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Superior Court of California
County of Los Angeles

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FAXED

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ATTORNEYS FOR Petitioner

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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In Re Marriage of:)	Case No. BD 646058
)	
ANGELINA JOLIE,)	VERIFIED STATEMENT OF GROUNDS
)	FOR OBJECTING TO AND REQUIRING
Petitioner,)	DISQUALIFICATION OF TEMPORARY
and)	JUDGE APPOINTED IN THIS MATTER
)	
WILLIAM BRADLEY PITT,)	
)	(Code of Civil Procedure, §§ 170.1, 170.3)
Respondent.)	
)	
)	
)	

TO THE COURT, TEMPORARY JUDGE OUDERKIRK, THE PARTIES AND THEIR COUNSEL OF RECORD:

Petitioner Angelina Jolie hereby objects to the Hon. John Ouderkirk (Ret.) presiding (in the past and in the future) as a temporary judge of the Los Angeles Superior Court under California Constitution art. VI, section 21, in any proceedings in this action. The objections are made on the grounds set forth in this verified statement of objection and the accompanying Memorandum of Points and Authorities. The objections are based on recently discovered evidence that:

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VERIFIED STATEMENT OF GROUNDS FOR OBJECTING TO AND REQUIRING DISQUALIFICATION OF TEMPORARY JUDGE APPOINTED IN THIS MATTER

In Re Marriage of Jolie and Pitt
Los Angeles Superior Court Case No. BD 646058

1 Judge Ouderkirk failed to disclose multiple professional, business, and financial
2 relationships, created and ongoing during the course of the matter, with Respondent’s counsel and
3 their law firms in which Judge Ouderkirk was privately compensated, which alone, or combined
4 with other statements and circumstances, taken in their totality, would lead a reasonable person to
5 entertain *a doubt* whether Judge Ouderkirk has been or would be impartial in these proceedings.

6 This verified statement is appropriately filed with the Los Angeles Superior Court
7 Presiding Judge, or his designee, as the court which appointed Judge Ouderkirk. (See *Hayward v.*
8 *Superior Court* (2016) 2 Cal.App.5th 10, 26 & fn. 15.)

9 **FACTUAL BACKGROUND**

10 **A. The Appointment of Judge Ouderkirk And His Initial Disclosures.**

11 1. On January 9, 2017, the Los Angeles Superior Court appointed the Honorable John
12 W. Ouderkirk, a retired Judge of that court, to act as a Temporary Judge pursuant to California
13 Constitution article VI, section 21 and Judge Ouderkirk’s appointment as Temporary Judge was
14 extended through December 30, 2019 and then through December 31, 2020. The extensions of
15 Judge Ouderkirk’s appointment were insisted upon by Respondent, to the extent that he made it a
16 condition of agreeing to resolve certain issues. Judge Ouderkirk’s appointment was subject to
17 California Rules of Court, Rules 2.830 through 2.835, inclusive.

18 2. As an article VI, section 21, Temporary Judge, Judge Ouderkirk was and is subject
19 to the Judicial Code of Ethics just as if he were a regular sitting judge of the Los Angeles Superior
20 Court. (Cal. Rules of Court, r. 2.831(b)&(d).)

21 3. Code of Judicial Ethics Canon 6D(5) mandates that “[a] temporary judge ... shall,
22 from the time of notice and acceptance of appointment *until termination of the appointment*” “(a)
23 [i]n all proceedings, *disclose in writing* or on the record information as required by law, or
24 information that is reasonably relevant to the question of disqualification under Canon 6D(3),
25 including personal or *professional relationships* known to the temporary judge, private judge, or
26 court-appointed arbitrator, that he or she or his or her law firm has had with a party, lawyer, or law

1 firm in the current proceeding, even though the temporary judge, private judge, or court-appointed
2 arbitrator concludes that there is no actual basis for disqualification.”

3 4. On January 3, 2017 and prior to Judge Ouderkirk’s appointment, Alternative
4 Resolution Centers, LLC (ARC), acting as Judge Ouderkirk’s authorized agent, made six
5 disclosures mandated by the California Rules of Court. Specifically, ARC disclosed that several
6 years earlier, Judge Ouderkirk had been compensated to preside in five cases in which
7 Respondent’s counsel, Lance S. Spiegel and Young Spiegel & Lee, served as counsel of record for
8 one of the parties. (Exh. 1.)

