued and served by the Clerk by mail (Code of Civil Procedure § 1013) from in-chambers work. This writ petition,

which was filed as quickly as possible after the June 20, 2017 ruling, is timely.

Absence of Other Remedies

A ruling on a denial of the disqualification of a judge (Code Civ. Proc., § 170.3, subd. (d)) is reviewable by writ.

WORD COUNT CERTIFICATION

I am one of the Petitioners in this action. Using Microsoft Word 2016, word count function, there are 6211 words in this brief. This Appellants' Reply Brief is printed in Times Roman font size 14.

I certify that the foregoing is true and correct.

DATED: July 3, 2017

/ eJDoe/

Jane Doe