

FILED
YOLO SUPERIOR COURT

JUL 03 2008

By [Signature]
Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF YOLO

PEOPLE OF THE STATE OF CALIFORNIA,)	Case No.: CR F 08-3355
)	
Plaintiff,)	
)	ORDER ON DEFENDANT MARCO
vs.)	ANTONIO TOPETE'S MOTION FOR
)	DISQUALIFICATION FOR CAUSE
MARCO ANTONIO TOPETE,)	
)	Hearing Date: July 3, 2008
Defendant.)	Department: 7
)	Time: 3:30 p.m.
)	
)	
)	

The Court issues this order on the motion for disqualification for cause submitted by the public defender's office on behalf of defendant Marco Antonio Topete, directed against Judges Steven Basha, Timothy Fall, Janet Gaard, W. Arvid Johnson, Stephen Mock, Donna Petre, Paul Richardson, David Rosenberg, Doris Shockley, Kathleen White, and Thomas Warriner.

Defendant's motion to disqualify the entirety of the bench is **DENIED**, as follows:

1. The Presiding Judge does not have the authority to recuse members of the bench. Moving party has cited no authority for a Presiding Judge to recuse an entire bench. Each judge must respond separately to a motion for disqualification. (Code Civ. Proc., § 170.3.)

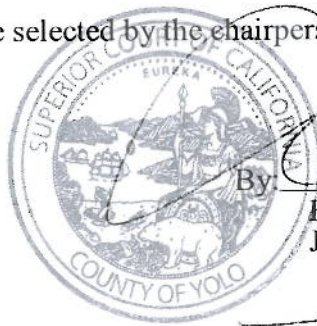
2. The Court orders the motion for disqualification **STRICKEN** as to Judges Fall, Gaard, Johnson, Mock, Richardson, Shockley, and Warriner. A challenge under Code of Civil

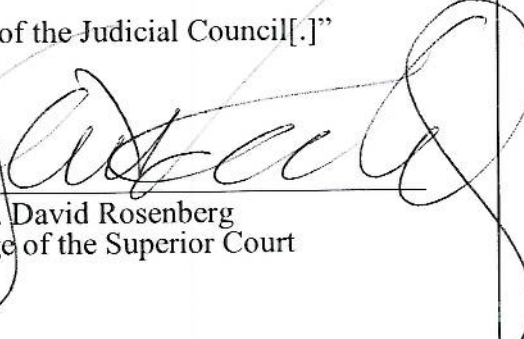
1 Procedure section 170.1 may only be properly directed to a judge who has been assigned to hear
2 a case. (Code Civ. Proc., §§170.4, subd. (b) and 170.5, subd. (f).) Since none of these judges
3 have been assigned to hear defendant's case, defendant's challenge of these judges discloses no
4 legal grounds for disqualification. (Code Civ. Proc., § 170.4, subd. (b).) Each of these seven
5 judges has filed an order striking the motion for disqualification on his or her own behalf.

6 3. While not in response to the motion, Judges Basha, White, and Petre have
7 voluntarily disqualified themselves from hearing defendant's case. Judge Basha has
8 disqualified himself because the named victim, Deputy Jose Antonio Diaz, was formerly
9 employed in the Information Technology Department at Yolo County, and had frequent contact
10 with Judge Basha, when Judge Basha was formerly employed as County Counsel. Judge White
11 has disqualified herself because the named victim acted as her bailiff. Judge Petre has
12 disqualified herself because she has heard matters in the named victim's family law case.

13 For the reasons set forth in his verified answer, Judge David Rosenberg declines to
14 disqualify himself, and has filed the verified answer required by Code of Civil Procedure section
15 170.3(c)(3). In accordance with Code of Civil Procedure section 170.3(c)(5), "the question of
16 disqualification shall be heard and determined by another judge agreed upon by all the parties
17 who have appeared or, in the event they are unable to agree within five days of notification of
18 the judge's answer, by a judge selected by the chairperson of the Judicial Council[.]"

19 Dated: July 3, 2008



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21 By 
22 Hon. David Rosenberg
23 Judge of the Superior Court
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