9 5. ARC’s January 3, 2017 disclosure letter stated that “[t]o further comply” with the
10 law, ARC was requesting that Judge Ouderkirk “search his/her records to ascertain whether the
11 attorneys or parties have compensated [him] directly during the past sixty months in any matter
12 heard outside this office or in an independent forum.” ARC further promised that if Judge
13 Ouderkirk were appointed, he “will also inform the parties of any subsequent offer while this case
14 is pending.” (Exh. 1.)

15 6. On that same day, Judge Ouderkirk sent his own letter providing additional
16 disclosures regarding his involvement in cases in which Lance S. Spiegel or Young Spiegel & Lee
17 served as counsel as well as disclosures regarding his involvement in matters where Petitioner’s
18 then counsel, Laura Wasser, had been counsel.

19 **B. Judge Ouderkirk’s Further Disclosures.**

20 7. Consistent with Judge Ouderkirk’s obligation and promise to provide continuing
21 disclosures, ARC and Judge Ouderkirk provided further disclosures in August 2018.

22 8. On August 27, 2018, upon Petitioner’s current counsel’s entry into the case, ARC
23 alerted the parties that Judge Ouderkirk had been retained in two additional cases:

- 24 • A case identified only as D13, in which Lance S. Spiegel and Young Spiegel & Lee
25 were counsel of record. For this entry, a notation indicated “Set” and the date “Dec
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1 2016”—nearly a year before the initial January 2017 disclosure and a year and a half
2 before it was ultimately disclosed; and

3 • *Marriage of Krista & Steven Levitan*, in which Lance S. Spiegel, Esq. and the law firm
4 Young Spiegel & Lee were counsel of record. Next to this was a notation “Set” and
5 the date “Oct. 2018.” (Exh. 2.)

6 9. ARC’s August 27, 2018 Disclosure also updated some previously provided
7 information, disclosing that Judge Ouderkirk had “heard” *Martina Emanuel v. Russell Emanuel* in
8 November 2013 and had “heard” *In re the Marriage of Fisher* in December 2017. (Exh. 2.)

9 10. From all of this, it could only be deduced that “Set.” meant that both D13 and the
10 *Levitan* matter had settled. That’s because D13 could not be merely “set” for a date a year and a
11 half in the past. That was consistent with press reports about the high-profile divorce in the *Levitan*
12 case having resolved. (See [https://www.tzm.com/2018/10/12/modern-family-creator-steve-](https://www.tzm.com/2018/10/12/modern-family-creator-steve-levitan-divorce-krista-4-million-year-no-spousal-support/)
13 levitan-divorce-krista-4-million-year-no-spousal-support/ [last accessed Aug. 7, 2020].)

14 11. A few days later, on August 30, 2018, Judge Ouderkirk sent the parties a
15 supplemental disclosure letter. There, he indicated that he had presided over *In re the Marriage*
16 of *Morton and Rosh* in 2017. (Exh. 3.)

17 **B. Judge Ouderkirk’s Belated Disclosure Of Further Retentions By Respondent’s**
18 **Counsel.**

19 12. Respondent brought a request for order which on June 19, 2020 Judge Ouderkirk
20 set for an in-person 15-day trial on October 5, 2020. At the time Petitioner’s counsel raised
21 concerns about the trial being set given COVID.

22 13. On July 21, 2020, no further disclosures having been made by Judge Ouderkirk, the
23 office of counsel for Petitioner wrote to ARC to ask if there had been any other matters in which
24 Judge Ouderkirk had been retained by Respondent’s counsel since the disclosures made in 2018,
25 as almost two years had passed.

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1 14. On July 24, 2020, ARC responded by identifying several such previously-
2 undisclosed matters:

3 a. *Marriage of Hankey*, with a date of May 2020, and a notation “heard”; and

4 b. *Marriage of Merade*, with a date of February 2020, and a notation “settled.”

5 15. ARC’s July 24, 2020 letter also provided additional disclosures altering the
6 information about one previously-disclosed case. Although the *Marriage of Levitan* matter had
7 been previously mentioned, Judge Ouderkirk’s ongoing retention in that matter was news to
8 Petitioner. It had been represented as settled in 2018. But ARC’s July 24, 2020 letter indicated
9 that Judge Ouderkirk had “heard” the *Marriage of Levitan* matter in August 2019. (Exh. 4.)

10 16. When Petitioner’s counsel looked at the underlying Los Angeles Superior Court
11 docket in that matter, they discovered that Respondent’s counsel, Mr. Spiegel, had filed a Request
12 for Order to extend Judge Ouderkirk’s appointment in that matter on July 31, 2019, thereby
13 advocating for Judge Ouderkirk’s financial interests, a request which the docket reflects was
14 opposed. (Exhs. 5 & 6 [docket entries for July 31, 2019, August 24, 2019, and September 4,
15 2019].)

16 17. The *Marriage of Merade* and *Marriage of Hankey* cases had not been previously
17 disclosed. By email dated July 28, 2020, Mr. Spiegel, counsel for Respondent, revealed that Judge
18 Ouderkirk had been retained in the *Marriage of Merade* matter for ten months from April 2019
19 until February 2020 during the pendency of this case. (Exh. 7.) The docket revealed that Ms.
20 Kiley had been counsel in the *Marriage of Hankey* matter since December 2019. (Exh. 8.)

21 **C. Judge Ouderkirk does not recuse himself.**

22 18. Following receipt of Judge Ouderkirk’s newly revealed, updated July 24, 2020,
23 statement disclosing his ongoing, continuous business relationship with Respondent’s counsel,
24 Petitioner’s counsel promptly performed some simple due diligence, for example confirming that
25 Respondent’s counsel was active in the *Marriage of Hankey* matter and learning that Respondent’s
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1 counsel had been actively advocating for Judge Ouderkirk’s continuing financial interest in having
2 his appointment extended in the *Marriage of Levitan* matter.

3 19. On July 27, 2020—it having become clear that there had been a substantial,
4 ongoing, undisclosed business relationship between Judge Ouderkirk and Respondent’s counsel
5 over the prior almost two years—Petitioner’s counsel wrote to Judge Ouderkirk seeking any
6 explanation that he might have. (Exh. 9.)

7 20. On August 5, 2020, Judge Ouderkirk responded. (Exh. 10., intervening email
8 removed as containing discussions of confidential matters.) He explained that he could not
9 respond sooner because he had been on vacation.

10 a. Judge Ouderkirk stated that there had been “errors in the disclosure of the
11 *Merade*” case. But Judge Ouderkirk’s retention by Respondent’s counsel in *Merade* was not
12 previously disclosed at all and Petitioner would have had no knowledge of it had she not asked in
13 July 2020. Judge Ouderkirk’s August 2020 letter indicates that “the case was reported as settled”
14 although he had actually presided over the trial and entered judgment in February 2020. But this
15 is a correction to the belated July 24, 2020 disclosure, which ARC only provided at the request of
16 Petitioner’s counsel. It was that disclosure that had erroneously reported the case as “Settled.”
17 The case had never been previously disclosed.

18 b. Judge Ouderkirk also acknowledged that the August 27, 2018 disclosure
19 contained “errors” regarding the “*Levitan* cases.” He acknowledged that *Levitan* had not simply
20 settled—as previously disclosed—but that Judge Ouderkirk had in fact adjudicated a financial
21 dispute between the parties that had been reserved for after entry of judgment.

22 c. Judge Ouderkirk acknowledged that—as ARC belatedly disclosed—one of
23 Respondent’s counsel, Anne Kiley, was a “co-counsel” in the *Hankey* case in 2019. Judge
24 Ouderkirk did not explain why this had not been previously disclosed. His letter stated that “[i]f
25 Ms. Kiley filed a substitution of attorney, I do not presently have a copy of it; however, she was
26 co-counsel.” (Exh. 10; see Exh. 8, Exh. 11.) Judge Ouderkirk did not explain why different

1 disclosure rules would apply if Ms. Kiley had substituted in as counsel rather than served as co-
2 counsel. The law makes no such distinction.

3 21. Judge Ouderkirk did not offer to recuse himself despite the clear application of rule
4 2.831, Canon 6D(5)(a) of the Code of Judicial Ethics; Civ. Proc. Code, § 170.1(a)(6)(A)(iii). The
5 disclosure and disqualification requirements are *not* waivable absent full and knowing waiver in
6 writing signed by the parties *after* all facts have been disclosed. (Canon 6D(4) of the Code of
7 Judicial Ethics.) That has not happened here.

8 22. On August 7, 2020, Petitioner again wrote to Judge Ouderkirk asking him to recuse
9 himself based on the previously undisclosed ongoing professional and financial relationships with
10 Respondent's counsel. (Exh. 12.) Judge Ouderkirk has not done so necessitating this verified
11 statement of disqualification.

12 23. Petitioner is unaware of the amount of compensation that Judge Ouderkirk has
13 received or is continuing to receive in the additional matters that had not been disclosed. But, as
14 Judge Ouderkirk is a privately-compensated neutral with ARC, he presumably was and continues
15 to be paid for his services, including payment by Respondent's counsel and their clients.

16 24. Over the last almost two years during which Respondent's counsel has repeatedly
17 hired Judge Ouderkirk in matters, with *no* disclosure to Petitioner, Petitioner's counsel has not
18 hired Judge Ouderkirk in any instance. Indeed, as Petitioner's counsel is based in the Bay Area, a
19 reasonable person would view that Judge Ouderkirk, who is based in Southern California, has no
20 expectation of repeat business from Petitioner's counsel's firm, while at the same time over the
21 last two years he has been obtaining undisclosed ongoing, consistent repeat business from counsel
22 for Respondent.

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1 **D. The Totality Of The Circumstances Require Judge Ouderkirk's**
2 **Disqualification.**

3 25. An article VI, section 21 temporary judge must be disqualified whenever a "person
4 aware of the facts *might* reasonably entertain *a doubt* that the judge would be able to be impartial."
5 (Civ. Proc. Code, §§ 170.1, subd. (a)(6)(A)(iii), italics added.)

6 26. For reasons explained more thoroughly in the attached Memorandum of Points and
7 Authorities, ample circumstances exist here to create that doubt:

8 a. California law imposes special disclosure obligations on privately-
9 compensated judges precisely because it is understood that such circumstances create heightened
10 concerns about impartiality. When a party's counsel becomes a private judge's or other private
11 "neutral's" "steady customer," the private judge's economic self-interest can undermine their
12 impartiality, whether overtly or by creating implicit favoritism. (*Benjamin, Weill & Mazer v. Kors*
13 (2011) 195 Cal.App.4th 40, 68.) Over time, the private judge can give the steady customer the
14 benefit of the doubt in subtle ways, ensuring that the pleased customer seeks out the private judge's
15 services in the future. (*Ibid.*) Here, Respondent's counsel has employed Judge Ouderkirk on
16 multiple undisclosed occasions occurring while this proceeding was pending. In essence, one side
17 has been paying Judge Ouderkirk additional compensation for services while that fact has been
18 undisclosed to the other side. On one of those occasions, Respondent's counsel actively advocated
19 for Judge Ouderkirk's financial interests, briefing to the Superior Court that his appointment
20 should be extended when the opposing party did not want to extend that appointment. Petitioner's
21 counsel was not made aware of these relationships until two weeks ago. A reasonable person
22 might entertain doubt about impartiality under these circumstances.

23 b. It is undisputed that Judge Ouderkirk violated his continuing obligation
24 under the Rules of Court, Code of Civil Procedure, and Canons of the Code of Judicial Ethics to
25 disclose the nature and extent of his professional relationship with Respondent's counsel.
26 (California Rules of Court, rule 2.831(d); Canon 6D(5)(a) of the Code of Judicial Ethics; Civ. Proc.

1 Code, § 170.1.) The statutory and rule scheme imposed on Judge Ouderkirk is a nonwaivable,
2 continuing duty to disclose. Indeed, multiple communications from ARC and Judge Ouderkirk
3 acknowledged his continuing duty to make these types of disclosures. Likewise, it is undisputed
4 that Judge Ouderkirk and his agent ARC entirely failed to make multiple mandatory disclosures
5 and erred in describing the status of at least some of the cases that were disclosed. The information
6 would have remained secret had Petitioner’s counsel not requested information from Judge
7 Ouderkirk and ARC—information that Judge Ouderkirk himself should have and was required to
8 disclose many, many months before. These violations of the private judge’s disclosure obligations
9 require disqualification: A “person aware” of both (1) the nature and extent of the relationship
10 between Judge Ouderkirk and Respondent’s counsel and (2) that he “failed to disclose it in the
11 manner required by the Code of Judicial Ethics ‘might reasonably entertain a doubt that [he] would
12 be able to be impartial.’” (*Hayward v. Superior Court* (2016) 2 Cal.App.5th 10, 52, quoting
13 § 170.1, subd. (a)(6)(A)(iii).).

14 **F. Judge Ouderkirk’s Failure To Meet His Ethical Disclosure Obligations**
15 **Reinforces Other Facts That Would Lead A Reasonable Observer To Question**
16 **The Private Judge’s Impartiality.**

17 27. These problems do not stand in isolation. They must be viewed in the context that
18 “might” lead a reasonable person to “entertain a doubt” about Judge Ouderkirk’s impartiality.
19 (*Ibid.*) For instance:

20 a. Petitioner’s counsel is based in the Bay Area and that is where the focus of
21 her practice is. She is not likely to be a “repeat player” in hiring Judge Ouderkirk. Respondent’s
22 counsel not only have the potential for being “repeat players” before Judge Ouderkirk and having
23 their clients hire and pay him, they have actively pursued being just such repeat players for Judge
24 Ouderkirk *during the pendency of this matter.*

25 b. Respondent’s counsel were fully aware that they were retaining Judge
26 Ouderkirk in the undisclosed matters while this matter remained pending. At no time did they

1 suggest to Judge Ouderkirk that he should be disclosing their business, professional, and financial
2 entanglement with him to Petitioner. Presumably, it served Respondent's purposes to keep his
3 counsel's ongoing retentions of Judge Ouderkirk undisclosed and unknown to Petitioner. Had
4 Petitioner's counsel not thought to ask, she still would be in the dark about the on-the-side
5 arrangements between Respondent's counsel and Judge Ouderkirk.

6 c. Respondent has insisted, as a condition for resolving issues, on Judge
7 Ouderkirk remaining the private judge in this case. All extensions of Judge Ouderkirk as a private
8 judge have been on the insistence of Respondent.

9 28. Coupled with the above-described serious and admitted failures to disclose
10 substantial professional relationships and entanglements between Judge Ouderkirk and
11 Respondent and his counsel, these additional facts would further lead a reasonable observer to
12 entertain *doubt* about Judge Ouderkirk's impartiality in this matter. (See (*Hayward v. Superior*
13 *Court, supra*, 2 Cal.App.5th 10 [noting similar factors].)

14 **H. Conclusion.**

15 29. For all of the above reasons, the Hon. John Ouderkirk (ret.), must be disqualified
16 as a California Constitution, art. VI, section 21, private judge.

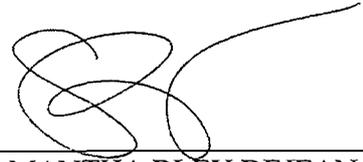
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VERIFICATION

I, Samantha Bley DeJean, declare as follows:

I am an attorney duly licensed to practice law in California. I am a partner in Bley and Bley, attorneys of record in this proceeding for Petitioner Angelina Jolie. I have personal knowledge of the foregoing facts. I make this declaration because I am more familiar with the relevant facts, i.e., the state of the record and the litigation, than is my client. I certify that the facts attested to in the foregoing verified statement of objections are true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification is executed on August 7, 2020, at San Francisco, California.



SAMANTHA BLEY DEJEAN
Attorney for Petitioner

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